

NATIVE TITLE IN THE NEWS - JULY & AUGUST 2000

National

Federal Opposition Aboriginal Affairs spokesman Daryl Melham resigned from the Labor front bench in protest over the Federal ALP decision to support the Queensland alternative procedures legislation. (*Koori Mail*, 6 September, p2)

The National Native Title Tribunal's annual report, tabled in Federal Parliament, shows that during 1999-2000 almost half the number of native title claims made under the original Act have been combined with other claims or discontinued. The report also shows that 95 percent of claims now made meet the new registration test compared with only 51 percent under the original Act. (*Attorney General News Release*, 26 October)

New South Wales

The NNTT has advertised the Gundungurra native title application in an attempt to reach an out of court agreement. The application covers Crown land and inland waters in local government areas including Bathurst, Blayney, Blue Mountains, Boorowa, Camden, Campbelltown, Cowra, Crookwell, Evans, Goulburn, Greater Lithgow, Gunning, Liverpool, Mulwaree, Oberon, Penrith, Tallaganda, Wingecarribee and Wollondilly. People with interests in the land, including those who hold licences and permits to use it, are able to apply to the Federal Court to become parties to mediation proceedings. (*DT*, 8 Sept, p20)*

A native title application involving land from Jervis Bay to Narooma and adjoining ocean to the 200 nautical mile limit has been lodged with the National Native Title Tribunal. The claim covers more than 51,000 square kilometres of land in the Eurobodalla, Shoalhaven and Tallaganda Shires. The Walbunja Elders Committee stated that land from Jervis Bay to Narooma had been a meeting place for South Coast Aboriginal people for centuries and that they wanted to exercise traditional fishing, hunting and gathering activities on their ancestral land. (*CT*, 5 October, p3)

Victoria

Victoria's Attorney General Rob Hulls announced the Government's intention to prefer negotiation and mediation when dealing with native title claims under the land rights policy approved by state cabinet. There are 49 outstanding native title claims in Victoria. Under the policy the Government

will provide information to claimants on land tenure issues when action is proposed that may impact on Crown land and native title. (*Age*, 29 Sept, p4)

A native title claim over Wilson's Promontory has received State Government support. Victorian Aboriginal Affairs Minister Keith Hamilton stated that the National Park would be jointly managed by local Aboriginal communities and the State Government and that public access would not be affected. (*HS*, 18 October, p15)*

Queensland

The Gurang Land Council (Aboriginal Corporation) has certified an agreement between native title groups, the Queensland Government, the Mining Registrar, 21 miners and the Queensland Boulder Opal Association covering an area of approximately 97 hectares near Opalton in the Shire of Winton. The agreement has been advertised by the NNTT giving potential native title holders in the area, who have not authorised the agreement, 3 months to object to its registration. The agreement allows for the grant of new mining leases without going through the right to negotiate process. (*NNTT Media Release*, 6 Sept)

The National Native Title Tribunal has advertised nine applications for native title in Queensland. Interested parties have 3 months to apply to register as parties to the mediation.

The advertised applications are:

- Olkol & Bakanh Peoples' application over Strathgordon Station in the Cook Shire;
- Kaanju People's application over the former Batavia Downs Pastoral Holding in the Cook Shire;
- Kalpowar Holdings application over specific lots of land in the Cook Shire, including land formerly known as Birthday Plains Pastoral Holding, Kalpowar Pastoral Holdings, Jack Lakes Pastoral Holding and Lythe Pastoral Holdings.
- Indjilandji/Dithannoi People's application near Gunpowder in the local government area of Mt Isa;
- Tagalaka People's application over specific parcels of land in the Croydon Shire;
- Tableland Yidinji #1 & #2 application over specific parcels of land in the Atherton Tablelands, within the local government areas of Atherton, Cairns, Eacham and Mareeba;
- Darumbal People #2 application over parcels of state land, forestry national parks, reserves and pastoral lease land in the

- Marlborough area, within the local government areas of Fitzroy and Livingstone;
- Kangoulo People's #2 application near Emerald over part of the Comet River and 36 parcels of land in the local government areas of Bauhinia, Broadsound and Emerald;
 - Wanggumara People #3 application over Cooma Holdings in the local government area of Quilpie.

The applications do not cover any private freehold land. *(NNTT Media Release, 20 Sept)*

Nine islands off Cape York's north east coast have been returned to the traditional owners. Natural Resources Minister Rod Welford granted the Wuthathi People freehold title to the islands which were previously classed as unallocated state land and had been home to the Wuthathi People until the formation of the Lockhart River Mission in 1924. *(CM, 22 Sept, p8)**

The Wik People of far north Queensland have officially gained native title over 6,000 square kilometres of their traditional lands following a Federal Court ruling. The ruling ratified an agreement between the Wik and Wik-Way Peoples, the Queensland Government and other parties through mediation in the National Native Title Tribunal. In his orders Justice Drummond specified that the determination would 'confer possession, occupation, use and enjoyment' of the land on the native title holders. Their rights and responsibilities 'included to uphold, regulate, monitor and enforce' their customary laws. The second part of the Wik claim covering over 20,000 square kilometres and including many different land tenures, including Aboriginal Lease Land, DOGIT land, mining and pastoral leases and seas, is still under negotiation. *(SMH, 4 October, p5)**

South Australia

Aboriginal groups representing 23 of the 25 native title claimants in South Australia have agreed to be represented by the Aboriginal Legal Rights Movement Native Title Unit. Parry Agius, executive officer of the Native Title Unit, said that the Government and Aboriginal people had agreed to work out a 'mini-treaty' rather than face years of uncertain litigation. *(Koori Mail, 18 October, p29)**

A native title application by the Kurna People covering 10,500 square kilometres from Yankalilla to the Clare Valley and including pockets of the Adelaide metropolitan area has been filed in the Federal Court. National

Native Title Tribunal State Manager Chris Uren stated that similar applications over metropolitan areas of Perth, Brisbane and Darwin did not effect the rights and interests of other citizens and that the law did not recognise native title on private freehold property. *(WA, 30 October, p30)**

Western Australia

The Federal Court began hearing the native title claim by the Rubibi community in Broome. The Rubibi community includes the Yawuru, Djugan and Goolarabooloo People. The claim covers 121 hectares of land near Broome and includes an important Aboriginal law ground where special ceremonies are carried out according to the Kimberley Land Council. A second claim for the same land has been lodged by the Leregon People and is being heard at the same time. *(WA, 5 October, p35)*

The Western Australian government has agreed to settle Australia's biggest native title claim through consent rather than litigation. The consent determination allows the Spinifex People exclusive possession over 85 percent of an area of almost 50,000 square kilometres. Non-exclusive possession of a further 15 per cent was also granted. The consent determination means that the Spinifex People are acknowledged as traditional Aboriginal owners of the land, the state maintains ownership of the minerals, water and petroleum, Aboriginal people are able to maintain their traditional activities and the full right to negotiate will apply to all. The agreement has still to be ratified by the Federal Court. *(CT, 17 October, p3)**

Western Australia's native title legislation has been approved by the Federal Attorney General. The legislation now must be approved by the Senate. The proposed regime means that certain mining tenements and compulsory acquisitions on pastoral lease land and reserved land will not be subject to the Federal right to negotiate but will be subject to special procedural requirements set down by legislation. *(Attorney General News Release, 27 October)**

Native title claimants in the Goldfields have objected to the flooding of an important Aboriginal heritage site with mine wastes from Sir Samuel Mines NL's Cosmos Nickel Project near Leonora. Western Australia's Minister for Mines stated in State Parliament that no environmental impact assessment of the proposal had been carried out or scrutinised by the Department of Minerals and Energy prior to granting approval to discharge. *(Koori Mail, 18 October, p29)*

COMMENT

Native Title in Western Australia: A Case to Answer

Consent determinations are what native title parties aspire to, perhaps at some level most claimants and Native Title Representative Bodies in Western Australia expected the State to see the light and get down to negotiating consent determinations. It is no secret that prior to the amendments government representatives were meeting with a number of claimant groups to tell them what preconditions the Government expected to be met prior to entering formal mediation toward consent determinations. This gave the impression that the State was indeed interested in negotiating claims.

Now, in the post amendment period native title claimants and their representatives could be forgiven for thinking that they were led down the garden path. A number of claims have been listed by the Federal Court and NTRB's are now trying desperately to prepare those cases. There have been two consent determinations in Western Australia, one is modelled on the State's preferred model of right to consult and the other was too dangerous for the state to pursue through the courts.

The Spinifex claim had the potential of creating the highest threshold or precedent of native title in Australia. A number of the claimants were only recently in from the desert (mid 1980s) the land was predominantly Vacant Crown Land and they have never left their country. This all adds up to a claim that would make the first *Miriuwung Gajerrong* decision, and perhaps even *Mabo* look ordinary in terms of expanding the conceptual basis of case law on native title. The settlement of that particular claim, while a tremendous outcome for the people, can also be viewed as a case where the State sought to minimise or restrict the expansion of case law on native title.

Fortunately there are still some desert claims in Western Australia which as far as I understand are not in the process of negotiation. If ATSIC want to expand the threshold of native title on land to something beyond the limitations enunciated by the full bench of the Federal Court in the last *Miriuwung Gajerrong* decision, then they must talk strategy with the NTRB's representing those substantial desert claims.

In Western Australia we are fast approaching a state election and to date have heard little if no policy on the settlement of native title claims by either party. The current Government seems content with its policy of pursuing expensive, lengthy and unnecessary court battles while the ALP opposition appears to have their heads in the sand. Negotiated determinations have been successfully pursued in Queensland. It is time that the Government of Western Australia stopped abrogating its responsibilities to the courts or trying to legislate Aboriginal rights out of existence and entered into dialogue with Aboriginal people to find common ground and a native title solution.

Kado Muir
Consultant Researcher

Northern Territory

An Indigenous Land Use Agreement between native title holders and Giants Reef Exploration Pty Limited covering exploration areas near Tennant Creek has been signed. The agreement covers 8,000 square kilometres of pastoral lease land. Applications for 52 exploration licences and five mineral leases are covered by the agreement. (*Aus, 18 Sept, p39*)*

Following the Senate's disallowance of the Northern Territory's alternative native title regime a backlog of exploration tenement applications are being filed. The Northern Land Council's chief executive officer, Mr Norman Fry, stated that the organisation did not have sufficient resources to assist native title holders with their native title applications if the Territory Government rushed a backlog of 1,000 exploration licences through the native title system in a 12 month period. Traditional owners have 3 months from when an exploration licence is advertised to make an application for native title. (*SMH, 21 Sept, p5*)

National Native Title Tribunal President, Graeme Neate, stated that in anticipation of the increase in mining and exploration applications extra staff had been employed at the Darwin office of the Tribunal. (*NNTT Media Release, 6 Sept*)

The Miriung and Gajerrong People have expressed concerned about the impact on their country from plans to plant 35,000 hectares of sugar cane and create a 40,000 hectare buffer zone in the proposed Ord River Stage II project. The Northern Land Council and Kimberley Land Council have made submissions on the environmental impact of the proposal. (*LR News, 3 October, p20*)

APPLICATIONS

National

The National Native Title Tribunal posts summaries of registration test decisions on their website at: <http://www.nntt.gov.au>

The following decisions are listed for September and October 2000.

Maaiangal Clan	accepted
Wakka Wakka Jinda People	abbreviated
Wakka Wakka People	abbreviated
Ngurrara	accepted
Muthi Muthi People (Combined Application)	accepted
Ngadju (Combined Application)	accepted
Paakantji People	accepted