

Cairns, Brisbane, Adelaide, Canberra, Melbourne, Echuca and Sydney.

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## LAND RIGHTS CONFERENCE

A Conference, Land Rights - Past, Present and Future, will be held at Old Parliament House, Canberra, from 16-17 August 1996. There will be plenary and concurrent sessions. Plenary session speakers on Land Rights and Native Title include Galarrwuy Yunupingu, Tracker Tilmouth and Henry Reynolds. John H Clarke of the Maori Strategic Development Unit, New Zealand Ministry of Justice, Gordon B Peters, an Ontario Regional Chief from Toronto, and, possibly, Erica-Irene Daes, Chairperson- Rapporteur of the United Nations Working Group on Indigenous Populations, will be providing international perspectives. Speaking on Land Rights and Social Justice will be Mick Dodson, Pat Turner and Ian Viner QC. Noel Pearson and Peter Yu will speak on regional agreements and Pat Dodson and David Ross will present a national overview.

The Conference commemorates and celebrates the passage of the *Aboriginal Land Rights (Northern Territory) Act 1976*. One of its many aims is to assist participants in gaining an understanding and recognition of the positive benefits of land rights and native title to all Australians.

The Conference is jointly convened by the Northern and Central Land Councils. For further inquiries please contact CMS Indigenous Consulting, Tel 06 253 4955, Fax 06 253 4954, Mobile 015 786 541.

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## CONFERENCE ON SCIENCE AND OTHER KNOWLEDGE TRADITIONS

A conference on Science and Other Knowledge Traditions will be held at James Cook University, Cairns, from 23-27 August 1996. The provisional program includes sessions on Cultural & Intellectual Property and Community Research, Theorising Indigenous Knowledge and Western Science, Knowledges and Their Uses, Material Culture and Media as Knowledge and Problems, Challenges and Solutions. The conference is convened by Henrietta Fourmile, Bukal Consulting Services, Queensland, David Turnbull, Studies of Science in Society Centre, Deakin University, and Paul Turnbull, Department of History and Politics, James Cook University of North Queensland. For further information, contact the conveners, c/o History and Politics, James Cook University, PO Queensland 4811, fax 077 814 487, e-mail Paul.Turnbull@jcu.edu.au. Inquiries to Conference Administrator, Humanities Research Centre, ANU, Canberra ACT 0200, Tel 06 249 2700, fax 06 248 0054, e-mail, administration.hrc@anu.edu.au.

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## NATIVE TITLE IN THE NEWS

(Note: Where an item also appears in other newspapers, etc, an asterisk (\*) will be used. People are invited to contact the Native Title Research Unit at AIATSIS if they want the additional references. As usual, NTRU will try to provide people with copies of particular newspaper articles on request.)

*Aus* = Australian  
*LE* = Launceston Examiner  
*Ad* = Advertiser (SA)  
*NTN* = Northern Territory News  
*CM* = Courier Mail (QLD)  
*SMH* = Sydney Morning Herald  
*CP* = Cairns Post  
*Tel M* = Telegraph Mirror (NSW)  
*CT* = Canberra Times  
*WA* = West Australian  
*Fin R* = Financial Review  
*WA* = Weekend Australian  
*HS* = Herald Sun (VIC)  
*KM* = Kalgoorlie Miner  
*Mer* = Hobart Mercury

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## CLAIMS

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## Northern Territory

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- **Croker Island** claim [NNTT Ref# DN94/9]. The first court decision on native title in offshore areas is expected to clear some uncertainty surrounding Australia's \$8 billion petroleum industry. NNTT President Justice Robert French told an oil and gas conference in Darwin in June that a claim on an area near Croker Island would be heard in a few weeks time in Darwin. "That will most likely give us some indication if native title exists offshore," said Justice French. The Native Title Act assumes it is possible native title may exist in waters but there has been no court decision on this to date (*Aus*, 20 June, p25 ). The claim was lodged by Mrs Mary Yamirr in 1994 on behalf of the Mandilarri-Ildugij, Mangalarra, Muran, Gadurra, Minaga, Ngayndjagar and Mayorram people for seas in the Croker Island region of the Northern Territory.

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## Queensland

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- **Wik Peoples** claim [NNTT Ref# QC94/3]. The High Court began hearing on 11 July the Wik Peoples' appeal against the Federal Court's rejection of their claim to 35,000 sq km of north Queensland in January this year. The results of this appeal, which will probably be handed down towards the end of this year, are anxiously awaited by all affected parties as it is essentially a test case that will decide whether native title can co-exist on any or all pastoral leases in Australia. The case was argued largely by submissions, which poured in with about 20 parties involved, including the WA and Commonwealth governments who are arguing that native title was extinguished on all pastoral leases regardless of provisions for Aboriginal access to land (*West Australian*, 11 June)\*. Seven High Court judges and around 60 Queen's Counsels and

barristers will seek an answer to these questions. Lawyers for the Wik and Thayorre Peoples told the Court's Full Bench that native title coexisted with pastoralists' rights and that pastoralists were not empowered to turn Aboriginal peoples off the land (*SMH, 12 June, p4*)\*.

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- **Waanyi** claims [NNTT Ref# QC94/5, QC96/4 & QC96/89] The Waanyi and other claims in the Gulf region had extensive media coverage in June and July because of the negotiations with Century Zinc (see *Mining: Century Zinc*). Early reports suggested RTZ-CRA Ltd had received 'grudging approval' from the Traditional Waanyi Elders Aboriginal Corporation (TWEAC) to proceed with the mine and that TWEAC had voted to suspend their native title claim over land affected by the mine and its associated slurry pipeline in favour of the employment and training opportunities created by the project (*Fin R, 28 June, p38*)\*. This agreement reportedly preserved the TWEAC's entitlement to a subsequent claim to the region following completion of the mine. Another Waanyi elder, Fred Aplin, whose brother, Henry, lodged the first native title claim over the mine site in 1994, and who is a Waanyi representative on the United Gulf Regional Aboriginal Council, said TWEAC did not represent all Waanyi people. He criticised some Waanyi for 'jumping on the bandwagon of greed' and said they had no comprehension of the devastating effect the mine would have on the majority of indigenous people in the Gulf (*Courier-Mail, 28 June, p3*). Arguments continued regarding the level of support for the mine amongst elders representing affected Aboriginal communities (*SMH, 6 July, p1*)\*. Gulf Aboriginal representative Ms Wadjular Binna visited the Netherlands and allegedly told Dutch authorities that if the Budel smelter used zinc concentrate from the mine it would be contributing to the genocide of Gulf Aborigines (*Aus, 10 July, p23*). Meanwhile, Queensland Premier Rob Borbidge moved to acquire the 23 000 hectares needed for the mine as well as a 300 km-long corridor to allow for the slurry pipeline in order to eliminate uncertainties caused by native title claims through enabling legislation. He called on the Federal Government to introduce complementary legislation, a request supported by Prime Minister Howard. Premier Borbidge said that Native Title would be respected if a successful claim was made and that such claims would be suspended for the life of the Century mine (*Sunday Mail, Qld, 7 July*)\*. The Queensland Cabinet approved the legislation which would set aside land for the Government to allow the project to go ahead (*SMH, 9 July, p1*)\*. ATSIIC Chairperson Miss Lois O'Donoghue called on the Federal and Queensland Governments to back off their planned legislation (*The Age, 1st ed, 9 July, p3*)\*. Century later withdrew its calls for State and Federal legislative support, preferring, according to reports, to negotiate with Gulf Aborigines (*Aus, 17 July p14*)\*. The Native Title Tribunal has nominated Mr Hal Wootten QC and Mr Rick Farley to mediate in negotiations over the mine if requested by either RTZ-CRA or Gulf Aboriginal communities (*Aus, 17 July, p25*)\*.

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- **Kullilli** People's claim [NNTT Ref# QC96/11]. A 'new wave of confusion' has allegedly hit South West Queensland following the lodgement of a native title claim by the Kullilli People. The new application overlaps the 67,000 sq km claimed by the Gunggari People. Uncertainty is tipped to increase further when the Charleville-based

Bidjara People lodge a further overlapping native title claim later this month. A newspaper report claims the Kullilli claim has triggered a dispute between the Kullilli and Gunggari groups. Tensions are apparently also running high in the rural community. The Kullilli claim also takes in 71,000 sq km of NSW and South Australia and is bordered by Birdsville, Jundah, Charleville and Cunnamulla and covers 11 shires (*Queensland Country Life, Qld, 6 June, p13*). Marcus Priest, writing in the Courier-Mail, claimed moderate Aboriginal leaders were concerned about the effect 'large ambit claims' (such as that of the Kullilli) were having on the native title process and the Aboriginal cause in general (*CM, 7 June, p7*).

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- **Kombumerri** claim [Native Title Reference# QC 96/69] A claim has been lodged over the Gold Coast from the Coomera to the Tweed River by the Ngarang-Wal Land Council on behalf of the Kombumerri community. The claim has allegedly 'shocked' local authorities and termed 'frivolous and vexatious' by the Gold Coast mayor but Land Council Chairman David Dillon reportedly assured locals they should not feel threatened by it. "It's to do with mutual recognition of rights," he said. "We will acknowledge the white people's rights to the land and to continue their commercial activities if they acknowledge the traditional custodians of the land". The claim includes vacant land and beaches on the Gold Coast. David Dillon said about 40 sites significant to local Aborigines had been destroyed on the coastal strip by developers (*CM, 27 June, p11*)\*.

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- **Ugarapul** People's claim [NNTT Ref# QC96/14]. The Ugarapul People have lodged a native title claim over the Kholo Botanical Gardens in Ipswich. Elders signed the claim in a ceremony at Goupong Park, near Redbank. Ugarapul elder Mona Parsons said her people were determined to protect a place that was sacred to them. The claimed land stretches from Ipswich to the foot of the Great Dividing Range (*Queensland Times, Ipswich, 6 June*).

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- **Torres Strait Island** claims (general). The Murray Islanders, whose 1985 land rights claim began the native title debate, are embarking on a new battle to win sea rights in the Torres Strait. They intend to claim up to 5000 sq km of sea between Australia and Papua New Guinea and intend to join forces with two nearby islands to hasten the process (*SHS, 2 June, p21*). A number of native title claims over Torres Strait Islands have been lodged in the past two months by Islanders, some of them represented by mainland Aboriginal land councils. The NNTT has received 63 applications to claim land and coastal waters in the Torres Strait. Chairperson of the Torres Strait Regional Authority, Mr Getano Lui Jnr AM, said Justice French and NNTT officers would be visiting the Islands in August to inform the Torres Strait Islander peoples of what applications had been lodged and by whom (*Torres News, TI, Qld, 12 July, p5*).

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## Victoria

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- **Yorta Yorta** claim [NNTT Ref# VC94/11]. A Federal Court hearing has been set for 8 October for the Yorta Yorta claim. Local irrigators and councils believe it will cost them \$750 000 in legal fees to challenge the claim. Councillor Len Anderson, Mayor of Berrigan, reportedly said the people of the Murray Valley 'may as well pack up and leave' if the Yorta Yorta gains control of water rights and win its native title claim. Berrigan, along with Murray and Corowa council representatives, have appealed to the Deputy Prime Minister, Mr Tim Fischer, for special legal aid. Councillor Anderson said border councils would have to represent themselves because the Government would be prepared to ignore the region's interests to protect those of more heavily populated areas. The Yorta have claimed Crown land between the Murray and Ovens Rivers, stretching from Howlong to Deniliquin and south to Seymour, including the water of the two rivers. Negotiations between the Yorta community, councils, Victorian and NSW government departments, farmers and land users collapsed late last year (*Border Mail, 18 July, p13*). Mark Love, a lawyer at the Corrs Chambers Westgarth legal firm, which represents farmers' interests in the claim, reportedly said it would be very difficult for the Yorta to win exclusive rights to rivers, reservoirs and other water bodies because native title over water had been extinguished by a number of Water Acts (*Riverine Herald, Echuca, 15 July p2*). The Western Mining Corporation, which wanted to explore part of northern Victoria for gold, has been refused permission to become a party to the Yorta Yorta native title claim hearings because, according to Judge Olney, it had not yet been granted an exploration licence and therefore could not argue it would be affected by the outcome of the claim (*Riverine Herald, Echuca, 10 June, p5*).

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## Western Australia

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- **Mirriuwung-Gajerrong** claim [NNTT Ref# WC94/2]. The WA State Government has appealed to the Federal Court in an attempt to avoid having to negotiate with native title claimants over an exploration licence in the Kimberley. It wants to overturn a NNTT decision which forces it and the mining company Carnegie minerals NL to negotiate with the Aboriginal claimants, the Mirriuwung-Gajerrong, before exploration starts. Aboriginal Legal Service Chief Executive Dennis Eggington reportedly said the State was wasting time which could have been spent negotiating. "The Mirriuwung and Gajerrong peoples simply want to negotiate to protect their sites, community life and the environment. The Tribunal accepted that they had that right," he said (*WA, 20 June, p4*)\*. Last month the State Government was praising the Mirriuwung-Gajerrong for forging an agreement which would conditionally allow the heritage process for the Ord Irrigation Scheme to go ahead.

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- **Waljen** claim (NNTT Ref# WC94/8 et al). The Waljen have traded native title claims in the mineral-rich eastern Goldfields for a slice of all future mining revenues flowing from the area. The agreement has been signed with Anaconda Nickel, which will set up a foundation for

Aboriginal people in the region into which it and other mining companies will pay fees in return for unrestricted development. The foundation is expected to provide millions of dollars a year for the Aboriginal people of the region (WA, 4 July, p1)\*.

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- **Gubrun** claim [NNTT Ref# WC95/27]. The Gubrun Aboriginal Corporation has struck a deal with Newcrest Mining Ltd which will allow the mining company to explore in the Eastern Goldfields region of Western Australia. The agreement includes Newcrest landholdings under claim near the company's New Celebration mine. The report says the agreement is important in that it adds to the growing list of companies that are coming to terms with native title in Western Australia. Under the agreement, the Gubrun have agreed to support Newcrest's present and future exploration and mining over the entire area of the claim. Newcrest has promised to assist the Gubrun with education and on-the-job training, encourage and where possible use Gubrun people for mining and exploration contracted services and will provide financial assistance to the Gubrun (Aus, 5 July, p21)\*.

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- **Njamal** claim [NNTT Ref# WC95/31]. The Aboriginal Legal Service, WA, claims the State Government has refused to negotiate in good faith with the Njamal people over a claim near Marble Bar. ALS counsel Mark Ritter said the Government's commitment to talks went no further than sitting on the boundaries to see what the parties would decide. Mark Donaldson, for the Government, claimed the evidence showed it had done all it could to assist meetings between Aboriginal claimants and the applicant for a mining lease. The ALS wants the NNTT to set a standard for negotiations in title disputes and force the Government to meet both parties (WA, 19 July, p10)\*.

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## **NATIVE TITLE: AMENDMENTS**

- Aboriginal interests have reportedly suggested the Howard Government's proposed changes to the NTA may strip away rights awarded by the High Court. Aboriginal negotiators meeting for the NTA 'summit', organised by the Council for Aboriginal Reconciliation (CAR), are believed to be concerned the Government is taking an inconsistent approach on land claimants' right to negotiate the use of that land. This negotiation phase can last up to 14 months, but the Government is considering doing away with it, saying other Australians do not have these common law rights. (Paul Chamberlin, *The Age*, 1 June, pA8).
- Senator the Hon Nick Minchin, the PM's Parliamentary Secretary with responsibility for a review of the NTA, told the Canberra 'summit' that the Government's proposals should be considered as a total package that sought to balance all interests and benefit Australia. He said the amendments were designed to achieve three main outcomes: increasing certainty for pastoral lease holders; expediting recognition of native title; and improving the approval of development projects under the NTA. He said the proposals would achieve these outcomes without affecting the common law rights of indigenous peoples outlined in the High Court's 'Mabo' decision. Senator Minchin assured the meeting he would be undertaking a further round of national consultations on native title.

He said the amendments to the Bill would incorporate responses to the discussion paper and further input from interested groups during the consultative process (*Press Release, Senator Nick Minchin's Office, 2 June*).

- The Chief Minister of the Northern Territory, Mr Stone, directly criticised the PM's handling of native title policy, saying he was disappointed by the Federal Government's failure to face up to native title. Echoing comments by the WA Premier, Mr Court, he questioned a key aspect of Mr Howard's rationale for not legislating to extinguish native title rights over pastoral leases, as demanded by some conservative States and a 'rebel group' of federal Coalition MPs. Mr Stone said the issue was all about who was in charge of land management in this country (*Aus, 4 June, p5*).
- Key figures in the NTA debate have called for the formation of Aboriginal bodies corporate to negotiate Mabo claims outside the scope of formal NTA proceedings. A paper by Council for Aboriginal Reconciliation (CAR) member Mr Rick Farley, together with a statement of 'Proposed Common Ground' by the President of the NNTT, Justice Robert French, will provide the focus for industry and indigenous peoples' discussion of the issue in coming weeks. In his paper, Mr Farley suggests, among other things, that Aboriginal bodies corporate should be created and allowed to conduct dealings on NT (*Fin R, 4 June, p7*).
- The fourth anniversary of the High Court's Mabo decision was marked by calls from Cape York Land Council Executive Director Mr Noel Pearson not to water down the decision (*CM, 4 June, p28*)\*.
- PM John Howard has signalled his Government will take a tougher line on Aboriginal issues, saying Australians are feeling uneasy about special interest group politics. Mr Howard allegedly said mainstream Australia supported the concept of native title but had become 'a bit disillusioned' with the Mabo process because of the prevalence of ambit claims by some within the Aboriginal community. Mr Howard said the Aboriginal community was entitled to its full measure of justice flowing from the NTA and promised to deliver it. "But the idea you have to do more there and you can short change another section of the community and they are supposed to cop it just won't work," he allegedly said (*Craig Johnstone, CM, 8 June, p1*).
- The 'summit' was extensively covered in the media. Senator Minchin issued a press release on 4 June emphasising that he welcomed the 'Native Title Reference Group' after some media reported that Minchin might bypass the advice of the group, preferring wider consultation with Aboriginal groups (eg *CT, 1 June, p1*)\*. Most media reports emphasised the 'unity' achieved by all parties at the 'summit' and that an agreement had been reached between them to push for voluntary deals outside the formal native title process (e.g. *WA, 3 June, p6*)\*. Coverage of the National Indigenous Working Group on Native Title meetings later in the month focused on concerns by Mr Noel Pearson that native title rights were 'being eroded' and that the only positive proposal from the Government had been the suggestion of profit sharing (*DT, 20 June, p26*)\*. Mr Pearson was also reportedly asking the Government to delay native title laws to allow for more negotiations (*CM, 20 June, p16*)\*. Aboriginal groups were said to have made significant concessions on proposed amendments to the NTA (*CM, 19 June, p13*)\*.
- Prime Minister Howard expressed doubts about the validity of the NTA when it was revealed the former Labor Government had failed to table a determination of the act (*Townsville Bulletin, 26 June, p1*)\*.

# HIGH COURT HEARING ON WIK

- The Wik appeal hearing began in the High Court on 11 June with seven High Court judges and about 60 Queen's Counsel and barristers preparing to seek an answer to whether native title was extinguished by pastoral leases. Queensland, Western Australia, South Australia and the Northern Territory have pressured the Federal Government to legislate to extinguish native title on pastoral leases but so far PM Howard has refused, saying the Government would await the outcome of legal hearings on the issue. A broad decision by the High Court that native title was extinguished by the leases would remove pressure on the Government to legislate, thus risking compensation claims and criticism it has contravened the Racial Discrimination Act. But a finding that native title has not been extinguished or a decision by the judges confining their ruling to Queensland pastoral leases, relating to the Wik case, is likely to result in further pressure on the Government and may require further High Court action to resolve pastoral lease issues in other states which included reservations in favour of indigenous peoples (Melissa Langerman, NT News, 11 June, p10)\*.
- Mrs Jean George and other Wik landowners attended the High Court hearing, telling the press that whatever the High Court decided nothing would weaken their conviction that they were the owners of the land (*Aus, 11 June, p2*)\*.
- Counsel for the Wik and Thayorre, Sir Maurice Byers QC, told the court that the mere issuing of a leasehold interest in land was not enough and that native title existed outside the common law system of tenure in a 'different universe of discourse'. The Queensland Government argued that the granting of pastoral leases over land subject to native title claims by the Wik and Thayorre must necessarily have extinguished forever any native title (*Aus, 12 June, p2*)\*. Queensland Solicitor-General Mr Patrick Keane QC said Aborigines were 'trespassers' on pastoral leases and nothing could be done to remedy their dispossession (*The Age, 13 June, pA4*)\*. The Commonwealth Solicitor-General, Gavan Griffith QC, argued that Aborigines had been dispossessed in the past by shameful acts and injustices but the High Court should not try to rewrite the rule to make amends (*W Aus, 13 June, p10*)\*.
- An analysis of the task facing the seven-member bench of the High Court suggested a ruling would not be easy, saying that parts of the bench were clearly uncomfortable with the stance of the Commonwealth that leases had legal standing that overrode native title with an implication of exclusivity to the leaseholder. The issue emerging, and with which the High Court is now forced to grapple, is whether the law should be interpreted by the legislative intention at the time of its adoption. The difficulty apparently lies in that Australian property law was legislated long before the concept of native title had any legal standing of its own. It therefore does not address the concept of exclusion of traditional owners from continuing traditional activities on leased land (*David Shires, Fin R, 14 June, p8*).
- The Wik case ended with no side confidant (*David Solomon, CM, 14 June, p7*)\*. The court reserved its decision, which is expected to be handed down by the end of the year. Indications suggest that several different judgements should be expected (*WA, 14 June, p8*)\*.

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## INDIGENOUS LAND CORPORATION

- Individual Aborigines would be eligible for grants of land through the



new \$1 billion indigenous land fund under changes proposed by the Federal Government. The Government also wants to ensure that assistance provided through the fund goes to Aborigines considered to be most disadvantaged because they lack access to land. The ILC can now grant land only to indigenous corporations (*WA, 19 June, p36*).

- The Chairman of the ILC, Mr David Ross, criticised Government moves to direct more money for land purchases to the most dispossessed Aboriginal people, saying its amendments to the ILC Act would be impossible to administer (*CT, 20 June, p3*). The Government wants to amend the Land Corporation Act, which was to provide \$1.4 billion over 10 years for those Aborigines unable to get access to native title to buy land. The Coalition has said it wants to give priority to those most disadvantaged and to enable grants of land to Aboriginal trusts, partnerships and individuals as well as corporations. Mr Ross said he was concerned by the land corporation amendments because no-one had told him how the funding would be distributed. But the amendments are likely to pass in the Senate because the Greens have shown support for the changes (*The Age, 20 June, pA7*).
- Brisbane lawyer Bob Haebich has been appointed to head the ILC in north-east Australia. He is now the solicitor for the FAIRA Aboriginal Corporation in Brisbane. He began his new job on 5 August (*Sunday Mail, Qld, 14 July, p44*).

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## NOEL PEARSON'S "RETIREMENT"

The "retirement" of our colleague, Mr Noel Pearson, from the leadership of the Cape York Land Council to take up a position with a Melbourne law firm was accorded the extensive media coverage usually reserved for the actual retirement or passing of a Head of State.

Mr Pearson announced his retirement after delivering an address to the National Press Club on the Government's proposed Amendments Bill and the deliberations of the National Indigenous Working Group on Native Title. An editorial in *The Australian* suggested that Mr Pearson's decision to withdraw from the front line of political activism created a leadership gap at a critical time for Aboriginal policy (*Aus, 27 June, p10*). A profile in this newspaper by Gabrielle Chan suggested Mr Pearson was "worn out" at 31 (*Aus, 27 June, p13*). Murray Hogarth suggested, in *The Sydney Morning Herald*, that "the brightest young star of Aboriginal politics" had "run out of energy" (*SMH, 27 June, p21*). Marcus Priest in *The Courier-Mail* suggested the manner in which Noel Pearson chose to announce his departure was "vintage Pearson - guns blazing at all political targets", referring to Mr Pearson's questioning of PM John Howard's commitment to Mabo (*CM, 27 June, p15*)\*.

Writing for *The Daily Telegraph*, Mr Pearson himself said he was leaving the debate with "a great deal of disquiet about the backward slide we have had in the tone of relations between indigenous and non-indigenous peoples in this country. I am particularly alarmed at the fact that the Minister is at odds with indigenous community leaders. My advice to Senator Herron is that he should honestly consider whether he can recover things and work with the indigenous leadership given his disastrous performance to date, or whether he ought to change jobs" (*DT, 27 June, p11*).

He told Rosemary Neill of *The Australian* that even after he left the land rights arena "my role will be to be a shoulder behind those [Aboriginal] leaders in the national debate" (*Aus, 27 June*). His colleagues look forward to his continuing counsel.

## MINING AND NATURAL RESOURCES

- A powerful mining industry lobby group wants native title on pastoral leases extinguished so miners will not be forced to negotiate with Aborigines over mining tenements. Association of Mining and Exploration Companies Chief Executive George Savell said extinguishing native title rights on pastoral leases would exempt many mining companies from having to negotiate with Aborigines. AMEC represents about 200 smaller Australian mining companies, many based in WA. About 70 per cent of new mineral activity is believed to be on pastoral leases (*WA, 6 June, p4* ).
- The WA State Government has appealed to the Federal Court in an attempt to avoid having to negotiate with native title claimants over an exploration licence in the Kimberley. It wants to overturn a NNTT decision which forces it and mining company Carnegie Minerals NL to negotiate with Aborigines before exploration starts. It is the second time a Tribunal decision about the fast-track procedure for granting exploration licences has been appealed (*WA, 20 June, p4* ).
- The first court decision on native title offshore areas is expected to clear some uncertainty surrounding Australia's \$8 billion petroleum industry. The NNTT President Justice Robert French told the Australian Petroleum Production and Exploration Association Conference in Darwin recently that the industry must continue to recognise the possibility that native title existed offshore and to deal with the issue (*Aus, 20 June, p25* ).
- The senior traditional owner of the site of a proposed uranium mine in Kakadu National Park has spoken out for the first time against the development, allegedly placing her at odds with pro-mining Aboriginal clans and the Northern Land Council. Ms Yvonne Margarula's strong opposition could end plans for the \$8 billion Jabiluka project (*W Aus, 15 June, p3* ).
- A Canadian company planning to build a \$1.3 billion gas pipeline from Papua New Guinea to Townsville has made an important breakthrough with Cape York Aborigines. IPC Ltd plans to bring natural gas 360 km from the Pandora gasfield in the Gulf of Papua to a landfall point at Cape York, then 1200 km underground to Townsville. IPC revealed it had signed a memorandum of understanding with the Cape York Land Council, to set out the protocol of consulting with indigenous groups along the proposed pipeline route. Cape York Land Council Executive Director Noel Pearson said there was a lesson to be learnt by other mining companies and project developers to begin consultations with indigenous peoples early in the life of a project. "It really is the best example I've seen in Queensland of a major developer doing business in the right way in this post-Mabo context", he reportedly *said* (*CM, 15 June, p9*)\*.
- Goldfields Aborigines were overwhelmingly supportive of Anaconda Nickel's \$900 million nickel-cobalt project, the NNTT was told, but failure to agree with one group of claimants was placing part of the project under threat. Two of three claimants with the right to negotiate over the leases - the Ngurludharra, Waljan and Tjinintjarra peoples - had struck confidential agreements with Anaconda, but negotiations with the Waljen people had broken down. Anaconda has struck four agreements over the area, which is covered by 11 native title claims. Anaconda's lawyer, Chris Humphry, urged the Tribunal to give the State Government approval to grant two mining leases and leave the native title parties to sort out their differences. Greg McIntyre, for the Waljen

people, said they were not opposed to mining but wanted to make sure the appropriate safeguards were put in place to protect the environment and Aboriginal heritage (WA, 28 June, p28)\*. Later, Anaconda Nickel and the Waljen announced they had reached an agreement, with Anaconda setting up a foundation for Aboriginal people in the region into which it and other mining companies would pay fees in return for unrestricted development. The agreement paves the way for Anaconda to begin mining at its \$900 million Murrin Murrin nickel and cobalt project between Leonora and Laverton (WA, 4 July, p1)\*.

- The NNTT has allowed the WA State Government to grant the first mining leases under NTA procedures but avoided making a decision on compensation for Aborigines because the 21-year leases may never be used for mining. The seven Eastern Goldfields leases are the first to make it through the Tribunal procedures after a six-month negotiation period failed to produce agreement. The Tribunal has told the State Government it can issue the leases subject to certain conditions, including continued negotiation with the Koara people before mining begins. Ted Coomanoo Evans, who has lodged a native title claim on behalf of the Koara people, objected to the leases being granted (WA, 25 June, p10).
- Newcrest Mining and the Gubrun Aboriginal Corporation have reached an agreement for the support of exploration and mining by Newcrest on land covered by a Gubrun native title claim. The Newcrest settlement covers part of the Eastern Goldfields, including Newcrest's interests near its New Celebration gold mine near Kalgoorlie- Boulder. Under the agreement, Newcrest will assist with education and on-the-job training, use Gubrun people for mining and exploration contracted services where possible and provide financial assistance to the Gubrun people (WA, 5 July, p32)\*
- Aboriginal peoples will share in the \$50 million mining contract for Acacia Resources Ltd's new Sunrise Dam gold project in Western Australia. The three year contract has been awarded to a joint venture of CSR Ltd subsidiary AWP Contractors and a new company representing local Aborigines, Carey Mining, which has a 25 per cent interest in the partnership (Mercury, Tas, 13 July, p31)\*.
- The NNTT has called on State and Federal parliaments to change mining laws so that it can rule on compensation for native title claims. In a landmark decision, the Tribunal determined it was impossible to come to an arbitrated decision on the level of compensation due to native title holders when it was not known whether mining would take place at all. It ruled that even if agreement was reached between miners and native title claimants the compensation should be placed in trust until the title claim is determined. The determination arose from a hearing into whether the WA Government could grant mining leases to Aurora Gold and Austwhim Resources. The Tribunal set new ground in accepting the issue of the mining lease: previously it has suggested in arbitration that claims be settled before leases can be issued. WA Government sources responded that the Tribunal had 'ducked' the question of determining compensation for 'future acts' under the NTA (Aus, 23 July, p4).
- Aboriginal groups would prefer to operate within the Commonwealth native title laws instead of establishing joint-venture agreements directly with resources companies, according to Mr Eddy Fry, adviser on Aboriginal affairs to the Normandy Mining Group. Mr Fry told the Australian Mining and Petroleum Law Association conference in Melbourne that the certainty of royalty payments negotiated under the native title legislation made that the preferred option for many Aboriginal groups. "Join-venture agreements are, in my view, the most difficult to construct and conclude with Aboriginal people. Not because Aboriginal people do not want them but because they do not have the finance required to become involved. Native title claimants have little experience

in how to ensure their equity is tightly contained and their interests preserved," he reportedly said. A partner with Clayton Utz, Mr Chris Davie, said the right-to-negotiate provisions were the teeth in the NTA as far as Aboriginal and Torres Strait Islanders were concerned. He said, "Although the Act does not give to Aborigines and Torres Strait Islanders rights of veto over land which they hold or have claimed under native title, the right to negotiate gives them an important statutory bargaining position" (*Lou Caruana, Aus, 26 July, p16* ).

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## CENTURY ZINC

*Media coverage of the Century Zinc dispute unfolded as follows :*

- Century Zinc spokesman Jim Singer said Carpentaria Land Council Co-ordinator Murradoo Yanner was trying to derail the \$1.14 billion mine project on the eve of a breakthrough agreement with local Aborigines. He said the company was in the final stages of negotiations with the United Gulf Region Aboriginal Corporation (UGRAC), which represented some of the indigenous people in the area which would be affected by the mine. He believed Mr Yanner would try to revive a plan to export zinc concentrate from the mine through Townsville rather than through Century's preferred port of Karumba in the gulf. Mr Yanner denied he was derailing the project as he had always advocated the Townsville pipeline if Century was to go ahead. Mr Yanner reportedly said the Townsville option would create more jobs for Aborigines than the pipeline to Karumba (*CM, 20 June, p31*)\*.
- The Federal Government has joined the negotiating table in a last-ditch attempt to win Aboriginal support for RTZ-CRA;s \$1.2 billion Century zinc mine in north-west Queensland. With plans for the world's biggest zinc mine likely to be shelved unless Aboriginal backing was gained for the project by 30 June, Canberra has joined the Queensland Government with offers designed to enhance a \$60 million compensation package proposed by CRA Ltd's Century Zinc subsidiary (*Aus, 21 June, p23* ).
- The Queensland State Government has given the go-ahead for dredging works to upgrade the port of Karumba in the Gulf of Carpentaria, the site proposed as the destination for slurry from the embattled Century mine. The decision follows a positive end to three days of negotiation between State and Federal Governments, Century Zinc and Gulf region Aboriginal leaders (*CM, 22 June, p69*)\*.
- Negotiations between Century Zinc and Aborigines appeared unlikely to allow the mine to open, sources close to negotiators said. The prediction was made after the key Aboriginal negotiating body, UGRAC, failed to meet on Sunday because of confusion and bickering among members (*CM, 26 June, p3*)\*.
- Century Zinc had won support from an influential group of Aboriginal elders on the eve of a final vote on whether the \$1 billion mine would go ahead, a company spokesman said. Century Zinc spokesman Jim Singer said the Traditional Waanyi Elders Aboriginal Corporation had thrown its weight behind the project. Members of UGRAC had yet to vote on the matter, however (*CM, 28 June, p3*)\*.
- The proposed Century Zinc mine was in jeopardy after Aboriginal groups failed to decide whether to accept a compensation offer from CRA to allow the mine to being operations. UGRAC members were unable to make a decision and set another meeting for 7 July (*Townsville Bulletin, 29 June, p1* ). A deep rift had emerged in UGRAC, which voted 12-11 to proceed, only to declare the decision

invalid minutes later (*Sunday Mail, Qld, 30 June, p3*)\*. Convinced it had 'written confirmation' of Aboriginal support for the mine, the company set to work on the next set of requirements for the project to go ahead. Century spokesman Jim Singer said talks were under way with the Queensland and Federal Governments (*Fin R, 2 July, p3*)\*. The Prime Minister allegedly warned Aboriginal leaders personally that their refusal to approve the proposed \$1.1 billion mine would seriously damage Aboriginal interests (*SMH, 2 July, p1*)\*.

- The executive officer of the Gkuthaarn Aboriginal Corporation has been ordered by his grandmother and traditional owner of the land through which 200 km of the pipeline will pass, Mrs Jessie Logan, to ensure that it does not proceed (*SMH, 2 July, p6*).
- Century Zinc has denied placing \$150,000 in trust for the Waanyi people to influence last week's crucial Aboriginal vote on the future of the mine (*CM, 2 July, p4*)\*.
- Barrie Mathias, Director of Operations for the Queensland Mining Council, writes in the Courier-Mail that it does not make sense for any small group to have the right to veto a major project with the potential to bring significant benefits to the entire community. Regardless of the outcome, he wrote, a valuable lesson has been learned from the history of Century Zinc: that is, the current rights to negotiate under the NTA are not workable or tenable (*CM, 2 July, p15*).
- Murrandoo Yanner, "once touted as the Messiah of his people," is reportedly facing an uncertain time not only from the wider Australian public but also from some of his own people, who feel his opposition to the mine development nearly destroyed a multimillion dollar lifeline set to deliver Gulf Aborigines from grinding poverty (*Marcus Priest, CM, 2 July*). Jerry Callope Jnr, a representative of the Jkuthaarn people, said any Aborigines who aligned themselves with the Premier and Century could become targets for those who opposed the project. Mr Murrandoo Yanner allegedly warned that there would be 'blood on the streets' if RTZ\_CRA and Premier Borbidge persisted with efforts to develop the mine (*CM, 2 July, pp1&2*)\*.
- On the assumption Aborigines had voted in favour of the mine, Premier Rob Borbidge moved to introduce legislation to secure land title for the Century Zinc project (*CM, 2 July, p2*)\*. The Federal Government decided to back moves by the Queensland Government to indemnify the project from future native title claims following the personal intervention of PM Howard. Mr Howard believes the Century mine will be seen as a test case on the workability of the NTA (*Aus, 2 July, p1*)\*. Opposition Leader Mr Kim Beazley also allegedly backed the go-ahead of the mine (*The Age, 3 July*). Senator Warwick Parer, Queensland Minister for Resources and Energy, issued a press release saying he would be consulting on removal of the right to negotiate for the issue of exploration titles and for the renewal of pre-1994 mining leases. "Nothing could have demonstrated more clearly the need for this legislation to be amended, in the interests of both industry and the Aboriginal community, than the recent near-loss of the Century project" (*Press Release, Senator Parer, 3 July*). The Prime Minister confirmed that the Commonwealth would legislate in the national interest to ensure the mine went ahead, but only if he could be assured that the local Aboriginal communities agreed. Miss Lois O'Donoghue, Chairperson of ATSIC, also lent her support, saying ATSIC 'would like to see the mine go ahead' but the traditional owners really must feel happy about it (*CT, 4 July, p3*). Miss O'Donoghue allegedly accused Mr Yanner of intimidating Gulf Aborigines who supported the mine (*CM, 5 July, pp1&2*). Both Miss O'Donoghue and ATSIC Chief Executive Officer Ms Patricia Turner, were credited with bypassing Mr Yanner and deputising ATSIC's North Queensland Commissioner, Mr Terry O'Shane, to handle the problem (*Peter Charlton, CM, 6 July, p5*).

- The Howard Government signalled it would use the problems associated with the Century Zinc project to support a new round of amendments to the NTA and to remove the perception of sovereign risk created by the Mabo decision (*Aus, 4 July, pp1 & 4*). Federal Aboriginal Affairs Minister John Herron defended proposed Commonwealth legislation to shore up the Century Zinc mining project (*WA, 4 July, p42*).
- An elected Aboriginal leader, Mount Isa and Gulf Aboriginal and Torres Strait Islander Commission chairperson Colin Saltmere, called for a Senate inquiry into the validity of an agreement to be signed between Century Zinc and Gulf Aboriginal peoples. He said the 12-11 vote in favour of the mine project had to be questioned (*North West Star, Mt Isa, 4 July, p1*). Traditional Waanyi elders' spokesman Peter O'Keefe reportedly said the 12-11 vote still held. He criticised Mr Yanner, saying his views did not represent the views of most Aborigines in the Gulf (*DT, 6 July, p14*). Meanwhile, Mr Yanner prepared to announce that he had the unanimous support of elders from Cape York to the Northern Territory border to halt the proposed mine (*SMH, 6 July, pp1 & 16*)\*. The Federal Government declared 'invalid' a vote by Gulf of Carpentaria Aborigines to ban the mine and said legislation to support the mine could provide a template for amendments to the NTA. The Opposition said the Century-specific legislation and the native title amendments appeared likely to undermine both the Racial Discrimination Act and Aborigines' right to negotiate under the NTA and would be unlikely to pass the Senate (*Aus, 8 July, p1*)\*. Australian Democrats' Leader Senator Cheryl Kernot met with representatives of both Century Zinc and Gulf Aboriginal groups but did not give commitments to either group in relation to the Democrats' position on calls for a Senate inquiry into allegations of corruption during the negotiation process (*Press Release, Senator Kernot, 8 July*)\*. Miss Lois O'Donoghue called on the Federal and Queensland Governments to back off their planned legislation in a bid to cool the deepening row over the proposed Century Zinc mine (*The Age, 9 July, pA3*)\*. Miss O'Donoghue reportedly said the legislation planned by the Queensland and Federal Governments was divisive and inflammatory and 'unlikely to result in anything more than a further diminution of the rights of indigenous peoples' (*Aus, 9 July, p1*).
- Pasmenco Ltd has applied to Dutch authorities for a year's extension to its June 1998 delivery deadline of low-iron zinc concentrate from the Century Zinc project following a visit to the Netherlands by Gulf Aboriginal representative Ms Wadjular Binna. Ms Binna is said to have told Dutch authorities that if the Budel smelter used zinc concentrate from the mine it would be contributing to the genocide of Gulf Aborigines (*Aus, 10 July, p23*).
- Prime Minister Howard 'retreated' from the Federal Government's acceptance that negotiations over the Century Zinc mining site had reached agreement, saying that more discussion was needed (*Fin R, 11 July, p3*)\*.
- RTZ-CRA announced it had advised the Commonwealth and Queensland Governments that it was withdrawing its requests for enabling legislation to facilitate security of title for the Century Zinc project. "The RTZ-CRA Group acknowledges that the requirement for project-specific enabling legislation for Century has become highly divisive and has been perceived by some to be an attack upon the Right to Negotiate process of the Native Title Act. This was not RTZ-CRA's wish. The Group continues to support the central tenets of the Native Title Act in the belief that long-term sustainable partnerships negotiated with Aboriginal communities across Australia is the best way forward" said its Managing Director, Mr Leigh Clifford (*Press Release, CRA, 15 July*)\*. As a result of CRA's 'backflip', a 'baffled, flabbergasted and

surprised' Premier Rob Borbidge declared he would think long and hard before going out on a limb again for Century Zinc (*CM, 17 July, p9*). Federal Aboriginal Affairs Minister John Herron also attacked Century Zinc over its handling of negotiations with Gulf Aborigines in relation to the zinc mine, saying the company should have operated within the provisions of the NTA from the beginning (*CM, 17 July, p1*). Federal Government sources claimed PM Howard was 'extremely annoyed' at the way CRA had unilaterally announced it no longer wanted specific legislation after seeking government intervention (*SMH, 17 July, p4*). Mr Yanner was also allegedly annoyed by the move, saying he had heard inside information that there was a deal going on between the top-level, so-called Aboriginal leaders in this country, the State and Federal Government and CRA (*CM, 17 July, p21*). Senator Cheryl Kernot said RTZ-CRA's decision was 'a fantastic example of good corporate behaviour' (*CM, 17 July, p8*). Some Gulf Aboriginal groups claimed ATSIC's intervention over the Century zinc mine had lost them the chance for employment and training (*North West Star, Mt Isa, 17 July*)\*.

- The NNTT is likely to appoint two mediators, Hal Wootton QC and Rick Farley, to future negotiations between Century Zinc and Aboriginal Groups if interest groups so wished (*CT, 17 July, p2*). . Aboriginal leader Mr Murradoo Yanner allegedly backed down on his refusal to participate in fresh negotiations over the mine and has agreed to take part in talks under the native title process (*CM, 26 July, pp1 & 2*).

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## **RECENT PUBLICATIONS**

**AMPLA Bulletin , Volume 15, No 2, June 1996.** This edition of the *AMPLA Bulletin* , published for the Australian Mining and Petroleum Law Association Limited, contains native title updates State by State provided by local contributors. *AMPLA Bulletin* is available from AMPLA Ltd, 4/360 Little Bourke Street, Melbourne, Vic 3000.

**Cullen, Richard**, "Rights to Offshore Resources after Mabo 1992 and the *Native Title Act 1993* (Cth)", *Sydney Law Review*, Vol.18(2) June 1996:124-151. This is one of the few published legal articles since the NTA was passed which focuses on the legal issues of the recognition of native title rights in the sea. In his view, there are some substantial legal obstacles to overcome.

**Imtiaz Omar**, "The Semantics of Mabo: An Essay in Law, Language and Interpretation," *James Cook University Law Review* , Vol 2 1995: 154-171. To be annotated next newsletter.

**Land Rights Queensland , Issue 3, June-July 1996.** The latest issue of *Land Rights Queensland* is now available and as usual provides coverage of the latest native title issues in Queensland and updates from various Land Councils. For copies contact the Editor, tel 07 3391 4677, fax 07 3391 4551.

**Marks, Gary N and McDonell, Paula**, "New Politics? The Mabo Debate and Public Opinion on Native Title in Australia", *International Journal of Public Opinion Research* , Vol.8, No.1. Gary Marks was, until recently, a research fellow in the Sociology Program at the Research School of Social Sciences, ANU, and Paula E McDonell is currently General Manager, Market Research, at Marketshare Pty Ltd, a private market research and marketing consultancy. Marks and McDonell examine the formation of opinions on Mabo with particular reference to 'new politics' as defined by Ronald Inglehart. The