

## Anniversary

The Gurindji people welcomed Mr Whitlam back to Wave Hill, where in 1975 he poured a handful of soil from the Daguragu country into the hands of Vincent Lingiari, the then leader of the Gurindji. 21 years later Mr Lingiari's son welcomed him back to mark the anniversary of the walk off (*WAus*, 24 August, p1 ).

Finally, Yothu Yindi headed a big sporting and cultural festival, Densing Langa Kantri (Dancing for Country) in Darwin and Alice Springs in early October to celebrate 20 years of the recognition of land rights (*SMH*, 17 September, p2 ).

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

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## Land claims

### NSW

#### **Evans Head: Bundjalung: [NNTT Ref #NC 96/16]**

The Federal Government brokered a four-day halt to the Iron Gates housing development at Evans Head which opponents claim is destroying Aboriginal sacred sites and protected wildlife. The 100ha site fronts the Evans River between the Broadwater and Bundjalung National Parks. The developer has an existing permission to build 600 homes on the area which Aboriginal people say holds shell middens, scar trees, and a massacre site.

A portion of the area is under native title claim by the Bundjalung people (*SMH, 3 August, p 4* ).\*

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## **Nelson Bay**

The Nelson Bay Shire Council proposed the funding a new tourist attraction in the Port Stephens area called the Port Waterslide. Native title claims exist in the area, and the Council advised the Department of Land and Water Conservation that it had no objection to the granting of several of these claims - except in those areas that were already designated reserves for public recreation (*Newcastle Herald, 6 August, p 4* ).

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## **Victoria**

### **Gournditch-mara: [NNTT Ref #VC 96/3]**

A claim was lodged by the Gournditch-mara, for an area of crown lands and waters between Ararat, Warrnambool, the SA border and including the Gaiwerd Grampians National Park. The claim is the fifth to be lodged with the NNTT; to date only two claims have been accepted for determination by the Tribunal (*The Age, 3 September, p 3* ).

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## **WA**

### **Mirriuwung Gajerrong Claim [NNTT Ref #WC 94/2]**

A new spirit of conciliation between State Government officials and key Aboriginal groups made the resolution of native title issues over Stage Two of the Ord River Irrigation Area a more realistic possibility. In June a landmark agreement was signed between the WA Government and Mirriuwung Gajerrong establishing a framework for future negotiations over land claims in the area (*Fin R, 6 September, p27* ).

The Mirriuwung Gajerrong agreed to allow a heritage survey process involving hydro-geological drilling work in exchange for security of tenure for nine Aboriginal communities occupying 50,000 ha of bush in the north-east Kimberley. Their native title claim was suspended while further talks were held on a social benefits package for Aborigines (*WA, 10 September* ).

Objections from the Mirriuwung and Gadjerrong Families Heritage Council forced Telstra to rethink its plan to place a mobile net tower on Kelly's Knob overlooking Kununurra (*Sunday Times WA, 15 September, p 16* ).

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## **NT**

## Miriuwung Gajerrong Claim [NNTT Ref #WC 94/2]

An area on Spirit Hills pastoral lease containing the archaeological site at the centre of the recent debate over the length of human occupation of Australia will be excised as a national park. NT Chief Minister Stone said that this area would be added to the Keep River National Park on the NT/WA border. This land is subject to the Miriuwung Gajerrong native title claim, in a region currently controlled by the NT Development Corporation (*Aus, 23 September, p5* )

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## NATIVE TITLE AMENDMENTS

Talks organised by the Council for Aboriginal Reconciliation between indigenous groups, pastoralists and miners broke down on 2 September. It is understood that the negotiations disagreed on key issues:

1. The role of native title representative bodies in the native title process.
2. Which parties could initiate and then exercise the right to negotiate, and when: ie at what stage of development of a mine.
3. The threshold test that indigenous claimants must pass before being permitted to make a legal native title claim.
4. How the groups would best negotiate outside the Native Title Act, and the native title process.

Aboriginal groups rejected any change to existing arrangements under which they can trigger negotiations at any stage of mining, and pushed for an exclusive role for representative bodies in negotiating on behalf of Aboriginal owners. Regarding a threshold test, Aboriginal groups favoured the less stringent test proposed by the previous government, and resisted the Government's plan for Aboriginal groups to have to prove, prima facie, before the Federal Court, that native title existed before they were able to pursue a claim (*CT, 3 September, p 2* )\*.

Financial Review coverage of the issue presents industry's proposals for a 'second stream' of voluntary agreements outside the formal native title process as a way of individuals making claims and preventing individual Aboriginals from launching court challenges against decisions reached by land councils. Indigenous negotiators resisted this argument, saying that the 'second stream' would allow industry to reach agreements with individuals, without guarantees that they were the correct, or only, native title holders (*FinR, 3 September, p2* ).

In a media release issued on 6 September, members of the National Indigenous Working Group on Native Title rejected any attempt to amend the NTA 1993 in a way that threatens the rights of Aboriginal and Torres Strait Islander people. The group said that Aboriginal people will oppose any attempt to interfere with their rights, by litigation for injunctions under the common law, proceedings based under the *Racial Discrimination Act 1975* and political action at a national and international level. The NIWG rejects allegations of the Act's unworkability as manufactured, believing that the major threat to the workability of the NTA is the intransigent attitude of State and Territory Governments.

Speaking at the Liberal Party State Conference, Prime Minister John Howard said the NTA needed to be reformed to make it more workable for miners, indigenous people, pastoralists and governments. Premier Richard Court told the conference 69% of WA land was now covered by native title claims and the federal legislation was holding up development in the State, for example the Ord River irrigation scheme (*WA, 9 September, p5*).

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## **MINING AND NATURAL RESOURCES**

### **National**

The Commonwealth Minister for Resources and Energy, Senator Parer, stated that the Federal Government will view mining projects as viable unless proved otherwise. He promised to expand access to land for exploration and mining, as well as "improving the workability of the Native Title Act" (*SMH, 14 September, p3* )

The Federal Court is to determine whether all exploration companies will need to negotiate with Aborigines before conducting exploration on mainland Australia. The West Australian court has appealed to the Federal Court against the NNTT decision not to approve expected procedures for 7 small oil exploration companies. Under the NTA, companies undertaking off shore exploration do not need to negotiate with potential Aboriginal title claimants, but on shore exploration is covered by the legislation. The Court is expected to hear the case before the end of the year (*Aus 23 September, p 34* ).

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### **NT**

An historic agreement between the Central Land Council and the Yuendumu Mining Company will allow YMC, Australia's first Aboriginal mining company, to explore for gold on Aboriginal land without assistance from other mining companies. The agreement covers three exploration licences in the Highland rocks area of the Tanami Desert and involves more than 1000 sq kms (*NTN, 4 August, p4* ).

The biggest mining deal yet signed by Aborigines, an 8 year contract worth \$166m, was signed in the Top End between Pegasus Mt Todd Gold Mine and Mirrwork Joint Venture. Mt Todd is 40 kms north of Katherine (*NTN, 4 September, p15* ). Negotiations over the fate of Jabiluka uranium body have resulted in an agreement by Energy Resources of Australia (ERA) to help finance a Kakadu regional social impact study as well as an environmental impact statement for the development of the mine (*WAus, 7 September, p60* ).

Adelaide Resources announced it signed a first agreement with local Aborigines in relation to exploration in the Tanami Desert. The Mt Solitaire joint venture is located on freehold Aboriginal land between 80 and 120 kms south-east of NFM'S Granites mine (*Ad, 24 September* ).

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## WA

### D'Entrecasteaux

The WA State Government is allowing mineral sands mining in the D'Entrecasteaux National Park, despite protests that no efficient environmental impact studies have been done, or that the site is the only underwater pre-history site in Australia. The State plans to use legislative means to change the class of the land to allow mining (*WA, 8 August, p38* ).

The Senate subsequently condemned the Court Government's move to excise 368 ha of the National Park for mining by Japanese owned Cable Sands. The South-Western Coalition of Aboriginal Corporations and Custodians of Traditional Lands has lodged a native title claim over the area. State Mines Minister, Kevin Minson, said that Cable Sands would have to satisfy the Environmental Protection Authority that the value of Lake Jasper would not be damaged before the project could be approved (*WA, 13 September, p9* ).

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## Queensland

### Century Zinc Mine : Waanyi

A fourth native title claim was lodged over land mooted for a pipeline for the Century Zinc mine. The other claims cover a corridor stretching from the mine site to a point just past the Gregory River in north west Queensland (*CM, 31 July, p10* ).

The Queensland Government was forced to back down from threats to short-circuit the Native Title Act by enacting legislative measures to allow the Century Zinc development to override Aboriginal protests, after RTZ-CRA rejected the Government's proposals and decided to negotiate under the NTA instead (*Townsville Bulletin, 5 August, p9* ).

The Queensland Premier, Mr Borbidge, expressed renewed optimism about the future of the Century Zinc project, hinting that a breakthrough had been achieved in recent talks (*Aus, 13 August, p19* ).\*

Former Governor General, Mr Bill Hayden was appointed to head the Queensland Government team trying to negotiate a start for the stalled \$1.1 billion Century Zinc project. His appointment signalled a more conciliatory stand on Aboriginal claims by the Government, a position forced by a Federal Court ruling that State governments must negotiate in good faith (*WAus, 7 September, p3* ).

Century Zinc engaged in negotiation with the United Gulf Regional Aboriginal Corporation to hand over full ownership to Gulf Aborigines of initially two, and eventually five, cattle properties owned by the Company. Pendine and Konka will be handed over first, and over time the final three properties, Riversleigh, Lawn Hill and Turn Off Lagoons (*CM, 10*

*September, p1 ).*

Owners of leasehold cattle properties along the proposed Century Zinc slurry pipeline route have rejected a proposal that the Queensland Government acquire the properties and hand over ownership to Aborigines (*CM, 11 September, p3 ).*

Carpentaria Land Council asked the Native Title Tribunal to mediate in the negotiations with RTZ-CRA. CLC said it would only negotiate under the Native Title Act if both RTZ-CRA and the Qld State Government stopped offensive tactics. The dispute would move to arbitration before the Tribunal if no agreement is reached by December 5 (*Aus, 2 August, p19 ).*

Whilst the CLC threatened the above, Aboriginal members of the Gulf region circulated a petition to drop the Council as their representative body, citing frustration with Mr Murradoo Yanner. There was also a request from DEET and Century Zinc for the publication of an ATSIIC investigative audit of the CLC's funding. The petition relied on section 202 of the Native Title Act that deems the Minister of Aboriginal Affairs cannot name a group as a representative body unless it displayed some broad representativeness (*Fin R, 2 August, p3 ).*

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### **Allgas Pipeline - Brisbane : Gungarri**

Queensland Premier Borbidge was criticised by Goolburri Land Council over his Government's failure to observe procedures stipulated under the Native Title Act. Instead of issuing Section 29 Native Title Notices, which would have brought forth claimants and set in motion the right to negotiate procedures of the Act, notices were issued under the Queensland Cultural Record Act seeking cultural survey information over a 100 metre wide corridor along the pipeline route (*WAus, 10 August, p8 )*

The Allgas pipeline runs through the traditional land of six Aboriginal groups. Dispute has existed on one segment of the pipeline near Mitchell, between the Gungarri and Bidjarra people as to ownership of the land. A meeting was organised at Saint George to resolve the dispute in hopes of allowing the pipeline to proceed according to schedule (*CM, 17 August, p2 ).*

Talks between Aboriginal groups involved in negotiations over the pipeline broke down on 19 August after representatives from the Gungarri refused to allow representatives from any other groups to monitor construction of the pipeline in the disputed area (*CM, 20 August, p6 ).*

The Queensland Government then threatened to use the Police Force to ensure that the gas pipeline went through if the conflicting groups did not settle their differences before 23 August. (*CM, 21 August, p4 ).*

Compromise was reached between the disputing Gungarri and Bidjarra groups, allowing the construction of the gas pipe line to go ahead. The deal allows both the Bidjara and Gungarri to have two representatives on the pipeline team to monitor the protection of Aboriginal heritage in the zone, and for the groups to work independently (*CM, 23 August, p3 ).\**

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## GENERAL NATIVE TITLE ISSUES

### National

The President of the Native Title Tribunal, Justice French, appealed for unity between pastoralists and Aboriginal groups. He noted that progress was slowest in dealings between native title applicants and State and Territory Governments, and asked that governments refrain from delaying native title negotiations in expectation of native title legislation amendments, or the handing down of a decision in the Wik case (*FinR, 28 August, p10* ).

Predictions were made that a defeat of the Federal Government's plans to amend the Native Title Act in the Senate is quite likely. Aboriginal and industry groups have had fundamental disagreements about key amendments. The Government's fear is that the split will strengthen the resolve of the Opposition and key power parties such as the Greens and Democrats, in blocking amendments (*Aus, 12 August, p3* ).

The Federal Government has indicated it may support the Cape York Peninsula agreement, undermining the Queensland Government's opposition to it. Despite the fact that farmers, Aboriginal, and environmental groups all support the deal, the Queensland Premier still refuses to support it. His main concern is that recognising the deal will uphold native title on pastoral leases, and contradict the High Court Wik case (*WA, 10 August, p8* ).

Ray Robinson, acting chair of ATSIC, called for more stringent testing for native title procedures, to minimise "stuff ups" because of insincere claims which ruin claims of legitimate claimants (*Aus, 2 August, p5* ).

Three Aboriginal fishermen who fished in a creek near Port Hedland to feed 300 people attending a wake have lost a legal claim that they had a native title right to fish in the area (*WA, 20 August, p29* ).

Retiring Cattlemen's Union Queensland Chairman, Andrew McInnerney, claimed that the NTA was badly written in that it requires Aboriginal groups to make ambit claims rather than sit down with landholders and work through the issues. Citing the Cape York agreement, he said the Union had shown that it was possible to negotiate without legal intervention (*CM, 29 August, p6* ).

Lawyer Noel Pearson, formerly director of the Cape York Land Council stated that in his opinion extinguished native title could be revived. Mr Pearson questioned whether the existence of historical inconsistency resulted in permanent and irrevocable extinguishment. Where the people remained, and tenure inconsistent with native title was replaced by a native title friendly land system, Aborigines again legally owned the land, he said (*Aus, 6 September* ).

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