

Merrit Mining NL has reached agreement with Aboriginal bodies on all but one of its Gawler Craton exploration licences west of Ceduna clearing the way to begin systematic fieldwork later in 1997. (*Aus, 20 Oct, p2*)

AMENDMENTS

Senator John Woodley, the Australian Democrats spokesman on primary industries took over Cheryl Kernot's native title responsibilities and confirmed that the Democrats were not changing their position on the Government's Wik legislation. The Democrats identify four areas of fundamental concern in the legislation; one that there be no blanket or implied extinguishment of native title; the restrictions of the proposed sunset clause; possible windfall gains from upgrading pastoral land to freehold; and no watering down of Aboriginal rights to negotiate. (*Aus, Oct 17, p6*)*

United Graziers Association President, Larry Acton, said pastoralists would refuse to engage in native title negotiations if the Senate did not pass the Amendment Bill. The UGA is opposed to amendments put forward by the opposition parties and would argue for a stricter threshold for acceptance. (*CM, 1 Oct, p13*)

The submission by the Australian Law Reform Commission to the Joint Parliamentary Committee on Native Title and the Land Fund, which was allegedly suppressed by the Attorney General, argued that six of the ten points of the Government's amendment plan were contentious. The ALRC argued that the validation of acts between 1994 and 1996 would leave the government open to compensation claims if the law was held to be valid. However, the submission argued that the confirmation of extinguishment, restrictions on the registration test, changes to the Right to Negotiate, the impositions of the sunset clause and the provision for upgrading of pastoral lease activities would offend the Racial Discrimination Act, and were contrary to international obligations and would open the proposed legislation to constitutional challenge. Allegations of intimidation by the Attorney-General have led opposition parties to seek an investigation by the Senate Privileges Committee. (*CM, 2 Oct, p6*)*

The Australian Conservation Foundation has raised concern over the environmental impact of the proposed amendments. The ACF argued that state land management laws would not give adequate protection to the land. In particular, the ACF points to provisions that seek to expand the definition of pastoral activity to include any activity incidental to 'primary production'. (*Media Release, 9 Oct*)

A Joint Parliamentary committee meeting in Cairns was disrupted as Aboriginal people and opposition members of the committee called for the Committee chair, Warren Entsch, to stand down for conflict of interest reasons. It was suggested that Mr Entsch's interests in pastoral properties in Cape York at least gave the perception of bias. The meeting also revealed the first indication that the Labor opposition would reject the Bill in the Senate. (*CM, 9 Oct, p9*)*

Aboriginal and Torres Strait Islander Social Justice commissioner, Michael Dodson, has said that the constitutionality of the government's Amendment Bill means that it cannot provide certainty and that the Bill failed to meet non-discrimination standards under international law. (*WA, 11 Oct, p4*)*

Senator Nick Minchin argued that both the Solicitor-General and Barrister David Jackson QC, had provided legal advice to the government that the Native Title Act Amendment Bill was supported by section 51(26) of the Constitution (the 'race' power. Senator Minchin said that the 'race' power likely extends to laws that are detrimental to the interests of Aboriginal people and in any event, the government believes that the Amendment Bill, if taken together with the original native title act is on balance for the benefit of Aboriginal people. (*Media Release, 13 Oct*)

A visiting Aboriginal delegation has told the South African Government that proposed amendments to the *Native Title Act* were racist and out of step with international trends that enshrined human rights for indigenous people. (*SMH, 20 Oct, p10*)

Nine of the eleven legal opinions submitted to the joint parliamentary committee have said that the legislation is bound be found unconstitutional on at least one ground, with concern over the detriment to Aboriginal people and the provision of just terms. The two opinions supporting the legislation were from within the government - Solicitor-General Dr Gavan Griffith and Wik Task Force lawyer, Robert Orr. (*HS, 24 Oct, p12*)* Dr Griffith, however, admitted that it was merely his opinion and that the legislation would probably be challenged and the judges may strike down the legislation. (*SMH, 24 Oct, p10*)*

John Basten QC argued that the Amendments would not only be unconstitutional themselves, but would call into question the original *Native Title Act*. (*WA, 25 Oct, p28*) Other constitutional law experts have agreed. (*SMH, 25 Oct, p7*)

The minority report of the Joint Parliamentary Committee on native title has recommended that the Native Title Act Amendment Bill be substantially amended. A number of key issues were identified including the constitutionality of the bill in providing just terms and bringing the Bill within the principle of the Racial Discrimination Act. (*CT, 25 Oct, p2*)* In addition, the report calls for amendments to restrict the definition of pastoral activities, ensure the right to negotiate extends to mining over pastoral leases and offshore waters, with notification rights over inland waters, rejects the sunset clause and the imposition of rules of evidence on native title cases. The report rejects the onerous registration test and argues that incompatible land use should be said to suppress rather than extinguish native tile. The Labor party drafted the report with input from the National Indigenous Working Group and received support from the Democrats and the Greens, although both minor parties are expected to suggest further amendments. The government has reiterated that it will not accept substantive amendments. (*Fin R, 25 Oct, p4*)*

Aboriginal elders of the Kimberley have had their evidence to the Joint Parliamentary Committee on Native Title excluded from the Hansard record. The only recording being 'Evidence was then given in a language other than English'. No names, except that Kimberley Land Council executive director, Peter Yu, were included although some were spelled out for the Hansard Reporter, including KLC Chair, Kurijinpi McPhee. The Kimberley Aboriginal Language Resource centre had offered accredited translation services prior to the hearing. The minority report of the Joint Committee was critical of the committee's dealings with the evidence. (*CT, 27 Oct, p1*)*

The majority report recommended the Native Title Amendment Bill be adopted, with only four minor amendments: to broaden the definition of banks in which Native Title Representative Bodies could keep their funds; to allow cases where indigenous people continue to live on reserves but were unable to register native title applications to be dealt with on a case by case basis; to clarify the position in relation to opal exploration, and to amend the bill so that only 'undue prejudice' could prevent the court from taking into account cultural and customary concerns. (*CT, 28 Oct, p5*)*

Queensland National Party members sought a number of amendments to the government's Amendment Bill in the House, crossing the floor to vote against the Coalition. The amendments, based on National Farmers Federation proposals, sought a tightening of the registration test based on physical connection, an expansion of the sunset clause to apply to common law claims as well as claims under the Act, for compensation to be paid by the commonwealth alone and for increased role for the state to intervene to block the right to negotiate. (*WA, 30 Oct, p10*)*

The Amendment Bill passed the House of Representatives on Wednesday 29 October 1997 (80 votes to 46). However, the Bill was not expected to pass easily through the Senate without substantial amendment. The Prime Minister, John Howard, and Special Minister for State, Senator Nick Minchin, reiterated that the government would not allow major amendments. The government suggested that criticisms of both sides are proof that the bill achieves a balance between the competing interests. The seemingly fixed positions suggest that the Senate's rejection of the bill may be used as a trigger for a double dissolution election. Senator Harradine appears to hold the balance of power in this decision. (*CM, 1 Nov, p8*)*

A large number of claims lodged over the last three months were attributed to the impending changes under the Amendment Bill. However, Deputy Prime Minister, Tim Fischer said that the Bill would be retrospective and many of the claims lodged recently would be struck out under the new rules. (*CM, 3 Nov, p8*)

An annual survey of the pastoral industry, published in the Australian Farm Journal, revealed that the largest pastoral holders in the country were in fact increasing their investments in pastoral property despite claims of the financial impact of alleged uncertainty. Among those, Hugh McLaughlin, cousin of Defence Minister Ian McLaughlin, as well as the Minister himself, Don McDonald, Federal President of the National Party, and other Federal Coalition members and Senators were identified in the survey. The National Indigenous Working Group and Democrats Leader Meg Lees called for those with interests in the pastoral industry to refrain from the native title amendment bill debate, and to publicly declare their conflict of interest. Other big investors identified in the survey included some of the richest people, families and companies in Australia. (*WA, 3 Nov, p14*)*

Gatjil Djerrkura, Chair of ATSIC, criticised the government's Amendment Bill and warned that ATSIC would act to protect the rights and interests of Indigenous people. Mr Djerrkura also stated that ATSIC would seek support from the international Indigenous community if the Amendment bill passed the Senate. (*Aus, 6 Nov, p4*)*

Special Minister for State, Senator Nick Minchin, has stated that the government would not subject the Amendment Bill to the *Racial Discrimination Act* because of the perceived legal consequences. (*FinR*, 6 Nov, p7)

Prime Minister John Howard has told State Premiers that he is prepared to use the Native Title Amendment Bill to force a double-dissolution election. His statement came after West Australian Premier Richard Court and Northern Territory leader Shane Stone called for an election on native title if the Senate blocked the legislation. The legislation goes to the Senate on November 24. (*WAus*, 8 Nov, p1, 4)* Mr Howard characterised native title as a 'land management' issue rather than a 'racial' one. (*FinR*, 8 Nov, p3)*

The Senate committee on Legal and Constitutional Legislation, tabled its report on the constitutionality of the NTA Bill. Evidence was given before the committee indicating that the Government's amendments did not abide by the Constitution's requirement that the Commonwealth provide just-terms compensation when acquiring property. The Coalition members of the committee have suggested that Special Minister for State Nick Minchin review the Bill to ensure that it abides by this requirement. (*CT*, 11 Nov, p1)* The Opposition and minor parties believe that the Bill is racially discriminatory. (*Aus*, 11 Nov, p2)*

Senator Nick Minchin disputed that the NTA Bill might not meet requirements for just-terms compensation set by the constitution. He said that he would, nevertheless, look at the committee's findings on that part of the Bill. Opposition legal affairs spokesman Nick Bolkus warned that an unchanged Bill could potentially lead to payment of compensation and uncertainty. (*WA*, 11 Nov, p9)*

British human rights groups protested against the Australian Government's NTA Bill in London, calling for an international boycott of the Sydney Olympics if native title rights were extinguished. British MPs will lobby their Foreign Secretary, Mr Robin Cook, to pressure Australia over the proposed amendments in line with the British Government's commitment to ethical foreign policy. (*SMH*, 12 Nov, p3)*

Former Prime Minister Paul Keating rejected suggestions he had expected that Labor's legislation, the *Native Title Act 1993*, would extinguish native title on pastoral leases in response to Government claims that their amendments were simply trying to do what Labor originally intended. (*SMH*, 12 Nov, p2)*

Human Rights Commissioner, Mr Chris Sidoti, has told a Senate hearing that he is concerned that the Government's proposed legislation will have a racially discriminatory effect and therefore would be in breach of provisions of international human rights treaties. (*Age*, 14 Nov, pA7)*

Federal Minister for Aboriginal Affairs, John Herron, said the NTA Bill was fair and just, and disputed claims that land was the basis for Aboriginal independence or reconciliation. (*WA*, 14 Nov, p10) ATSIC Chair, Gatjil Djerrkura, said although the legislation was the task of Special

Minister of State, Nick Minchin, the Aboriginal Affairs Minister should be representing indigenous interests. He said that land was the core of indigenous identity. (WA, 14 Nov, p10)

The ALP has produced a detailed assessment of the Government's NTA Bill. The ALP insists that the right to negotiate over mines and other developments on pastoral leases be written into the bill. The Labor party is expected to make public their proposed amendments next week. (FinR, 15 Nov, p3)

Queensland National Party Senator, Bill O'Chee, told the national conference of the Australian National Sport Fishing Association that native title poses a threat to fishermen as well as graziers because the *Native Title Act* potentially allows people to make claims over oceans and waterways. He said that the Government's proposed legislation would protect the fishing community. (CT, 16 Nov, p14)*

Prime Minister, John Howard, said the only way to avoid a double-dissolution election on race was for the Senate to pass the Bill unamended. (Aus, 17 Nov, p3)*

The manager of government business in the Senate, Ian Campbell, announced an extra sitting week for the Senate from December 1, in order to complete the debate over the proposed legislation. (Aus, 18 Nov, p4)* The Government has allowed 40 hours in its program for debate on this legislation. (Media Release, 17 Nov)

Liberal backbencher, Ms Susan Jeanes, criticised her Government's handling of native title and Aboriginal affairs as 'mean-spirited' in the eyes of Australians. She said she was 'very saddened' by the proposed legislation that placed the interests of farmers and miners above those of Indigenous people. (Ad, 18 Nov, p5)*

Business council of Australia president Stan Wallis said that the continuing debate over the Amendment Bill is damaging Australia's investment reputation. (Aus, 12 Nov 1997, p2)* Mr Wallis said certainty of land tenure was crucial for investment but a continuing reconciliation process was also of 'critical importance' for the nation. Three dangers of a double dissolution election were identified as: the further delay in certainty; the erosion of goodwill, jeopardising negotiations which mining companies have undertaken with Aboriginal communities; and the potential unconstitutionality of the legislation. (FinR, 19 Nov, p18)

The Australian Greens said they would vote down the Government's NTA Bill in the Senate rather than support ALP amendments that did not fully protect Aboriginal rights. (FinR, 19 Nov, p3) The Greens will move to split the bill so that agreed sections can pass before the end of the year. These include the Brandy amendments and provisions relating to Indigenous Land Use Agreements. (Media release, 19 Nov)

The Labor party pursued a unified opposition to the Government's proposed legislation. However, the minor parties demanded that leases granted since 1 January 1994 be reissued, opposing the validation provisions supported by the Labor party. (Age, 24 Nov, pA4)* The Labor party's amendments remove and offset parts of the Amendment Bill that are racially

discriminatory or fail to meet the constitutional obligation of ‘just terms’ compensation. (CT, 24 Nov, p2)

After a party-room meeting with the National Indigenous Working Group, the Democrats announced that the party would sponsor a package of amendments as proposed by Aboriginal people. Senator John Woodley said the amendments, would include an amendment opposing validation of intermediate titles. (*Media Release, 24 Nov*)

A number of senior Australian business leaders have expressed strong support for passage of the essential features of the Government’s Native Title Amendment Bill. They say this will provide greater certainty for investment in Australia. (*Media Release, 24 Nov*)* Among the 30 people that signed the statement were BHP’s Jerry Ellis and John Prescott, the Commonwealth Bank’s Tim Besley, Western Mining’s Hugh Morgan, AMP’s Ian Burgess, National Mutual’s Geoff Tomlinson, Telstra’s David Hoare, Rio Tinto’s Barry Cusack, the National Australia Bank’s Don Argus, Normandy Mining chief executive Robert Champoin de Crespigny and Don McGauchie, president of the National Farmers Federation. According to David Buckingham, the executive director of the Business Council of Australia, those who made the statement were signing as individuals, not as representatives of the council or companies. (*Aus, 25 Nov, p2*)* Normandy Mining has distanced itself from the statement of support, with managing director Mr Ian Gould saying its position was “far too complex to be conveyed in that simple statement”. (*Ad, 25 Nov, p6*)

There were more than 700 amendments to the Government’s NTA Bill from all parties to be considered by the Senate. Labor will insist that native title claimants have a right to negotiate on pastoral leases and will refuse to support a schedule of leases that the Government asserts give exclusive occupancy rights to leaseholders. Labor also proposes that legislation only suppress native title rights rather than extinguish them permanently. They will also oppose moves that allow pastoralists to upgrade their leases to freehold title. They will, however, give some support to Government proposals to validate leases granted since 1994 and to increase the capacity of pastoralists to diversify their activities beyond the formal terms of their leases. (*Age, 25 Nov, pA1*)*

A letter sent by Tim Fischer’s office informing a property owner that her freehold title had been ‘thrown into doubt’ by the Wik decision, became public. (*Aus, 27 Nov, p2*)*

Indigenous Australians with Native Title claims threatened by the Government’s Amendment Bill gathered in Canberra yesterday to plead for a change of mind. Mr Juluk Tighe representative of the Walmajari community of Western Australia stated that the community has been locked out of Christmas Creek by the pastoralist. Under the NTA Bill they will have no right to negotiate over new uses of the land. (CT, 28 Nov, p4)*

GENERAL NATIVE TITLE ISSUES

National