

AMENDMENTS

National

Special Minister of State Senator Nick Minchin announced that the new *Native Title Act* will come into effect on 30 September 1998. The changes will include:

- New procedures for processing of native title claims through the NNTT and the Federal Court.
- A new registration test.
- Complementary State legislation being enabled to take effect.
- Amendments relating to agreements.

The amendments relating to Native Title Representative Bodies (NTRBs) will not come into effect until 30 October 1998. This is to allow an extra month for consultation with the NTRBs on the implementation of the new procedures. (*Special Minister of State, Media Release, 11 Aug, p1*)*

National Native Title Tribunal President, Justice Robert French, today confirmed that the Federal Tribunal would begin applying the new, stringent registration test to existing and fresh native title applications from 30 September, the proclamation date of the amended Federal *Native Title Act*. He said the new test, which the Tribunal had been preparing to implement for several months pending the passage of the *Native Title Amendment Bill*, could result in a significant number of existing applicants losing their right to negotiate over developments on land where native title may exist.

Fresh applications lodged after 30 September would have the registration test automatically applied within four months, or as soon as possible, after the date of lodgment. This meant new native title applications would not attract the right to negotiate over mining or exploration leases until satisfying the stringent criteria. Justice French said there were a number of conditions which had to be satisfied to achieve registration, including that:

- at least one member of the applicant group has or had a traditional physical connection with the area;
- no member of the native title claim group was a member of a native title claim group for a previous application; and
- the applicant was a member of the claim group and authorised to make the application on behalf of everyone else in the claim group.

He said it was a misconception that applications that failed the registration test would be defunct, as the registration test is primarily a gateway to the right to negotiate. Native title applications that do not satisfy the registration test criteria will lose the right to negotiate and other procedural rights, but could remain as an application to determine native title rights and interests. Justice French said the Tribunal would implement the provisions of the new Federal Act until such time as each State assumed full responsibility for the registration and mediation of native title applications. (*NNTT Media Release, 19 Aug, p1*)*

National Native Title Tribunal President, Justice Robert French, said in the 59 working days since the passage of the *Native Title Amendment Bill*, the Tribunal had prepared more than 700 case files for transfer to the Federal Court, as under the new laws all existing claims would be treated as proceedings in the Court.

The Tribunal has also developed detailed procedures to underpin key elements of the 421 page amended *Act* and sent education and training material to thousands of stakeholders Australia wide. (*NNTT Media Release, 29 Sept, p1*)

New South Wales

The NSW State Government has introduced legislation in response to the Federal *Native Title Amendment Act (1998)*. The *Native Title (NSW) Act* extinguishes native title on all freehold, residential leases, commercial leases and leases for community purposes. The Government will leave the question of whether native title can co-exist on pastoral leases in the State's west, up to the court to decide. The legislation will also secure small-scale mining operations at Lightning Ridge and White Cliffs, and allow approval for further exploration after consultation with Indigenous representatives. (*DT, 16 Sept, p26*)*

The NSW Aboriginal Land Council says that around 80 of the 115 applications before the National Native Title Tribunal will be tossed out after the stricter registration test under new legislation is applied. (*SMH, 30 Sept, p6*)

Queensland

In response to the introduction of a Bill to extinguish native title on many leases and permits by the Queensland Government, the Queensland Indigenous Working Group will be asking the Federal Labor Party to oppose the endorsement of the State's native title legislation in the Senate. The Working Group's chairperson, Terry O'Shane, said Indigenous groups would consider a legal challenge to the legislation. (*Aus, 13 Aug, p6*)* The challenge would centre on the question of whether Grazing Homestead Perpetual Leases extinguish native title. (*CM, 19 Aug, p4*)*

Queensland Premier, Peter Beattie, has consulted the Crown Solicitor in regard to possible challenges to his native title legislation. The Crown Solicitor said that there were no guarantees that the High Court would accept the legislation. Mr Beattie has acknowledged that the legislation would cause considerable grief to Aboriginal people, and could deprive them of legitimate rights to land. (*CM, 27 Aug, p3*)*

The Queensland State Government is reported to be considering the implementation of a process that will cover negotiations between mining and Indigenous stakeholders over different types of land tenures, merging Federal Government standards for right to negotiate procedures on vacant crown land with procedures proposed for mining on pastoral leases. (*FinR, 15 Sept, p3*)* Queensland Premier, Mr Peter Beattie, said an options paper had been put forward for discussion by all parties, and no decision had been made on right to negotiate procedures. (*CM, 16 Sept, p2*)

Queensland Government sources have indicated that discussions with interested parties over the right to negotiate procedures are continuing, with the hope of a legislative outcome in October. The Government is reported to be favoring retaining negotiating rights on pastoral leases. (*SMH, 30 Sept, p6*)

Western Australia

The Western Australian Government is expected to introduce two Bills into Parliament next month. Until then, the Bills, which amend the 1995 *Titles Validation Act* and establish a State tribunal, are expected to be available for public comment. (*WA, 7 Aug, p24*)*

Western Australia is the first State or Territory to announce legislation that is designed to take over the National Native Title Tribunal's entire function. (WA, 22 Aug, 51)

As a response to the proposed WA legislation, the Aboriginal Legal Service has warned that extinguishment of native title would result in many claims for compensation and a considerable compensation bill. (WA, 24 Aug, p26)

Tasmania

The Tasmanian Aboriginal Centre is holding negotiations with Aboriginal people over pursuing a native title application, which the Centre hopes to lodge in the near future. The application will cover Crown land from Freycinet Peninsula to Ben Lomond and across to the Tamar Valley. The Centre's legal manager, Michael Mansell, has indicated that this will be a test case for Australia as the case will be testing the legal argument that the Aboriginal community still had a legal right to the land it once occupied. This argument relies on gaining recognition that north-east Aboriginal groups had freehold title to large areas of the east coast 200 years ago. (Mer, 26 Aug, p5)*

Northern Territory

The Northern Territory has become the first state or territory to pass native title legislation following the Federal Government's *Native Title Amendment Act*. The legislation removes the right to negotiate provisions and establishes a Territory native title tribunal. The Northern Territory Government hopes to establish their tribunal, to be called the Lands and Mining Tribunal, by 30 September. (HS, 21 Aug, p16)* The Tribunal will only take over the National Native Title Tribunal's function in the area of future acts. Aboriginal representatives condemned the legislative package as being the closest thing to extinguishment that the Federal legislation would allow. (WA, 22 Aug, 51)*

GENERAL NATIVE TITLE ISSUES

International

The head of the Unrepresented Nations and Peoples Organisation (UNPO), Ms Helen Corbett, will address members of the United States Congress on issues including that of how the US can assist Aboriginal people in the furtherance of their rights. Ms Corbett, who is the first Aboriginal person to be invited to address Congress members, is expected to tell the members that the Federal Government is breaching fundamental Indigenous rights. Ms Corbett has warned of the likelihood of a renewed call for a 2000 Olympic boycott, following the passage of the *Native Title Amendment Act* and the rise of One Nation. The UNPO is based in the Hague and is an advocate for about 100 million people from around 50 minorities and small nations around the world. (SMH, 17 Aug, p5)

A delegation of experts involved in the *Delgamuukw case* in Canada yesterday spoke to native title lawyers in Sydney. Delegation members included Maas Gaak (Don Ryan) speaker for the Hereditary Chiefs of the Gitxan; Midiigim Gyemk (Neil Sterritt) Gitxan Chief and spokesperson; Stuart Rush QC and Louise Mandell QC lawyers for the plaintiffs. The Gitxan people have recently demanded half of the profits from wood cutting and mining operations on their territory from the provincial Government. They are yet to hear a response from the Government. The delegation said the *Delgamuukw case* has implications for Australia. Law professor, Richard Bartlett agrees, saying that Aboriginal oral history was given great weight by the Canadian Supreme Court, a fact likely to have considerable significance here. The Canadian Supreme Court also considered the question of Indigenous self-government as important. Mr Stuart Rush,