



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

Native Title Research Unit

GPO BOX 553
CANBERRA ACT 2601
Phone 02 6246 1161
Fax 02 6249 1046
E-mail: ntru@aiatsis.gov.au
Website: <http://www.aiatsis.gov.au/>

NATIVE TITLE NEWSLETTER

No. 6/98

NATIVE TITLE IN THE NEWS October - November 1998

(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.)*

Ad = Advertiser (SA)

Age = The Age

Aus = Australian

CM = Courier Mail (QLD)

CP = Cairns Post

CT = Canberra Times

FinR = Financial Review

HS = Herald Sun (VIC)

LE = Launceston Examiner

Mer = Hobart Mercury

NNTT = National Native Title Tribunal

NTA = *Native Title Act 1993*

NTN = Northern Territory News

SC = Sunshine Coast Daily

SMH = Sydney Morning Herald

Tel M = Telegraph Mirror (NSW)

WA = West Australian

WAus = Weekend Australian

CLAIMS

New South Wales

Arakwal People [NNTT Ref#NC95/1]

Arakwal native title applicants and the Byron Bay Shire Council have signed an agreement at a ceremony in Byron Bay. It is the first substantial agreement between a local shire council and native title applicants in NSW.

The Heads of Agreement sets out a framework for ongoing consultations between the Council and Arakwal people and resolves a number of issues on priority developments in the area.

The agreement establishes the Byron Shire Council Aboriginal Consultative Committee, comprising representatives of the Council and the Arakwal community. The Committee will

make recommendations to Council on a planning strategy for Byron Shire that takes into account the concerns of the Arakwal community on specific development proposals.

Tribunal President, Justice Robert French said that while the agreement resolves a number of issues on specific developments, the crucial thing is the commitment to ongoing consultations. There is now a solid framework to address priority issues as they emerge.

The Arakwal native title application was lodged with the National Native Title Tribunal on 22 December 1994 and accepted by the Tribunal on 20 September 1995. Mediation began in July 1996. In April 1997, an agreement was reached between the State Government of NSW and the Arakwal applicants regarding a new State Recreation Area. The park was created on 9 July 1997. The Tribunal continues to facilitate discussions between all parties. (*NNTT Media Release, 16 Oct*)*

Bandjalang People [NNTT Ref#96/16]

Formal mediation of the Bandjalang native title application at Evans Head began on 5 November with a meeting between the applicants and other registered parties.

The application for recognition of native title over land, sea and inland waters in and around Evans Head was lodged on 17 May 1996. It includes parts of the Broadwater National Park and Bandjalang National Park, and extends five kilometres out to sea.

The application was accepted for mediation by the Tribunal in October 1996, and public notification closed in April 1997. Since that time, interested parties to the mediation have been registered and the Tribunal has held preliminary discussions with all groups to prepare for mediation.

Talks continue on 6 November between the applicants, the NSW Government, and Richmond River Shire Council. (*NNTT Media Release, 6 Nov*)

Bunjalung People [NNTT Ref#NC96/8, NC96/14]

Two Bunjalung native title applications in the Northern Rivers region move into formal mediation this week with meetings in Grafton on Thursday 26 November and Tabulam on Friday 27 November.

The claims for recognition of native title were lodged by the Bunjalung people in 1996. Since then, the Tribunal has conducted public notification to identify people with a direct interest in the area, and held preliminary discussions with all groups to prepare for mediation.

Tribunal Member Mr Kim Wilson, who will chair the meetings, said that formal mediation begins with a plenary conference that brings together the native title applicants and all the other registered parties to listen to each other's concerns and objectives, and to set out a framework for further talks.

The two claims moving into mediation are:

- 1) NC96/8: lodged in March 1996 on behalf of the Bunjalung people of Mulabugilmah and Baryugil over national parks, forests and crown reserves in the Shires of Copmanhurst, Nymboida, Severn and Tenterfield.
- 2) NC96/14: lodged on behalf of the Bunjalung people of Tabulam in May 1996. It covers land and waters in the parishes of Tabulam, Timbarra, Chauvel, Sandhills, Evans, Black

Camp, Picarbin and Emu, Town of Tabulam, village of Mallanganee. It covers land in the Shires of Kyogle and Tenterfield. (*NNTT Media Release, 24 Nov*)

Queensland

Wakka Wakka People [NNTT Ref#QC98/47]

A native title application has been lodged with the National Native Title Tribunal on behalf of the Wakka Wakka people. The application covers areas within the Burnett district, including national parks and conservation reserves, unallocated State land and timber reserves. (*Biggenden Weekly, 8 Oct, p1*)*

Wulgurukaba People #1 and #2 [NNTT Ref#QC98/30, QC98/31]

The National Native Title Tribunal will host two public information sessions at the Arcadia Resort, Magnetic Island, on Wednesday 14 October. Tribunal Member Mr Geoff Clark said the purpose of the meetings was to provide an update to residents on the progress of the Wulgurukaba applications since the Tribunal's last visit to the island in July, and to explain the next steps in the process. (*NNTT Media Release, 12 Oct*)

Jinibara People [NNTT Ref#QC98/45]

A native title application covering much of north-west Brisbane to the Caboolture Shire and west to Nanango, has been lodged on behalf of the Jinibara people. (*CM, 26 Oct, p2*)

Waanyi People

The Waanyi people have united to pursue a single native title claim. The claim replaces the eight overlapping claims in the Gulf of Carpentaria region. A three day meeting, held on Ganggalida land, was convened by the National Native Title Tribunal and organised and funded by the Carpentaria Land Council to explore possibilities for agreement over native title claims in the Gulf.

Over 100 senior elders and other representatives of Waanyi and neighbouring Ganggalida, Garrawa, Mingginda, Indjilandji, Landil, Kaiadilt, and Yangkaal groups attended the meeting. The meeting agreed unanimously to combine their eight overlapping native title claims into a single Waanyi Nation claim. The claim will be managed by a newly established steering committee representing all Waanyi families.

Tribunal member Dr Mary Edmunds—who facilitated the meeting—said Waanyi people had achieved a significant step towards the recognition of their native title. Dr Edmunds said all parties recognise the contribution towards this achievement made by the Coordinator of the Carpentaria Land Council, Mr Murradoo Yanner, congratulating him, the Waanyi and neighbouring peoples. (*NNTT Media Release, 5 Nov*)*

Fraser Island

A land and sea rights crown law claim over Fraser Island and surrounding areas has been struck out by the Supreme Court in Queensland. The State and Commonwealth Governments have fought the claim on the basis that it was incompletely presented. Justice John Muir made the decision after giving the claimants several opportunities to amend the claim. The claimants included the Dalungbara, Batchala and Ngulungbara peoples. (*Aus, 5 Nov, p8*)* Mr John Lee Jones, representative for the claimants, said he would appeal the decision. He argues that the Indigenous peoples do not, under common law, have to show a continuation of customs, language and association with the land. (*Ad, 4 Nov, p33*)*

Undumbi People [NNTT Ref#QC97/44]

A native title application lodged on behalf of the Undumbi people covers most of the Sunshine Coast and extends two kilometres out to sea. Included areas are State forest, reserves, national parks and unallocated state land. Representatives of applicants have been

invited to speak to Maroochy Shire Council about the application. (*Sunshine Coast, 12 Nov, p3*)

Turrbal People [NNTT Ref#QC98/26]

The Turrbal people are contemplating a Federal Court injunction to stop the construction of a six-lane highway in Brisbane. Maroochy Barambah, spokesperson for the Turrbal people, says the route would decimate Victoria Park, which the people want to preserve as part of their community and history. The Turrbal people say they have been excluded from negotiating the path of the highway. They have lodged a native title claim in order to have a say on development in places of significance around Brisbane. (*CM, 23 Nov, p8*)

Western Australia

Perth Region

The National Native Title Tribunal has referred eight metropolitan native title applications to the Federal Court for resolution. Five of the eight applications were lodged by Mr Corrie Bodney of the Ballaruk people; two were lodged by Mr Robert Bropho on behalf of the Swan Valley Nyungah community and one was lodged by Mr William Warrell of Mogumber.

Tribunal Registrar, Christopher Doepel, said intensive efforts to bring the parties together to resolve overlaps and other issues had been unsuccessful, leaving the Tribunal with no option but to have the applications tested in Court. Mr Doepel said the Western Australian Government's 11 preconditions to entering into mediation included a requirement that there were no overlaps in the applications. (*NNTT Media Release, 9 Oct*)*

Martu People

A major breakthrough has been achieved in the Martu people's effort to achieve formal recognition of their native title rights over a 153 000 square kilometre area of the Pilbara centred on the Rudall River National Park.

The National Native Title Tribunal today announced it had assisted five language groups of Martu people to reach an agreement to withdraw two native title applications and combine efforts on a third application, clearing a major obstacle to resolution of the native title issues. The elimination of overlaps clears the way for formal negotiations with the State Government for recognition of native title.

The Government's requirement that overlaps be eliminated, as a precondition to their entering into mediation, poses particular difficulties in Western Australia where there are a number of overlapping applications. It is one of the reasons that there have been no agreed determinations of native title in Western Australia while there have been two in Queensland, which has fewer applications.

The remaining application encompasses the communities of Kunawaritji (Well 33), Punmu and Parnngurr (Cotton Creek) and is over vacant Crown land and the Rudall River National Park, and includes some mining tenements.

The Martu people were seeking recognition as the traditional owners of the country, the right to maintain their traditional association with the land and the right to have a say over any activities on the land. (*NNTT Media Release, 4 Nov*)*

Miriuwung Gajerrong #1 [NNTT Ref#94/2]

National Native Title Tribunal President, Justice Robert French, said the Federal Court's decision that native title existed over part of the land claimed by the Miriuwung and

Gajerrong peoples would make a significant contribution to the resolution of native title claims around Australia.

Justice French said the decision on the 7800 square kilometre claim on the Western Australian and Northern Territory border, clarified a number of important issues in the relatively new field of native title law.

Justice French said the decision also underscored the importance of mediation as a route to resolving native title applications. The Federal Court process was expensive, adversarial and a protracted exercise for all parties. Mediation is still necessary to put the Court's decision into practical effect.

The native title application was lodged with the Tribunal on 6 April 1994. The Tribunal referred the matter to the Federal Court on 7 February 1995 after a lack of progress in mediation. (*NNTT Media Release, 24 Nov*)*

Justice Malcolm Lee of the Federal Court, found that native title had been successfully established by the Miriuwung and Gajerrong peoples. The court recognised substantial native title rights, including rights to possess and occupy the land, control access to land, the right to trade in resources on the land, and the right to control the use and enjoyment of the land and its resources. Justice Lee said that native title exists in the region with some exceptions. Roads, public reserves, power and telephone stations and some agricultural land, are areas that extinguish native title rights. (*FinR, 25 Nov, p7*) (*Age, 25 Nov, pA2*)*

There is speculation that the Howard Government may have to review its native title legislation in light of the Miriuwung-Gajerrong decision. (*SMH, 25 Nov, p3*)*

Western Australian Premier, Mr Richard Court, said the State may appeal the Federal Court decision in the Miriuwung-Gajerrong native title case. Lawyers have warned that if the State Government proceeds with legislation to extinguish native title over pastoral leases and other areas of land, it could be up for massive compensation claims. (*FinR, 26 Nov, p3*)*

The Miriuwung-Gajerrong decision recognised native title rights on areas of land that the Commonwealth Government had earmarked for extinguishment under their recent amendments to the NTA. A schedule attached to the Act lists where extinguishment of native title can be 'confirmed' through State legislation. The Government had previously claimed that the list only included land subject to tenures and acts that extinguished native title. (*Aus, 26 Nov, p2*)

The Commonwealth Attorney-General, Mr Daryl Williams, said that the Government would not have to rethink its native title legislation after the recent Federal Court decision. He said that where there is an inconsistency between a native title right and a valid lease, the NTA allowed the rights of leaseholders to prevail. (*Age, 26 Nov, pA6*)* Mr Williams said that the decision is primarily a matter for the Governments of Western Australia and the Northern Territory rather than the Commonwealth Government. (*Attorney-General Media Release, 25 Nov*)

Karratha Area (2 claims)

The Western Australian Government has called for expressions of interest on development of Karratha land into residential areas. There are two native title claims over the area and the

Government has put the onus on successful tenderers to negotiate access agreements with native title applicants. (*FinR*, 19 Nov, p50)

Northern Territory

Alice Springs [NNTT Ref#DC94/2]

The Federal Court hearing into the Alice Springs application will re-open before Justice Olney. The application covers areas of vacant Crown land in and around Alice Springs. It was referred to the Federal Court after the Northern Territory Government refused to negotiate with traditional owners. (*NTN*, 25 Oct, p4)

MINING AND NATURAL RESOURCES

Queensland

Gold Coast – Fishing

A fishing contest has been cancelled at the last minute with State Government departments unable to grant a permit. Under new native title legislation the departments have to notify possible claimants before granting permits or leases. It is understood that the Queensland Fisheries Management Authority would not have had time to do this. (*CM*, 6 Nov, p28)*

The Queensland Government has decided to approve six leases to allow a nickel and cobalt mining project near Rockhampton to proceed. The land is required for extraction of minerals and for a processing and refining plant. Native title is still uncertain in the area and four leases remain to be decided. Premier Peter Beattie believes the native title issues can be resolved. (*CM*, 10 Nov, p4)

Century Zinc Mine

The Queensland Government has announced it will compulsorily acquire the native title rights to a strip of land that is the last section of a power line route from Gunpowder to the Century Zinc mining project. The Government wanted to make sure the project went ahead after talks again broke down between power company NORQEB and traditional owners. The Government faces penalties of \$50 000 a day, in the first instance, if power to the mine is delayed beyond 1 August 1999. The Queensland Indigenous Working Group is concerned that the Government's action may have set a dangerous precedent. (*Aus*, 27 Nov, p8)*

Western Australia

The National Native Title Tribunal today confirmed that 31 Western Australian native title applications would be put through the stringent new registration test earlier than expected because of the Western Australian Government's decision to grant a series of mining related tenements under the provisions of the amended *Native Title Act 1993*.

Tribunal Acting Registrar, Hugh Chevis, said the WA Government had advised the Tribunal of its intention to grant 25 mining tenements, mainly in the Goldfields and Mid West, which impacted on 31 existing native title applications.

The Government's proposal to grant mining related tenements in key areas triggered an acceleration of the registration test. The test will now have to be applied to affected applications within four months. Some of the individual tenements affected as many as eight native title applications, requiring all of them to face the registration test several months earlier. The Tribunal will devote additional resources to managing the registration test process given the shortened time frames.