The High Court was asked to consider whether a grant of freehold or fee simple was effective to extinguish all native title rights and interests so that, upon the land being re-acquired by the Crown, no native title rights and interests could then be recognised by the common law.

The case raises two important issues. The first issue is whether a grant of freehold extinguished native title so that no form of native title can co-exist with freehold title. The second question is whether extinguishment was permanent and absolute or whether there was potential for native title under the common law to be re-recognised or to 'revive' when the land returned to the Crown. The case also dealt with the issue of injunctive relief available outside the operation of the *Native Title Act 1993*.

Held

1. Native title is completely extinguished by the grant of a freehold estate. The rights granted under fee simple are inconsistent with the continued existence of any form of native title and no coexisting or concurrent rights can survive.
2. The grant of freehold extinguishes native title permanently regardless of the land being held by the Crown in the future.
3. While the existence of Indigenous law is necessary to establish native title, it is not sufficient to invite recognition under the common law.
4. Statutory rights under the *Native Title Act* are valuable rights that may warrant protection by injunctions. General principles of injunctive relief apply. Acceptance by the Registrar establishes an arguable case, but some inquiry may be made into the case of the other parties.

……*Lisa Strelein, Visiting Research Fellow NTRU, 4/2/99*

MINING AND NATURAL RESOURCES

Queensland

Charters Towers – Burdekin River

The Charters Towers Fish Stock Group has received permission to release barramundi fingerlings into the Burdekin River. The Group, in line with new Queensland native title laws, advertised their re-stocking plans and allowed for a 28-day period to give Aboriginal groups the opportunity to object. There were no objections to the plan. *(Northern Miner, 12 Jan, p2)*

South Australia

Gawler Craton

Drilling will begin in nine copper-gold targets in a Gawler Craton joint venture between Adelaide Resources and Cyprus Amax. Native title and environmental approvals have been gained for the program. *(Ad, 29 Jan, p27)*

Western Australia

The National Native Title Tribunal has ruled that it cannot hear the case for the grant of 15 mining leases in the Goldfields and Great Southern regions because the Western Australian Government had not negotiated with native title applicants. The 15 applications asking for the

Tribunal to decide the matters were lodged by the Aboriginal Legal Service and the Noongar Land Council on behalf of several groups of native title applicants.

In a significant decision, Tribunal Member Chris Sumner ruled that a period of good faith negotiations between the Indigenous people, the Government and other parties was necessary before the Tribunal could be called in to decide if the leases could be granted - regardless of which party sought the Tribunal's intervention.

The ruling had implications for more than 2000 recent applications by Indigenous people for the Tribunal to decide whether a series of land acquisitions, mining leases and exploration licences should be granted and if so under what conditions. The applications - mainly in the Goldfields - were lodged in the days leading up to the introduction of amended native title laws on 30 September 1998. Many of these applications will now be dismissed. *(NNTT Media Release, 21 Dec)**

AGREEMENTS

National

Indigenous Land Use Agreements Conference

At a conference on Indigenous land use agreements in Kalgoorlie today, NNTT President, Justice Robert French, urged Australian mining companies, governments, pastoralists and other land users to take advantage of new measures to fast track developments in areas under native title claim.

Justice French said the amended *Native Title Act 1993* provided new legislative tools for Governments and developers to strike legally binding and enforceable land use agreements with Indigenous people which could allow developments to proceed while protecting the interests of native title holders. He said Indigenous land use agreements offer the opportunity for economic certainty and cultural protection at the local or regional level and allow developments to proceed by negotiation without waiting for the finalisation of native title applications.

Indigenous land use agreements can cover:

- ancillary agreements that may resolve specific issues arising from mediation of a native title claim;
- negotiated settlement of all issues relating to a native title claim;
- agreements for mineral exploration, mining, land developments and some types of compulsory acquisition by governments; and
- co-management or partnership arrangements.

More than 120 people representing the mining and pastoral industries, local governments and native title holders attended the conference, staged by the National Native Title Tribunal with support and assistance from the WA Chamber of Minerals and Energy, Association of Mining and Exploration Companies and the Australian Mining and Petroleum Law Association. *(NNTT Media Release, 1 Dec)**