

subservient to other titles, this provision can also lead to extinguishment by stealth. The question in my mind is why is it that non-Indigenous property rights can be determined with no reference to the law - that is, at the whim of government - while Indigenous people are forced to undergo an arduous and offensive 'inquisition' before gaining recognition of rights we already hold? The *Mabo* decision settled the question of terra nullius; the determination process should now be one that starts on the premise of recognition of native title and then be a process of facilitating that recognition within the social, political and economic framework of the nation state. This is possible through mediation but not through the courts.

A further issue highlighted by Ms McDougall is the fact that the common law, despite the attempt to cast it in a new light with *Mabo*, is still racist in its treatment of Indigenous rights. The principle that native title is vulnerable and susceptible to extinguishment by the sovereign powers of the Crown is clearly a throw back to Darwinian arguments and has no real basis in merit.

The approach to native title is always a contentious political issue but we should never lose sight of the fact that it is an issue at the very heart of our nation. Native title strikes at real issues of reconciliation, human rights and equity that simply can not be brushed aside for political convenience. I recommend that readers visit the FAIRA website, which has a lot of detail on the CERD deliberations. It can be accessed at <<http://www.faira.org.au>>.

This month the NTRU has published an Issues Paper looking at the CERD developments. We are also in the initial stages of planning a workshop to debate some of the issues surrounding the operation of the NTA, such as race, international human rights law and the development of native title law in Australia. The workshop is planned for mid November.

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NATIVE TITLE IN THE NEWS - JULY AND AUGUST 1999

International

ATSIC chairman, Mr Gatjil Djerrkura criticised the Federal Government's performance in relation to Australia's Indigenous people in ATSIC's report to the UN Working Group on Indigenous Peoples. Mr Djerrkura stated that he had to defend the rights of Aboriginal and Torres Strait Islander people and that the common law rights of Indigenous people had been substantially diminished through the changes to the *Native Title Act*. (*Ad, 28 July, p6*)

ATSIC urged the United Nations Committee on the Elimination of Racial Discrimination to continue to pursue the Australian government over its native title legislation. ATSCI wrote to the UN Committee requesting that it maintain its scrutiny of the situation following the Federal Government's decision to reject the Committee's findings that the *Native Title Act* as currently amended is racially discriminatory. (*ATSIC Media Release, 9 Aug*)*

The United Nation's Committee on the Elimination of Racial Discrimination (CERD) has reaffirmed its decision that certain provisions of the 1998 amendments to the *Native Title Act* are incompatible with the International Convention for the Elimination of All Forms of Racial Discrimination. The Committee said that the changes 'risked creating an acute impairment' of Indigenous land rights and stated that it had carefully considered the Australian Government's submission but it had seen 'no progress' and would continue to monitor Australia's treatment of Indigenous peoples. Australia will become the first Western nation reported to the UN General Assembly for breaching the Convention. (*SMH, 18 Aug, p2*)*

New South Wales

Shellharbour City Council will buy a section of Crown Land at Shell Cove to build a 350-berth marina. Native title claims prevented the Council from being granted a Crown lease for part of the area in the tidal zone adjacent to Shell Cove. (*IM, 1 July, p12*)

New South Wales Cabinet Office held an information session on native title at the Wentworth and District Services Memorial Club to help clarify some of the finer points of the Native Title Act. (*Sunraysia Daily (Mildura), 28 July, p1*)

Victoria

Victorian Indigenous Working Group executive officer Angela Lesley spoke at two meetings in Bendigo held to examine the effects of the Victorian Government's native title legislation. The VIWG has combined with the Defenders of Native Title to resist any lessening of Indigenous peoples' rights to negotiate over developments on traditional land. (*Bendigo Advertiser, 29 July, p3*)

The Yorta Yorta native title appeal began with the Victorian Government attempting to have a Federal Court judge removed from the hearing on the

grounds that he was biased due to his membership of the Koori Heritage Trust. (*FinR*, 18 Aug, p10)*

Justice Ron Merkel agreed to disqualify himself from the Yorta Yorta native title appeal hearing because of 'perceived bias'. (*FinR*, 19 Aug, p5)*

The Yorta Yorta appeal against the rejection of their claim to 2000 square kilometres of land straddling the NSW and Victorian borders is seen as important as it is the only native title appeal currently before the Federal Court that is not in a remote part of Australia. (*Bendigo Advertiser*, 21 Aug, p6)*

The Federal Court reserved their decision in the Yorta Yorta native title claim. (*DT*, 27 Aug, p18)*

Queensland

Queensland Premier Peter Beattie has given his support for a proposed satellite launch pad near Gladstone. United Launch Systems International is investigating the feasibility of a commercial satellite launch site on a small island known as Hummock Hill, 20 kilometres south of Gladstone. The development is opposed by the Gooring-Goorang people on the grounds that a launch mishap could cause toxic materials to be released from a damaged rocket. (*CM*, 12 July, p7)

Brisbane City Council has issued a notice of resumption to use the traditional land of the Turrbal people at Herston to build part of the Inner City Bypass. Council and Turrbal representatives are negotiating over compensation. (*Westside News*, 21 July, p3)

South Australia

South Australia's native title legislation has been put aside until the next sitting of Parliament to allow time for further consultation. (*Ad*, 6 Aug, p12)

Western Australia

The Federal Court has stated good faith negotiations must take place before the NNTT can be involved, and that the obligation to begin good faith negotiations probably arose, at the latest, two months after a section 29 notice is advertised.

Justice Carr made the comments while hearing a group of test cases regarding a flood of applications to the NNTT for determination against the granting of mining tenements in WA. The Tribunal found that it could not make any

determinations because the WA Government had not complied with its obligation to negotiate in good faith. The Federal Court upheld the decision of the Tribunal and dismissed the appeal.

Dennis Eggington of the Aboriginal Legal Service (WA) said that the decision had raised significant new issues in relation to the time frame for negotiations, which meant that negotiations could not be delayed indefinitely. Premier Richard Court also said the decision confirmed that native title claimants, too, would have to negotiate in good faith. (WA, 9 July, p10)

The National Native Title Tribunal and Curtin University have announced their collaboration on a project to introduce primary and secondary school Aboriginal studies teachers to native title concepts. The project was launched at Curtin University by NNTT President Graeme Neate. (*NNTT Media Release, 20 July*)

Kalgoorlie Labor MLA Megan Anwyl and Kalgoorlie-Boulder mayor Paul Robson have combined to gain commitments from the WA Chamber of Mines, Goldfields Land Council, Goldfields Esperance Development Commission, WA Chamber of Commerce and Industry, Australian Drilling Industry Association and the Australian Prospectors and Lease-holders Association to 'break the deadlock over land access by avoiding the courts'. (WA, 20 July, p31)

More than 20 native title claims over the Kalgoorlie-Boulder region have been amalgamated into 2 claims after negotiations between native title groups. The Goldfields Land Council has submitted the Central West and Central East native title applications to the Federal Court for registration. The Central West application covers West Kalgoorlie to Southern Cross and is the amalgamation of 16 previous claims. The Central East application covers land east of Kalgoorlie-Boulder to Karonie and is the amalgamation of fewer than 10 previous claims. (KM, 22 July, p3)

A Full Federal Court appeal against the Miriuwung-Gajerrong native title decision has begun before Justices Bryan Beaumont, John von Doussa and Anthony North. (WA, 27 July, p29)

A series of workshops are being held by Goldfields Land Council to teach native title claimants how to successfully negotiate with mining and development companies. The aim of the workshops is to broaden the skills and understanding of the local Aboriginal people. The workshops are being held from Kalgoorlie to Esperance. (Aus, 17 Aug, p6)

Labor MP Mark Nevill has officially resigned from the ALP and will sit as an Independent, and hold the balance of power, in the Upper House of the WA Parliament. If Mr Nevill votes with the Government, legislation such as the native title bill can be passed after being delayed for nearly a year. (*Aus, 24 Aug, p2*)*

Northern Territory

Governor-General Sir William Deane delivered freehold title to three Northern Territory pastoral leases to traditional owners. Title to the Central Mount Wedge lease was handed to the Ngalurrtju Land Trust and title to the Tempe Downs and Middleton Ponds leases was handed to the Urrampinyi Iltjiltjarri Aboriginal Land Trust. The handovers follow claims made under the *Aboriginal Land Rights (Northern Territory) Act 1976* which has a clause preventing claims after 1997. (*Age, 26 July, pA6*)*

Senator John Herron, Minister for Aboriginal Affairs, handed over the title deed to the Urrpantyenye lease covering 6554 hectares of Crown land in central Australia to the traditional owners. The deed was handed over to the Yewerre Aboriginal Land Trust. (*DT, 19 Aug, p4*)*

The report of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs has rejected all of the major recommendations of the Reeves Report into the *Aboriginal Land Rights (Northern Territory) Act 1976*. The Committee's major recommendation is that no changes be made to the Act without the consent of traditional landowners. (*DT, 31 Aug, p4*)*

The Senate has voted to disallow the Northern Territory's native title scheme. It is the first state-based regime to go to Parliament for Senate approval as a result of the 1998 amendments. The Democrats, Independent Senator Brian Harradine and Greens Senator Bob Brown sided with Labor to pass the disallowance motion because future changes could be made to the scheme without further monitoring by the Federal Parliament. (*Media Release, Australian Democrats, 31 Aug*)*

National Native Title Tribunal President Graeme Neate stated that the Tribunal had made contingency plans to deal with the 900 applications currently held by the Northern Territory Government following the disallowance of the Territory Government's native title legislation in the Senate. Mr Neate said the applications could be handled in a timely and efficient way. (*NNTT Media Release, 31 Aug*)

ACT

The ACT Government has offered legal title over Namadgi National Park to Aboriginal people. This would allow the Ngunnawal people to take part in joint management of the park, but it was not a native title offer. Hunting or living in Namadgi would not be allowed but traditional Aboriginal land use had not been ruled out according to Gary Humphries, ACT Attorney General. *(CT, 20 July, p1).**

APPLICATIONS

National

The National Native Title Tribunal now posts summaries of registration test decisions on their website at: <http://www.nntt.gov.au>

The following decisions are listed for July and August:

<u>CLAIMANT</u>	<u>DECISION</u>	<u>CLAIMANT</u>	<u>DECISION</u>
Nanda People	sff	Badimia People	pass
Ngangawonka Wadjari & Narla (Combined Application)	pass	Djungan People #3	pass
Dharawal People	pass	Iman People #1	sff
Ballardong People	pass	St Vidgeon's	sff
Karriyara #14	sff	Bullenbuk-Noongar (amended 16/7/99)	pass
Wanjina/Wunggurr-Willinggin	pass	Koa People	pass
Antakirinja Native Title Claim	pass	Olga Miller #2 - Wondunna	pass
Yandruwandha/Yawarawarrka	pass	Warraber (Sue Islanders) #2	pass
Gooreng Gooreng People # 2	pass	Gnulli	pass
Gurang People	dnp	Gangulu People	sff
Irruntyju-Papulankutja	pass	Taribelang Bunda People	pass
Kiwirrkurra	pass	YUED	pass
Ngankali	pass	Masig People (Yorke I'ders) #1	pass
Borrooloola Region	sff	Moorawarri Aboriginal People	dnp
Borrooloola/Gulf Regions	sff	Gubrun	sff
Edward Pellew Seas	sff	Kalamaia Kabu(d)n People	sff
West Arnhem Seas	sff	Gkuthaarn & Kukatj Peoples	sff
Wurdaliya - Wuyaliya	sff	Bidawal and Monaro (Ngarigo)	sff
Ngadjunngarra	pass	Dhudoroa #2	sff
Ngaluma/Injibandi (Combined Application)	pass	Gkuthaarn People	sff
V.J. & C.F. Isaacs	dnp	Karuwali People	sff
Rail Corridor 3	sff	Leichhardt River	sff
Rail Corridor 4	sff	Mundine & related families	sff
Rail Corridor 5	sff	Ngunawal people #2	sff
Rail Corridor 6	sff	Ngunawal people #7 (D Bell)	sff
Rail Corridor 7	sff	Ngunawal #4	sff
		Iman People #2	sff