Kimberley National Parks

by Peter Yu

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On 19 August 2000, Western Australian Premier Richard Court announced the creation of more than 500,000 hectares of new national parks and conservation parks in the north-west Kimberley, on the Mitchell Plateau and in the King Leopold Ranges.

The parks are all within country owned by the Wanjina/Wunggurr native title claim group. This group includes people who speak Wunambal and Ngarinyin languages. The owners have registered native title applications to their country, united under the law of the Wanjina and Wunggurr creator beings. Those applications are called Wanjina/Wunggurr-Ungguu and Wanjina/Wunggurr-Wilinggin.

Aboriginal owners of the area have not given permission for their land to be turned into national parks or conservation parks and were not notified of the government's decision to change the land tenure on 10 July.

They regard this act as theft of their property. The Kimberley Land Council described it as 'an appalling case of home invasion'. The Western Australian Premier has been reported as stating that the national parks will thwart native title claims for exclusive possession, and that national parks and native title can co-exist.

Much of the country turned into conservation reserves was previously Vacant Crown Land and as such would have had an unimpeded opportunity to receive a positive native title determination. Future act procedures were not followed, and the parks are arguably invalid by the operation of the Native Title Act.

Moreover, it is racially discriminatory to take away a property interest on Aboriginal land when non-Aboriginal property interests would not be acquired in the same way. Therefore, the creation of the parks in the north-west Kimberley also arguably contravenes the Racial Discrimination Act.

Regional, state, national, and international conservation groups — such as Environs Kimberley, Conservation Council of Western Australia, the Australian Conservation Foundation, the Wilderness Society, and the World Wildlife Fund for Nature — are supporting the Traditional Owners and the Kimberley Land Council in their call for the State Government to withdraw or suspend the park declarations, pending negotiations to reach agreements about joint management.

The Western Australian Government and the Department of Conservation and Land Management have rejected an excellent opportunity to create Western Australia's

first co-managed national parks, protecting nature and Indigenous culture, and respecting Aboriginal people as land owners and managers. Kimberley Traditional Owners are leading a direct action and legal campaign to make this opportunity a reality.

For further information contact the Kimberley Land Council at media@bme.klc.org.au

Torres Strait Determinations

On the 6th and 7th July 2000 the Federal Court sat for the first time in its history in the Torres Strait. The sitting of the Court was to give effect to six consent determinations relating to native title applications. These covered the islands of Dauan, Mabuiag, Warraber, Poruma, Masig and Damuth. The determinations formally recognise, under Australian law, the native title rights and interests held by those communities under traditional law.

This latest round of successful applications brings the total number of native title determinations within the Torres Strait to nine. Eight of these have been obtained under the *Native Title Act 1993* and follow on from the initial Murray Islands (*Mabo*) court case handed down by the High Court in 1992.

The consent determinations handed down in July come 18 months after the first native title determinations under the amended *Native Title Act 1993*. These were in relation to Moa and Saibai Islands. Saibai Island, at the time, was put forward as a test case by the Torres Strait Regional Authority and was considered as having implications for other native title applications in the Torres Strait.

At issue in reaching these outcomes has been how one party's rights will articulate with those of others. Native title determinations in the Torres Strait (excluding the *Mabo* case) have been preceded by formal agreements between the native title applicants and other parties. These have predominantly been struck with companies providing infrastructure to the area and have followed from the successful strategy employed by Torres Strait Regional Authority in the Saibai Island application.

The determinations obtained under the *Native Title Act 1993* only apply to areas of land. Native title rights in relation to the sea are yet to be claimed. The Torres Strait Regional Authority is currently engaging in consultation with communities across the region. It is hoped that putting in a regional application covering relevant marine areas will get over the difficulty of trying to delineate between different claim boundaries out at sea.

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