

web-site as well. Should you wish to receive a copy, but are not on our mailing list, simply contact us.

We are actively seeking Issues Papers from our readers. They are usually 3,500 to 4,500 words long on a topic of interest to native title researchers and claimants. If you have a suggestion for a topic or, better yet, have a paper you would like us to consider for publication please contact the Unit.

## **NATIVE TITLE IN THE NEWS - July & August 2001**

### **National**

ATSIC Commissioner Geoff Clarke's criticism of the way the native title system is working has received support from Labor Aboriginal Affairs spokesman, Mr Bob McMullan who said, 'Geoff's criticism of the way native title works is right, but I think his solution is wrong...it's true there is too much emphasis on litigation and that native title representative bodies are not adequately funded...but we shouldn't throw out the whole native title system because it's not being properly run by the Howard Government.' Mr Clarke had criticised native title legislation after NSW Aboriginal Land Council objected to the creation of 85 national parks without the consent of traditional owners. (*Sydney Morning Herald 6 August 2001*)

### **New South Wales**

The Federal Court has dismissed an application to remove Dorothy and Phillip Lawson as Barkandji 'Pooncarie' representatives whose agent is Mark Dengate. Judge Stone handed down the decision almost two months after the hearing on 17 May. It is seen as a disappointment for both the NSW government and the NSW Aboriginal Land Council. (*Mildura Independent Star*)

### **Applications**

Native title applications by the Bandjalang, Yaegl, Bundjalung and Gumbaynggirr Peoples (NC96/16, NC98/19, NC96/38) have prompted NSW Farmers Association to remind the farmers affected by two important claims on the state north coast that the cut off date is approaching for registering with the Federal Court. If they register as a party to the claim it will ensure lease and licence holders have their say in the native title process. (*Daily Examiner 18 June 2001*)

Native title claims in the Yarrowlumla area by the Ngunnawal People (NC00/1) have prompted the Yarrowlumla Shire Council to assist local residents to be more informed about the claims. Shire Mayor Ian Marjason said that the Council had been advised by the NNTT that the Ngunnawal People have asked the Federal Court to recognize their traditional rights and interest over the Southern Tablelands area. (*Queanbeyan Age 9 July 2001*)

The Ngyabul People, who have a native title claim over areas in Lake Ainworth, Broken Head Nature Reserve and Seven Mile Beach (NC98/1) are moving toward

mediation by the NNTI. Affected landowners and other stakeholders had until August 1 to register with the Federal Court to be involved in the mediation process. Some areas included in this claim are likely to be contentious because they are also the subject of claims made by the Arakwal People. (*Northern Star 20 July 2001*)

Armidale has become the focus of two native title applications with public notices inviting affected landowners and other interested holders to register for talks. The claim by the Gumbangirri People asks that their traditional rights to be recognised over a 4,466 sq km area generally to the east of Armidale to the coast (NC97/34). The second claim is by the Nucoorilma Clan of the Gamilaroy People to an area to the west (NC98/17). The first step in settling these applications is to hold mediation meetings aimed at reaching voluntary agreements that respect everyone's rights and interests. (*Northern Daily Leader 27 July 2001*)

Traditional owners of the Sydney region, the Darug People, have notified thirty six local councils of a native title claim stretching from Bondi to the Blue Mountains, including 482 parcels of vacant Crown land in the city and environs (NC97/8). Claimant Colin Gale said the claim is intended to prove that his people were committed to living in the area since settlement. 'There are other groups who have attempted native title claim in the Sydney basin, but we are the only ones who have succeeded in proving up to this point our genealogy and background.' (*Sydney Morning Herald 7 August 2001*)

A rugby park is subject to a native title claim in Goulburn where the City Council is attempting to purchase Crown land near the park to build sludge lagoons. The area is managed by the Rugby Park Trust which is subject to native title claim by the Gundungurra Tribal Council Aboriginal Corporation (NC97/7). (*Goulburn Post 8 August 2001*)

Two native title claims, one by the Ngunnawal People which covers Goulburn to Murrumburrah in the western part of the Monaro region (NCO0/1), the other a 1997 claim by the Gunungarra Tribal Council which covers a much larger area beyond Lithgow (NC97/4), may take several years to resolve but will not be major impost on local councils according to consultants. The cut off date to become a party to the Ngunnawal claim was 1/8/2001. (*Goulburn Post 8 August 2001*)

### **Agreements**

Described as a significant step forward in the reconciliation process, the Bega Valley Shire Council and all three local Aboriginal Land Councils and represented native title landholders have signed an historic statement of understanding. The three page document was signed in Bega by local Aboriginal claimants, John Dixon, Ben Cruse, Edward Foster and Mervyn Penrith. It acknowledges that Aboriginal people were the first custodians and native title holders of all lands and waters in the Bega Valley Shire. As well, the Council will assist and encourage employment opportunities for Aboriginal people in its own workforce. (*Bega District News 15 June 2001*) 4/7

## **Indigenous Land Corporation**

Weilmoringle near Brewarrina, one of the best known stations in the NSW western division, has been sold to the Indigenous Land Corporation for eventual transfer to the land's traditional owners. The sale of the 17,300 hectare combined area followed two years of negotiation with the ILC whose representative made initial approach to buy the property. (*Advocate Ayr 22 June 2001*)

## **Victoria**

Responding to a claim by the Yorta Yorta People for public land and water in the Goulburn Valley and Southern Riverina, the Victorian Farmers Federation (VFF) has stated that native title applicants should have to prove they can manage land as well as establish they are descendants of the original tribe occupying the land before agreements are negotiated. (*Country Times 6 August 2001*)

### **Land Rights and Heritage**

Aboriginal affairs minister Keith Hamilton congratulated the Lake Tyers Aboriginal Trust on the 30th anniversary of the Aboriginal Land Act, which gave freehold title to the Lake Tyers Aboriginal Reserve to the local Koorie community. This legislation was groundbreaking in that Victoria was the first state in Australia to unconditionally hand over a freehold title to Indigenous people. (*Mirror 25 July 2001*)

The Wurundjeri Community intends to fight to protect Woodbourne Hills and The Sanctuary from development. The community and alliance groups maintain Woodbourne Hills and The Sanctuary are environmentally and historically significant and are calling on appropriate studies to be conducted before any development takes place. Wurundjeru tribal elder Norm Hunter said it is Indigenous land and the local council should protect it. (*Sunbury Telegraph 31 July 2001*)

### **Mediation**

Native title claim on Crown land across Victoria is nearing the mediation stage. The claim by the Gournditch-Mara People covers 20,360 sq km across areas of land and sea stretching from the high water mark out to 22 nautical miles (VC96/3). About 270 parties have registered an interest and mediation is expected to begin in September. (*Hamilton Spectator 3 July 2001*)

A native title claim which covers five northern Victorian shires over an area of almost 12,000 sq km including Gannawarra and the rural city of Swan Hill has reached its mediation stage. The claim on behalf of the Wamba Wamba, Barapa Barapa and Waddi Waddi Peoples asks that their traditional rights be recognized (VCO0/5). The claim excludes areas already claimed by the Wotjobaluk, Wadi Wadi and Robinvale Peoples. (*Bendigo Advertiser 12 July 2001, Northern Times 20 July 2001*)

## **Federal Court Proceedings**

A native title claim affecting a large area of western Victoria and the border of SA is being heard in Federal Court. The claim, on behalf of the Gournditch-mara People, covers more than 20,000 sq km extending from Portland to Nelson and includes the seas between Naracoorte, Ararat and Yambuk (VC99/7). Manager of the native title court, Ron Davies said the final list of those accepted would not be drawn up until the end of the year. (*Warrnambool Standard* 13 July 2001)

## **South Australia**

The Adnyamathanha Traditional Lands Association Aboriginal Corporation has given notice of a special meeting to which all Adnyamathanha People and interested parties are invited to decide important issues in relation to native title claims. (*Advertiser* 27 July 2001)

Michael Pinnock, Chief Executive of QLD Mining Council, has suggested that the backlog of 1700 mining applications dating as far back as 1996 are costing the north QLD region more than \$250 million. He blamed the delays on the QLD government and the QLD Indigenous Working Group failing to reach an agreement on land use. (*Cairns Post* 18 July 2001)

The federal and state governments have stopped funding to Anangu Pitjantjatjara and Pitjantjatjara Council after traditional owners refused to accept a government imposed administrator whom they felt undermined traditional landowners' power to control and develop on their lands. (*Australian* 30 July 2001)

## **Queensland**

Under a fee structure in the QLD government's proposed Indigenous Land Use Agreement guidelines, companies would pay up to \$1500 per day for an Aboriginal inspection team to get native title clearance to explore land and an up front compensation payment for an exploration liaison officer from the claimant group, as well as for a monitor if ground is to be broken up. Premier Beattie said this was a small price to pay to deliver an outcome for backlogged exploration and achieve certainty for the industry. (*Courier Mail* 11 August 2001)

Acting under the terms of one of the first native title consent determinations negotiated in Australia, the Gamay People of the Guugu Yimithirr nation, traditional owners of the north QLD community of Hopevale, issued eviction notices to five families brought to the community during mission times. The Hopevale Community Council intends to return the land to its natural condition and use it as a tourist venture. (*Aus* 21 August 2001)

A recently granted sand mining lease on North Stradbroke Island could be invalidated because it failed to get approval from Aboriginal people named as official applicants in a native title claim. The mining lease application by Unimin Australia (formerly ACI Industrial Minerals) has received a number of objections

from Aboriginal families and individuals on the island. (*Bayside Bulletin 31 July 2001*)

Premier Beattie has said native title issues regarding a planned convention centre on the Gold Coast (QC98/24) may be resolved by compulsory acquisition processes to ensure the project proceeds despite legal complexities. The QLD Nationals have said that the same processes should be used to alleviate native title delays in the mining industry. (*Tablelands Advertiser 1 July 2001*)

Forty five individuals and groups with native title interest in Mount Morgan Shire land have contacted the council in a response to a public notice which urged people with interest to arrange to meet with Council to discuss claims by the Darumbal People over unallocated land (PR1-58). (*Morning Bulletin 3 August 2001*)

The North Queensland Land Council has been recognised as the Native Title Representative Body for the Cairns area. This brings the number of Rep Bodies in Queensland to 6 and the number of Rep Bodies nationally to 21. (*Qld NT News Sept 2001*)

A forum was held to give the community of Burdekin and its Council a better understanding of native title. Speaker Marissa Menin, who is the Local Government Association of QLD native title policy officer, gave an overview of native title. (*Advocate Ayr 22 June 2001*)

Stephen Ducksbury of the NNTT has given notice to stakeholders to register to participate in the the Mandingalbay, Yidinji and Yarrabarra Gunggandji Peoples' claim to the southern parts of the Yarrabah DOGIT, south to High Island and including the Frankland Island group south of Cairns (QC99/40). (KM 16 July 2001)

## **Agreements**

A confidential Indigenous Land Use Agreement is reportedly being negotiated between the Quandamooka Land Council and Premier Peter Beattie. Aboriginal people of North Stradbroke Island will receive millions of dollars in royalties and state government grants including secure land title over national parks and seaside areas. (*Australian 19 July 2001*)

Recent negotiations over the last year on an Indigenous Land Use Agreement between the Kalkadoon People, the QLD government and a handful of mining companies may resolve a five year long native title negotiation. The agreement would affect about 20 exploration permits in the mineral rich area. (*Courier Mail 20 July 2001*)

The Kaurareg People have achieved native title over Ngurupai (Horn Island) and six other islands in the southern most portion of the Prince of Wales group in the Torres Strait (PR01-36a). The Kaurareg People were previously unrecognized Aboriginal people of the Strait after being forcibly removed from their home island 46 years ago. An Indigenous Land Use Agreement signed simultaneously between the Kaurareg, the Torres Shire Council and the State of Queensland

allows for public access to two reserves on Ngurupai and one on Muruiag. (*Koorie Mail 27 June 2001*)

Normandy was granted a second mining lease by the QLD Government following approval of an agreement signed with the Birra and Kudjala Peoples. Following the initial agreement with traditional owners 13 years ago, the first such agreement for exploration and mine development, Normandy extracted over one million ounces of gold. Another million is yet to be mined. (*Northern Miner 26 June 2001*)

The Imjim Land Trust has been granted 12 hectares of freehold land title over Laura Aboriginal Reserve and will act as custodian for the Imjim People who have a connection with the land. Chief executive of the Ang-gnarra Aboriginal Corporation, Robert Williams, who represents all Indigenous people of Laura, said the arrangement was pleasing for the people who have had families in the region for years. (*Cairns Post 29 June 2001*)

### **Federal Court Proceedings**

The Wulgurukaba People and a number of other parties involved in a Magnetic Island native title claim have been sent back to mediation following a brief hearing in the Federal Court. Justice Douglas Drummond reopened the mediation process between the four applicants representing the Wulguukaba People. Two claims before the court were lodged in 1998 and deal with national parks and unallocated state land on the island (PR98/57). (*Townsville Bulletin 4 July 2001*)

### **Determinations**

The Bar-Barum Peoples native title claim to an area of about 357 sq km of reserves and unallocated state land south west of Cairns (QC96/105) was heard by the Federal Court in Herberton. The Court determined native title by consent. NNTT President Graeme Neate has said that this is also a starting point for a new relationship between the Bar-Barum People and the wider community which can ensure the protection and recognition of the claim. (*KM 29 June 2001*)

## **Western Australia**

The State Government has released draft guidelines to facilitate the settlement of native title applications in WA. This is the result of a review of native title negotiations headed by former Rio Tinto Vice President Paul Wand. Key recommendations include involving NNTT in all mediation and ensuring that reports prepared by claimants are adequate before beginning mediation. This is an important step in clearing up the state's backlog of 128 outstanding native title applications. (*WA 14 July 2001*).

Dolly Walker, spokeswoman for the Goldfields Ngalia Kutjunktja People, has criticised the Goldfields Land Council, saying that they were 'meeting with miners and the WA government to give away our rights.' She was referring to an Aboriginal Heritage Protection Protocol negotiated between the Goldfields Land Council, the WA government, the Chamber of Minerals and Energy and the

ASSOCIATION OF MINING AND EXPLORATION COMPANIES. NNTT member Barry McFarlane, on the other hand, described the Protocol as 'a formula for the protection of Aboriginal heritage' and said that the process was marked by goodwill and the desire to concentrate on solutions. (KM 17 August 2001, NNTT 15 August)

Dolly Walker, speaking for the Ngalia Heritage Research Council, has refused to join a proposed liaison committee made up of native title parties to discuss mining leases near WMC's Mt Keith nickel operation. She described the area as so complex that it 'should never be subject to any form of mineral exploration or other destructive impact.' (KM 8 August 2001)

### **Federal Court Proceedings**

Evidence of native title holders on behalf of the Wanjina Wunggurr Willingjin claim (WO01/312) is being held in Perth. The 70,000 sq km claim area stretches from about 25 km east of Derby to about 60 km west of Whyndham and Kununurra. Last year evidence of six older claimants was taken in advance of the hearing. (WA 31 July 2001)

### **Detrminations**

A consent determination, the first under the Gallop government and only the third in WA, has given the Tjurabalan People native title rights to 26,000 sq kms in the Tanami Desert region south of Halls Creek (WC95/74). The claim was first lodged in 1995 by the Kimberley Land Council on behalf of the 24 different applicants. NNTT member Fred Chaney praised the Gallop government for recommending that disputing parties return to negotiation rather than face litigation. See box for details. (WA 1 August 2001)

#### **Tjurabalan Consent Determination**

*Ngalpil v State of Western Australia [2001] FCA 1140*

In this case the Court made a consent determination of native title over an area of nearly 26,000 sq kms in northern Western Australia and adjacent to the Northern Territory border south of Halls Creek. The determination area included two pastoral leases (each of which is held by the Aboriginal Lands Trust), Aboriginal reserves and several areas of unallocated Crown land.

The consent determination was for the right to possess, occupy, use and enjoy the land and waters of the determination area to the exclusion of all others, including certain identified pendant, or parasitic, rights. The native title is to be held by the Tjurabalan People. Tjurabalan is the cultural concept that gives definition to the community of native title holders which includes members of three language groups, Walmajarri, Jaru and Nyininy.

The consent determination does not include the right to own minerals. However, in the event that the Full Court decision on this issue in *State of Western Australia v Ward* (2000) 170 ALR 59 is over-ruled, the determination acknowledges the right of the prescribed body corporate to apply to vary the determination under s.13(4) or (5) of the *Native Title Act 1993*. Unlike the earlier Spinifex determination (*Mark Anderson on behalf of the Spinifex People v State of Western Australia* [2000] FCA 1717), the Tjurabalan consent determination acknowledges the native title extends to flowing and subterranean waters to the extent recognised by the common law.

The Tjurabalan determination provides claimant groups presently negotiating with the new Western Australian State Government cause for cautious optimism that they will be able to achieve an exclusive possession determination without the need for a contested hearing before the Federal Court.

Paul Sheiner

## Northern Territory

### Land Rights and Heritage

In a victory for the Mirrar People, Rio Tinto has announced it will delay indefinitely the Jabiluka uranium project, blaming low commodity prices and Aboriginal opposition. Yvonne Margarula stated that the Mirrar People are disillusioned with the small benefits mining has produced for Aboriginal people throughout the 1980's and early 1990's. (*Koorie Mail 12 July 2001*)

A native title claim on behalf of the Western Arrernte People over western portions of the Macdonnell Ranges (DO01/73), did not become an issue in the NT election campaign. The claim covers one of central Australian's most important tourist destinations and was to prevent exploration and mining. The title holders are opposed to exploration and mining because they are worried about detrimental affects on sacred sites, tourism and conservation of the environment. (*Cairns Post 3 August 2001*)

## APPLICATIONS

The National Native Title Tribunal posts summaries of registration test decisions on their website at: <http://www.nntt.gov.au>. The following decisions are listed for July and August 2001.

The Wajarri Elders (Combined Application)	accepted
Helen Springs	accepted
Ooratippra	accepted