

GENERAL NATIVE TITLE ISSUES

International

The Commonwealth Government has confirmed in Parliament that it wishes to change references to 'self-determination' for Indigenous peoples in the United Nations Draft Declaration on Indigenous Rights. Senator Hill stated that the Government believes that alternative language, such as self-management or self-empowerment would better reflect Australia's national interests and circumstance. (*Democrats Media Release, 1 Dec*)* The use of the term 'self-determination' will be discussed by governmental and Indigenous representatives when the United Nations Working Group on the Draft Declaration meets in Geneva. (*Age, 7 Dec, pA4*)*

Aboriginal leader, Mr Peter Yu, has told the Amnesty International Human Rights Defenders conference that Indigenous culture in Australia is being eroded by the Federal Government. The conference, held in Paris, is part of the marking of the 50th anniversary of the Universal Declaration of Human Rights. (*WA, 10 Dec, p8*)

The Federal Government has lodged a report with the United Nations committee investigating into racial discrimination. The Committee on the Elimination of Racial Discrimination has asked Australia to explain their handling of human rights. Of particular concern to the committee were recent amendments to the *Native Title Act 1993*, changes to land rights policy and the vacating of the position of Aboriginal and Torres Strait Islander Social Justice Commissioner. The report defends the Government's position on native title, arguing that the amendments strengthen a non-discriminatory regime. It says that the restructuring of the Social Justice Commissioner's position was a streamlining of specialist commissioners and would not effect the rights of Indigenous people. The Government has refused to release the report to the public. Australian officials will appear before the committee in March. (*Age 21 Jan, pA2*), (*SMH, 21 Jan, p2*)*

The Government has decided to make its response to the Committee publicly available. It can be found at: <http://www.law.gov.au/publications/pubs.htm> (*Attorney-General Media Release, 28 Jan*)

Shadow Attorney-General, Robert McClelland, has said that although the UN Committee sought the Government's views on whether its changes to the NTA were consistent with the *Convention on the Elimination of All Forms of Racial Discrimination*, the Government's response describes those changes without addressing the issue of whether the amendments discriminate on the basis of race. The Government has not released its legal advice as to whether its amendments are racially discriminatory or not. The Government's submission does not make mention of the recent Miriuwung-Gajerrong native title decision, which has shown that the confirmation of extinguishment provisions in Schedule 3 of the Bill, at least as they relate to Western Australia and the Northern Territory, are inconsistent with the common law. (*Shadow Attorney-General, Media Release, 29 Jan*)

National

Acting Aboriginal and Torres Strait Islander Social Justice Commissioner and Race Discrimination Commissioner, Ms Zita Antonios, said that the Federal Court's Miriuwung-Gajerrong native title decision shows that it is much better to approach issues of native title through negotiation, mediation and agreement is than through litigation. She said that

legislation and court proceedings have made native title issues more complex than they need be. (WA, 1 Dec, p6)

ATSIC has released a paper for information and discussion on the new provisions relating to Native Title Representative Bodies under the NTA, as amended. (*Gundagai Independent*, 7 Dec, p2)* The paper forms the basis of a consultation process undertaken by ATSIC on matters related to the implementation of the new Representative Body provisions. In particular, the paper highlights a number of issues about which the Minister for Aboriginal and Torres Strait Islander Affairs is required to make decisions as part of implementing the transitional provisions. These include:

- the "invitation areas" for which eligible bodies will be invited to apply, during the transition period, for recognition as Representative Bodies to operate under the new legislative regime;
- the method of inviting applications for recognition as a Representative Body; and
- the form in which bodies will need to apply for recognition as Representative Bodies.

Copies of the paper can be obtained from ATSIC State and Regional Offices, by phoning ATSIC's Central Office on (02) 6289 3531 or by accessing ATSIC's Homepage on the internet at http://www.atsic.gov.au/native/representative_bodies/contents.htm (ATSIC general email)

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund has elected Senator Jeannie Ferris as Chair and the Hon Warren Snowdon MP as Deputy Chair. (*Committee Media Release*, 9 Dec)

Law firm Dwyer Durack, has set up a specialised consultancy group, based in Perth, to deal with business ideas and legal issues for Indigenous people. The group includes lawyers, accountants, anthropologists, management consultants, economists and historians and is chaired by Dwyer Durack senior partner Carolyn Tan. (WA, 16 Dec, p49)*

Part-time member of the NNTT and Chair of the Queensland Aboriginal and Torres Strait Islander Land Tribunals, Graeme Neate, has been appointed as the next NNTT President. He will start his term, replacing Justice Robert French, on 1 March 1999. (*Gold Coast Bulletin*, 19 Dec, p13)

NNTT President, Justice Robert French, said all Australian governments have failed to educate the public about native title. He criticised those who cite lack of native title determinations as proof of the NNTT's unworkability, when the Tribunal had no power to recognise native title, and pointed to the work of the Tribunal to mediate agreements, saying that the success of this process depended on the goodwill of all parties to achieve positive outcomes. Justice French said that such criticisms reflect a disturbing lack of information, knowledge and understanding about the native title process and also about the roles of government and the courts. He believes that government responsibility to educate the community about the essential nature of native title, native title process and the functions of the NNTT, has not been discharged. He said this failure had prevented agreements being negotiated and finalised. (*Sunday Times*, 20 Dec, p21)*

Justice Robert French, whose term is ending as President of the NNTT, said Native Title Representative Bodies are often inexperienced and inefficient. He said Representative Bodies around Australia are having trouble doing their job as they have yet to be accepted by the

communities they are supposed to represent. Some land councils have responded by pointing to a lack of resources that made it hard for many Representative Bodies to meet their obligations under law. (WA, 22 Dec, p6)

Mining company Rio Tinto has funded a study to look at the industry's effect on Arnhem Land communities. The study is to be conducted by the University of Wollongong. The research will centre on the town of Ngukurr and will provide the community and the company with recommendations about the impact of potential mining in the area. Project director, John Bern, is Professor of Sociology at the University. Professor Bern said the study followed an agreement between the Ngukurr people and Rio Tinto in 1996, recognising the Ngukurr people as traditional owners. (Aus, 13 Jan, p23)* The Social Changes in South-East Arnhem Land study will be a continuation of a 30-year association with the Ngukurr community for Professor Bern. The team of researchers will compile social-demographic statistics and will build an educational, health, and employment profile of the town. (IM, 12 Jan, p7)

In a letter, published as a newspaper advertisement, 57 prominent Aboriginal people and groups called on the Australian Government to sign a treaty with Aboriginal and Torres Strait Islander peoples. They suggested that the Treaty be concluded by 26 January 2001 as a symbolic date for negotiated settlement. Terms of the Treaty could refer to matters such as the Charter of Indigenous Rights, Land Levies, Indigenous Laws, Co-sharing Territories and Government. Signatories also called on the British Government to guarantee their human rights by strongly advocating the Treaty. They called for a referendum of Indigenous peoples over issues of nationality, constitution or form of government. Such a referendum could be held concurrently with ATSIC regional council elections later this year. Those who signed the document include Parry Agius, Geoff Clark, Gatjil Djerrkura, Michael Mansell, George Mye and Terry O'Shane. (WA, 27 Jan, p6), (CT, 27 Jan, p2), (Aus, 26 Jan, p5)*

New South Wales

A decision in the Supreme Court has seen a native title test case for the Western Lands Leases remain unresolved. Justice David Levine decided that it would be more appropriate for the case to be heard before the Federal Court and the National Native Title Tribunal, as native title applications were already before those bodies. The New South Wales Farmers Association was hoping to have a determination that native title had been extinguished when the lease was granted.(CT, 21 Jan, p4)

Victoria

Genocide charges against the Premier, Mr Jeff Kennett, have been dismissed from the Melbourne Magistrates' Court. Chief Magistrate, Mr Michael Adams, QC, ruled that genocide was not recognised under Victorian law. (Age, 28 Jan, pA)*

Western Australia

Miriuwung-Gajerrong People

Deputy Prime Minister Tim Fischer said the recent Federal Court decision recognising the Miriwung and Gajerrong peoples' native title is totally unworkable and would be appealed. (WA, 7 Dec, p9)* (Summaries of the decision appeared in the last issue of the Native Title Newsletter)

The Western Australian Government has indicated that it will appeal the Federal Court decision on the Miriwung-Gajerrong native title application. One of the issues they believe needs clarification is ownership of resources. (FinR, 9 Dec, p4)* Legislative Council leader,

Norman Moore, said the Government would spend up to \$2 million on the appeal. (WA, 10 Dec, p6)

The State Government will appeal the Federal Court Miriuwung-Gajerrong decision on 92 grounds. They lodged their appeal with the Federal Court on 15 December, claiming that Federal Court Justice Malcolm Lee erred when he judged that native title was a direct interest in land rather than particular rights in respect of the land. They are also concerned that the judgement included no concept of partial extinguishment. The Government wishes to challenge the ruling that because a lease interest was not permanent, native title was not extinguished. The Government will query the decision on the ownership of minerals. (WA, 19 Dec, p48)*

The Western Australian Government and the Northern Territory Government would like their appeal against the Miriuwung and Gajerrong Federal Court decision to be heard in the High Court rather than the Federal Court. The Governments will know in March whether parts of their appeal will go to the High Court. (WA, 14 Jan, p8)*

Noongar Land Council

A meeting of around 90 members of the Noongar Land Council has voted to transfer the handling of native title applications to the Aboriginal Legal Service. Members, who are unhappy with what the Land Council has achieved, also voted for a freezing of funds to the Land Council and dismissal of its executive committee. Less than 10 members signed a request for the meeting which, according to the Land Council's executive officer John Hoare, makes the meeting illegal under their constitution. (WA, 11 Jan, p24)* Mr John Herron, Commonwealth Minister for Aboriginal Affairs, has initiated inquiries into the operations of the Land Council. (WA, 16 Jan, p56)

Australian Capital Territory

The ACT Supreme Court has dismissed an application seeking the issue of warrants for the arrest of John Howard, Tim Fischer, Brian Harradine and Pauline Hanson. Four Aboriginal applicants were seeking to have the warrants issued on the basis that the amendments to the *Native Title Act 1993* had amounted to genocide. Justice Ken Crispin said that, under Australian law, there was no such offence as genocide. (CT, 19 Dec, p5)

An appeal against Justice Crispin's decision has been lodged in the Federal Court. (CT, 26 Jan, p2)* In a media statement at the time the appeal was lodged, the applicants state that:

It is our opinion that the judge failed to take into account the commitment Australia gave to the international community when ratifying the Genocide Convention in 1949. Australia was the third country to sign and gave an unequivocal guarantee that genocide is punishable under the existing laws of Australia and that, subject to international actions, Australia found there was no need to enact genocide legislation within the country.

The appeal also focuses on the ability of the court in Australia to prosecute their heads of State, under the Genocide Convention, making all Heads of State responsible for the actions. . . (as in the Pinochet matter) highlighting the fact that it is no function of a head of State or other high government official to commit acts of genocide. (Media Release, Aboriginal Tent Embassy, 25 Jan)

Northern Territory

The Northern Territory Government will join the Western Australian Government in an appeal against the recent Federal Court decision that recognised native title over the Keep River National Park. (*NTN*, 12 Dec, p4)* Chief Minister, Shane Stone, said the decision contradicted the Federal Government's plan for native title. (*CP*, 12 Dec, p28)

RECENT PUBLICATIONS (Not AIATSIS Publications)

Finlayson, Julie 1998 *Negotiating the Registration Test for native title claims: A manual for Anthropologists working with Native Title Representative Bodies*. ATSIC, Canberra.

ATSIC would welcome comments on the manual and will install a link on their website for the purpose. The link can be accessed through the manual's web-page at:

<http://www.atsic.gov.au/native/anthorego.htm>

Film/Video

Changes to Native Title Representative Bodies - ATSIC

ATSIC has released a video to provide information on the new legislative provisions for Native Title Representative Bodies contained in the *Native Title Act 1993*, as amended.

The video focuses on the processes for selecting and recognising representative bodies to operate under the amended Act. All existing representative bodies will be required to re-apply for recognition.

Further information about the video and issues discussed in the video is available by phoning ATSIC's Native Title Branch on (02) 6289 3308 or by emailing: representative.bodies@atsic.gov.au

Native Title Research Unit Publications

The following NTRU publications are available from Aboriginal Studies Press, ph.: (02) 6246 1191.

A Guide to Overseas Precedents of Relevance to Native Title Prepared for the NTRU by Shaunnagh Dorsett and Lee Godden. AIATSIS, Canberra. (cost \$18.95 including postage)

Working with the Native Title Act: alternatives to the adversarial method. Edited by Lisa Strelein, 1998. (\$9.95 including postage)

Regional Agreements: Key issues in Australia, volume 1. Edited by Mary Edmunds, 1998. (\$16.95 including postage)

A Sea Change in Land Rights Law: The Extension of Native Title to Australia's Offshore Areas by Gary D. Meyers, Malcolm O'Dell, Guy Wright and Simone C. Muller, 1996. (\$12.95 including postage)

Heritage and Native Title: Anthropological and Legal Perspectives

(Proceedings of a workshop conducted by The Australian Anthropological Society and AIATSIS at the ANU, Canberra, 14-15 February 1996 ~ cost \$20 including postage)

The Skills of Native Title Practice

(Proceedings of a workshop conducted by the NTRU, the Native Title Section of ATSIC and the Representative Bodies, 13-15 September 1995 - cost \$15 including postage)

Anthropology in the Native Title Era

(Proceedings of a workshop conducted by the Australian Anthropological Society and the Native Title Research Unit, AIATSIS, 14-15 February 1995 - cost \$11.95 including postage)