

- Native title to minerals was not extinguished by the *Mining Act* of Western Australia.

It is considered that the appeals by Miriuwung Gajerong with respect to extinguishment are likely to have more success than the appeals of the state of Western Australia with respect to the proof of native title.

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The Goldfields Regional Heritage Protection Protocol

An historic agreement between the Government of Western Australia, major mining and prospecting industry organisations and the Goldfields Land and Sea Council (GLSC), on how to better protect Aboriginal heritage in the Goldfields region, was signed on August 15, 2001. The agreement (protocol), known as the Goldfields Regional Heritage Protection Protocol, was signed by the WA Chamber of Minerals and Energy, Association of Mining and Exploration Companies and the Amalgamated Prospectors and Leaseholders Association. The State's Deputy Premier, Eric Ripper, who has responsibility for native title, also endorsed the protocol on behalf of the WA Government. It is the first time that the State government and Western Australian industry-wide representative associations have entered into an agreement of this kind.

By signing the voluntary protocol they have all acknowledged that:

- Protection of Aboriginal heritage is very important to Aboriginal people and requires the cooperation and respect from all persons who want access to land;
- Aboriginal heritage and the traditional laws and customs of Aboriginal people are cornerstones of native title. Heritage protection can therefore not be separated from the recognition of native title; and
- Friendly and productive long-term relationships with traditional owners and their representative body (the GLSC), based on trust, goodwill and mutual respect, are the best relationships for everyone to have.

The protocol sets out the principles by which this goal will be achieved. The protocol was drawn up by a special working group (Goldfields Native Title Liaison Council) chaired by the President of the National Native Title Tribunal, Mr Greame Neate.

The working group, convened by the NNTT in order to develop general principles to regulate land access and protection of Aboriginal heritage, had members from peak bodies of pastoral and mining interests in the Goldfields, the State government and the GLSC. While the new protocol was based on existing heritage agreements between claimant groups and mining companies, this is the first time the concept has received support from the State government and peak mining bodies. The principles identified in the protocol will now be taken to the various claimant groups for further discussion and negotiation with mining companies and pastoral groups as part of determination proceedings. The protocol fills a gaping hole in the current WA Aboriginal Heritage Act, which only requires developers to 'protect and preserve' Aboriginal heritage. For example, under the Act there is no requirement for heritage surveys to be done to

clearly identify heritage sites, where they are, their level of significance and how to protect them.

Anthropologists: It is agreed that the quality and professional standards of anthropological services being used needs to be improved. Ideally, minimum standards and a system of accreditation should be introduced. Meanwhile, only mutually acceptable anthropologists or other suitable qualified persons should be engaged.

Register of surveys and sites: It is important to establish a register of surveys and sites in order to build on the work already undertaken and to avoid duplication of effort.

Role of representative body: From time to time, the Goldfields Land and Sea Council may, if requested, provide assistance in arranging heritage surveys.

Enforcement and compliance: Developers should keep claimants informed of all ground-disturbing activities to avoid misunderstandings occurring. It is noted that where the developer has agreed to fund and conduct a heritage survey, there is an expectation that the tenement would be granted.

Dispute resolution: When disputes arise, everyone should try to resolve them as quickly as possible. If they can't, then they should get expert advice or the services of a mutually-agreed mediator.

Further development of guidelines: Finally, everyone has committed to working together to further develop these principles by resolving any outstanding issues and then going on to develop a more detailed Heritage Protection Agreement for use at the level of individual claims.

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What was agreed: The groups who signed the protocol have agreed to recommend to their members that they abide by the following key principles when heritage surveys are undertaken:

Survey procedures: The type of survey to be undertaken will be determined on a case-by-case basis, depending on the nature and scope of the planned activity. It is reasonable that people providing services for the survey be paid (eg. traditional representatives of country who assist in conducting the survey), to ensure that the survey process is fully effective. When striking payment rates, one of two methods should be used, either variable

costs (according to the time the survey takes and number of participants); or lump sum payment (no matter how long it takes or how many people).

Management of survey/processes: It is essential that each party's role in heritage surveys be decided and clearly spelt out, prior to commencement. Representatives of the developer (for example the mining or exploration company) should accompany the survey team to clearly identify the land they want to use, and to provide any other assistance. However, it is agreed that the survey team may sometimes require privacy for discussing culturally sensitive issues.

Survey reports: A survey report should be prepared at the end of each survey, and should clearly identify who did the survey, including relevant information about them,

the date of the survey and the area surveyed. If heritage sites are identified, then only culturally appropriate (non-sensitive) detail is to be included in the report, but to include: location and description; dimensions (including any buffer area necessary to protect the site); and its significance. The reports should have clear descriptions and enough detail of heritage sites for the developer to be able to rely on them when planning prospecting, exploration, mining and associated activities, so as to avoid or minimise disturbances. The survey reports should also provide recommendations as to how sites could be managed. The developer should be provided with a copy of the survey report. If members of the survey team want to record private, culturally sensitive information, then this should be included in a separate part of the survey report. This would not be provided to the developer.

Goldfields Land and Sea Council

NATIVE TITLE IN THE NEWS - September & October 2001

National

The High Court ruled that Aboriginal people of the Croker Island region northwest of Darwin hold native title over 3,300 sq km of sea. The court found that native title coexists with other interests and that non-title holders could not be stopped from using the waters below tide mark. This decision is welcomed by ATSIC as just and honorable. Aboriginal elder Mary Yarmirr who led the Croker Island fight said the decision was bitter sweet and was happy that Australian law had confirmed native title can exist over sea country as it does on land. Based on the decision, over 120 claims to areas of sea and 60 to areas in the intertidal zone will be lodged according to Graeme Neate, President of the NNTT. (*Aus 12 October 2001*, NNTT Press Release 11 October)

New South Wales

The Darug Tribal Aboriginal Corp has filed a native title claim to eight parcels of Crown Land in Canada Bay near the city's foreshores (NC 97/8). Speaking to counter statements by fellow City Councilors, Neil Kenzler suggested, 'The simple thing is we need to be party to the discussions...This is the first step in a long due process of law.' (*Glebe and Inner Western Weekly 17 October 2001*)

The first meetings of interested parties in the Muthi Muthi native title claim to land near Balranald and Hatfield were convened by NNTT member Bardy MacFarlane in Balranald in late September. (NNTT Press Release 24 September)

In an arbitrated decision the NNTT has granted a sand mining lease to State Government and Mineral Deposits Pty Ltd at Stockton Bight on land of interest to the Maaiangal Clan. Under future acts provisions of the NTA, the Tribunal was asked to enter negotiations when the two parties failed to reach agreement. The decision to allow the license was based on minimal impact on the rights, interests and traditions of the Maaiangal Clan and the social and economic benefits to the community. (NNTT Press Release 25 September)

In an agreement reached outside of the courts, a stretch of land south of the Cape Byron Lighthouse has been handed back to the Arakwal Aboriginal People at Byron Bay. After