

hensive right would need to be ‘unbundled’ into its component parts to determine the impacts of extinguishment [382].

The applicants had suggested that with this underlying recognition of exclusive possession the most appropriate way to determine the impact of extinguishment was by what I would describe as an ‘exclusive possession – minus’ methodology. That is, the exclusive possession title is reduced by the extent of the interests granted. The Court would assess the rights and interests conferred by the non-indigenous interest and the native title would be extinguished only to the extent necessary to give effect to the right. The exercise of the laws and customs relied upon by the native title holders in establishing their claim would be exercisable subject to the rights of the interest holder. The judge rejected the notion of what he called ‘conditional rights’ based on decisions of the High Court in *Ward* and *Yarmirr* [475]. His Honour favoured a direct comparison of each law and the rights it confers against the rights conferred. In the result, as demonstrated in *Ward* and later determinations, the grant of any interest in the land, by taking away the ‘exclusivity’ of the title, denies any ongoing role on the part of the native title

holders to make decisions in relation to access and use of their country.

The result of the extinguishing impacts of pastoral leases in the area means that the rights in relation to large tracts of country are limited to general access, hunting and fishing rights for personal communal or ceremonial and non-commercial use. Because the surviving rights are so limited on this approach, the judge took the advice of the High Court in *Ward* and resorted to considering the kinds of activities that could be exercised in pursuit of the native title. These activities, it was said, do not define the legal content of the right but, nevertheless now express the relationship between native title and the other interests in the area.

Such invasive extinguishment is not necessary in order to give effect to the limited rights encompassed by many of these interests, and unnecessarily trenches upon the rights of the native title holders. It does not allow any scope for the operation of rights and interests that continue to exist under traditional law and custom. The compensation implications of the courts’ approach to this matter are yet to be explored.

NATIVE TITLE IN THE NEWS

New South Wales

A prominent Aboriginal elder has called for a treaty to be signed between the Albury City Council and its Indigenous community. Pastor Cec Grant, a senior member of the Wiradjuri council of elders, said he was eager to see an agreement, memorandum of understanding or a treaty with the council which would recognise the traditional ownership and role of the Indigenous community. Albury Mayor Cr Patricia Gould said she was not aware of the proposal, but expected it to be given some thought. *Border Mail (Albury Wodonga)* pg 13. 21 February 2004.

The West Wyalong region is set to receive an economic boost with Barrick Gold commencing construction of the Cowal gold mining development project. Barrick has formed a native title agreement with the Wiradjuri Condobolin native title claim group. Promotion and protection of Wiradjuri cultural heritage will take place in the area, with benefits to flow into the community during the life of the mine. Around 350 construction and 200 permanent jobs are expected to be created over the next 21 months. *Forbes Advocate*, pg 6. 28 February 2004. Wiradjuri claim: NC02/03, N6002/02.

Northern Territory

The first mining/petroleum native title agreement mediated in the Northern Terri-

tory was set in motion recently. The Territory government recently granted two exploration permits to Sweetpea Corporation to explore 14,000 sq km of land in the Newcastle Waters region with the traditional owner's agreement. Tribunal deputy president Christopher Sumner, who facilitated the mediation, said the agreement demonstrated what resource companies and Indigenous groups could achieve under the native title act if issues were talked through with the aim of reaching an agreement. *NNTT media release*, 04 February 2004. Eva Downs claim: DC01/34, D6035/01, Tandyidgee/Powell/Helen Springs claim: DC01/35, D6036/01. Tandyidgee claim: DC01/36, D6037/01. Powell Creek claim: DC01/37, D6038/01, Nutwood Downs claim: DC01/59, D6059/01, Daly Waters claim: DC01/71, D6071/01, Tanumbirini claim: DC02/35, D6036/02.

The Northern Land Council wants to establish a crocodile hunting industry in the Northern Territory in a bid to achieve economic independence. Traditional Aboriginals landowners would run safari-style trophy hunts in remote Northern Territory communities. The NLC has put a submission to the federal government to allow trial hunts of 25 saltwater crocodiles a year at Maningrida, in Arnhem land. *Ballarat Courier*, pg 20. 12 February 2004.

Alcan's proposed \$1.5 billion alumina refinery expansion in the Northern Territory is moving closer to final approval. The Canadian aluminium giant said it had submitted its Environmental Impact Statement (EIS) to the Northern Territory government. Aboriginal traditional owners, through the Northern Land Council, have indicated they would like to buy an equity stake of up to \$100 million in the pipeline project, which crosses Aboriginal land and land covered by native title claims. *National Indigenous Times*, pg 5. 18 February 2004.

Queensland

The State government and the Waanyi people have signed two Indigenous land use

agreements (ILUAs) in the Doomadgee area. These two agreements are part of a group of six in the north Queensland region which were signed in December last year. The signings are expected to allow more than 130 mining and exploration permits to be granted. *North West Star (Mt Isa)*, pg 3, 08 January 2004. Waanyi ILUA QI2003/62.

A native title claim has been lodged over parts of Kurrimine and Mission Beach by the Djiru people of Far North Queensland. The National Native Title Tribunal has invited those with interests in the land and waters in question to register for talks aimed at reaching negotiated settlements. Of the two applications the Djiru people have lodged, one of the applications covers 96.23 sq km, whilst the other covers 4.56 sq km. Both claims fall within the Cardwell and Johnstone shire council areas. *Cairns Post*, pg 9. 15 January 2004. Djiru claim: QC03/6, Q6006/03.

The Gia people have lodged a native title application over a 4808 sq km area. The application covers Bowen and Mackay and includes Proserpine and surrounding areas. Private freehold land within the area is excluded. The National Native Title Tribunal has invited people with interests in the land and waters covered by the application to register for talks aimed at reaching negotiated agreements. The application covers crown land, national parks, reserves and pastoral interests where native title has not been extinguished. *Proserpine Guardian*, pg 9. 21 January 2004. Gia claim: QC99/24, Q6023/99.

Unwanted State government land will be given back to Torres Strait traditional owners after a commitment from the Qld labor government. This decision follows a recent Federal Court decision that public works built prior to 1996 extinguished native title on Torres Strait Islander lands. Torres Shire Mayor Pedro Stephen, one of the Traditional Owners who voiced concern over the issue, hailed the decision as "a very positive way for the affected traditional owners to sit

down with the State government and conduct negotiations clear of all doubts and fears." *Torres News (Thursday Island)*, pg 1. 23 January 2004.

Three Indigenous Land Use Agreements (ILUAs) between nine traditional owner groups and the North Queensland Gas Pipeline Project group has been finalised. Representatives from the National Native Title Tribunal, the North Queensland Gas Pipeline Project and the nine Indigenous groups gathered in Townsville to celebrate the finalisation of the ILUAs after 14 months of negotiations. The ILUA's allow the Pipeline Project Group to proceed with plans to construct a 390km gas pipeline from Moranbah to Townsville while ensuring the protection of cultural heritage for the nine traditional groups. *Koori Mail*, pg 52. 28 January 2004. Jangga People claim: QC98/10, QG6230/98, Wiri People claim: QC98/5, QG6242/98, Wulgurukaba People claim: QC98/30, QG6221/98, Juru People claim, Barada Barna Kabalbara & Yetimaria claim: QC97/59, QG6224/98, Bindal People claim: QC99/21, Q6020/99, Birri People claim: QC98/12, QG6244/98, Kudjala People claim: QC00/1, Q6001/00 & inland Nebo claim.

The Jagera Indigenous group has lodged a native title claim over a large area of land in south Queensland, a portion of which is part of Warwick Shire's north east. The claim extends from Redland Shire, west to Toowoomba and south to Warwick. Early analysis of the claim by Warwick Shire council indicates the claim should have no effect on the majority of the shire. *Southern Free Times*, pg 3. 04 February 2004. Jagera claim: QC03/15, Q6014/03.

Torres Strait Island communities and the Federal Government have recently signed an Indigenous Land Use Agreement. This agreement will enable a radar to be erected to boost border protection and target illegal fishing. Defence Minister Robert Hill and Customs Minister Chris Ellison flew to

Dauan Island then south to Badu Island in the central strait, for signing ceremonies with the Island councils. The agreement paves the way for the siting on uninhabited Pumpkin Island, off Badu Island, and a receiving antennae on Dauan Island. Dauan Island council chairperson Margaret Mau said the radar was strongly supported by the Island people and would create local jobs and help protect traditional fisheries. *Courier Mail*, pg 10. 26 February 2004. Pumpkin Island (Koey) Ngurtai ILUA & Dauan Island ILUA

South Australia

The Full Bench of the Federal court has ordered all parties in the De Rose Hill native title claim case to participate in a case management conference this month, to try and resolve the matter. Justices Wilcox, Merkel and Sackville said their deliberations so far favoured the native title claimants. Aboriginal Legal Rights Movement executive officer Parry Agius, said the case proved litigation was not the way to go, and makes all parties re-think how to go about resolving native title. *Koori Mail*, pg 55. 14 January 2004. Yankunytjatjara claim: SC94/2, SG6001/96.

Talks this week may determine the future of South Australia's only Aboriginal legal service, the Aboriginal Legal Rights Movement. The legal service has been unable to seek clarification from ATSIIS over ongoing funding and only has enough money to remain until the 05 March 2004. ALRM's head office is in Adelaide and regional offices include Port Augusta, Port Lincoln, Murray Bridge and Ceduna. The legal service employs 47 people. *Koori Mail*, pg 5. 25 February 2004.

A native title directions hearing will resume in the Federal court on March 17 in relation to the Gournditch-Mara claim. The claim covers south-western Victoria and a small part of the south-east of South Australia. The Gournditch-Mara claimants have provided preliminary connection material and a

document setting out their aspirations to the State government. *Wimmera Mail Times*, pg 7. 27 February 2004. Gourditch-Mara claim: VC99/7, VG6004/98.

Tasmania

Tasmania's three political parties have agreed to acknowledge the traditional owners of the land in the state. A statement to acknowledge the Mouheneener people will be read at the beginning of each parliamentary sitting. *ABC News Online*, 05 January 2004. Mouheneener People.

Western Australia

Owners of the Monkey Mia Resort in Shark Bay, 850 km north of Perth, are negotiating with the State government to expand the resort area from 4ha to 7ha. The resort is jointly owned by the local Yadgalah Aboriginal community, Indigenous Business Australia and co-founder Graeme Robertson. The idea behind the partnership is to include the 100-strong local Shark Bay Aboriginal community in the ownership and operation of the resort, rather than sell out and employ another resort operator. *Weekend Australian*, pg 8. 17 January 2004.

Late last year a meeting occurred between two local native title claimant groups to establish a working group. This meeting was held by the Yamaji Land and Sea Council to provide the opportunity for Wilinyu claimants and Naaguja native title claimants to discuss arrangement for working with an overlapping native title claim. A positive and encouraging resolution was passed in relation to working together on their native title claims from Jurien Bay to Bowes River inland. *Yamaji News (Geraldton)*, pg 1. 28 January 2004. Wilinyu claim & Naaguja claim: WC97/73, WG6194/98.

The Federal government has rejected an application by native title claimants for work stop on the Champion Lakes rowing com-

plex. Planning and Infrastructure Minister Alannah MacTieran said she welcomed the Federal Government's decision that there was no justification for a stop-work order. Two members of the Nyoongar Circle of Elders lodged the application, with the rest of the application still to be considered by Federal Environment Minister David Kemp. *Armadale Examiner*, pg 5. 29 January 2004. Combined Single Noongar claim: WC03/6, W6006/03.

During March, the Federal court will hear the final submissions in the long-running Wongatha native title claim. The Goldfields Land and Sea Council and the State Government both called for mediation but were not able to reach agreement. The Wongatha claim, which commenced in February 2002, covers Kalgoorlie-Boulder to Laverton and includes mining and pastoral leases. *Kalgoorlie Miner*, pg 5. 30 January 2004. Wongatha claim: WC99/1, WAG6005/98.

An Esperance native title claim has become the first claim in Western Australia to be assessed by a neutral party outside the court process. Retired Federal Court Judge John Lockhart is conducting the early neutral evaluation which covers 49,115sq km of land and sea around Esperance. Executive director Anne De Soyza from the state Office of Native Title, said the early evaluation was designed to assist mediation and was quicker than the court process. *Kalgoorlie Miner*, pg 4. 03 February 2004. Combined Single Noongar Claim: WC03/6, W6006/03.

Pastoralists and traditional landowners in the goldfields region have agreed to a set of principles for negotiating access to pastoral leases. The agreement was made between the Pastoralists and Graziers Association (PGA) and the Goldfields Land and Sea Council (GLSC) on behalf of the Indigenous groups. The access principles were negotiated over the last year under the guidance of the National Native Title Tribunal. The agreement acknowledges the importance of co-existence with the 14 principles address-

ing the rights of both groups in a fair and equitable way. *NNTT media release*, 03 February 2004.

The signing of a memorandum of understanding is intended to fast-track the transfer of 64 Aboriginal trust lands in the southwest to Noongar people. Under the agreement, made between the South West Aboriginal Land and Sea Council, the Aboriginal Lands Trust and the Indigenous Affairs Department, 64 properties will be transferred back to traditional Noongar owners. SWALSC CEO Darryl Pearce welcomed the handover, stating that "land is central in achieving sustainable economic independence for Noongar people". *Augusta Margaret River Mail*, pg 3. 11 February 2004. Combined Single Noongar Claim: WC03/6, W6006/03

Experts warned that the lack of funds for native title representative bodies may affect their ability to properly represent Indigenous

groups. Kimberley Land Council have already stated they will have to leave a group of traditional owners unrepresented in court due to lack of funds. National Native Title Tribunal deputy president Fred Chaney warned that the funding shortfall could result in travesties of justice. *Weekend Australian*, pg 10, 28 February 2004.

The Kimberley Land Council will have to cease working on four native title claims if critical funding shortfalls are not addressed immediately. A crisis meeting was held with ATSI, the Commonwealth body responsible for funding native title representative bodies. Executive director Wayne Bergmann said lawyers were withdrawn from the Djabera Djabera claim last week, with Karajrri, Wanjina and Rubibi claims also at risk. *West Australian*, pg 44. 28 February 2004. Djabera Djabera claim: WC96/99, WG6124/98. Karajrri claim: WC00/02, WG6100/98. Wanjina claim: WC02/04, W6006/02 and Rubibi claim: WC99/23, WG91/98.

APPLICATIONS LODGED

The National Native Title Tribunal posts summaries of applications that are lodged with them, on their website, <www.nntt.gov.au>. The following lodgements are listed for January/February.

Claimant Applications

Date Filed	Application Name	State/Territory	Tribunal File No.	Federal Court File No.
10/02/04	Town of Newcastle Waters	NT	DC04/1	NTD3/04
11/02/04	Wanamara	QLD	QC04/1	Q32/04
18/02/04	Jirrbal People # 3	QLD	QC04/4	Q42/04
18/02/04	Jirrbal People # 2	QLD	QC04/3	Q41/04
23/02/04	Mbara Ngawun (Woolgar People)	QLD	QC04/2	Q37/04

REGISTRATION TEST DECISIONS

The National Native Title Tribunal posts summaries of registration test decisions at <www.nntt.gov.au>. The following decisions are listed for January to February. If an application has not been accepted, this does not mean that native title does not exist. The applicants may still pursue the application for the determination of native title. If an application does not pass the