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Australian Institute of Aboriginal and Torres Strait Islander Studies

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NATIVE TITLE NEWSLETTER

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[Go to Table of Contents](#)

NATIVE TITLE NEWS OF OCTOBER - NOVEMBER 1996

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As we go to press this month, the High Court on 23rd December 1996 handed down its judgement on the Wik case, the test case on whether pastoral leases extinguish native title. In a 4/3 decision, Justices Toohey, Gaudron, Gummow and Kirby ruled that the Queensland pastoral leases under consideration in the Wik case did not confer rights of exclusive possession on the lessees. They ruled in the case of the Wik peoples that pastoral leases did not necessarily extinguish native title. In relation to the second segment of the case, the Court ruled that the State of Queensland was not derelict in its fiduciary duty in allowing mining to take place at Aurukun.

As native title rights survive to the extent that they are not inconsistent with the rights granted to pastoralists under their leases, the judgement provides a strong basis for negotiation between native title claimants and pastoralists in relation to co- existence.

[Go back to contents](#)

1. Firsts - Crescent Head Decision and the

Handover of the first ILC Land

The first resolution of a native title claim for mainland Australia, by the Dunghutti people of Crescent Head in NSW, was announced on 9 October. The settlement involves the Dhungutti people allowing partial development of 12.4ha of land in return for compensation for the Government's sale of the land without establishing whether native title existed over it.

Justice French, president of the National Native Title Tribunal, hailed the settlement as one which satisfied the Aboriginal community, local people, and Government. Justice French said 'I think it will have a very important symbolic significance - people will realise that agreements are possible and that agreements can be made that benefit and protect all interests'. Patrick Dodson called the decision 'a timely and powerful symbol of reconciliation - measured, realistic and negotiated by all parties in a spirit of goodwill. He hailed the decision as an example of reconciliation which is called for in the current times: 'a form of agreement which deals with the legacies of our history, provides justice for all, and that takes us forward as a nation'.

Meanwhile the Indigenous Land Corporation on November 13 handed over the title deeds to the first property in Australia it has acquired. The 1.8ha site, comprising a former primary school at Henley Brook, with a teachers' residence and a few sheds, is in the path of a dreaming track for Noongar Aborigines (*Aus, 14 November, p4*).*

[Go back to contents](#)

2. Amendments to the Native Title Act

ATSIC's discussion paper, 'Proposed Amendments to the *Native Title Act 1993*: Issues for Indigenous Peoples', released in November, is still available to the public. The document contains succinct overviews of native title rights; the relevance of the *Racial Discrimination Act 1975* to the NTA; mining on native title land; and the right to negotiate and international law. It concludes that indigenous people are not opposed to amendments to the NTA which improve the procedures of the NTA, but oppose those which dismantle native title rights in favour of the interests of State and Territory governments and resource developers.

This report can be obtained either from Martin Freckman of the Office of Public Affairs; from Di Myer of the native Title and Land Rights Branch of ATSIC, at PO Box 17, Woden, ACT 2606 [tel (06) 289 1222], OR from your local State or Regional Office of ATSIC. Issues of substance can be discussed with the Manager of the Policy and Legislation Section of the Native Title and Land Rights Branch in Canberra.

[Go back to contents](#)

3. Centre for Aboriginal Economic Policy Research paper on the Amendments

CAEPR has recently produced a new discussion paper, 'The Right to Negotiate and Native Title Future Acts: Implications of the *Native Title*

Amendment Bill 1996 (No 124) by Diane Smith. This paper focuses on how the Native Title Act has been practically implemented, highlighting difficulties and outcomes to date. The foreshadowed amendments to the right to negotiate are then critically assessed, including: the proposed exclusions mechanism; the conjunctive right to negotiate and 'project acts'; parallel processing; compulsory acquisition powers; Ministerial intervention; and the new claims registration test.

[Go back to contents](#)

4. Significant people in the development of Native Title legislation

Tributes were made in October to two of the landmark figures in native title - Eddie Koiki Mabo and Justice Lionel Murphy, whose questioning of the *terra nullius* doctrine was one of the factors which finally bore fruit in the Mabo (1992) overturning of the principle and the development of native title legislation.

The University of Queensland Press' biography of Mabo by Noel Loos and Koiki Mabo traces his development as an activist from the late 1950s when he left Mer and took a job on the mainland with a Queensland Railways construction gang and became interested in trade unionism. By 1962 he had a public profile and in 1967 organised a seminar in connection with the Referendum. In that year he took a job as a gardener at James Cook University in Townsville where he met academics such as Loos and Henry Reynolds, and began lecturing to white students in Loos' race relations course. Mabo's fight for his land began in the early 1970s when he was told that in the eyes of the Australian legal system the outer islands of the Torres Strait were Crown land. Koiki Mabo died of cancer only months before the seminal land rights judgement was enacted in his name.

[Go back to contents](#)

5. Review of Aboriginal Councils and Associations Act Report

The 'Review of the *Aboriginal Councils and Associations Act 1976*' Report has now been finalised. This report has major implications for native title in view of the need for all prescribed bodies corporate to be incorporated under the Act. Copies of the final report are available by contacting the Assistant General Manager, Strategic Planning and Policy Branch, ATSIC, PO Box 17, Woden ACT 2606, Ph (06) 289 3318, or Fax (06) 285 3603.

[Go back to contents](#)

NATIVE TITLE IN THE NEWS

(Note: Where an item also appears in other newspapers, etc, an asterisk (*) will be used. People are invited to contact the Native Title Research