

## **RECENT FEDERAL NATIVE TITLE DECISIONS IN THE KIMBERLEY**

The advertised speaker, Griff Ranson was unable to attend the Kimberley Society meeting of 2 June 2004 but Gary Simmons very ably took his place. Gary is currently General Manager of Native Title and Mining Titles in the Department of Industry and Resources. He has extensive experience in administering the Mining Act, particularly the native title aspects of mining tenements.

Under the Mining Act, the extinguishment of any native title that may exist is suspended for the length of the life of the mining tenement. When freehold title is granted under the Land Administration Act, native title is extinguished. In the Kimberley, a high proportion of the country is covered by native title claims, a few of which overlap. Thirty-five claims have been made in the Kimberley and five of these have been determined. In the whole of WA, 136 claims have been made under the Commonwealth Act but most of those in the lower Pilbara, Goldfields and South West will more than likely fail the test of continuous Aboriginal connection with the area (Yorta Yorta decision). The present WA government prefers to negotiate claims rather than litigate them in the Federal Court. Native title can be exclusive e.g. on vacant crown land (native title rights and interests do not extend to minerals and petroleum) or non-exclusive e.g. on a pastoral lease where Aboriginal people and pastoralists will have co-existing rights. In the Kimberley most native title determinations are exclusive, which means that non-Aboriginals cannot enter without permission. Travellers in the outback need to consult the Department of Industry and Resources, which has maps showing pastoral leases and native title areas with map co-ordinates of the boundaries. It is then necessary to approach the Aboriginal owners. In the Kimberley, 27 of the claimant groups use the Kimberley Land Council to negotiate for them and it is recommended that approaches should be made through this council if one wishes to enter native lands where exclusive rights exist in the Kimberley. There have been five native title determinations in the Kimberley region comprising three consent determinations (Tjurabalan, Karajarri and Miriuwung Gajerrong #1) and two litigated determinations (Rubibi #6 and Wanjina).

The Tjurabalan title (2001) covers 25,917 square kilometres in the Tanami Desert, south of Halls Creek and abuts the NT border in the east and Aboriginal reserve land to the south. It is an exclusive title. The Karajarri title (determined in 2002 by consent) is also exclusive (except for a mining lease) and covers 31,220 square kilometres in the west Kimberley. Most (24,725 square kilometres) is over vacant crown land south of Broome but it includes the pastoral stations Shamrock, Frazier Downs and Nita Downs. The claim over the vacant crown land has been granted but that over the pastoral stations is currently being negotiated. The Miriuwung Gajerrong claim #1 (determined in 2003), which covers an area from

just south of Kununurra to the north coast, was rejected by the Federal Court which found that native title was extinguished. That decision was overturned by the Full Court. The title gives exclusive rights over Lacrosse Island, Kangguru Island, Aboriginal reserves within the Kununurra townsite, a women's site within the township, Glen Hill pastoral lease and Hagan Island in Lake Argyle. The Government is now negotiating with the claimants on the development of Ord Stage II.

The Miriuwung Gajerrong #2 claim covers 6,767 square kilometres in the shire of Wyndham-East Kimberley. It has not yet been registered by the National Native Title Tribunal.

The Rubibi claim #6 (determined in 2001) gives limited native title rights to the Yawaru People in Broome over the Kunin law ground in the Broome township. This is a non-exclusive native title.

The last claim so far determined is the Wanjina Wunggurr-Wilinggin, determined in December 2003. This area, south-west of Kununurra, includes Pentecost Downs and Durack River stations. Exclusive possession native title rights exist in all areas of this claim where extinguishment has not occurred.

A further three claims are currently being actively negotiated, these are the Bardi Jawi (around Lombadina and One Arm Point) and cover 5,347 square kilometres. The State Government and Kimberley Land Council have reached agreement but the Commonwealth Government wishes to proceed to litigation. The state would prefer it to be a consent determination.

The remainder of the Karajarri claim is still being negotiated but is expected to be determined by consent very soon. The remaining part of the Rubibi claim covers 6,375 square kilometres and overlaps the town of Broome. This was not able to be resolved through mediation and is currently in trial, with a decision expected in 2005. A further 22 claims have been registered with the Native Title Tribunal. Gary gave us a fascinating insight into the complexities of Native Title in the Kimberley and left with the Society several copies of a coloured map showing the areas claimed, pastoral stations and reserves. A number of claims include large areas of the sea but this only applies to the islands above high water mark.

*Loisette Marsh*