BALANCE
The Official Publication of the AUGUST 1998 Law Society of the Northern Territory

Raelene's accolade for best paper!

Raelene Webb, Crown Counsel, NT Attorney General's Department recently received an award for best paper at the Australian Mining & Petroleum Law Association Annual Conference in July.

Raelene's paper entitled *Native Title Offshore - at the Water's Edge or Beyond* was submitted to the conference in Adelaide as part of the Native Title and Cultural Heritage Session. Later that day as the conference came to a close, the Best Paper award was announced and to Raelene's surprise and delight she had won the award.

As the paper is quite comprehensive, the summary and introduction is provided in the following paragraphs and a copy of the whole document can be obtained from Carol Bartlett from AMPLA on (03) 9670 2544.

Native Title Offshore - at the Water's Edge or Beyond

by Raelene Webb

Summary

The concept of native title offshore is explored firstly by looking at the account of Aboriginal sea tenure as conceptualised by the Aboriginal people who claim native title to the seas about Croker Island in the Northern Territory. A brief history of native title in Australia precedes a discussion of some of the legal issues arising in the Croker Island Seas Claim, including whether indigenous rights and interests offshore can be recognised and protected by the common law in those areas. Finally, the possible existence of any offshore native title rights in minerals is considered.

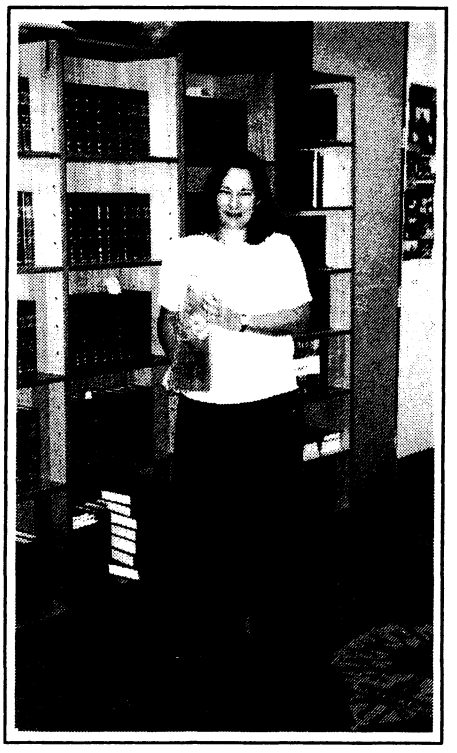
Introduction

A native title claim to the seas in the Croker Island region of the Northern Territory was lodged with the National Native Title Tribunal on 22 November 1994[1]. The area covered by the application included sea, sea-based, land or reefs (other than and granted pursuant to the *Aboriginal Land Rights (Northern Territory) Act* 1976). On 21 May 1996 the Tribunal lodged the application with the Federal Court for decision, pursuant to section 74 of the *Native Title Act* 1993. Final submissions in the matter[2] concluded on 23 April 1998. The reasons for judgement were delivered by Justice Olney on 6 July 1998.

His Honour concluded that the applicants had established a non-exclusive native title right to have free access to the sea and the sea-bed for the purpose of:

a) travelling through or within the claimed area;
b) fishing, hunting and gathering to satisfy their personal, domestic or non-commercial communal needs (including for the purpose of observing traditional, cultural, ritual and spiritual laws and customs);
c) visiting and protecting places of cultural and spiritual importance; and
d) safeguarding cultural and spiritual knowledge.

Those rights being subjected to all valid laws of the Commonwealth and the Northern Territory and rights and interests granted thereunder[3].



Raelene Webb with her well earned award

Many of the legal questions which arose in this case have fallen for decision for the first time and are not the subject of authoritative pronouncement by the High Court. Some of the issues argued in the Croker Island Seas claim, such as the extent to which the common law recognises and protects native title rights and interests offshore, and the existence of any offshore native title rights in minerals, are the principal focus of this paper. In order to usefully consider these legal issues it is necessary to understand how the applicants in the Croker Island Seas claim conceptualise their relationship with the sea and the resources therein.

(The paper was presented to the 1998 Annual Conference of AMPLA and will be published in the 1998 AMPLA Yearbook. AMPLA owns the copyright to the paper.)