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Wik Legislation may yet label Australia an international pariah says new native title study

The Native Title Amendment Act 1998 (the Wik legislation) amounts to an extraordinary expropriation of property rights and interests for one section of the community with no compensation on just terms, says a paper published by The Australia Institute today.

"The Wik legislation is therefore akin to the notion of *terra nullius,*" says the paper.

Comparing Native Title and Anglo-Australian Land Law, prepared by native title researcher, Fellow of the Australian Property Institute and Member of the Royal Australian Planning Institute, Ed Wensing, concludes: "History will one day judge this legislation for what it really is. In the eyes of the international community, Australia's reputation as a fair and just society has been severely tarnished."

Yet had native title rights been considered in a different light, they could have served as a key element in the reconciliation process, says the author.

"The similarities between indigenous and Anglo-European concepts of land management are much greater than the differences.

"Both cultures have an enduring approach to land management reflecting their respective cultural values.

"The Anglo-Australian approach is firmly rooted in statute law, as well as in the Crown's power to grant interests in land and to regulate and change those rights and interests.

"In contrast, indigenous Australian approaches reflect their special relationship to land and waters and their sense of stewardship in the use, preservation and renewal of natural resources for present and future generations.

"In both cultures, the ways in which land and water are utilised are very similar and are closely regulated."

Despite these similarities, the native title rights and interests of indigenous Australians have been declared subservient to the real estate interests of non-indigenous Australians because the Native Title Amendment Act of 1998 gives other proprietary interests a higher priority than native title, and exempts such action from the Racial Discrimination Act.

The paper examines the report earlier this year of the UN Committee on the Elimination of Racial Discrimination (CERD) which concluded that the Native Title Amendment Act discriminates against native title holders, and called for the Act to be suspended.

The paper comments: “This is the same committee that condemned the apartheid laws of South Africa as inimical to international standards.

“It is not in Australia’s best interests to continue denying the CERD Committee’s findings. Denial never works as a long-term solution.

“Sooner or later we will need to deal with this report or we may face the kind of sanctions once imposed on South Africa or become the first western nation to be reported to the UN General Assembly for breaching the International Convention on the Elimination of Racial Discrimination.

“One culture has exerted its dominance and authority over the other culture. By doing so it has circumvented Australia’s international obligations by selectively setting aside the Racial Discrimination Act. In a decent society, this ought to be unacceptable.”