



AIATSIS

# Native Title NEWSLETTER

Issue 1 | 2025





# WELCOME

## to the Native Title Newsletter

### Issue 1, 2025



For over 30 years, the AIATSIS Native Title Research Unit (NTRU) has focused on maximising the recognition of native title through improving information and coordination, actively engaging in law and policy reform and strengthening the voice of native title holders.

The Native Title Research Unit has been renamed the Indigenous Country and Governance Unit (ICG) in recognition of the support that we can provide native title organisations in the post-determination environment.

Above:  
Alligators near Gimuy (Cairns),  
Gimuy Walubarra Yidinji Country, Queensland

Cover:  
Quobba Blow Holes near Gwoonwardu (Carnarvon),  
Yinggarda Country, Western Australia

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Aboriginal and Torres Strait Islander people are respectfully advised that this publication may contain names and images of deceased persons, and culturally sensitive material. AIATSIS apologises for any distress this may cause.

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# Meet the team

## Felicity Thiessen (Director)

### Indigenous Country and Governance

Felicity was appointed as Director of the Indigenous Country and Governance Unit in 2022. She holds degrees in law and anthropology. Felicity has worked in the native title system for 20 years including as a lawyer and Chief Operating Officer at Queensland South Native Title Services and with a number of Commonwealth entities including the National Native Title Tribunal.



## Tony Eales (Assistant Director)

### Indigenous Country and Governance

Tony Eales is an Assistant Director of the Indigenous Country and Governance Unit. He grew up in Queensland and spent ten years doing cultural heritage management in the Bowen Basin west of Rockhampton and in the Hunter Valley, NSW. He then spent 14 years as an in-house anthropologist at Queensland South Native Title Services working on many successful claims. Tony is now based in Canberra, ACT.



## Clare Sayers (Assistant Director)

### Indigenous Country and Governance

Originally from Toowoomba, Queensland, Clare now lives and works on Yarun (Bribie Island), Kabi Kabi Country. She has a Bachelor of Laws and a Bachelor of Government and International Relations and is currently studying a Master of International Law. Prior to joining AIATSIS, Clare worked as a lawyer and paralegal for approximately six years, with the majority of her career spent in the native title and resources team at King & Wood Mallesons.



## Lilly-Rae Jones (Senior Project Officer)

### Indigenous Country and Governance

A proud Wiradjuri woman who has lived on Ngunnawal Country for most of her life, Lilly-Rae became a member of ICG in April 2023 as a Research Officer and has since been promoted to Senior Research Officer. Previously, Lilly-Rae studied a Diploma in Governance, as well as Youth Work, Alcohol and Other Drugs, Mental Health and Community Services, serving as an Indigenous persons support worker for St. John ACT Nightcrew.



## Caitlin Treacy (Senior Project Officer)

### Indigenous Country and Governance

Caitlin is a Senior Project Officer in the ICG Team based in Meanjin (Brisbane). Caitlin has an applied background in anthropology, community and stakeholder engagement, cultural heritage and native title. Prior to joining the ICG Team, Caitlin had over five years' experience working in the private sector delivering social impact assessment and social performance projects for a diverse range of clients across Australia.





## Tara Hatcher-Leahy (Project Officer)

### Indigenous Country and Governance

Tara is a Project Officer within the ICG Unit, based in Canberra. She is of Papua New Guinean and Torres Strait Islander heritage and was born in Cairns, Queensland. Prior to joining AIATSIS in December 2024, Tara studied a bachelor's degree of Arts & Pacific Studies at ANU before moving on to work in various sectors of the public service.



## John Mckinley (Project Manager)

### Indigenous Country and Governance

John is a Wulli Wulli/Djakunde person who grew up in Melbourne and has lived and studied in Perth before moving to Canberra to work in the public service. He has worked in Aboriginal and Torres Strait Islander affairs for two decades particularly focused on the native title and land rights areas. Joining AIATSIS in October 2024, John is based with the team at the Maraga Building in Canberra, Ngunnawal Country.



## Ya Maulidin (Research Assistant)

### Indigenous Country and Governance

Ya was born in Indonesia and moved to Australia in 2017. He is a Research Officer and manages Native Title Access Requests in the ICGU. He is an Applied Anthropology and Participatory Development graduate from the Australian National University. Prior to working at AIATSIS, Ya was a research assistant for the Development Policy Centre at ANU.



## Lisa Hicks (Administration Officer)

### Indigenous Country and Governance

Lisa was born and raised in Papua New Guinea, and has spent most of her adult life on beautiful Dharug and Gundungurra Country. Lisa is now based in Canberra, having joined the ICG team in January. Before AIATSIS, she worked at Western Sydney University's engagement campus, Maldhan Ngurr Ngurra Lithgow Transformation Hub, supporting resilience and capacity building in a regional community vulnerable to the challenges of natural disasters and economic change.



## Allana (Lani) Slockee (Administration Officer)

### Indigenous Country and Governance

Bardi Oorany from the Dampier Peninsula, Western Australia. Also of Yawuru, Walbunja, Gumbaynggirr & Bunjalung decent, with family ties to the Kimberley region and New South Wales south & north coastlines. Lani joined the team in September 2024 as the Administrative Officer. Prior to working with AIATSIS, Lani completed the Indigenous Australian Government Development Program and graduated with a Diploma in Government.



# Native Title Snapshot

In each issue of its newsletter, the Indigenous Country and Governance unit provides a snapshot of broad information related to native title claims, determinations and prescribed bodies corporate (PBCs). The information is largely sourced from the public registers of the National Native Title Tribunal (NNTT) and the Office of the Registrar of Indigenous Corporations (ORIC).

## In Brief

- There are currently 124 claimant applications. Of these applications, 100 are registered, 23 were not accepted for active registration and one is currently going through the registration test, covering a total of 732,813 km<sup>2</sup>.
- At 1 April 2025, there were 647 native title determinations over 4,416,364 km<sup>2</sup> of land and waters in Australia. Of those, 526 determinations found native title to exist either in all or in part of the determination area. The positive determinations cover 3,662,745 km<sup>2</sup> of Australia’s land and waters.
- At the time of writing, 284 PBCs have been registered on the National Native Title Register.

### Active native title claims at 1 April 2025

Table 1: Current active native title claims

Jurisdiction	Native title claims	
	Registered	Not registered
ACT/Jervis Bay	0	0
NSW	7	1
NT	24	6
QLD	38	6
SA	7	1
TAS	0	0
Vic	3	4
WA	20	5
Total	100	24

### Native title determinations at 1 April 2025

Table 2: National overview of determined outcomes

Jurisdiction	Native title exists (sq km)			Native title does not exist		Total Area (sq km)
	Exclusive	Non-exclusive	Sub-total	Native title does not exist	Native title extinguished (not within determination area)	
ACT	0	0	0	0	0	0
NSW	684	9,309	9,993	101,717	125,564	237, 274
NT	14,055	361,694	375, 749	921	21	376, 691
QLD	76,072	607,507	683,579	151,387	20,231	855,197
SA	6,093	551,285	557,378	104,341	2,889	664,608
TAS	0	0	0	0	0	0
Vic	0	16,334	16,344	11,018	0	27,352
WA	1,085,513	820,685	1,906,198	321,643	43,245	2,271,086
Total	1,182,417	2,366,814	3,549,231	691,027	191,950	4,432,208
Offshore	0	113,514	113,514	62,592	38	176,144

Note: No determinations of native title have been made in the Australian Capital Territory or Tasmania.



Map 1: Native title determined outcomes

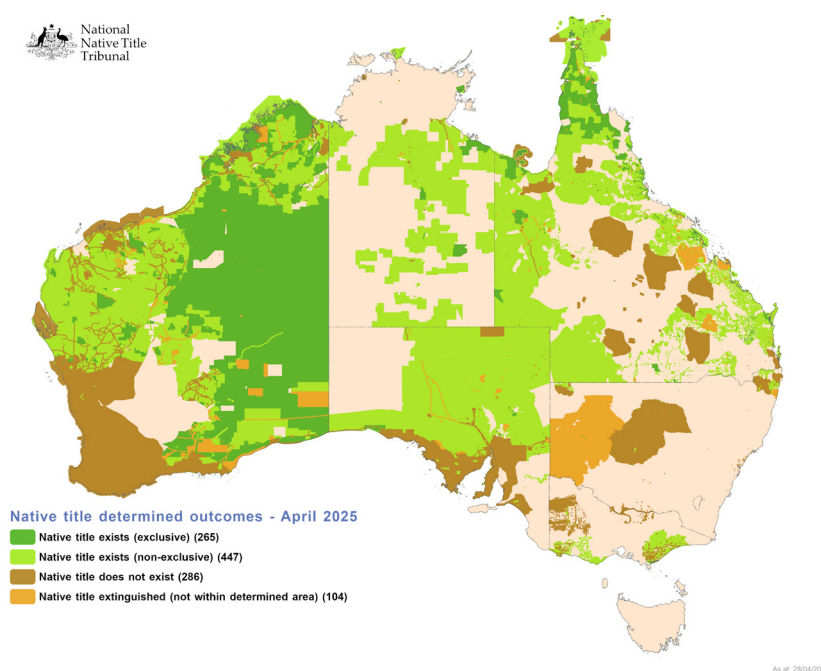


Table 3: Native title as a percentage of land and waters

Determination outcomes as a percentage of land and waters		
Jurisdiction	Total positive determined	Total determined
ACT	0%	0%
NSW	1%	29%
NT	26%	27%
QLD	37%	46%
SA	53%	64%
TAS	0%	0%
Vic	7%	12%
WA	72%	85%
Total	44%	55%

Map 2: Native title determination applications – registration status

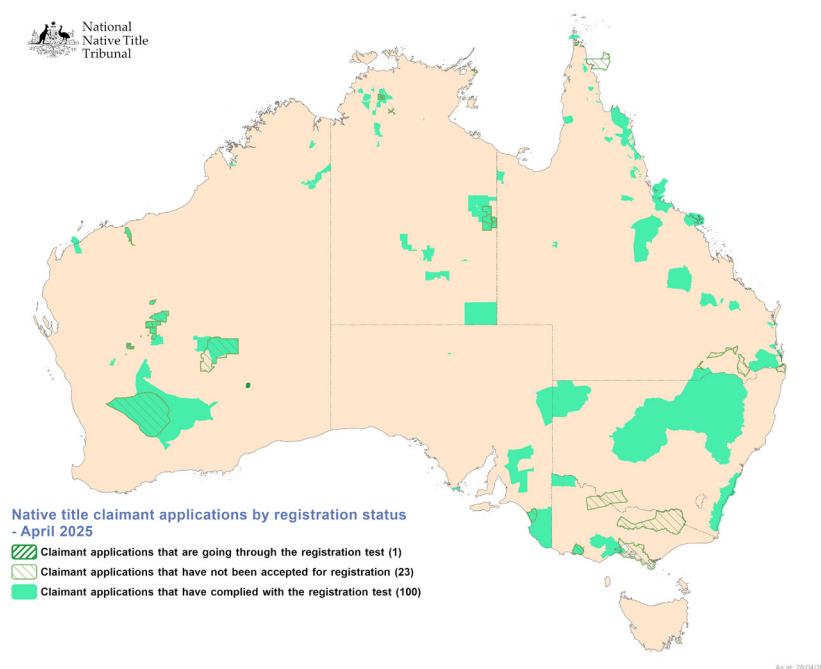


Table 4: Size of PBC

TOTAL PBCS	Small *	Medium **	Large***
284	152	98	34

\* **A small PBC** is a corporation with at least two of the following in a financial year: a gross operating income of less than \$100,000; consolidated gross assets worth less than \$100,000; and fewer than five employees.

\*\* **A medium PBC** is a corporation with at least two of the following, in a financial year: a gross operating income between \$100,000 and \$5 million; consolidated gross assets worth between \$100,000 and \$2.5 million; and between five and 24 employees.

\*\*\* **A large PBC** is a corporation with at least two of the following, in a financial year: a gross operating income of \$5 million or more; consolidated gross assets worth \$2.5 million or more; and more than 24 employees.

Table 5: Number and average of PBC directors and members

	Total across all PBCs	Average per PBC
Total number of PBC directors	2,407	9
Total number of PBC members	76,638	270

Table 6: Number of PBCs by native title representative body (NTRB)/native title service provider (NTSP) region

NTRB Region	Number of PBCs per region
Gur A Baradharaw Kod (Qld)	21
Cape York Land Council (Qld)	29
North Queensland Land Council (Qld)	32
Carpentaria Land Council Aboriginal Corporation (Qld)	5
Queensland South Native Title Services (Qld)	33
Central Land Council (NT)	35
Northern Land Council (NT)	2*
Kimberley Land Council (WA)	29
Central Desert Native Title Services (WA)	22
Native Title Services Goldfields (WA)	5
Yamatji Marlpa Aboriginal Corporation (WA)	30
South Australia Native Title Services (SA)	26
First Nations Legal and Research Services (Vic)	4
NTSCORP (NSW)	11

\*The Top End (Default PBC/CLA) PBC is the agent prescribed body corporate (PBC) for all of the positive determinations of native title in the Northern Land Council's region except for the Djalkiripuyngu Aboriginal Corporation RNTBC.

Table 7: Number of PBCs by State and Territory

State/Territory	Number of PBCs per State/Territory
Queensland	120
New South Wales	11
Australian Capital Territory	0
Victoria	4
Tasmania	0
South Australia	26
Western Australia	86
Northern Territory	37
<b>Total</b>	<b>284</b>



Tilba Tilba, Yuin Nation Country, New South Wales







# Update on Indigenous Country and Governance activities

## National Prescribed Bodies Corporate (PBC) Survey 2024-25 (PBC Survey)

### THE NATIONAL PBC SURVEY HAS BEEN EXTENDED TO 30 NOVEMBER 2025

Participating in the National PBC Survey gives your PBC the opportunity to anonymously voice its views on the current resource needs and barriers faced by PBCs to achieving its goals and aspirations. The Survey is also an opportunity for PBCs to talk about their achievements and successes, despite resourcing and other challenges.

The Survey will capture information to enable reporting on regional and national trends so that Commonwealth and State/Territory governments, and other stakeholders, will better understand how PBCs can be properly supported to meet their goals and aspirations.

This Survey follows on from surveys conducted in 2013 and 2019 by AIATSIS. It is important to conduct a further survey now that there are 285 PBCs compared with 204 in 2019.

Please contact [felicity.thiessen@aiatsis.gov.au](mailto:felicity.thiessen@aiatsis.gov.au) or [clare.sayers@aiatsis.gov.au](mailto:clare.sayers@aiatsis.gov.au) to discuss participating in the PBC Survey.

### Redevelopment of the PBC Website

ICG has been working on the redevelopment of the PBC Website (<https://nativetitleorg.au>), which will be launched later in 2025. The redeveloped website will present up-to-date information on a range of native title and related topics, such as land and sea management, international rights, wide cultural heritage, future acts, and matters relevant to PBCs.

The other new website, which will be called the Indigenous Country and Governance Website, will feature an interactive roadmap designed to improve navigating the website.

The website will also host the Native Title Agencies Directory, an interactive page showing the roles and responsibilities different Commonwealth agencies have in the native title system.

While the new ICG Website is still currently under construction, you can access the Native Title Directory at <https://nativetitle.org.au/resources-and-publications/directory>.

### If you would like to do the Survey, you can do so:

#### Electronically

The Survey and the Consent Form can be filled out on a phone, tablet or computer. You can return the completed forms to: [nativetitlesearchunit@aiatsis.gov.au](mailto:nativetitlesearchunit@aiatsis.gov.au)

#### By hard copy

You can print out the Survey and Consent Form, complete it, and then return it to ICG via email (to [nativetitlesearchunit@aiatsis.gov.au](mailto:nativetitlesearchunit@aiatsis.gov.au)) or via post to:

Indigenous Country and Governance  
AIATSIS  
GPO Box 553, Canberra ACT 2601

#### In person or via Teams/Zoom

If you would like to do the Survey in person or by Microsoft Teams or Zoom, please get in contact with one of the PBC Survey Team on the details below.

#### Felicity Thiessen

Director, ICG  
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(02) 6129 3904

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(02) 6246 1130



# AIATSIS Summit 2025 Youth Event

## Indigenous Country and Governance Youth Governance Workshop

**Thursday, 5 June – Friday, 6 June 2025**  
**Garramilla (Darwin)**

The Youth Governance Workshop will bring Indigenous youth together to develop their governance skills. The workshop will be a culturally safe space for young people to share ideas and opinions and to discuss their experiences of governance in their professional and community roles. Participants will have the opportunity to network with their First Nations peers from around Australia.

AIATSIS's Indigenous Country and Governance Unit, the Australian Indigenous Governance Institute and the National Native Title Council will be leading the workshop sessions which are detailed in the program below:

### **Day One:**

- 'Two-way governance' and 'Empowering voices in the boardroom' – Australian Indigenous Governance Institute

### **Day Two:**

- 'Training the next generation: Young people and native title' – National Native Title Council
- 'Succession planning and youth engagement' and 'Leadership in Indigenous governance' – Australian Indigenous Governance Institute

If you have any queries about the ICG's workshop, please email the ICG at [nativetitlereserachunit@aiatsis.gov.au](mailto:nativetitlereserachunit@aiatsis.gov.au) or call ICG on (02) 6261 4251.

Further information about the 2025 AIATSIS Summit generally can be found at: <https://aiatsis.gov.au/whats-new/events/aiatsis-summit-2025>



# AIATSIS Summit 2025

## Closed Sessions (Day 3) – Prescribed Bodies Corporate (PBCs) and Native Title Representative Bodies and Service Providers (NTRBs/SPs)

**Wednesday, 4 June 2025**  
**Garramilla (Darwin)**

On Day 3 (Wednesday, 4 June), in Hall 3, ICG will host a closed day exclusively for PBCs and NTRBs/SPs.

Time	Session
<b>11am</b>	<b>The Australian Law Reform Commission: Review of the Future Acts regime</b> Tony McAvoy, Nick Testro and Jane Hall Australian Law Reform Commission
<b>12pm</b>	<b>Our journey: 20 Years of native title on De Rose Hill Station, South Australia</b> Rex Tjami, Sammy Wilson, Mick Starkey and Tom Jenkin South Australian Native Title Services
<b>1.30pm</b>	<b>Economic reconciliation in Canada and lessons for Australia</b> First Nations Financial Management, First Nations Finance Authority, Native Nations Institute, University of Arizona, Harvard Kennedy School and the Australian National University
<b>2.30pm</b>	<b>Niimidiman: From recognition to realisation—Prescribed body corporate-led land activation</b> Gareth Ogilvie Bardi Jawi
<b>3.30pm</b>	<b>Governance Story Series</b> Central Land Council
<b>4pm</b>	<b>Training the next generation: Young people and native title</b> Chelsie Collard National Native Title Council
<b>4.30pm</b>	<b>A discussion about how the National Native Title Tribunal can support agreement making by PBCs (s60AAA)</b> Sandez Barnard, Amanda Gamble and Mary Scalzo National Native Title Tribunal

If you have any queries about the Closed PBC and NTRB/SP Day, please email Felicity Thiessen, Director, Indigenous Country and Governance Unit, at [felicity.thiessen@aiatsis.gov.au](mailto:felicity.thiessen@aiatsis.gov.au).

Further information about the 2025 AIATSIS Summit generally can be found at <https://aiatsis.gov.au/whats-new/events/aiatsis-summit-2025>.



# New resources and survey initiative from the National Native Title Tribunal

**Paulette Dupuy and Michael Raine**

The National Native Title Tribunal<sup>1</sup> has a range of functions provided under the NTA including assistance to native title holders, registered native title bodies corporate,<sup>2</sup> representative Aboriginal and Torres Strait Islander bodies<sup>3</sup> and other stakeholders. These functions include the provision of pre-lodgement assistance to applicants seeking to register Indigenous Land Use Agreements<sup>4</sup> and Native Title Determination Applications.<sup>5</sup> The full range of NNTT assistance functions can be viewed on the NNTT [website](#).

To further support our stakeholders, the NNTT has developed new resources including an **updated template reg 9 certificate**, new registration process flowcharts and an **expedited procedure objection flowchart** to assist those working through the multiple legislative provisions of the NTA and supporting regulations.<sup>6</sup>

Further initiatives taken by the NNTT include the **ILUA access form and survey** and the **Excel Registers and Schedules**. The Excel Registers and Schedules allow users to conveniently access information about registered claims, registered ILUAs, NTDA's, and determinations of native title via an Excel spreadsheet.

## Updated template reg 9 certificate for ILUAs

The NNTT has updated the template certificate required under reg 9 of the Native Title (Prescribed Body Corporate) Regulations 1999 (Cth).<sup>7</sup> The new template assists the applicant to identify the processes and information needed to produce a compliant Reg 9 certificate, where required under the NTA and PBC Regulations.

For example, an RNTBC may be required to prepare a Reg 9 certificate after it makes a 'native title decision', to enter into an ILUA. The PBC Regulations prescribe the information that must be included in the certificate such as the details of the decision-making process of the RNTBC. Additionally, information concerning the consultation and consent process undertaken by the RNTBC with the common law holders under reg 8 or details of the approval process under subreg 8(8) may be required.

You can find a copy of the updated template reg 9 certificate at the end of the application forms for the registration of area agreements and body corporate agreements. Both forms are available on the NNTT [website](#).

## New registration process flowcharts

The NNTT has launched two new registration process flowcharts depicting the steps and processes that are involved in key aspects of the registration process. These flowcharts set out the processes relating to the registration of Claims and ILUAs. The flowcharts can be found on the NNTT [website](#).

<sup>1</sup> The National Native Title Tribunal (NNTT) was established under Part 6 of the Native Title Act 1993 (Cth) (NTA).

<sup>2</sup> RNTBC. Note that a PBC becomes an RNTBC following entry on the National Native Title Register. See s 253 of the NTA.

<sup>3</sup> RATSIBs, see ss 203AD and 253 of the NTA.

<sup>4</sup> ILUA.

<sup>5</sup> NTDA/Claims.

<sup>6</sup> The regulations relevant to the resources referred to in this article are: Native Title (Indigenous Land Use Agreements) Regulations 2024 (Cth); Native Title (Prescribed Body Corporate) Regulations 1999 (Cth); Native Title (Tribunal) Regulations 2024 (Cth).

<sup>7</sup> PBC Regulations.

### Claims registration flowchart

When an applicant files a new or amended NTDA in the Federal Court of Australia, a copy is provided to the NNTT. The Native Title Registrar assesses the claim made in the NTDA to decide whether it must be entered on the Register of Native Title Claims.<sup>8</sup> Once the NTDA becomes a registered Claim, the native title claim group gains certain procedural rights, including the right to negotiate and the right to oppose non-claimant applications in the area covered by their application. In addition, the applicant for a registered Claim becomes a registered native title claimant and must be included as a party to any area agreement ILUA that affects the areas included in their registered Claim.

To support parties applying to register NTDA's the new flowchart sets out the steps involved in the registration testing and notification process for ease of reference. The flowchart also includes NNTT assistance available to applicants seeking a preliminary assessment of the NTDA before it is filed in the Federal Court.

### Registration flowchart for Body Corporate ILUA<sup>9</sup> and Area Agreement ILUA<sup>10</sup>

ILUAs are agreements made between native title parties and stakeholders such as mining proponents, pastoralists, local government and others. ILUAs are generally confidential and can include agreement between the parties about the use and management of areas of land and waters affected by native title. Once an ILUA is signed, the parties can apply for registration of the ILUA on the Register of ILUAs.<sup>11</sup> A registered ILUA acts as a contract between the parties to ensure that agreed activities are valid and binding on all native title holders.

The NNTT has produced one flowchart showing the registration processes that apply to both Body Corporate and Area Agreement ILUAs. The flowchart sets out phases involved in the registration of an ILUA including pre-lodgement steps, registration testing and notification stages.

The flowchart usefully highlights similarities and variations between the processes applicable to both Body Corporate and Area Agreement ILUAs.<sup>11</sup> NNTT assistance available to applicants such as mapping and pre-lodgement comments for draft registration applications have also been included.

### New Expedited Procedure Objection process flowchart

A future act is a proposal to deal with land and waters in a way that affects native title rights and interests. The NTA sets out the procedures that must be followed before going ahead with a future act.<sup>12</sup> These procedures vary depending on the nature of the act. For example where the future acts are done by a government and involve the grant of a mining tenement or the compulsory acquisition of land, negotiation between the government party, grantee party and native title parties is required.<sup>13</sup>

The expedited procedure<sup>14</sup> can be used to fast-track the future acts process following notice by a government party.<sup>15</sup> These notices often concern an application by a mining proponent for the grant of an exploration or prospecting licence. The option of an expedited procedure is applied where the responsible government agency asserts that the activities under the grant will have minimal impact on any native title rights and interests. However, a registered native title claimant or RNTBC can lodge an objection with the arbitral body<sup>16</sup> against the use of the expedited procedure process through the "expedited procedure objection process". If the arbitral body determines the expedited procedure applies, the future act may be done.<sup>17</sup> If the arbitral body determines the expedited procedure does not apply, the normal negotiation procedure must be followed before the act can be done.<sup>18</sup>

The new expedited procedure objection process flowchart sets out the steps involved in the objection process, including assistance that may be provided by the NNTT to help the parties reach an agreement.

<sup>8</sup> Part 7 of the NTA.

<sup>9</sup> See s 24BC of the NTA.

<sup>10</sup> See s 24CC of the NTA.

<sup>11</sup> Part 8A of the NTA.

<sup>12</sup> See Part 2, Division 3 of the NTA.

<sup>13</sup> See Part 2, Division 3, Subdivision P of the NTA.

<sup>14</sup> See s 32 of the NTA.

<sup>15</sup> See s 29 of the NTA.

<sup>16</sup> The 'arbitral body' is usually the NNTT. However, a State or Territory may have its own recognised body to deal with such matters: s 27 of the NTA.

<sup>17</sup> See s 32(4) of the NTA.

<sup>18</sup> See s 32(5) of the NTA.



## ILUA access form and survey

Once a decision has been made that an ILUA meets the conditions for registration, the details of the ILUA must be entered on the Register of ILUAs by the NNTT Registrar who is responsible for the Register.<sup>19</sup> The contents of the Register are prescribed under the NTA. The Register does not record the whole of the ILUA document, however it does include the details of the agreement such as the contact details of each party to the agreement, the area covered by the agreement, the term of the agreement, etc.<sup>20</sup> The Register is available via the NNTT website. It can be searched, and each entry provides an extract and map of all registered ILUAs.

The NNTT receives regular requests from persons and entities seeking access to a complete copy of the ILUA document. Such requests may be received from parties to the ILUA, determined native title holders, RNTBCs, RATSIBs, legal representatives and others.

The NNTT conducted a survey earlier this year in January and February inviting various stakeholders to provide their views regarding access to ILUAs. The survey asked a series of questions such as who is entitled to immediate access and what administrative processes should apply prior to release. The NNTT received 20 responses including from RATSIBs, law firms, government departments, researchers and others. The responses to the survey have been collated and will inform policies under development by the NNTT.

Late last year, the NNTT developed an ILUA Access Request form. The form prompts each requestor to ensure that all relevant information is provided to the NNTT in the first instance. Where all ILUA parties agree to release the ILUA to the requestor, a template form has been included for that purpose. The NNTT will only consider providing access to an ILUA where it is satisfied that it is lawful to do so. The form is available on the NNTT website.

## Excel Registers and Schedules

Under the NTA, the Registrar is responsible for the following public registers:

- National Native Title Register
- Register of Native Title Claims
- Register of ILUAs
- Schedule of Applications and Determinations

Individual entries recorded in the above Registers and Schedules can be searched via the NNTT website. By clicking on the “Search the Registers & Applications” bar, users are directed towards a search screen, which then prompts the user to enter individual enquiry criteria into the relevant search bars.

The new Excel Registers and Schedules present the same information recorded in the Registers and Schedules in a convenient and accessible spreadsheet format. The Excel spreadsheets permit users to search multiple entries and filter information recorded in the Schedules and Registers. The Excel Registers and Schedules can be accessed via a link located at the top of each Register and Schedule Search page. The Excel spreadsheets are updated daily.

<sup>19</sup> See s 199A(2) of the NTA.

<sup>20</sup> See s 199B of the NTA.



Cape Bruny, Nuenonne (Nyunoni) Country, Tasmania

# Belgium found guilty of war crimes during colonial rule of central Africa

## Felicity Thiessen and Clare Sayers

A Belgian court has handed down an historic ruling<sup>1</sup>, officially recognising Belgium's actions in the Congo Free State and Belgian Congo as crimes against humanity pursuant to article 6(c) of the Nuremberg Charter (as the applicable contemporary legal text).<sup>2</sup> The decision is being hailed as a turning point in the global reckoning with colonial violence.

### Colonial violence recognised as crimes against humanity

The matter was brought by five Métis women born between 1948 and 1952 in the Belgian Congo, invoking universal jurisdiction provisions under Belgian law. Their initial claim filed in the Tribunal of First Instance of Brussels (**Tribunal**) was dismissed on the basis that 'no one can be punished for a crime that did not exist (at the time of the alleged facts)'.<sup>3</sup> The plaintiffs appealed that decision.

On 2 December 2024, the Brussels Court of Appeal (the **Court**) found that systemic atrocities—including systematic kidnapping, mass killings, forced labour, amputation, and widespread human degradation—committed under Belgian King Leopold II's rule and subsequent Belgian administrations between 1885 and 1960 met the legal threshold for crimes against humanity.

In the plaintiff's cases, they were:

*taken from their Congolese mothers, forcibly placed in religious institutions, deprived of their roots and identity, and later abandoned to fend for themselves when Congo gained independence. Even today, the wounds of that era remain profound. The Métis children of colonization (sic) still grapple with the consequences of these devastating practices, despite the official apology made by the Belgian Prime Minister at the time, Charles Michel, in 2018, and the Federal Parliament's adoption of the 'Métis Resolution' in 2019.*<sup>4</sup>

In contrast to the Tribunal's decision, the Court held that the crimes were 'clearly established under international law' at the time for the following reasons:<sup>5</sup>

- a) Belgium signed the 'Agreement for the prosecution and punishment of the major war criminals of the European Axis' (**London Agreement**) of 8 August 1945 to which the Nuremberg Charter was annexed.
- b) On 11 December 1946, the United Nations General Assembly unanimously adopted Resolution 95(I) affirming the Nuremberg principles.
- c) Inhumane acts constituting crimes against humanity were already codified under Belgian law and 'the criminal laws of most "civilized States"'(sic).

In fact, the Court stated that the foundations of crimes against humanity have been well-established in international law since at least 1863 with the Lieber Code, issued during the American Civil War, which prohibited 'cruelty and bad faith towards enemy civilians'.<sup>6</sup>

<sup>1</sup> Cours d'Appel Brussels, Dec. 2, 2024, Nr. 2002/AR/262.

<sup>2</sup> Agreement for the prosecution and punishment of the major war criminals of the European Axis (8 August 1945). Available here: <[https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2\\_Charter%20of%20IMT%201945.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf)>.

<sup>3</sup> Civil Tribunal (Francophone) of Brussels, 8 December 2021, 20/4655/A, 16 (unofficial translation). Quoted in Jérôme de Hemptinne, 'Historic Ruling: Brussels Court of Appeal Declares Colonial Forced Removal and Segregation of Métis Children Crimes Against Humanity' (2025) *Journal of International Criminal Justice* 1(10). Available here: <<https://academic.oup.com/jicj/advance-article/doi/10.1093/jicj/mqaf009/8093643>>.

<sup>4</sup> Amnesty International UK (2 December 2024), 'Belgium convicted of crimes against humanity in Colonial Congo'. Available here: <<https://www.amnesty.org.uk/press-releases/belgium-convicted-crimes-against-humanity-colonial-congo>>.

<sup>5</sup> Jérôme de Hemptinne, 'Historic Ruling: Brussels Court of Appeal Declares Colonial Forced Removal and Segregation of Métis Children Crimes Against Humanity' (2025) *Journal of International Criminal Justice* 1(10). Available here: <<https://academic.oup.com/jicj/advance-article/doi/10.1093/jicj/mqaf009/8093643>>.

<sup>6</sup> Jérôme de Hemptinne, 'Historic Ruling: Brussels Court of Appeal Declares Colonial Forced Removal and Segregation of Métis Children Crimes Against Humanity' (2025) *Journal of International Criminal Justice* 1(10), 5. Available here: <<https://academic.oup.com/jicj/advance-article/doi/10.1093/jicj/mqaf009/8093643>>.



Additionally, the Court was required to consider the challenge of whether the crimes were committed in war or a time of peace (as Article 6(c) of the Nuremberg Charter confines crimes against humanity to those committed in connection with war crimes or crimes against peace).<sup>7</sup> The Court held that such a nexus was not required in this instance because:

*...the requirement to link crimes against humanity with other international crimes was a condition imposed by the Nuremberg and Tokyo Charters to legitimize (sic) the authority of their tribunals, when addressing large-scale crimes committed by states against their own or allied nationals — acts typically considered within the exclusive jurisdiction of sovereign states.<sup>8</sup>*

The Court clarified that this nexus was not part of the definition of crimes against humanity, but rather a jurisdictional requirement unique to the post-World War II tribunals.

While Belgium has previously acknowledged the brutality of its colonial past in political and academic contexts, this is the first time a court has formally recognised these acts as crimes in the international context. Importantly, the Court rejected the argument that the age of the crimes barred legal scrutiny, affirming that crimes against humanity do not expire with time.

### Implications and international significance

This judgment is legally and politically significant for several reasons:

- a) It is the first formal conviction of a European colonial power for crimes against humanity related to colonisation, affirming that discriminatory practices committed by a state against its own citizens during colonial rule can be considered crimes against humanity.
- b) It affirms that international human rights norms apply retrospectively where acts are of such gravity to constitute crimes under customary international law.
- c) It opens the door for further legal claims against former colonial states and heightens pressure on governments to engage seriously with demands for truth-telling and reparations.

Legal scholars note that the ruling may act as a catalyst for broader legal action across Europe, particularly in jurisdictions where universal jurisdiction or international human rights statutes apply.<sup>9</sup>

### A step towards justice, but not the end

While the ruling does not, in itself, mandate financial reparations, it may serve as a foundation for future legal and political action. While Belgium has 'resisted demands for financial compensation',<sup>10</sup> plaintiffs have indicated their intention to pursue reparative outcomes, including potential compensation and formal recognition ceremonies.

As debate continues across Europe about the legacy of empire, this case confirms that colonial-era atrocities can, and will, be judged by the standards of modern international law.

<sup>6</sup> Jérôme de Hemptinne, 'Historic Ruling: Brussels Court of Appeal Declares Colonial Forced Removal and Segregation of Métis Children Crimes Against Humanity' (2025) *Journal of International Criminal Justice* 1(10), 5. Available here: <<https://academic.oup.com/jicj/advance-article/doi/10.1093/jicj/mqaf009/8093643>>.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid, 6.

<sup>9</sup> Ibid, 10.

<sup>10</sup> Jennifer Rankin (13 January 2025), 'Court ruling on Belgium's conduct in colonial Africa hailed as turning point', *The Guardian*. Available here: <<https://www.theguardian.com/world/2025/jan/12/court-ruling-crimes-against-humanity-belgium-colonial-africa-hailed-turning-point#:~:text=Court%20ruling%20on%20Belgium's%20conduct%20in%20colonial%20Africa%20hailed%20as%20turning%20point,-This%20article%20is&text=A%20historic%20court%20ruling%20that,and%20other%20forms%20of%20justice.>>>.



Wadjemup (Rottnest Island), Whadjuk Noongar Boodja, Western Australia

# Complaint made to United Nations about Australia's discriminatory youth justice policies

**Clare Sayers**

A formal complaint has been submitted to the United Nations (UN) Committee on the Elimination of Racial Discrimination (**Committee**) regarding Australia's treatment of Aboriginal and Torres Strait Islander children in the youth justice system. Authored by Associate Professor Hannah McGlade and Professor Megan Davis, the submission is supported by several prominent organisations and individuals, including Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss.

The complaint calls on the UN to initiate an urgent review under the committee's Early Warning and Urgent Action process, arguing that Australia's youth justice practices constitute a breach of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. It presents evidence that Aboriginal and Torres Strait Islander children are disproportionately incarcerated, subjected to 'extensive trauma, cruel, inhuman and degrading treatment, segregation from society, exclusion from their own community, exclusion from culture and loss of life' due to the youth justice system.<sup>1</sup> In 2023-24 alone, there were 162 recorded instances of self-harm or attempted suicide by Indigenous children in custody.<sup>2</sup>

The complaint states the following regarding the grim statistics of mass incarceration of children in Australia:

*Aboriginal and Torres Strait Islander children have for too long been drastically overrepresented in the criminal legal system in Australia. The number and rate of Indigenous children aged 10 to 17 in detention on an average day has been increasing since 2020. Examining the rates at which Indigenous children were incarcerated across Australian jurisdictions in 2023-2024 paints an increasingly grim picture. Although around 6.5% of young people aged 10–17 in Australia are Aboriginal or Torres Strait Islander, **almost two thirds (65%) of the young people aged 10–17 in detention on an average day in 2023–24 were Indigenous**. Indigenous children aged 10 to 17 were **almost 27 times more likely** than their non-Indigenous counterparts to be in detention on an average day nationwide in 2023-2024, while Indigenous children aged 10 to 13 were **almost 46 times more likely** than their non-Indigenous counterparts to be in detention.<sup>3</sup> [Emphasis added]*



Landscape near Galinyala (Port Lincoln),  
Barnagarla Country, South Australia

<sup>1</sup> Associate Professor Hannah McGlade and Professor Megan Davis, 'International Covenant on Elimination of All Forms of Racial Discrimination—Early Warning and Urgent Action submission' (2025), [7]. Available here: <[https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/67ea290c1c3aff78641d7e91/1743399185829/United+Nations+CERD+complaint\\_youth+justice+in+Australia.pdf](https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/67ea290c1c3aff78641d7e91/1743399185829/United+Nations+CERD+complaint_youth+justice+in+Australia.pdf)>.

<sup>2</sup> Ibid [6].

<sup>3</sup> Ibid [20].



The complaint also highlights legislative developments that will further increase levels of incarceration. The Northern Territory, Queensland and Victoria have introduced more punitive bail laws and policies that have led to the incarceration of children as young as 10. Refer to the end of this article for further details on the salient legislative amendments.<sup>4</sup>

These enactments have been made in direct contrast to recommendations arising from inquiries, including the 1991 Royal Commission into Aboriginal Deaths in Custody, which made 339 recommendations, some of which are listed below:

- a) reduce incarceration rates by using imprisonment as a last resort, particularly for minor offences;
- b) increase diversion programmes to keep Aboriginal people out of the criminal justice system;
- c) enhance the role of Aboriginal legal and community organisations and ensure they are adequately funded;
- d) review bail and sentencing laws that disproportionately affect Aboriginal people; and
- e) train police on Aboriginal cultures and customs to ensure fair and respectful interactions.

Instead of investing in community-led, preventative approaches, governments have continued to expand the youth detention system.

The authors of the complaint are requesting that the Committee finds that Australia is in violation of its obligations under international law and urges the Commonwealth Government to take immediate steps to protect and promote the rights of Aboriginal and Torres Strait Islander children, including:

- a) full and prompt response to the National Children's Commissioner's report;
- b) ratification of the Optional Protocol to the Convention on the Rights of the Child;
- c) withdrawal of the reservation to article 37(c) of the Convention on the Rights of the Child, which requires that children not be detained with adults; and
- d) full implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in particular by the Commonwealth Government ensuring robust National Preventative Mechanisms are operating in every state and territory.<sup>5</sup>

This submission represents a collective effort by Aboriginal and Torres Strait Islander leaders, legal advocates, and human rights experts to draw international attention to what they describe as a 'crisis of mass incarceration'<sup>6</sup>—one that continues to harm children and perpetuate systemic racial injustice.

At the time of writing, there is no indication as to when the Committee might respond to the complaint.

### Key legislative amendments in Northern Territory, Queensland and Victoria

In October 2024, the Northern Territory government passed amendments to the *Criminal Code Act 1983* (NT), which included lowering the age of criminal responsibility from 12 to 10 years of age. Additionally, the amendments repealed the offences of unlawfully disclosing an expunged record (meaning the expunged records of children as young as 10 years of age can be unlawfully disclosed without consequence), and the requirement to annotate expunged records was also repealed.

In Queensland, the newly elected Liberal National government passed the *Making Queensland Safer Act 2024* (Qld) in December 2024, which amended the *Youth Justice Act 1992* and the *Childrens Court Act 1992*. Key amendments included removing the principle of detention as a last resort, and providing that children who commit specified offences are now liable to the same maximum, mandatory and minimum penalties as adults.

In Victoria, the recent passing of the *Youth Justice Act 2024* and the *Bail Amendment Act 2025* means, like Queensland, remand will no longer be considered a last resort for children who commit offences. Additionally, strict new bail tests make it more difficult for children to be granted bail. For instance, children accused of certain offences 'must show compelling reasons why they should be bailed, rather than the prosecution proving they should not'.

<sup>4</sup> Northern Territory Government Attorney-General's Department, *Criminal Code Amendment Bill 2024* (2024). Available here: <<https://agd.nt.gov.au/law-reform-reviews/law-reforms/criminal-code-amendment-bill-2024>>; Queensland Government Department of Youth Justice and Victim Support, *Changes to Youth Justice Act and Regulation* (2025). Available here: <<https://www.youthjustice.qld.gov.au/our-department/our-legislation/changes-act>>; ABC News, *Tougher bail laws pass both houses after marathon sitting of Victorian parliament* (21 March 2025). Available here: <<https://www.abc.net.au/news/2025-03-21/victoria-bail-laws-passed/105077660>>; ABC News, *Victoria struggles to find balance in bail laws after more than a decade of change* (13 March 2025). Available here: <<https://www.abc.net.au/news/2025-03-13/victoria-bail-law-reform-explainer/105042562>>.

<sup>5</sup> Ibid [11].

<sup>6</sup> Ibid [5].

# Northern Territory Government commits to the rehabilitation of the Redbank Copper Mine

**Caitlin Treacy**

The Northern Territory Government (**Government**) has committed to rehabilitating the former Redbank Copper Mine (**mine site**) more than three decades after its closure.<sup>1</sup> The mine site, which has been described as 'one of the worst polluting sites in Australia', has been leaking toxic copper sulphide into surrounding landscapes and ecosystems for almost 30 years.<sup>2</sup> The extent of the mine's environmental impact increased since its closure in 1996, with 'battery acid-strength contamination' leaking from the site into waterways that span over 40kms, up to the Gulf of Carpentaria near Robinson River, and east to the Queensland Border.<sup>3</sup>

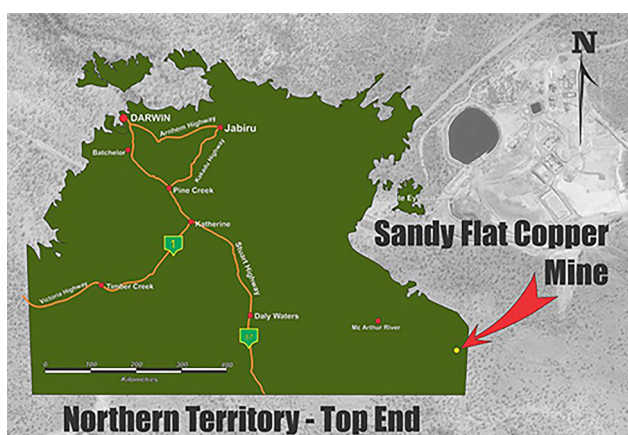
## Sick Country

The mine site is located in the Gulf region of the Northern Territory, approximately 30km west of the Queensland border and 70km inland from the Gulf of Carpentaria.<sup>4</sup> Copper oxide was first discovered at the mine site in 1916, with significant environmental degradation occurring between 1994 and 1996 as a result of 'irresponsible and unregulated' mining activities.<sup>5</sup>

The area of the mine site and its surrounds are of great cultural significance to the Traditional Owners, containing sacred sites and important natural resources including the now-polluted Hanrahan's Creek.<sup>6</sup> The area was an important local fishing, hunting and camping ground.<sup>7</sup> Traditional Owner Donald Shadforth described the site prior to the environmental damage, stating:

*"When I was a kid, it was a beautiful little paradise, this place, but when they put that mine here it changed. It makes you feel sad because what I see is this country crying out for help."*<sup>8</sup>

In 2014, the Northern Territory Environmental Protection Agency (**NTEPA**) published a case study of the mine site after investigating the 'ongoing environmental damage caused by legacy mining issues in the Northern Territory'.<sup>9</sup> The NTEPA found that the key factors contributing to the mine site's environmental impacts included 'inadequate environmental assessment, a failure to comply with regulatory approvals and a failure of the regulatory framework to effectively manage the impacts at the site'.<sup>10</sup> Ongoing environmental impacts are largely due to acid from uncontained waste rock and tailings leaching into surrounding waterways.<sup>11</sup> This pollution has turned the water in Hanrahan's Creek a luminescent green, devoid of flora and fauna.<sup>12</sup>



Source: NT EPA, 2014.



## Rehabilitation and future mining

The Government has undertaken to start rehabilitation works at the mine site during the 2025 dry season. While hopeful, Mr Shadforth stated:

*“We used to be able to eat animals and drink the water there, now the pollution is affecting everyone so deeply, there's dead trees and hardly any wildlife... Promises have been broken so many times, we just want people to fix the damage that they've caused.”<sup>13</sup>*

The Redbank Mining Company (**Redbank Mining**) has also offered to assist in site rehabilitation as part of renewed mining activities in the area.<sup>14</sup> Redbank Mining has argued that the economic benefits associated with incorporating rehabilitation into a new mining project would be the best path forward for all stakeholders. However, renewed mining activity will not be welcomed by Traditional Owners. Senior Garawa man Keith Rory stated:

*“We don't want a mining company to come in and promise a little bit of money, rehabilitation, and then after that do more mining. That's not on, we don't want mining there — no more. All we want to do is get this mess cleaned up, we want the site to be left to the way it was before the mine.”<sup>15</sup>*

<sup>1</sup> J. Bardon, 'Government promises rehabilitation at one of NT's most toxic abandoned mines', ABC News, 2025, <https://www.abc.net.au/news/2025-01-10/government-promises-to-start-rehabilitation-at-toxic-nt-mine/104800184> (accessed 16 April 2025).

<sup>2</sup> J. Bardon, 'NT Indigenous leaders call for moratorium on new mines until government starts Redbank Mine rehabilitation', ABC News, 2023, <https://www.abc.net.au/news/2023-11-29/nt-indigenous-leaders-urge-redbank-mine-rehabilitation/103158550> (accessed 16 April 2025); S. Kerins, 'Sick Country: Poisoning Garawa with Mining and Politics', New Matilda, 2014, <https://newmatilda.com/2014/07/22/sick-country-poisoning-garawa-mining-and-politics/> (accessed 16 April 2025).

<sup>3</sup> J. Bardon, 2023.

<sup>4</sup> NTG, 'Sandy Flat Mine (former Redbank Mine)', Northern Territory Government, 2025, <https://nt.gov.au/industry/mining/legacy-mines-remediation/remediation-projects/mining-remediation-fund/sandy-flat-mine-former-redbank-mine> (accessed 16 April 2025).

<sup>5</sup> NTG, 2025.

<sup>6</sup> NTG, 'Cultural Importance of Redbank Mine', Northern Territory Government, 2025, <https://nt.gov.au/industry/mining/legacy-mines-remediation/remediation-projects/mining-remediation-fund/sandy-flat-mine-former-redbank-mine/cultural-importance-of-redbank-mine> (accessed 16 April 2025).

<sup>7</sup> J. Bardon, 2023.

<sup>8</sup> Ibid.

<sup>9</sup> NTEPA, 'Redbank Copper Mine – Environmental Quality Report', Northern Territory Environmental Protection Authority, 2014, [https://ntepa.nt.gov.au/\\_\\_data/assets/pdf\\_file/0010/284743/redbank\\_environmental\\_quality\\_report.pdf](https://ntepa.nt.gov.au/__data/assets/pdf_file/0010/284743/redbank_environmental_quality_report.pdf) (accessed 16 April 2025).

<sup>10</sup> Ibid.

<sup>11</sup> D. Fitzgerald 'Northern Territory government investigating options to rehabilitate remote 'toxic' Redbank mine', ABC News, 2022, <https://www.abc.net.au/news/rural/2022-10-17/redbank-copper-mine-rehabilitation-nt/101530170> (accessed 16 April 2025).

<sup>12</sup> J. Bardon, 2023.

<sup>13</sup> J. Bardon, 2025.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.



Landscape near Mparntwe (Alice Springs), Arrernte Country, Northern Territory

# Northern Territory Government Introduces Territory Coordinator Act 2025

**Felicity Thiessen, Clare Sayers, Caitlin Treacy and Tara Hatcher-Leahy**

In late 2024, the Northern Territory Government (the **Government**) revealed plans to introduce the Territory Coordinator Bill 2025 as part of a broader plan to enhance economic growth within the Northern Territory.<sup>1</sup> Despite considerable pushback from opposition members, environmentalists and Aboriginal organisations,<sup>2</sup> the Territory Coordinator Act 2025 (the **Act**) was passed in March 2025, granting the newly established Territory Coordinator (**Coordinator**) broad powers to expedite 'economically significant' projects (that is, any project deemed to be of 'economic significance' by, for example, facilitating job creation or private sector investment)<sup>3</sup> by 'cutting red tape' and fast-tracking project approvals.<sup>4</sup>



Tjoritja (MacDonnell Ranges), Arrente Country, Northern Territory

## Powers of the Territory Coordinator

Under the Act, the Coordinator has the power to streamline government processes by issuing notices to public agencies to share information, permit entry onto land without a warrant, and override certain statutes, amongst other things.

In relation to the authority to override certain statutes, the Act empowers the Coordinator to make recommendations to the Chief Minister regarding areas of the Northern Territory that may be suitable for designation as Territory Development Areas (**TDAs**) or Infrastructure Coordination Areas (**ICAs**).<sup>5</sup> The purpose of designating an area a TDA or an ICA is to prioritise and accelerate major development by removing regulatory barriers and reducing timeframes. Once an area is declared a TDA, the Coordinator has the power to issue a 'step-in' notice (meaning the Coordinator will make the relevant statutory decision in place of the usual decision-maker),<sup>6</sup> or recommend that the Minister issue exemptions from compliance with specified laws listed in the Schedule to the Act. The *Heritage Act 2011* (NT) (**Heritage Act**) is one of the Scheduled laws.

<sup>1</sup> NTG, 'Guide to the Territory Coordinator Bill', Department of the Chief Minister and Cabinet, 2024, [https://cmc.nt.gov.au/\\_\\_data/assets/pdf\\_file/0014/1460300/explanatory-guide-to-the-territory-coordinator-bill.pdf](https://cmc.nt.gov.au/__data/assets/pdf_file/0014/1460300/explanatory-guide-to-the-territory-coordinator-bill.pdf) (accessed 16 April 2025).

<sup>2</sup> NTG, 'The Territory Coordinator', Department of the Chief Minister and Cabinet, 2025, <https://cmc.nt.gov.au/advancing-industry/the-territory-coordinator> (accessed 16 April 2025); J. Bardon, 2025.

<sup>3</sup> Territory Coordinator Act 2025 (Northern Territory), ss 3 and 4.

<sup>4</sup> J. Bardon, 'Warnings planned new Territory Coordinator law could erode Indigenous land rights and open door to nuclear waste storage', ABC News, 2025, <https://www.abc.net.au/news/2025-01-16/nt-territory-coordinator-concerns-laws-could-erode-rights/104820618> (accessed 16 April 2025).

<sup>5</sup> Territory Coordinator Act 2025 (Northern Territory), s 19(1)(c).

<sup>6</sup> Ibid, s 68(2).



Including the Heritage Act as a Scheduled law has caused concern for the safeguarding of sites of historical and cultural significance, including Aboriginal sites.<sup>7</sup> By contrast, the Aboriginal Sacred Sites Act 1989 (NT) (**Sacred Sites Act**)—which is not Scheduled—only applies to ‘sacred sites’ as defined under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (**ALRA**): places that are ‘sacred to [Aboriginal people] or [are] otherwise of significance according to Aboriginal tradition’.<sup>8</sup> Cultural heritage that does not fit this definition—for example, artefact scatters—are not covered by the Sacred Sites Act. The Heritage Act ‘operates in tandem with the [Sacred Sites Act] to protect Aboriginal artefacts and archaeological dig sites’.<sup>9</sup> As a result, some cultural heritage could lose protection if certain provisions of the Heritage Act are set aside pursuant to an exemption notice.

Under section 78 of the Act, an exemption notice can be issued on one of the following grounds:

- a) **Unnecessary for effective regulation:** If applying the law or part thereof would not meaningfully contribute to the effective regulation of the project—based on the law’s purpose and objectives—the Coordinator can exempt compliance with it.
- b) **Duplication of existing legal processes:** If the law duplicates another legal process that has already been, or will be, completed in relation to the same project, the Coordinator may exclude it to avoid unnecessary repetition.

The Minister must table a copy of any exemption notice in the Legislative Assembly on the next sitting day, and the Legislative Assembly may pass a resolution to disallow the exemption notice.<sup>10</sup>

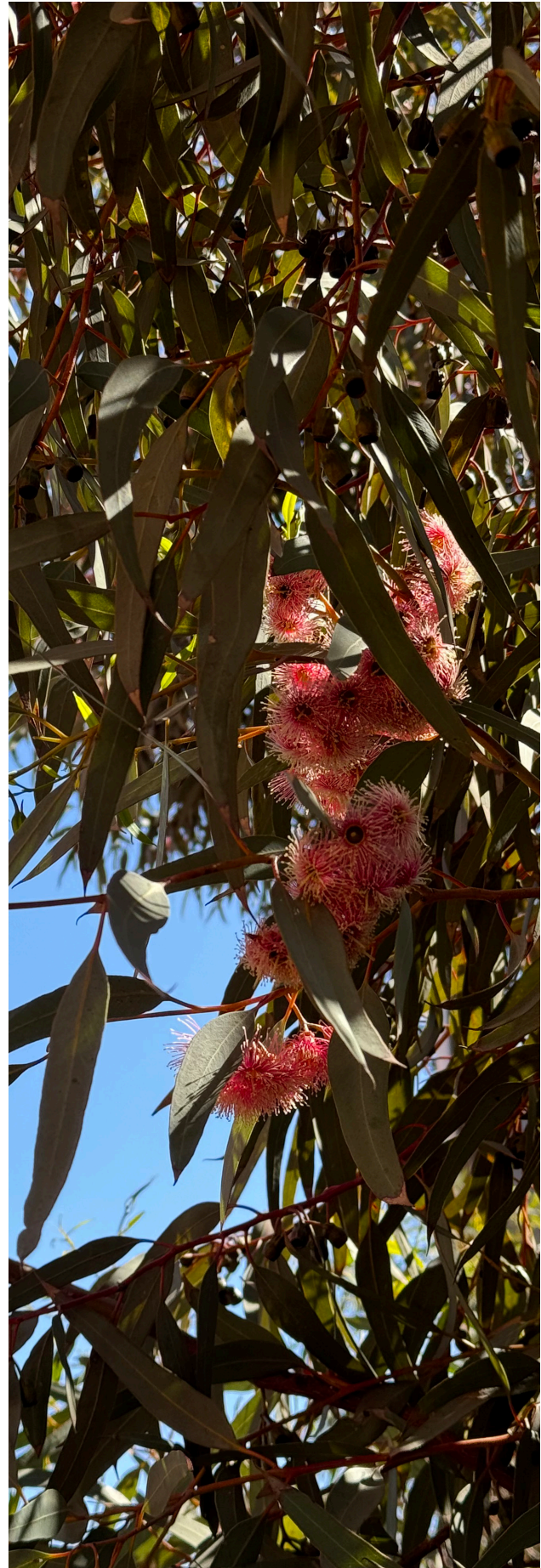
In relation to the power to authorise entry to land, pursuant to section 92 of the Act, the Coordinator may permit entry to land within a TDA or ICA, including for inspections and other preparatory activities, without a warrant.

<sup>7</sup> Northern Land Council, ‘Submission to the Northern Territory Government Department of the Chief Minister and Cabinet on the Draft Territory Coordinator Bill’ (17 January 2025), [3.12]. Available here: <[https://irp.cdn-website.com/98b48721/files/uploaded/Territory\\_Coordinator\\_Bill\\_-\\_NLC\\_Submission\\_%28FINAL%29.pdf](https://irp.cdn-website.com/98b48721/files/uploaded/Territory_Coordinator_Bill_-_NLC_Submission_%28FINAL%29.pdf)>.

<sup>8</sup> Sacred Sites Act 1989 (NT) s 3; Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) s 3.

<sup>9</sup> Northern Land Council, ‘Submission to the Northern Territory Government Department of the Chief Minister and Cabinet on the Draft Territory Coordinator Bill’ (17 January 2025), [3.12]. Available here: <[https://irp.cdn-website.com/98b48721/files/uploaded/Territory\\_Coordinator\\_Bill\\_-\\_NLC\\_Submission\\_%28FINAL%29.pdf](https://irp.cdn-website.com/98b48721/files/uploaded/Territory_Coordinator_Bill_-_NLC_Submission_%28FINAL%29.pdf)>.

<sup>10</sup> Territory Coordinator Act 2025 (Northern Territory), s 69.



Callistemon in Karlakurla (Kalgoorlie), Wongatha (Wangkatja/Wangkatha) Country, Western Australia

In its first submission to the Government during the consultation phase, the Northern Land Council (NLC) raised concerns that 'entry onto Aboriginal land, or land affected by native title, may occur without the informed consent, or the awareness, of Traditional Owners'.<sup>11</sup> The NLC made the following submissions regarding land access:

#### **Aboriginal land**

6.3 Firstly, sections 30 and 31 [of the Act] allow entry onto Aboriginal Land by obtaining consent from the owner or occupier. There is no requirement for compliance with section 4 of the *Aboriginal Land Act 1978 (ALA)* in relation to entry onto Aboriginal land (being the requirement to obtain a permit). Therefore, the practical application of sections 30 and 31 constitutes interferences with the ALA, despite the purported intention of section 14.

#### **Land affected by native title**

6.4 An authorisation to enter land affected by native title could give rise to a 'future act' for the purposes of the Native Title Act. The NLC considers the activities permitted by section 31 would be inconsistent with the continued existence of exclusive native title rights, and also with the continued enjoyment or exercise of certain non-exclusive native title rights. The NLC is concerned that, in practice, the future act provisions of the Native Title Act (Part 2, Division 3) will not be observed in the application of sections 30 and 31.

#### **Consent from owner or occupier**

6.5 Having the option to obtain consent from the owner or occupier is problematic, as it means that activities on Aboriginal land, or land subject to native title, may occur unbeknownst to Traditional Owners. For example, for Aboriginal Land, per section 30, consent could be obtained from the section 19 lessee only, and for pastoral leases, consent could be obtained from the pastoral lease holder only. We note that the SA Bill requires consent from both the owner and occupier.

Additionally, the NLC submitted that various types of rights held by Traditional Owners could be modified or overridden under the Act.<sup>12</sup> In this regard, the NLC stated:

The NLC has identified the following types of rights held by Traditional Owners which could be modified or overridden under the current Bill (this is a non-exhaustive list):

- a) **Consultation rights** – The right to make written submissions in response to applications for water extraction licences, non-pastoral use permits, pastoral land clearing permits, and mineral titles;
- b) **Requirement to comply with the [Native Title Act 1993 (Cth) (Native Title Act)] and [ALRA]** – [Northern Territory] legislation requiring specific compliance with the Native Title Act's future act provisions of the [ALRA] as a precondition to granting an interest, such as under the *Petroleum Act 1984 (NT)* and the *Mineral Titles Act 2010 (NT)*;
- c) **Requirement to consider Aboriginal cultural values** – [T]he Pastoral Land Act (through the Pastoral Land Clearing Guidelines), the Water Act, and the *Environment Protection Act 2019 (NT)* require consideration of Aboriginal cultural values and sacred sites; and
- d) **Other procedural rights** – Other laws separately require compliance with certain procedural steps to validly affect native title as a matter of NT law, such as the *Land Acquisition Act 1978 (NT)* and the *Territory Parks and Wildlife Conservation Act 1976 (NT) (TPWC Act)*.

In its submissions, the Central Land Council (CLC) stated:

*While it is uncontentious law that the Territory Coordinator and Minister are not empowered to interfere with the operation of Commonwealth laws like the [ALRA] or Native Title Act, the TC Bill does not expressly say so. Were a Territory Coordinator or Minister to erroneously impinge on those Acts, a judicial review application would be required.*<sup>13</sup>

<sup>11</sup> Northern Land Council, 'Submission to the Northern Territory Government Department of the Chief Minister and Cabinet on the Draft Territory Coordinator Bill' (17 January 2025), [6.2]. Available here: <[https://irp.cdn-website.com/98b48721/files/uploaded/Territory\\_Coordinator\\_Bill\\_-\\_NLC\\_Submission\\_%28FINAL%29.pdf](https://irp.cdn-website.com/98b48721/files/uploaded/Territory_Coordinator_Bill_-_NLC_Submission_%28FINAL%29.pdf)>.

<sup>12</sup> Northern Land Council, 'Submission to the Northern Territory Government Department of the Chief Minister and Cabinet on the Draft Territory Coordinator Bill' (17 January 2025), [3.7]. Available here: <[https://irp.cdn-website.com/98b48721/files/uploaded/Territory\\_Coordinator\\_Bill\\_-\\_NLC\\_Submission\\_%28FINAL%29.pdf](https://irp.cdn-website.com/98b48721/files/uploaded/Territory_Coordinator_Bill_-_NLC_Submission_%28FINAL%29.pdf)>.

<sup>13</sup> Central Land Council, 'Submission on Territory Coordinator Bill 2024' (17 January 2025), [13]. Available here: <<https://www.clc.org.au/wp-content/uploads/CLC-Submission-on-Territory-Coordinator-Bill.pdf>>.





Gungardie (Cooktown), Guugu Yimithirr Country, Queensland

## Responses to the Act

During the Act's consultation phase, the Government received 559 written submissions. Those critical of the legislation raised key concerns pertaining to potential negative impacts on environmental, cultural, social and heritage values.<sup>14</sup> Both the NLC and CLC made two submissions each,<sup>15</sup> and also published a joint media release in partnership with the Anindilyakwa and Tiwi Land Councils.<sup>16</sup>

**"All activities on Aboriginal land must involve the owners of that land. After all this is privately owned land. Any other private landowner would have the same expectations. The right people must be consulted and give their free, prior and informed consent."**

Cherelle Wurrawilya  
Anindilyakwa Land Council Chair

In the joint media release, the Northern Territory's four land councils jointly criticised the new legislation. Concerns regarding the 'unchecked' and 'expansive' power of the Coordinator were central to the land councils' opposition. In the joint statement issued by the NLC, they stated that 'the Bill [as it then was] excludes Aboriginal people from involvement in development decisions on their traditional lands and prevents them from protecting their land and culture'.<sup>17</sup>

In summary, while the Act cannot lawfully interfere with the operation of the Native Title Act and ALRA there remain significant concerns for the impacts of the Act on Aboriginal cultural heritage, rights and interests in concert with a lack of consultation with affected Aboriginal peoples.

<sup>14</sup> NTG, 'Consultation Report: Draft Territory Coordinator Bill', Department of the Chief Minister and Cabinet, 2025, [https://cmc.nt.gov.au/\\_data/assets/pdf\\_file/0010/1481932/tc-consultation-report.pdf](https://cmc.nt.gov.au/_data/assets/pdf_file/0010/1481932/tc-consultation-report.pdf) (accessed 16 April 2025).

<sup>15</sup> Please see here for links to submissions: Northern Land Council (<https://www.nlc.org.au/nlc-submission-on-the-territory-coordinator-bill> and <https://www.nlc.org.au/territory-coordinator-bill-submissions-to-the-legislative-scrutiny-committee>) and Central Land Council (<https://www.clc.org.au/wp-content/uploads/CLC-Submission-on-Territory-Coordinator-Bill.pdf> and <https://www.clc.org.au/wp-content/uploads/CLC-Submission-to-Legislation-Scrutiny-Committee-re-Territory-Coordinator-Bill-20250219.pdf>).

<sup>16</sup> Northern Land Council, 'Joint media release: NT land councils call on NT government to bin Territory Coordinator Bill' (12 March 2025). Available here: <https://www.nlc.org.au/joint-media-release-nt-land-councils-call-on-nt-government-to-bin-territory-coordinator-bill>.

<sup>17</sup> NLC, 2025.

# Five years on: Implementation of the Yamatji Nation Indigenous Land Use Agreement

**Clare Sayers and Lani Slockee**

Executed in February 2020, the Yamatji Nation Indigenous Land Use Agreement (**Yamatji Nation ILUA** or the **ILUA**) between the Yamatji Nation and the State of Western Australia (**State**) resolved the State's native title compensation in relation to approximately 48,000 square kilometres in the Mid West region of Western Australia (**WA**). The parties agreed upon a comprehensive benefits package, and established a framework for long-term economic development, employment, training, housing, tourism, and land management, supporting the self-determination of the Yamatji Nation.<sup>1</sup>

The authors acknowledge that this article has been drafted on the basis of Yamatji Southern Regional Corporation's newsletters.<sup>2</sup>

## Background to the Yamatji Nation ILUA

Negotiations toward the Yamatji Nation ILUA commenced in 2017 between the Southern Yamatji, Hutt River, Mullewa Wadjari and Widi Mob native title claim groups. The Federal Court later made orders for the four claimant groups to file a consolidated native title claim. The claimant groups did so, consolidating with the Yamatji Nation Claim, and the settlement of the consolidated claim occurred via the Yamatji Nation ILUA.<sup>3</sup>

In 2019, a two-day authorisation meeting was held, during which 92% of attendees voted in favour of the proposed native title determinations and the ILUA. In early 2020, the Yamatji Southern Regional Corporation (**YSRC**) was established to fulfil the duties of the Regional Entity under the ILUA, which include administering the implementation of the ILUA.<sup>4</sup> Later that year, the ILUA was registered on the National Native Title Tribunal's Register of Indigenous Land Use Agreements, marking one of the first comprehensive compensation settlements in Australia.



Supermoon in Karla Kurla (Kalgoorlie), Wongatha (Wangkatja/Wangkatha) Country, Western Australia

<sup>1</sup> Department of the Premier and Cabinet (Western Australia), 'Yamatji Nation Indigenous Land Use Agreement' (26 November 2021). Available here: <<https://www.wa.gov.au/organisation/departments-and-cabinet/yamatji-nation-indigenous-land-use-agreement>>.

<sup>2</sup> Newsletters available here: <<https://www.ysrc.com.au/member-newsletters>>.

<sup>3</sup> Yamatji Nation Indigenous Land Use Agreement (2020), B (p. 14). Available here: <[https://www.wa.gov.au/system/files/2021-06/Yamatji%20Nation%20ILUA%20%20Executed%20Agreement\\_Redacted.pdf](https://www.wa.gov.au/system/files/2021-06/Yamatji%20Nation%20ILUA%20%20Executed%20Agreement_Redacted.pdf)>.

<sup>4</sup> Yamatji Nation Indigenous Land Use Agreement (2020), J(b) (p. 16). Available here: <[https://www.wa.gov.au/system/files/2021-06/Yamatji%20Nation%20ILUA%20%20Executed%20Agreement\\_Redacted.pdf](https://www.wa.gov.au/system/files/2021-06/Yamatji%20Nation%20ILUA%20%20Executed%20Agreement_Redacted.pdf)>.



## What benefits are included in the Yamatji Nation ILUA?

Benefits under the ILUA flow over 15 years from conclusive registration on 26 October 2020.<sup>5</sup> The ILUA provides for a compensation package valued at \$442 million, excluding the value of Crown land transferred pursuant to the ILUA. The benefits package compensates the Yamatji Nation for 'all current and future native title determination applications', including compensation claims for the loss, surrender or impairment of native title in the area,<sup>6</sup> and is 'designed to support the development of sustainable economic independence and self-development for current and future generations of Yamatji people'.<sup>7</sup>

The benefits package includes:

- a) \$325 million held in trust for the Yamatji Nation;
- b) \$70 million allocated for assets and economic development initiatives;
- c) 35% of annual rental income from mining tenures in the agreement area for ten years; and
- d) 5% of lease income from land within Oakajee Industrial Project.

A significant non-monetary aspect of the compensation package is the Yamatji Land Estate, comprising approximately 150,000 hectares in total.<sup>8</sup>



Kuranda region, Djabugay Country, Queensland

## What milestones have been reached?

Nearly five years on from registration, the parties have progressed the implementation of a number of provisions of the ILUA. Below, we have listed some key achievements.

- a) **Transfer of land:** As of April 2025, the Bundi Yamatji Aboriginal Corporation (**BYAC**) (the registered native title body corporate for the Yamatji people) has accepted 693 parcels of land, which is currently estimated to be 96% of the available land, making the Yamatji Nation one of the largest landholders in the region.<sup>10</sup>
- b) **Clean Energy Scoping Project:** YSRC has engaged with the Australian National University (**ANU**) to undertake a clean energy study into wind, solar, hybrid systems and microgrids across Yamatji country to assess where clean energy investment might have the most benefit.<sup>11</sup> The project is called the Yamatji South – Clean Energy Scoping Project, and will be delivered across two stages:
  - i. Stage 1: A rapid site assessment of the energy potential of eligible land parcels; and
  - ii. Stage 2: A detailed shortlisted site-specific assessments of suitability for grid connections, cultural values over land use scenarios and commercial site attractiveness mapping.<sup>12</sup>

<sup>5</sup> Western Australian Government, 'Yamatji Nation Indigenous Land Use Agreement' (26 November 2021). Available here: <<https://www.wa.gov.au/organisation/departments-of-the-premier-and-cabinet/yamatji-nation-indigenous-land-use-agreement>>.

<sup>6</sup> Yamatji Nation Indigenous Land Use Agreement (2020), D (p. 14). Available here: <[https://www.wa.gov.au/system/files/2021-06/Yamatji%20Nation%20ILUA%20%20Executed%20Agreement\\_Redacted.pdf](https://www.wa.gov.au/system/files/2021-06/Yamatji%20Nation%20ILUA%20%20Executed%20Agreement_Redacted.pdf)>.

<sup>7</sup> Agreement overview, Yamatji Nation Indigenous Land Use Agreement. Available here: <[www.wa.gov.au/system/files/202003/07.Agreement%20Overview\\_final.pdf](https://www.wa.gov.au/system/files/202003/07.Agreement%20Overview_final.pdf)>.

<sup>8</sup> Yamatji Southern Regional Corporation, 'Yamatji Land Estate'. Available here: <<https://www.ysrc.com.au/country/yamatji-land-estate>>.

<sup>9</sup> Yamatji Southern Regional Corporation, 'Newsletter: March-April 2025' (2025). Available here: <<https://www.ysrc.com.au/blog/ysrc-newsletter-mar-april>>.

<sup>10</sup> Government of Western Australia, 'Significant milestone under landmark Yamatji agreement' (18 November 2024). Available here: <<https://www.wagov.pipeline.preproduction.digital.wa.gov.au/government/media-statements/Cook%20Labor%20Government/Significant-milestone-under-landmark-Yamatji-agreement-20241118>>.

<sup>11</sup> Yamatji Southern Regional Corporation, 'Newsletter: March-April 2025' (2025). Available here: <<https://www.ysrc.com.au/blog/ysrc-newsletter-mar-april>>.

<sup>12</sup> Yamatji South – Clean Energy Scoping Project <https://researchportalplus.anu.edu.au/en/projects/yamatji-south-clean-energy-scoping-project>

The project is due for completion at the end of July 2025. The study 'is the first of its kind in empowering an Aboriginal corporation to lead in renewable energy decision-making'.<sup>13</sup>

- c) **Yamatji Fresh Produce:** Yamatji Enterprises Limited (YEL), the economic branch of YSRC, entered into a joint venture with 4 Ways Fresh and Indigenous Business Australia to form Yamatji Fresh Produce (YFP). In 2022, YSRC and IBA acquired two parcels of land in Geraldton, Western Australia, and construction of a horticultural facility began in 2023.<sup>14</sup> The facility will house a large-scale cucumber farming operation, with 300 greenhouses to be constructed by the end of 2025. Each greenhouse will house 9,000 cucumber plants, the fruits of which have been, and will be, sold to supermarkets nationally. YFP is the largest cucumber farm in the Southern Hemisphere. The joint venture is designed to deliver economic benefits and employment opportunities to the Yamatji Nation, fostering community development and self-determination.
- d) **Ranger programs:** YSRC administers two ranger programs: the Yamatji Land Rangers and the Yamatji Sea Rangers. The Yamatji Land Ranger Program is a partnership between the YSRC and the Department of Biodiversity, Conservation and Attractions,<sup>15</sup> and the Yamatji Sea Ranger Program is a partnership between BYAC, Batavia Coast Maritime Institute, Central Regional TAFE, the University of Western Australia, and Parks Australia.<sup>16</sup> Both programs train rangers in activities such as fauna and flora surveys, fire management, infrastructure maintenance, cultural heritage conservation, and marine conservation and management. The programs also allow for an initiative called the Yamatji Ranger Cultural Knowledge Exchange, which provides opportunities for Elders to share stories, cultural site histories, and family connections with rangers.<sup>17</sup> Both programs aim to empower Yamatji people through employment, education and the strengthening of cultural connections to land and sea.

To stay up to date with YSRC, please visit their website at: [www.ysrc.com.au](http://www.ysrc.com.au).

<sup>13</sup> Yamatji Southern Regional Corporation, 'Newsletter: November-December 2024' (2024). Available here: <<https://www.ysrc.com.au/blog/newsletter-november2024>>.

<sup>14</sup> Australian Government Transparency Portal, 'Horticulture: Yamatji Fresh Produce' (Annual Report 2022-23). Available here: <<https://www.transparency.gov.au/publications/prime-minister-and-cabinet/indigenous-business-australia/annual-report-2022-23/part-4%3A-our-performance-against-our-strategy/horticulture%3A-yamatji-fresh-produce>>.

<sup>15</sup> Yamatji Southern Regional Corporation, 'Yamatji Sea Rangers'. Available here: <<https://www.ysrc.com.au/yamatji-sea-rangers>>.

<sup>16</sup> Yamatji Southern Regional Corporation, 'Yamatji Land Rangers'. Available here: <<https://www.ysrc.com.au/yamatji-land-rangers>>.

<sup>17</sup> Yamatji Southern Regional Corporation, 'January - February 2025' (2025). Available here: <<https://www.ysrc.com.au/blog/ysrc-newsletter-feb2025?rq=report>>.



Tumby Bay, Barnngarla Country, South Australia





Koala near Gimuy (Cairns), Gimuy Walubarra Yidinji Country, Queensland



# ‘One Heart, One Mind’: The story of the Yirrkala Bark Petitions

## Clare Sayers and Lisa Hicks

In 1963, the Yolngu people of Yirrkala in north-east Arnhem Land created the Yirrkala Bark Petitions (**petitions**) in response to the Commonwealth Government's decision to excise land in the Gove Peninsula, without consulting the Yolngu people, for the purpose of bauxite mining. The four distinctive petitions, on traditional bark paintings, combined text in both English and Yolngu Matha. described the petitions described the importance of the land to the Yolngu since time immemorial, and expressed concerns for the lack of consultation in relation to the excision and sought to have their voices heard on how their country was being dealt with. Unfortunately, the petitions did not prevent mining in the area, but they did lead to the start of the land rights movement.

In 2024, a documentary titled ‘One Heart, One Mind’ was released. Directed by Larissa Behrendt AO, the documentary reflects upon the impact of the petitions on the land rights movement, and covers the story of the petitions and their return to Yirrkala.<sup>1</sup>

### Return of the petitions to Yirrkala

In 2022, three of the four petitions were accounted for: two were on display in Parliament House, and another in the National Museum of Australia. The fourth petition had been missing for 29 years, and was discovered after historian Clare Wright contacted Joan McKie in Derby, Western Australia, who confirmed she had the missing petition hanging on a wall at her residence.<sup>3</sup>

From there, Yananymul Mununggurr—daughter of Dhunggala Mununggurr, one of the original signatories to the petitions—and four other Yolngu representatives travelled from Yirrkala to Derby to retrieve the petition and return it to Yirrkala.<sup>4</sup>

<sup>3</sup> Madison Howarth, ‘One Mind, One Heart: The legacy of the Yirrkala barks, Australia's first successful petitions’, ABC News (22 January 2025). Available here: <<https://www.abc.net.au/news/2025-01-22/yirrkala-barks-one-mind-one-heart-sbs-documentary/104841284>>.

<sup>4</sup> Tallulah Bieundurry, ‘Historic Bark Petition artefact returned to traditional owners after 59-year travels around Australia’, ABC News (24 November 2022). Available here: <<https://www.abc.net.au/news/2022-11-24/bark-petition-artefact-truth-telling-returned-to-yolngu-people/101678052>>.



Kalbarri National Park, Nanda Country, Western Australia

<sup>1</sup> Madison Howarth, ‘One Mind, One Heart: The legacy of the Yirrkala barks, Australia's first successful petitions’, ABC News (22 January 2025). Available here: <<https://www.abc.net.au/news/2025-01-22/yirrkala-barks-one-mind-one-heart-sbs-documentary/104841284>>.

<sup>2</sup> Tallulah Bieundurry, ‘Historic Bark Petition artefact returned to traditional owners after 59-year travels around Australia’, ABC News (24 November 2022). Available here: <<https://www.abc.net.au/news/2022-11-24/bark-petition-artefact-truth-telling-returned-to-yolngu-people/101678052>>.



## Impact of the Yirrkala Bark Petitions

The petitions were tabled in Parliament on 14 and 28 August 1963.<sup>5</sup> They sought the appointment of a committee to hear the views of the Yolngu people of Yirrkala before permitting the excision of the relevant land, and that no arrangements would be entered into with any mining company that would destroy the livelihood and independence of the Yirrkala people.<sup>6</sup>

The petition tabled on 14 August 1963 was rejected by Labor member for the Northern Territory, Jock Nelson, due to the fact the signatories included young people and women, who Mr Nelson implied 'were acting as the puppets of radicals from the southern states'.<sup>7</sup> The Yirrkala people responded with a further copy of the petition including thumbprints from senior men and women, which was tabled on 28 August and formally received. This resulted in an inquiry into the concerns raised in the petition.

Despite the inquiry finding that the Yolngu people had not been adequately consulted about the mining, and that they were entitled to compensation, the Commonwealth ignored the finding and issued the *Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968 (Cth)*, which allowed the bauxite mining to continue. As a result, an aluminium refinery and township of Nhulunbuy were constructed on Yolngu land.<sup>8</sup>



Atherrke, near Mparntwe (Alice Springs), Arrernte Country, Northern Territory

In response, the Yolngu people took the issue to the Supreme Court of the Northern Territory, seeking to have their rights in the land recognised in the matter of *Milirrpum v Nabalco Pty Ltd*. Ultimately, Blackburn J held that no doctrine of communal title has ever existed in the common law and that the land in question formed part of the settled colony subject to the English law. His honour felt himself bound by the decision of the Privy Council in *Cooper v Stuart* which held that the colony of New South Wales was a 'tract of territory practically unoccupied, without settled inhabitants or settled law'.<sup>9</sup> However, he did recognise that the Yolngu people demonstrated a 'subtle and elaborate system highly adapted to the country in which the people led their lives, which provided a stable order of society', which left open the possibility of recognition in the future.<sup>10</sup>

While the matter was unsuccessful, it led to the Whitlam Government establishing an inquiry into Aboriginal land rights in the Northern Territory (the Woodward Commission) and ultimately the enactment of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*.

## Where to watch 'One Heart, One Mind'

'One Heart, One Mind' can be viewed on SBS On Demand here: <https://www.sbs.com.au/ondemand/movie/one-mind-one-heart/2398494787910>

<sup>5</sup> Museum of Australian Democracy, 'Yirrkala bark petitions'. Available here: <<https://www.foundingdocs.gov.au/item-did-104.html>>.

<sup>6</sup> Museum of Australian Democracy, Translation of Yirrkala Bark Petitions. Available here: <[https://www.foundingdocs.gov.au/resources/transcripts/cth15\\_doc\\_1963.pdf](https://www.foundingdocs.gov.au/resources/transcripts/cth15_doc_1963.pdf)>.

<sup>7</sup> Clare Wright, '1963—The Yirrkala Bark Petitions', Australian Dictionary of Biography. Available here: <<https://adb.anu.edu.au/the-quest-for-indigenous-recognition/the-yirrkala-bark-petitions>>.

<sup>8</sup> Clare Wright, '1963—The Yirrkala Bark Petitions', Australian Dictionary of Biography. Available here: <<https://adb.anu.edu.au/the-quest-for-indigenous-recognition/the-yirrkala-bark-petitions>>.

<sup>9</sup> *Cooper v Stuart* (1889) 14 App Cas 286.

<sup>10</sup> *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141, 266-7.

# What's happening around the country?

All endnotes can be found on page 35.



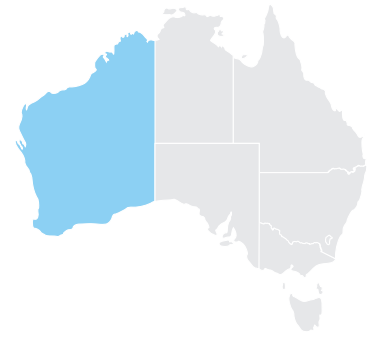
## National

- The Mabo Centre—a joint initiative of the University of Melbourne and the National Native Title Council—was launched on 3 March 2025. The centre aims to honour the legacy of Eddie Koiki Mabo by supporting Traditional Owner groups to achieve better economic outcomes. The Mabo Centre will help Traditional Owner groups maximise their 'economic, social and cultural benefits of [land and sea rights] by building leadership skills and knowledge to advance successful agreement-making'.<sup>1</sup> The Mabo Centre's four key focus areas include research, training, exchange and acceleration.<sup>2</sup>
- In March, the High Court of Australia (**High Court**) delivered its judgment in *Commonwealth of Australia v Yunupingu on behalf of the Gumatj Clan or Estate Group* [2025] HCA 6. The High Court affirmed that native title rights and interests constitute property for the purposes of section 51(xxxi) of the Constitution, meaning extinguishment of native title rights amounts to an acquisition of property, for which 'just terms' compensation must be paid.<sup>3</sup>
- In April, the High Court of Australia (**High Court**), in *Stuart v State of South Australia*, unanimously allowed an appeal by the Arabana people from a decision of the Full Court of the Federal Court (**Full Court**). The Full Court had previously determined that, while the forebears of the Arabana people held native title rights and interests in the claim area at sovereignty, the Arabana people had not proved their continuing connection to the area. The High Court found that the Full Court had erred in its application of the 'connection' principle as it focussed on whether there were physical acts which demonstrated connection rather than assessing whether there remained a connection in accordance with traditional laws and customs (which may be established other than by physical acts). The matter has been remitted to the Full Court to determine whether the Arabana people hold native title rights in the claim area.<sup>4</sup>



## Western Australia

- Banjima Native Title Aboriginal Corporation recently secured \$5.5 million in funding to support two clean energy projects, which will see 103 megawatts of solar power and 51.5 megawatts of battery storage constructed on Banjima country.<sup>5</sup>
- Bardi Jawi Rangers have warned that extensive coral bleaching in an area of west Kimberley coastline is the 'worst seen on country', and is the result of rising water temperatures due to climate change. In a partnership with the Australian Institute of Marine Science, Bardi Jawi Rangers are 'building long-term data on coral reef and fish health across Bardi and Jawi Sea Country'.<sup>6</sup>



## Victoria

- The Gunaikurnai Land and Waters Aboriginal Corporation have entered into an 'engagement agreement' with Iberdrola Australia, a wind energy proponent, in relation to the proposed Aurora Green Project located within Gunaikurnai's sea country. The agreement ensures Gunaikurnai has a voice in the project as it undergoes early feasibility stages.<sup>7</sup>
- A Lake Bolac farmer has been found guilty of destroying Aboriginal cultural heritage after using an excavator to 'remove rocks from a 1,500-year-old, 300-metre long stone arrangement resembling an eel'. The formation is known to the Djap Wurrung people as the 'kuyang ceremonial ground', and was recognised and registered as a significant site in 1975. The offender has been sentenced to a 12-month good behaviour undertaking and must pay \$7,000 to the Aboriginal Heritage Council.<sup>8</sup>



## Northern Territory

- The Northern Territory Government has formally ended the Territory's Treaty process. Commenced in 2018, a 180-page report including recommendations was released in 2022. The Northern Territory Government has confirmed that none of the recommendations will be implemented.<sup>10</sup>
- Multinational mining company Glencore has been fined \$31,500 after pleading guilty to charges of unlawfully entering and carrying out works on a registered sacred site at the McArthur River Mine known as Damangani (Barney Creek). Glencore failed to secure the required approvals from the Aboriginal Area Protection Authority prior to undertaking works.<sup>11</sup>



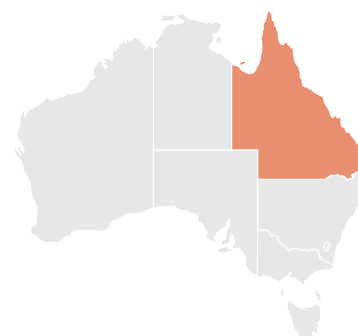
### South Australia

- In March, the South Australian Court of Appeal (**Court**) delivered its judgment in *Rangelea Holdings Pty Ltd v Adnyamathanha Traditional Lands Association* [2025] SASCA 32, which confirmed the statutory right of native title holders (and prescribed bodies corporate acting on their behalf) to access documents and financial records of trusts of which they are the beneficiaries.<sup>6</sup>



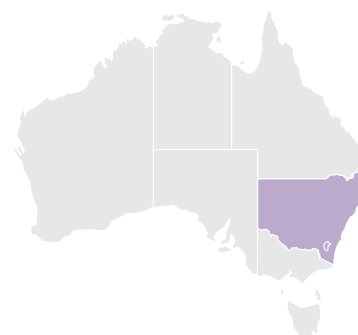
### Queensland

- In March, the Land Court of Queensland (Land Court) delivered its judgment in *Re Sungela Pty Ltd & Anor* [2025] QLC 5, in which it recommended that the Ensham Coal Mine located in Central Queensland not be subject to a 25-year extension on its current mining lease 'unless and until [the proponents] show real and significant progress towards mitigating their [greenhouse gas] emissions'.<sup>12</sup>
- Ancestral remains have been returned to the Woppaburra, Warrgamay, Wuthathi and Yadhigana communities from the United Kingdom's Natural History Museum. This is the fourth return of ancestral remains to Australia by the museum.<sup>13</sup>



### New South Wales

- The Hunter Valley Operations' 'HVO North' mine—one of the largest coal mines in New South Wales—has been granted an extension two months before its mining approvals were due to expire. The mine is a joint venture between Yancoal and Glencore, and is part of Hunter Valley Operations' plans to mine the area until 2050.<sup>14</sup>
- In April, the New South Wales Aboriginal Land Council appointed its first female Chief Executive Officer, Ms Clare McHugh.<sup>15</sup>



### Tasmania

- The Tasmanian Planning Commission (**TPC**) recently released a draft report on its assessment of the proposed Macquarie Point Stadium in Hobart. The TPC was critical of the Tasmanian government's plans and stated that the government has 'grossly underestimated the cost and overestimated the benefits' of the stadium. Initially, plans for the stadium included an Aboriginal cultural centre, but the latest plans for the stadium do not.<sup>19</sup>
- The Land and Sea Aboriginal Corporation Tasmania (**LSACT**) has entered into an agreement with the Tasmanian government, which concerns a 'long-term lease and buy back arrangement of 40 abalone units at Musselroe Bay in the state's far north-east'.<sup>20</sup> According to LSACT chair Rodney Dillon, the arrangement will result in positive cultural, economic and social impacts for Tasmania's Aboriginal people.





## Australian Capital Territory

- From 20 – 22 May, a three-day camp will be held in Canberra to 'explore, share and practice Indigenous water science and governance'.<sup>16</sup> The camp, hosted by Monash University, is intended to cover discussions on aqua nullius (water belonging to no one) and the impact of this principle, as well as a workshop on water country plans. The camp is intended to be conducted every two years.
- The first stage of Ngamawari, a large-scale, culturally significant public space in Canberra is due for completion this year. The park's name was gifted by the Ngunnawal people to signify the cultural importance of nearby limestone caves, now flooded beneath Lake Burley Griffin. Designed in collaboration with the Ngunnawal community, Ngamawari will feature native plantings and artworks, embedding local Indigenous culture and history into the park's design.<sup>17</sup>



<sup>1</sup> University of Melbourne, 'Mabo Centre advances new era of Native Title and First Nations leadership' (4 March 2025). Available here: <<https://www.unimelb.edu.au/newsroom/news/2025/march/mabo-centre-advances-new-era-of-native-title-and-first-nations-leadership>>.

<sup>2</sup> The Mabo Centre, 'Our key areas of focus'. Available here: <<https://mabocentre.com/>>.

<sup>3</sup> Commonwealth of Australia v Yunupingu on behalf of the Gumatj Clan or Estate Group [2025] HCA 6. Available here: <[https://www.hcourt.gov.au/cases/case\\_d5-2023](https://www.hcourt.gov.au/cases/case_d5-2023)>.

<sup>4</sup> Stuart v State of South Australia [2025] HCA 12.

<sup>5</sup> David Prestipino, '\$5.5m for two First Nations-led clean energy projects in WA' National Indigenous Times (10 January 2025). Available here: <<https://nit.com.au/10-01-2025/15705/55m-for-two-first-nations-led-clean-energy-projects-in-wa>>.

<sup>6</sup> Kimberley Land Council, 'Unprecedented coral bleaching hits west Kimberley: Bardi Jawi Rangers warn of climate crisis' (4 March 2025). Available here: <<https://www.klc.org.au/newsroomblog/2025/3/4/unprecedented-coral-bleaching-hits-west-kimberley-bardi-jawi-rangers-warn-of-climate-crisis-nbsp>>.

<sup>7</sup> Giovanni Torre, 'Gunaikurnai Corporation secures agreement to ensure voice in offshore wind feasibility plans' National Indigenous Times (5 March 2025). Available here: <<https://nit.com.au/05-03-2025/16633/gunaikurnai-aboriginal-corporation-secures-agreement-to-ensure-voice-in-offshore-wind-feasibility-plans>>.

<sup>8</sup> Julia Bergin, 'Lake Bolac farmer found guilty of destroying Aboriginal rock formation' ABC News (1 May 2025). Available here: <<https://www.abc.net.au/news/2025-05-01/farmer-guilty-of-destroying-aboriginal-cultural-heritage/105237474>>.

<sup>9</sup> Jesse Thompson, 'Landmark treaty report recommends First Nation government system for Indigenous Territorians' ABC News (29 June 2022). Available here: <<https://www.abc.net.au/news/2022-06-29/nt-treaty-report-released-by-commissioner/101192202>>.

<sup>10</sup> Matt Garrick, 'NT CLP government 'dismantles' treaty plans, ending seven year process' ABC News (11 February 2025). Available here: <<https://www.abc.net.au/news/2025-02-11/nt-clp-government-scraps-treaty-process/104918700>>.

<sup>11</sup> Oliver Chaseling, 'Glencore's McArthur River Mine fined for breaching NT sacred site laws over 13 years' ABC News (5 March 2025). Available here: <<https://www.abc.net.au/news/2025-03-05/mcarthur-river-mine-nt-glencore-fined-sacred-site-works/105012126>>.

<sup>12</sup> Re Sungela Pty Ltd & Anor [2025] QLC 5, order 1. Available here: <<https://archive.sclqld.org.au/qjudgment/2025/QLC25-005.pdf>>.

<sup>13</sup> Kathryn Armstrong, 'Remains of dozens of Indigenous ancestors returned to Australia', BBC (11 April 2025). Available here: <<https://www.bbc.com/news/articles/cde2dd01n8wo>>.

<sup>14</sup> Amelia Bernasconi and Country Yeandle, 'Mega Hunter Valley coal mine granted short-term extension of life', ABC News (24 April 2025). Available here: <<https://www.abc.net.au/news/2025-04-24/hunter-valley-operations-receives-18-month-extension/105210614>>.

<sup>15</sup> Giovanni Torre, 'NSW Aboriginal Land Council welcomes first female CEO in organisation's history', National Indigenous Times (28 February 2025). Available here: <<https://nit.com.au/28-02-2025/16552/nsw-aboriginal-land-council-welcomes-first-female-ceo-in-organisations-history>>.

<sup>16</sup> Dechlan Brennan, 'Resisting aqua nullius: Ngunnawal Country to host camp exploring Indigenous water science and governance', National Indigenous Times (9 April 2025). Available here: <<https://nit.com.au/09-04-2025/17298/resisting-aqua-nullius-ngunnawal-country-to-host-three-day-camp-exploring-indigenous-water-science-and-governance>>.

<sup>17</sup> Ian Bushnell, 'Interim Ngamawari park coming to Acton Waterfront in 2025 with work underway', Region Canberra (11 June 2024). Available here: <<https://region.com.au/interim-ngamawari-park-coming-to-acton-waterfront-in-2025-with-work-underway/776901/>>.

<sup>18</sup> Adam Holmes, 'Planning Commission panel lashes Hobart's Macquarie Point stadium plan', ABC News (31 March 2025). Available here: <<https://www.abc.net.au/news/2025-03-31/tas-macquarie-point-stadium-planning-commission-report/105116018>>.

<sup>19</sup> Adam Holmes, 'Space for Aboriginal recognition at Hobart's proposed stadium shrinks because of cricket pitches and a shed', ABC News (2 October 2024). Available here: <<https://www.abc.net.au/news/2024-10-02/tas-macquarie-point-hobart-stadium-aboriginal-park-reduction/104407184>>.

<sup>20</sup> Callan Morse, '"A significant step towards Treaty": Tasmanian Aboriginal corporation secures long-term abalone fishing rights agreement', National Indigenous Times (10 December 2024). Available here: <<https://nit.com.au/10-12-2024/15316/a-significant-step-towards-treaty-tasmanian-aboriginal-corporation-secures-long-term-abalone-fishing-rights-agreement-with-state-government>>.

# External profiles

## Rewi Lyall



### Q1: Please introduce yourself.

#### What is your name?

Rewi Lyall

#### What organisation do you work with?

Yued Aboriginal Corporation

#### Briefly describe your role.

Chief Executive Officer

#### How long have you worked in native title?

Over the course of my professional career of 25 years I've worked in and around native title for about 10 years, including work briefly as a historian and less briefly as a media adviser.

It's a bit weird for me to talk about this as being about native title, because I think of my career as more about (without overstating the very limited contribution I have made) providing what help I can in a struggle for justice. Native title provides an opportunity for bigger conversations about social, economic and cultural rights that in combination might achieve some greater measure of justice than native title alone can achieve.

### Q2: What are some of the highlights of your career in native title so far?

By far and away the highlight has been meeting and working with incredible Aboriginal Western Australians from many peoples, closely followed by my non-Aboriginal friends and colleagues, from all of whom I've learned a vast amount.

I was fortunate to work for the Aboriginal Legal Service of Western Australia helping with the first meetings of the Noongar Nation at Dumbartung and Curtin University over 20 years ago. I was part of the ATSIC WA State Office that pursued and secured the Statement of commitment to a new and just relationship between the Government of Western Australia and Aboriginal Western Australians.

Being part of a team that secured funding for basic maintenance and repairs for remote community housing, or for the construction of new artists' stud doesn't sound like native title work, but without native title the negotiating opportunity wouldn't exist.

If it's straight native title legal work you're after, I can't go past stealing the limelight by borrowing Malcolm O'Dell's robes and appearing for Martu claimants at the determination of Martu #3 while he and Tikka Wright were out of town.

### Q3: What advice would you give someone who is considering a career in native title?

Reflect on the bias and assumptions you bring to the discussion, not to achieve chimeric objectivity but to recognise the effect of your subjectivity.

If what you mean is 'considering a career working for and with Aboriginal and Islander peoples', I would say study intersectionality and public policy broadly and learn how to apply the tools native title provides to Aboriginal and Islander peoples to obtain rights beyond the limitations of the Native Title Act. Which might be a call to generalist rather than specialist legal training.

If, instead, you mean 'considering a career working for proponents including government', I would say... have justice as your lens rather than mere statutory compliance.



## Jeremy Brown



### Q1: Please introduce yourself.

#### What is your name?

Jeremy Brown

#### What organisation do you work with?

Native Title Services Goldfields. I also do some authoring for LexisNexis' native title service

#### Briefly describe your role.

At NTSG I'm the Deputy Principal Lawyer. I do some claim and project work, manage some of the lawyers in our legal team and assist our Principal Lawyer (the amazing Brooke Creemers) with setting and pursuing the strategic and operational objectives for the organisation.

#### How long have you worked in native title?

I started working in native title in September 2016, initially as a law clerk.

### Q2: What are some of the highlights of your career in native title so far?

I've been fortunate to work with lots of amazing people on some really incredible projects. Two projects in particular stand out as career highlights.

The first is the Yamatji Nation Indigenous Land Use Agreement (YN ILUA), which I worked on (also with Brooke) during my time at Yamatji Marlpa Aboriginal Corporation (YMAC) and was concluded in early 2020. The YN ILUA was incredible because the State Government adopted a whole-of-government approach to negotiating it, so we had access to key people from the relevant government departments involved in negotiating aspects of the package. We also had an amazing Traditional Owner negotiation team; a group of really intelligent, talented people who, despite being from four different native title claims and all of the baggage that can come with that, learnt to work together and become a really cohesive team.

The second is the Nyalpa Pirniku consent determination, which occurred in October 2023. For a region (the Goldfields) which has been so starved of positive native title outcomes over such a long time, it was fantastic for native title to be finally recognised over such a large area and to see what it meant to so many people. I was particularly proud of the way the team at NTSG worked with the community to build relationships and generate widespread buy-in to the consent determination outcome, because there were a lot of people at the start who felt pretty jaded with the whole native title system.

### Q3: What advice would you give someone who is considering a career in native title?

Go for it! Native title is an incredible area of the law to work in. I've always enjoyed how varied and challenging the work can be, and particularly for junior lawyers I think it exposes you to such a wide variety of tasks and legal problems and even other areas of the law that it provides an amazing grounding for your legal career. The opportunity to work with anthropologists and engage with their perspectives is not something you come across anywhere else (that I'm aware of!) and the communities we get to work in and people we get to work with are really diverse and interesting. It can certainly be a very challenging area of the law to work in, and you have to be prepared to be extremely hands-on, but it's also incredibly rewarding and offers a lot of fantastic opportunities.

## Nick Testro



### Q1: Please introduce yourself.

#### What is your name?

Nick Testro

#### What organisation do you work with?

I currently have three roles (all part-time) – Assistant Commissioner with the Australian Law Reform Commission (ALRC) for the Future Acts Inquiry, Legal Counsel with Bush Heritage Australia, and principal of Testro Legal Pty Ltd.

#### Briefly describe your role.

My main role at present is Assistant Commissioner with the ALRC. I was appointed to this role specifically for the Future Acts Inquiry, so the role will come to an end once the ALRC's final report is submitted to the Attorney-General in December 2025.

The Commonwealth Attorney-General referred the Terms of Reference for the Future Acts Inquiry to the ALRC in June 2024. All ALRC inquiries are overseen by the ALRC President, presently Justice Mordecai Bromberg SC. For each Inquiry, a number of lawyers with subject-matter expertise are appointed, including a Commissioner, an Assistant Commissioner or Special Counsel, and sometimes lawyers with varying levels of experience. The Commissioner for the Future Acts Inquiry is Tony McAvoy SC, supported by a team of four full-time lawyers (plus me as Assistant Commissioner). The role of Assistant Commissioner is to work closely with the President, the Commissioner and the legal team to run all aspects of the inquiry. This includes: consulting with people who participate in, are affected by or have an interest in the future acts regime (including native title holders, PBCs, NTRBs/NTSPs, government departments and agencies, private firm lawyers, academics, industry bodies, and members of the public); preparing and publishing issues and discussion papers to provide context for the inquiry, invite submissions and propose potential reforms; conducting research to identify and support potential reform ideas; and preparing the final report with recommendations for reform. Consultations to date have been conducted both in person and virtually with people across Australia. The ALRC's role is to make recommendations – it is up to the Federal government and Commonwealth Parliament to decide whether to accept and implement the recommendations.

#### How long have you worked in native title?

I have worked in native title now for over 15 years, having commenced as a Legal Officer with Cape York Land Council in 2008. Since that time, I have worked for private law firms, the NTRB/NTSP for Victoria (now First Nations Legal and Research Services), the Victorian government, as well as my present roles.



**Q2: What are some of the highlights of your career in native title so far?**

There have been highlights from most of the roles in which I've been lucky enough to work. An overall highlight of working in native title has been hearing directly from Traditional Owners about culture and country. Highlights from my work in Victoria include working with two Traditional Owner groups to negotiate native title settlements under the Traditional Owner Settlement Act 2010 (Vic) as well as being involved in litigation concerning novel questions of law about claim group membership and identity. In my time at private firms, I routinely prepared advices on complex and interesting questions of law for projects and laws of national significance, some of which I would read about in the media. I also had the privilege of working with the firm acting as solicitors assisting the Yoorrook Justice Commission in Victoria, for which I was assigned to work with a number of Victorian Aboriginal elders to assist them to prepare witness statements. In my current role as Assistant Commissioner, it has been immensely interesting talking to a wide range of people about their experiences with and views of the future acts regime and hearing their thoughts on how it might be improved.

**Q3: What advice would you give someone who is considering a career in native title?**

Native title is a very special area of law. It is a great privilege to be able to work with Aboriginal and Torres Strait Islander Peoples, who have maintained the longest continuing culture in the world. Native title intersects with so many other areas of law as well as other disciplines, like history and archaeology. Lawyers who don't work in the area often don't understand how technical and complex it is. But it's also an immensely important area of law as, at its heart, it involves working through the continuing effects of the original dispossession of Aboriginal and Torres Strait Islander Peoples from their traditional lands by European settlers. So if you're up for interesting, challenging and important work that can take you all around Australia meeting and working with interesting and diverse people, then you should definitely consider native title as a career option.



Quokka on Wadjemup (Rottneest Island),  
Whadjuk Noongar Boodja, Western Australia

## Carolyn Tan



### Q1: Please introduce yourself.

#### What is your name?

Carolyn Tan

#### What organisation do you work with?

Yamatji Marlpa Aboriginal Corporation (YMAC), the Native Title Representative Body (NTRB) for the Pilbara, Murchison, Gascoyne and Mid West regions of Western Australia.

#### Briefly describe your role.

My position at YMAC is labelled as Special Counsel. I work there part-time as a lawyer, mainly providing advice and assistance to other YMAC lawyers and also do some of the court appearances, manage claim litigation and write submissions for litigation and for law reforms etc.

#### How long have you worked in native title?

I have worked in native title since 1994, initially for about 9 years as a lawyer in private practice, mainly working for native title claim groups, either directly or through consultancies for NTRBs. I have been Special Counsel at YMAC since 2003. Prior to working in native title I worked from time to time on Aboriginal cultural heritage litigation since the mid-1980s.

### Q2: What are some of the highlights of your career in native title so far?

In general, it is seeing the claims that I have worked receiving native title determinations and seeing the joy that this recognition gives to the traditional owner communities. I have also loved spending time with Elders learning about their country and their spirituality.

Native title has brought the opportunity to try new legal arguments and working to develop the new area of law and practice. One particular highlight was selecting and running the Ngarla litigation that succeeded in the High Court in *WA v Brown* (2014) 253 CLR 507, a landmark decision on extinguishment and what amounted to inconsistency of rights. This overruled a long-standing negative decision of the Full Court of the Federal Court.

A memorable, but chaotic, time was when the registration test was first introduced. ATSIC funded a native title team at my firm to help any claims in WA who wanted assistance to pass the registration test. I got to work on claims all over the State and test out the simplest and most economical ways to pass the registration test. This extended to some registration test work in other parts of Australia as well.

### Q3: What advice would you give someone who is considering a career in native title?

I would advise anyone to work in native title if you can work for traditional owner groups. You will learn so much from them about their country and culture which is so generously and patiently shared. There is never a dull moment as you work for not only a single client but a whole community with all that complexity! For lawyers, it is a chance to be creative and think of new arguments in developing areas of law.



## Nisha Jholl



### Q1: Please introduce yourself.

#### What is your name?

Nisha Jholl

#### What organisation do you work with?

First Nations Legal and Research Services (FNLRS)

#### Briefly describe your role.

As Co-PLO, I have the privilege of leading a team of amazing lawyers who are passionate about formal recognition and land rights. My role involves collaborating with managers across the legal, research and corporate services departments and our CEO, to set the strategic direction of our organisation while providing support in the various areas of work we are involved in. This includes native title claims, settlement negotiations under the Victorian Traditional Owner Settlement Act 2010 and other areas of importance to the Traditional Owners we work with, including treaty and renewables.

#### How long have you worked in native title?

9 years

### Q2: What are some of the highlights of your career in native title so far?

Witnessing the Eastern Maar people receive their native title determination and have their rights recognised in a beautiful ceremony in Warrnambool in March 2023. I was fortunate to work with them from the time I started at the predecessor to FNLRS and it was a very special moment for which I will always be grateful, particularly to the strong leaders and elders whom I worked with.

Travelling across Victoria and forming relationships with our clients on their sacred country has also been and continues to be a highlight. I have felt at peace and in awe of my clients' connection to their land and waters I have visited, from the bushlands of Gariwerd, the breathtaking landscapes of the Great Ocean Road and Far East Gippsland to the lush rainforests of the Otways and sweeping mountains and plains from Yea to the Snowy Mountains. It has been an honour to experience this accompanied by my clients who have kindly imparted knowledge through dreaming stories and songs and their experiences growing up on country.

### Q3: What advice would you give someone who is considering a career in native title?

It has its challenges, like all professions, but working as a lawyer in the native title sector has been the most rewarding experience of my career. To have the privilege to work alongside people of one of the oldest, living cultures on Earth while navigating complex, dynamic legal landscapes is such a great balance. The sector is also very tight knit and it feels great to be part of one big community of like-minded peers to embark on this career with.

# Closing submissions made in Yindjibarndi's \$1.8 billion compensation claim

## Clare Sayers

In 2023, the Yindjibarndi Ngurra Aboriginal Corporation (YNAC) filed a \$1.8 billion compensation claim in the Federal Court of Australia (the **Court**), the key respondents to which are Fortescue Metals Group (FMG) and the State of Western Australia (the **State**). YNAC, as the applicant, is seeking compensation for the allegedly invalid establishment and operation of the Solomon Hub iron ore mine on Yindjibarndi country in the Pilbara region. YNAC asserts that mining activities commenced without their consent, leading to significant cultural, spiritual, social, and economic loss.<sup>1</sup>

The outcome of this matter could set a significant precedent for future native title applications across the country. The Court is currently reviewing final submissions, with Justice Stephen Burley presiding. A decision is expected to be handed down in late 2025 or early 2026.

### YNAC's claim

The quantum of YNAC's \$1.8 billion compensation claim is calculated as follows:

- a) \$1 billion in cultural loss for the destruction and desecration of sacred sites and the erosion of cultural heritage;
- b) \$687.1 million in economic loss, representing the loss of financial benefits that would have been negotiated had FMG entered into an Indigenous Land Use Agreement (ILUA) at the commencement of the project;
- c) \$34.8 million in damages for specific site destruction; and
- d) \$112.1 million in damages for social disruption caused by FMG's operations, including alleged support for a splinter group that led to divisions within the Yindjibarndi community.

YNAC contends that FMG's operations have led to the destruction of over 240 culturally significant sites, causing profound and irreparable harm to Yindjibarndi heritage and community.

For instance, at [34A(c) and (d)] of its Amended Statement of Claim filed in the Court on 5 July 2023, YNAC alleges that, since July 2010, FMG has made approximately 32 applications under the *Aboriginal Heritage Act 1972* (WA) for section 16 or section 18 permits, which are, respectively, permits to investigate and consent to disturb or destroy an Aboriginal heritage site.

In relation to the claims of social disruption, the Australian Financial Review reports:<sup>2</sup>

Another of the traditional owners' claims for compensation, previously untested under Australian law, is around social disharmony caused by Fortescue opting to throw its support behind a breakaway group, Wirlu-murra Yindjibarndi Aboriginal Corporation, which has separately struck deals with the miner. **The court filing points to \$880,000 in receipts paid by Fortescue to the breakaway group.**

The cultural loss due to the rift within Yindjibarndi families was a central issue in the evidence of a series of Yindjibarndi elders[.] ...

"Yindjibarndi people over 30 years of age can remember that the Yindjibarndi community were harmonious before 2007 when Fortescue arrived," the court documents claim. "Those who are younger **cannot recall amicable relations** between the [two groups]." To compensate for this, the Yindjibarndi are asking for \$112 million. *[Emphasis added]*

<sup>1</sup> Sarah Collard (25 February 2025), 'Fortescue and WA government say traditional owners' \$1.8bn compensation claim is worth \$8m'. Available here: <<https://www.theguardian.com/australia-news/2025/feb/25/fortescue-wa-government-yindjibarndi-compensation-claim-pilbara-mine>>.

<sup>2</sup> Elouise Fowler (19 February 2025), 'Fortescue faces \$1.8b native title compensation claim', Australian Financial Review. Available here: <<https://www.afr.com/companies/mining/fortescue-faces-1-8b-native-title-compensation-claim-20250219-p5ldgf>>.





Twelve Apostles, Eastern Maar Country, Victoria



## FMG's and the State's response

In response, FMG and the State argue that the compensation claim is substantially overstated. The State suggests an appropriate compensation amount would be closer to \$5-10 million, and FMG has suggested \$8 million.

FMG argues that the calculations for compensation used by YNAC's lawyers are 'flawed' because those calculations incorporate 'a royalty percentage of the for sale value of the minerals on the land'.<sup>3</sup> In its opening submissions, FMG stated:

*Such loss cannot be measured by reference to the rent or royalties paid by FMG to the State for the taking of iron ore which is (and always has been) owned by the State and over which the [Yindjibarndi People] never held any native title as expressly determined in Warrie (No 2).<sup>4</sup>*

As an aside, in December 2024, the State estimated it will receive more than \$9 billion in mining royalties in the 2024-2025 financial year, with approximately a quarter of that coming from iron ore.<sup>5</sup> Further, it is estimated that the Solomon Hub iron ore mine has generated approximately \$80 billion in revenue for FMG since 2013.<sup>6</sup>

In relation to YNAC's claims of social division, FMG categorically denies causing any social division or disharmony, arguing:

*...if different groups within the [Yindjibarndi People] had different views about what agreement should be made, the difference of view cannot properly be said to have been caused by FMG.<sup>7</sup> [Emphasis in original]*

Another crucial issue is whether the State or FMG would be responsible for compensation found to be payable. FMG argues that any compensation owed should be the responsibility of the State as the entity which granted the mining licences under the Mining Act 1978 (WA) (**Mining Act**), thereby facilitating the mining operations. FMG maintains that it operated under legal approvals provided by the State, and, therefore, should not be held liable for compensation claims arising from those operations.

On the contrary, the State argues that FMG should be held liable for any compensation awarded due to the operation of section 125A of the Mining Act which provides that the holder of a mining tenement is responsible for compensating native title holders for any loss or damage resulting from mining activities.

In response to this, FMG has argued that section 125A is invalid because it is inconsistent with the Native Title Act 1993 (Cth) (**NTA**) as the NTA only provides for the State (and not proponents) to pay compensation pursuant to sections 45 ('RDA compensation to be determined under this Act') and 53 ('Just terms compensation') of the NTA. As a result of this alleged inconsistency, the Mining Act is invalid under section 109 of the Constitution, which states that Commonwealth law prevails to the extent of any inconsistency with State law.<sup>8</sup>

<sup>3</sup> Jessica Shackleton and Charlie McLean (27 February 2025), 'Cultural losses key to \$1.8b damages claim by Pilbara traditional owners'. Available here: <<https://www.abc.net.au/news/2025-02-27/yindjibarndi-vs-fortescue-case-closing-arguments/104959440>>.

<sup>4</sup> Yindjibarndi Ngurra Aboriginal Corporation RNTBC (ICN 8721) and State of Western Australia and Others (WAD37/2022), FMG Respondents' Submissions (filed 24 July 2023), [9]. Available here: <[https://www.fedcourt.gov.au/\\_data/assets/pdf\\_file/0014/111254/FMG-Opening-Submissions.pdf](https://www.fedcourt.gov.au/_data/assets/pdf_file/0014/111254/FMG-Opening-Submissions.pdf)>.

<sup>5</sup> Chamber of Minerals and Energy WA (23 December 2024), 'Resources sector defies global headwinds to maintain massive contribution to the State's finances'. Available here: <<https://www.cmewa.com.au/media-release/articles/resources-sector-defies-global-headwinds-to-maintain-massive-contribution-to-states-finances/#:~:text=The%20WA%20Government's%20revised%20%243.1,the%20Budget%20delivered%20in%20May.>>>.

<sup>6</sup> Sarah Collard (as above n 1).

<sup>7</sup> Yindjibarndi Ngurra Aboriginal Corporation RNTBC (ICN 8721) and State of Western Australia and Others (WAD37/2022), FMG Respondents' Submissions (filed 24 July 2023), [9]. Available here: <[https://www.fedcourt.gov.au/\\_data/assets/pdf\\_file/0014/111254/FMG-Opening-Submissions.pdf](https://www.fedcourt.gov.au/_data/assets/pdf_file/0014/111254/FMG-Opening-Submissions.pdf)>.

<sup>8</sup> Yindjibarndi Ngurra Aboriginal Corporation RNTBC (ICN 8721) and State of Western Australia and Others (WAD37/2022), FMG Respondents' Submissions (filed 24 July 2023), [112] – [122]. Available here: <[https://www.fedcourt.gov.au/\\_data/assets/pdf\\_file/0014/111254/FMG-Opening-Submissions.pdf](https://www.fedcourt.gov.au/_data/assets/pdf_file/0014/111254/FMG-Opening-Submissions.pdf)>.

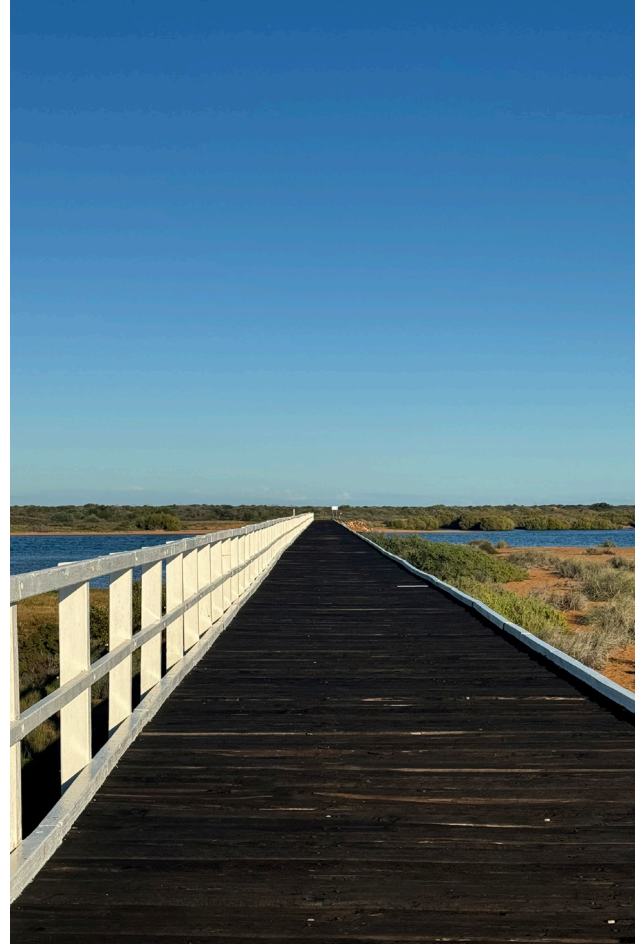


## What might be the consequences of the judgment?

The implications of a successful outcome for YNAC will be significant for the quantum of compensation sought by applicants and may provide greater clarity for calculating compensation for cultural loss.

If the Court finds section 125A of the Mining Act is invalid, it could restore compensation liability to the State and might trigger legislative reform in Western Australia in order to address gaps or inconsistencies. It is also likely such a finding would result in an appeal on the part of the State.

As stated above, the Court has reserved its judgment and is expected to be handed down later this year or early 2026.



Gwoonwardu (Carnarvon), Gnulli (Yinggarda, Baiyungu and Thalanyji) Country, Western Australia



Tjoritja (MacDonnell Ranges), Arrernte Country, Northern Territory

# High Court hands down judgment in *Commonwealth v Yunupingu* constitutional case

**Felicity Thiessen and Clare Sayers**

On 12 March 2025, the High Court of Australia (**High Court**) handed down its decision in *Commonwealth of Australia v Yunupingu* settling two constitutional questions in relation to the operation of sections 51(xxxi) (acquisition of property on just terms) and 122 (territories power) of the Constitution in relation to the extinguishment of native title.<sup>1</sup> Confirming the Full Court of the Federal Court's decision, the High Court held that the Commonwealth's power to make laws for its territories does not extend to making laws for the acquisition of property other than on just terms.

## Background

In 2019, the late Dr Galarrwuy Yunupingu brought an application on behalf of the Gumatj clan of the Yolngu people of north-east Arnhem Land in the Northern Territory. The application sought compensation for the impacts of acts of the Commonwealth on native title (subject of a native title claim also filed in 2019) between 1911 and 1978, while it governed the Northern Territory. The applicant submitted that the acts (including the grant of mining tenements) were invalid because of the failure to provide just terms attributable to the Commonwealth compensation pursuant to section 51(xxxi) of the Constitution.

### Section 51(xxxi) of the Constitution

#### 51. Legislative power of the Parliament

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

(xxx) the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.

## The Full Court of the Federal Court decision

### Section 122 of the Constitution

#### 122. Government of territories

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of Parliament to the extent and on the terms which it thinks fit.

In 2023, in *Yunupingu v Commonwealth*, the Full Court, comprised of Chief Justice Mortimer and Justices Moshinsky and Banks, unanimously held that the just terms requirement pursuant to s 51(xxxi) applies to laws enacted under s 122 and that native title rights and interests do constitute property for the purposes of s 51(xxxi). The Commonwealth was granted special leave to appeal the findings of the High Court.<sup>2</sup>

## The High Court decision

The High Court considered three key questions:

- Whether the Commonwealth's power to legislate for territories pursuant to section 122 of the Constitution is subject to the 'just terms' requirement of section 51(xxxi).
- Whether the extinguishment of native title rights and interests prior to the NTA constitutes an acquisition of property under the Constitution.
- Whether a 1903 pastoral lease issued by South Australia extinguished non-exclusive native title rights over minerals.

<sup>1</sup> *Commonwealth of Australia v Yunupingu* (on behalf of the Gumatj Clan or Estate Group) & Ors [2025] HCA 6. Available here: <[https://www.hcourt.gov.au/cases/case\\_d5-2023](https://www.hcourt.gov.au/cases/case_d5-2023)>.

<sup>2</sup> Lavery, Daniel, "Native Title as Property: *Yunupingu v Commonwealth*" [2023] JCU Law Review 8; (2023) 29 *James Cook University Law Review* 125.





Kalbarri National Park, Nanda Country, Western Australia

The key findings of the High Court were as follows:

### **Just terms**

Section 122 of the Constitution empowers the Commonwealth to make laws for territories, including in regard to land, minerals, and governance. In *Teori Tau v Commonwealth* (1969) 119 CLR 564 (*Teori Tau*), the High Court held that s 51(xxxi) does not qualify the territories power in s 122; that is, the Commonwealth was not bound by just terms acquisition of property when exercising its power under s 122. The High Court overruled *Teori Tau* in finding the 'just terms' requirement in section 51(xxxi) applies to territory laws made by the Commonwealth under section 122.

### **Acquisition of property**

The Court confirmed that native title rights are proprietary in nature, meaning they fall within the definition of 'property' for the purposes of section 51(xxxi). Consequently, when the Commonwealth extinguishes or impairs these rights, it amounts to an acquisition of property, which requires compensation on just terms.

### **1903 pastoral lease did not extinguish non-exclusive native title rights over minerals:**

The Court also held that a 1903 pastoral lease issued by South Australia prior to the creation of the Northern Territory did not extinguish non-exclusive native title rights over minerals. This finding ensures that historical leaseholds do not automatically override native title rights unless specifically intended by law.

### **Key outcomes and emerging issues**

Prior to this decision, liability for the payment of compensation for extinguishment or impairment of native title by acts of the Commonwealth was understood to arise only in relation to acts validated under the *Native Title Act 1993* and which occurred upon/after the enactment of the *Racial Discrimination Act* on 31 October 1975.

The decision may have significant implications for the Commonwealth's compensation liability for acts done by it in the Northern Territory, and other territories, during its territorial governing periods.

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