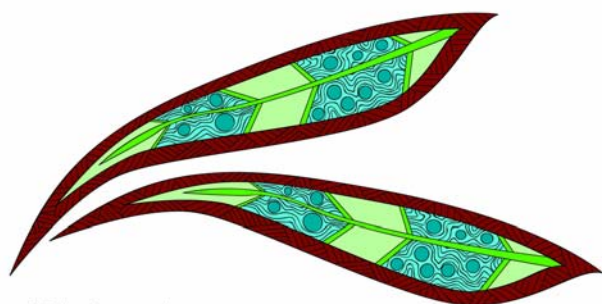


Native Title Newsletter

January/February, No. 1/2009

WHAT'S NEW



10th Annual
NATIVE TITLE CONFERENCE 2009

SPIRIT OF COUNTRY • LAND • WATER • LIFE

Bunji Aka: Bik, Paen, Mooroop

**See the Native Title Conference webpage
for information about sponsorship,
registration and accommodation**

<http://ntru.aiatsis.gov.au/conf2009/conference2009a.html>

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AIATSIS
Australian Institute of Aboriginal
and Torres Strait Islander Studies

Native Title Research Unit, AIATSIS

Native Title – fact or fiction

A view from a Native Title Applicant

By Margaret Hornagold

I have been an applicant on our Native Title claim since 1998. That's eleven long and frustrating years for all concerned. What has been achieved in that time?

Our claim is located in Central Queensland and is impacted upon by the mining activities of the Bowen Basin and the frenzy to open more and more mines. What have Native Title claimants gotten out of these lucrative ventures? In our case, next to nothing.

In that time, anthropologists have come and gone and we are yet to see a Connection Report. Overlaps created difficulties for the NTRB as to whom they represented and remain unresolved.

At times we wondered if someone had changed the goalposts for what Native Title was about as it seemed to be moving further and further away from identifying the people who could speak for country and who could assert traditional rights and interests. The focus has been on negotiations with mining companies rather than allowing time for issues of caring for country and maintaining cultural practices.



Margaret's Uncle Alick Smith Jr.,
photo taken at Apis Creek in Central Qld



Margaret's Grandfather and Grandmother,
Alick Smith Snr, a Kabalbara man and
Topsy Smith, a Barada woman

There are a number of elderly people on our claim who are well into their 70s and 80s and the stress that it has placed on them is incredible. But they have a simple response and that is that they know who they are and where they come from; they know who they were born as and who they will die as and no court or other structure will take that from them.

We are now with a new NTRB as the former one was disbanded. No doubt there will be teething problems.

I believe that a hard look needs to be taken at what Native Title was originally meant to be and talk with claimants and applicants about what we believed it to be and how it has evolved to be something else.

Aboriginal people are being forced into a convoluted system. The approach taken is that since there is no written anthropological or other records of what our Elders are saying, their word is negated. They feel powerless and belittled as the word of someone they have never met is believed because it was written down by a non-Indigenous person. Names of groups recorded in the 1940s are apparently insufficient to prove that groups' existence from colonisation. There are Elders who were born in the 1920s who assert and have signed statutory declarations that their mothers or fathers and grandparents told them that is who they are. But this is not good enough apparently.

I don't know where it will end but the frustrations and the waste of time, peoples' energy, passion and commitment in fighting to prove who we are within a western legal system is taking far too long and another way has to be found.

Post script from Margaret: Since writing this article, our Native Title Claim was dismissed in the Federal Court on the 20 February 2009. It was a real kick in the guts and has upset my Elders greatly. Don't know where to go from here.

Native Title Conference

Welcome from the Native Title Services Victoria Board

We would like to welcome you to the 2009 Native Title Conference, now in its 10th year. This year the conference returns to Melbourne, where it started, and is being held at the Melbourne Cricket Ground, on the traditional lands of the Wurundjeri People. We wish to thank our hosts, the Wurundjeri people, for inviting us to hold the conference on their country.

This important national event provides us all with the opportunity to have new conversations, make new connections and strengthen old friendships.

This year we encourage you to step back from the day-to-day processes of the Native Title Act and consider what drives claimants to seek resolution through a native title claim. As we all deal positively and openly with these issues the successful operation of native title processes will be more likely to occur.

We would like delegates to discuss how we can all respond to traditional owners' rights and aspirations creatively, bringing constructive, pragmatic approaches to the difficult conversations that are intrinsic in indigenous land settlements not only in Australia but throughout the world. Through such approaches we can make significant headway in securing long term economic and social benefits for the whole community.

Put simply, we want to get back to basics, renew the purpose of native title and do the right thing. We invite you to specifically share your thoughts on the challenges and opportunities in relation to:

- Strengthening communities
- Rivers, Lakes and Sea country
- Respectful engagement
- Economies, ecologies and ideologies
- Connecting throughout diversity
- Stories to learn from

Significantly, the Melbourne Cricket Ground is located on land that has a rich history as a gathering place of first

nation people and continues today as a gathering place for both Indigenous and non-Indigenous people.

To register your attendance at this year's Native Title Conference, or for more information: phone: 02 6246 1161, email: ntru@aiatsis.gov.au or visit website: <http://ntru.aiatsis.gov.au/>

Changes to QLD NTRBs & SA's new NTRB

By Ingrid Hammer, Research Officer, NTRU

The status of native title representative bodies has changed in both Queensland and South Australia in recent months. In Queensland there have been changes to the regions of responsibility, and a new body has been established in South Australia.

In Queensland there have been a number of changes that affect the operations of land councils. Although the Carpentaria Land Council Aboriginal Corporation has remained with the Gulf region, Queensland South Native Title Services (QSNTS) now has responsibility for the Greater Mount Isa region. In addition to this QSNTS will include the former Gurang Land Council's areas of responsibility. The Torres Strait Regional Authority remains the representative body for the Torres Strait and the Cape York Land Council is also unchanged.

In news from the south, South Australian Native Title Services (SANTS) has become the State's new native title representative body. The former body, the Aboriginal Legal Rights Movement Inc (ALRM) Native Title Unit, has been rolled over into the new organisation, making for few disruptions to existing operations.

SANTS became the new peak body on July 1 2008 after discussions that concluded that the interests of stakeholders would be better served by a new, independent organisation. ALRM will continue to exist and carry on its ambition to progress the legal interests of the Indigenous people of South Australia, with all native title representative body functions being vested in SANTS.

The idea to create a separate entity was floated as early as 2000, with further discussions continuing until 2006 between ALRM Native Title Unit, the Aboriginal Congress of SA Inc, ALRM and the Commonwealth.

Since the new body has come into force an interim board has been appointed to oversee operations, with the expectation that up to 10 members will sit on the board in the future.

The vision and values of SANTS include:

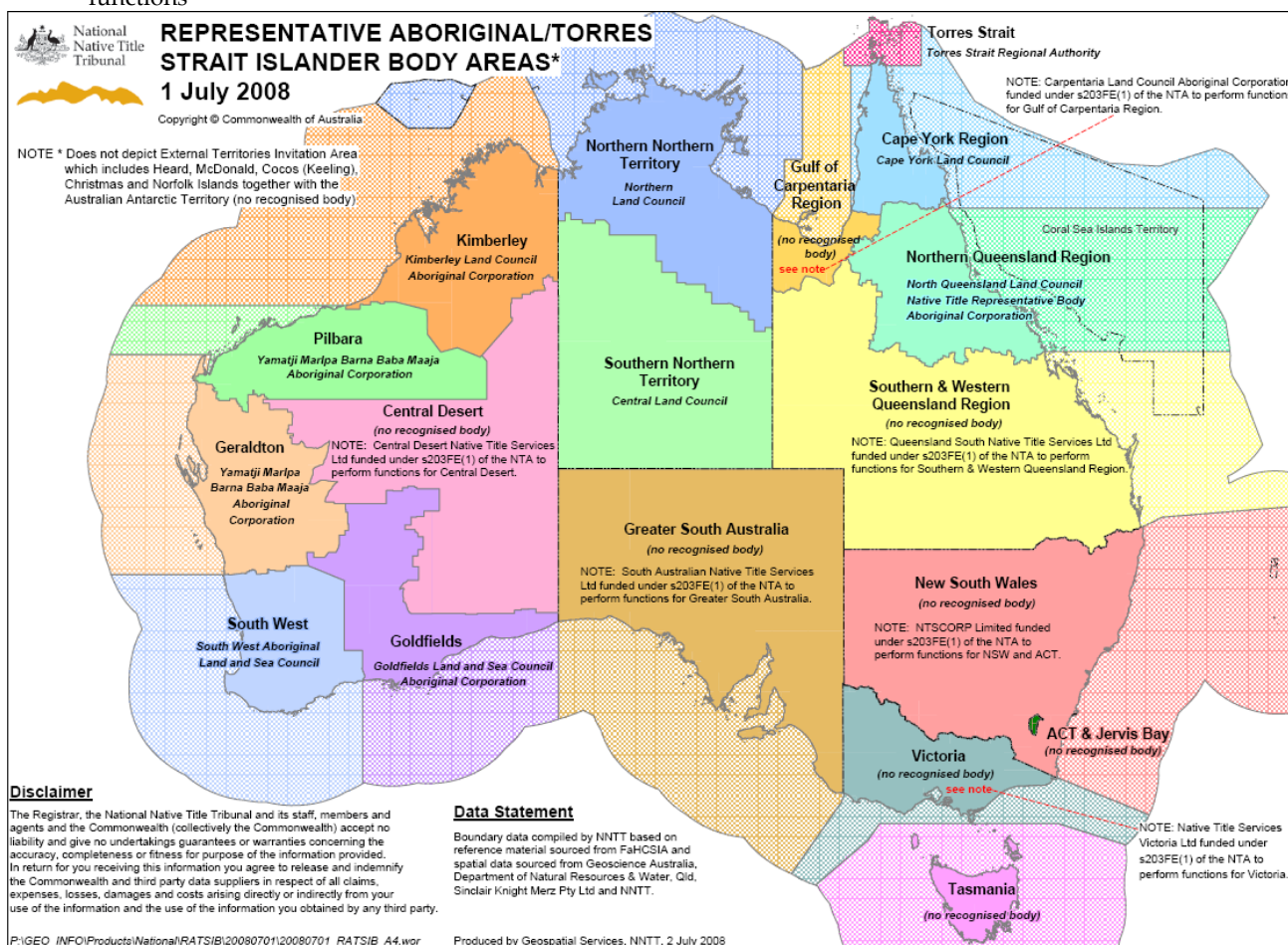
- To enhance the economic, social and cultural condition of the traditional owners of South Australia by promoting and protecting their native title rights and interest in lands and waters
- To the greatest extent possible, to provide the traditional owners of SA with grass-roots control of SANTS's functions
- To ethically and efficiently perform and deliver Native Title Representative Body services and functions

- To show respect for elders and other Indigenous people
- To achieve the best possible outcomes for Indigenous people
- To foster innovation and seek better ways of achieving our objectives
- To provide a safe, diverse and trusting workplace

The organisational structure of SANTS includes the areas of corporate services and client services, with up to thirty people employed in the organisation at one time.

ALRM was farewelled and SANTS was kicked off with a celebratory dinner held at AAMI stadium in Adelaide. The CEO position at SANTS is filled by Parry Agius, while Neil Gillespie takes on the role of CEO of ALRM.

More information is available from the SANTS website: <http://nativetitlesa.org>



Calling for your papers on Native Title Issues... in return for a registration to the Native Title Conference!

We are keen to attract a range of academic work on a variety of native title issues for our Issues Paper series *Land, Rights, Laws: Issues of Native Title*. For papers that successfully complete the peer review process and are published, we offer a full registration to the annual Native Title Conference – which is held every year in June.

The Issues Papers series is a multi-disciplinary series of short research papers. Issues Papers allow the NTRU to target a number of emerging issues in native title research, reflecting on 'bigger picture' issues in a form that is of high academic quality but in a size and format that is useful to practitioners and researchers.

In particular, we are now looking for Issues Papers that discuss native title and:

- Prescribed Bodies Corporate
- Connection requirements
- Native title, land and water
- Economic development
- Federal Court and National Native Title Tribunal Practice
- Corporate design
- Agreement benchmarking
- Alternative settlements (including implementation)
- Mediation and negotiation
- Claims management
- Collection management
- Cultural Heritage, and
- International comparisons

Once papers are received and endorsed for possible publication, papers are then anonymously peer reviewed

by two independent experts. The author then responds to the peer review comments, with the final decision about publication resting with the Editorial Committee. If the paper is published, we will credit you with a full registration to our annual Native Title Conference. The credit will be valid for two years, so if you can't make it to the Conference one year you can still use the credit the following year.

Issues Papers are usually between 3000-5000 words. For guidance on writing an Issues Paper please see the NTRU Author's Guide at

[http://ntru.aiatsis.gov.au/publications/reports%20and%20other%20pdfs/NTRU%20Authors%20Guide%20\[Final\].pdf](http://ntru.aiatsis.gov.au/publications/reports%20and%20other%20pdfs/NTRU%20Authors%20Guide%20[Final].pdf)

To view existing Issues Papers see

http://ntru.aiatsis.gov.au/publications/issue_papers.html

For more information please contact the NTRU on 02 6246 1161. Please submit your completed paper to the editor at ntru@aiatsis.gov.au

If you would like to subscribe to the Issues Papers series, please contact the NTRU on 02 6246 1161 or ntru@aiatsis.gov.au or download the [NTRU Publications Subscriptions form here](#).

What's New

Reforms and Reviews

[*Aboriginal Affairs Victoria. Review of the Aboriginal Heritage Regulations 2007*](#)

The *Aboriginal Heritage Act 2006* ('the Act') commenced operation on 28 May 2007. The commencement of the Act proceeded as soon as practicable after the completion of the Regulations. This new legislation substantially changed the management and protection of Aboriginal Cultural Heritage in Victoria.

Given the substantial change to the legislation, it was accepted that a period of operation was required before some aspects of the Regulations could be reasonably evaluated. Firstly, the Regulatory Impact Statement (RIS) process had highlighted that the cost of the Regulations could only be accurately assessed after the Regulations

had been in operation for a period. Secondly, the then Minister for Aboriginal Affairs wanted to ensure that the list of High Impact Activities in the Regulations was sufficiently targeted, and considered that an operational period may be needed to identify corrections (if any) in this list. In addition to these issues, a review was considered beneficial in assessing the effectiveness of the Regulations in meeting the aims of the Act.

This report sets out the results of the review of the Aboriginal Heritage Regulations 2007 ('the Regulations') conducted by Lily D'Ambrosio, Parliamentary Secretary, Community Development, and Aboriginal Affairs Victoria.

Recent Cases

Australia

Lansen v Minister for Environment and Heritage [\[2008\] FCAFC 189](#)

This was a decision of the Full Court of the Federal Court of Australia. The applicants were several Native Title Claim Groups with Native Title determination applications. This application was for approval of "controlled action" under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth). One issue was whether assessment of the proposal was properly made under a Bilateral Agreement between Commonwealth and Northern Territory when the Bilateral Agreement came into force after the decision of the Minister to deem the proposal a "controlled action". The Court considered whether assessment of the proposal should have been made under Part 8 of *EPBC Act* and whether the primary judge was correct in holding that the assessment of proposal was properly made under the Bilateral Agreement. A further issue was whether the pre-condition to the grant of approval under Part 9 of the *EPBC Act* was satisfied where the Minister received a report that there was not enough information and, secondly, whether the Minister received an assessment report as required by s 133. The Court considered whether the primary judge was correct in concluding that there was an assessment report in existence within the meaning of s 133 of the *EPBC Act*. The Court considered whether the Minister breached s 134(4)(a) of the *EPBC Act* and whether any breach of s 134(4)(a) rendered the approval invalid. Whether the primary judge erred in concluding that any breach of s 134(4)(a) did not render the Minister's decision invalid was considered. The final issue was whether the appellants should be permitted to raise an issue not argued before the primary judge. The

order of the primary judge was set aside and an order made that the application for approval be remitted to the Minister for further consideration according to law.

Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples v State of Queensland [\[2008\] FCA 1855](#)

Determination of native title by consent. The issue was whether it was within the power of the Court and appropriate to make an order under section 87 of the *Native Title Act* and, additionally, whether section 225 of the *Native Title Act* was satisfied. The determination of native title was made.

Worimi Local Aboriginal Land Council v Minister for Lands for the State of New South Wales (No 2) [\[2008\] FCA 1929](#)

Non-claimant application under *Native Title Act 1993* (Cth) seeking a determination that no native title exists over an area of land. The previous claimant applications for determination that native title exists were struck out for not meeting requirements of the Act. The previous claimant was joined as third respondent under s 84(5) of the Act. The third respondent opposed the non-claimant application. The Minister had not abandoned the right to participate in the proceedings as the Minister is not required to establish an interest to remain a party. The burden of proof is an evidentiary burden with a requirement to prove the proposition negative on the balance of probabilities. There is no presumption of native title and the third respondent is not required to establish native title but is required to adduce evidence once the applicant has adduced sufficient evidence from which the negative proposition may be inferred. The third respondent had not adduced sufficient evidence to cast doubt on the applicant's case and there was no sufficient evidence that asserted rights and interests arise under normative system of traditional laws acknowledged and traditional customs observed. The court held that the applicant was entitled to a determination that there is no native title over the land.

Quall v Northern Territory of Australia [\[2009\] FCA 18](#)

Application under Order 20 r 4 for summary dismissal. The native title determination application claim area is split into areas A and B with an earlier determination that no native title exists for area A because traditional Aboriginal society that existed at sovereignty had a

substantial interruption in acknowledgement and observance of traditional laws and customs. Issue estoppel was considered to the extent of whether an earlier determination decided what the relevant Aboriginal society was at sovereignty. If this was the case then an abuse of process had occurred because of a failure to claim particular Aboriginal society possessed native title rights and interests in earlier proceedings. A concurrent issue was whether an abuse of process had occurred due to an attempt to pursue that claim in proceedings for area B. The principles applicable to an application under O 20 r 4 for summary dismissal were considered along with the principle of issue estoppel, specifically whether the current claim is a re-litigation of the issue already determined in an earlier proceeding involving the same parties.

Eden Local Aboriginal Land Council v Minister for Lands [\[2008\] FCA 1934](#)

Non-claimant application for declaration that no native title exists. The application was made co-operatively for purpose of s 86G(2) of the *Native Title Act 1993* (Cth).

Holocene Pty Ltd/Western Australia/Western Desert Lands Aboriginal Corporation (Jamukurnu – Yapalikunu) [\[2009\] NNTTA 8](#)

Future act determination application concerning a proposed mining lease. A primary issue of the case was whether the grantee party had negotiated in good faith. An in-principle agreement was signed between the two parties, and the grantee party was not required to further negotiate about agreed commercial terms. A secondary issue was whether the grantee party agreed to pay the negotiation costs of the native title party. An unreasonable demand for the native title party to execute agreement was not fatal as the conduct is to be judged from the negotiations overall. The court held that the grantee party had negotiated in good faith.

International

R v Goodon 2008 MBPC 59 (Canada)

The accused is charged under s.19 of the Wildlife Act of Manitoba S.M. c. W 130 with possessing wildlife which was killed in contravention of that Act. The accused claims that he has a constitutionally protected right as a Metis to hunt for food under s. 35 of the Constitution Act, 1982 and therefore s. 19 of the Wildlife Act does not

apply to him, containing no reasonable accommodation for his constitutionally protected right.

Temagami First Nation v. Turner [\[2008 FC 1287\]](#) (Canada)

The applicant is seeking an interim injunction that would enforce the results of a general election held on June 12, 2008 until the underlying proceeding dealing with a judicial review of two resolutions purporting to amend the Temagami First Nation Tribal Constitution has been heard and decided on its merits. The applicant is also requesting a stay of these resolutions amongst other remedies. It is suggested that what is at stake in these proceedings might be the leadership of the community. It might be a battle for control and the power to govern the Temagami First Nation.

Nunavut Wildlife Management Board v. Canada (Director General, Department of Fisheries and Oceans, Pacific Region) [\[2009 FC 16\]](#)

The applicant, the Nunavut Wildlife Management Board (NWMB), seeks judicial review of a decision dated 30 January 2008 by the respondent Minister of Fisheries and Oceans approving the permanent re-allocations of 1900 metric tonnes of quota for turbot for the offshore fisheries areas adjoining the marine areas of the Nunavut Settlement Area (NSA).

Books

Behrendt, L. and Kelly, L. *Resolving indigenous disputes: kind conflict and beyond* Annandale, N.S.W.:Federation Press, 2008.

Papers

McAvoy, T. 'Native title litigation reform' (2008) 8 *Native Title News* 12, 193-195.

Behrendt, J. 'The Wellesley Sea Claim and the gap between Indigenous sea cultures and native title recognition' (2008) 2 *Ngiya: Talk the Law* 2, 2-16.

Yogarathnam, J. 'Mabo: whistle blowing the state government on native title in Malaysia' (2008) 33 *Alternative Law Journal* 4, 240-243.

Native Title in the News

National

Feb-09 NATIONAL **Deal makes way for mid west** Iron ore producer Midwest Corporation has finalised heritage agreements with the Jidi Jidi Aboriginal Corporation (JJAC), covering its prospective iron ore and manganese tenements at the Robinson Range in WA's Mid West region. *Mining Chronicle*, (National, February 2009), 16.

Feb-09 NATIONAL **Submissions to close** Submissions are due to close for the Federal Government's Native Title Discussion Paper, which canvassed options for using the native title system to help address key areas of Indigenous disadvantage. The purpose of the discussion paper was to generate ideas, stimulate discussion and seek input from the public. *Government News*, (National, February 2009), 12.

28-Feb-09 NATIONAL **Half of land taken reverts to Aborigines** Aborigines in the Northern Territory will regain 50% of the land that was compulsory acquired by the Federal Government, after a review of the intervention. *Weekend Australia*, (National, 28 February 2009), 10.

New South Wales

6-Jan-09 NSW **Court reserves decision on mine** The Land and Environment Court has reserved judgment in the case challenging Barrick Gold's plan to significantly expand the size of the Cowal Mine. Long time objector and native title claimant Neville Williams is behind the action taken in late December. *West Wyalong Advocate*, (West Wyalong NSW, 6 January 2009), 3.

22-Jan-09 NSW **Court's decision paves way for sale** The Federal Court action to stop the Worimi Local Aboriginal Land Council from selling off 10 acres of key waterfront land at Boat Harbour has ended with the Federal Court decision that there is no native title over the land. *Port Stephens Examiner*, (Port Stephens NSW, 22 January 2009), 60.

6-Feb-09 NSW **Traditional land owners fire up quarry debate** The Ngulingah Aboriginal Land Council has accused Lismore City Council and the owner for Champions Quarry of not consulting with them over a proposed extension of the site. *Northern Star*, (Lismore NSW, 6 February 2009), 6.

19-Feb-09 NSW **Four remote communities sign up to 40-years lease** Traditional owners from four remote communities have agreed to give up control of their land for the next 40 years under a lease agreement with the Federal Government. In exchange, the communities will receive approximately 300 new houses and 250 existing houses will be refurbished. *National Indigenous Times*, (Malua Bay NSW, 19 February 2009), 9.

Northern Territory

8-Jan-09 NT **Tiwi people to manage fishing rights** Tiwi Islanders will represent themselves over the management of fishing rights after the High Court's Blue Mud Bay decision. Though Mr Tipungwuti and fellow Islanders still want suggestions from fishermen and government on how to manage their coasts. The Islanders agreed with Chief Minister Paul Henderson that the High Courts Blue Mud Bay decision should not become a "political playground". *Northern Territory News*, (Darwin NT, 8 January 2009), 4.

12-Jan-09 NT **Land Councils passing the buck** The High Court has made a decision that is in favour of the Indigenous land holders. The traditional land holders are now looking for some sort of permit system introduced for non-Indigenous peoples wanting to fish their tidal waters. *Northern Territory*, (Darwin, 12 January 2009), 13. *The Weekend Australian*, (National, 10 January 2009), 22.

16-Jan-09 NT **Native title is key to better deal** The Federal Government has released a native title discussion paper which will look at options for improving the system. Issues relating to mining and infrastructure payments are major considerations. *Centralian Advocate*, (Alice Springs NT, 16 January 2009), 16.

31-Jan-09 VIC **30-year land claim over** Australia's longest running land claim has been settled, ending a 30-year struggle by traditional owners for rights to land on Darwin's doorstep. The Northern Territory Government and traditional owners declared that they had reached an agreement over 65,000 hectares of land on the Cox Peninsula, west of Darwin. *Ballarat Courier*, (Ballarat VIC, 31 January 2009), 26. *Sunraysia Daily*, (Mildura VIC, 31

January 2009), 23. *Townsville Bulletin*, (Townsville QLD, 31 January 2009), 8. *The Examiner*, (Launceston TAS, 31 January 2009), 13. *Ilawarra Mercury*, (Wollongong NSW, 31 January 2009), 24. *Northern Territory News*, (Darwin, 31 January 2009), 19. *National Indigenous Times*, (Malua Bay NSW, 5 February 2009), 3. *Border Mail*, (Albury-Wodonga VIC, 31 January 2009), 28. *National Indigenous Times*, (Malua Bay NSW, 5 February 2009), 5.

2-Feb-09 NT **New Indigenous body sworn in** For the first time in the Northern Territory, the government has appointed an Indigenous body to advise it on Aboriginal affairs. *National Indigenous Times*, (Malua Bay NSW, 19 February 2009), 7.

17-Feb-09 NT **Arrente warning: behave or get out** The native title holders of Alice Springs have called on bush visitors to 'mind the lore of the land while they're here - or get out'. Under a plan being worked on with the Northern Territory and Federal Governments, native title holders will educate visitors on where it is safe to be and where it is not. *Centralian Advocate*, (Alice Springs, 17 February 2009), 5.

Queensland

25-Feb-09 QLD **Mabo community challenges State Government** The tiny island community that set the nation's land rights agenda with the 1992 Mabo decisions says it is ready to initiate a legal challenge against the Queensland Government if necessary, to have a school built on the native title land. *Torres News* (Thursday Island, QLD, 25 January 2009), 10.

South Australia

7-Jan-09 SA **Weir threatens return of Hindmarsh saga** Ngarrindjeri Native Title Committee has threatened to re-initiate the Hindmarsh Island bridge affair if the Rann Government moves ahead with the proposed weir at Clayton, near the Murray Mouth. *The Australian*, (National, 7 January 2009), 5.

15-Jan-09 SA **McLaughlin Park delay** Native title concerns have delayed the construction of the replacement under cover viewing site of the main oval at Millicent's McLaughlin Park. According to a recent statement from Millicent Football Netball Club, the new structure is awaiting native title clearance. *South Eastern Times*, (Millicent SA, 15 January 2009), 21.

22-Jan-09 SA **Elders back Olympic Dam native title claim** Despite Arabunna elder Kevin Buzzacott calling for the immediate closure of the Olympic Dam mine, the Kokatha elders have given their support for the proposed native title claim over the Olympic Dam area. *Monitor Roxby Downs*, (Roxby Downs, SA, 22 January 2009), 5. *Monitor Roxby Downs*, (Roxby Downs, SA, 28 January 2009), 3.

Tasmania

10-Feb-09 TAS **Independence moves by Aboriginals** Aboriginal leaders are this month meeting Launceston to plan a push to form their own government to control Crown land resources. *Launceston times*, (Launceston TAS, 10 February 2009), 5.

Victoria

6-Jan-09 VIC **Native Title reform bid** Indigenous leader Mick Dodson, who chaired the steering committee for the development of a Victorian Native Title Settlement Framework, says in a report that if reforms are adopted then native title claims in Victoria could be largely resolved by 2020. *The Age*, (Melbourne VIC, 6 January 2009)

8-Jan-09 VIC **Nationals slam 'secretive' native title plan** The Nationals have criticised the Victorian Government over its guarded approach to land management and called on it to confess on native title reform plans. Victorian deputy leader Peter Walsh said it was a terrible disgrace that country Victorians were the last to be notified on management of local Crown land. The overhaul, to be considered by cabinet, would allow traditional owner groups to be able to negotiate with the State Government to jointly manage areas like national parks. *The Age*, (Melbourne VIC, 8 January 2009), 5. *Sunraysia Daily*, (Mildura VIC, 7 January 2009), 8.

09-Jan-09 NATIONAL **Native Title shake-up** The Victorian Government is considering a draft report on changes to native title land management which could see Indigenous groups jointly managing areas. The report suggests that Aboriginal groups that could prove a traditional, rather than continuous, connection to land could negotiate agreements with the Government to jointly manage areas such as national parks. *Riverine Herald*, (Echuca VIC, 9 January 2009), 3. *The Week*,

(National, 9 January 2009), 6. *The Age*, (Melbourne, VIC, 9 January 2009), 11. *Border Mail*, (Albury-Wodonga VIC, 7 January 2009), 20. *Warrnambool Standard*, (Warrnambool VIC, 7 January 2009), 8. *Cairns Post*, (Cairns QLD, 7 January 2009), 11. *Shepparton News*, (Shepparton VIC, 7 January 2009), 6. *The Age*, (Melbourne VIC, 7 January 2009), 3. *The Age*, (Melbourne VIC, 7 January 2009), 10. *The Age*, (Melbourne VIC, 6 January 2009), 1. *The Week*, (National, 9 January 2009), 6. *East Gippsland News*, (East-Gippsland, 14 January 2009), 1. *Wangarata Chronicle*, (Wangarata VIC, 9 January 2009), 9. *National Indigenous Times*, (Malua Bay NSW, 22 January 2009), 8. *Mansfield Courier*, (Mansfield VIC, 14 January 2009), 18.

15-Jan-09 VIC **Aborigines press on with Bay bid in court** A native title claim over Port Phillip Bay will proceed in the Federal Court this year despite a proposed state revamp of Aboriginal Land rights that would avoid prolonged, expensive court battles. *The Age*, (Melbourne VIC, 15 January 2009), 3.

19-Jan-09 VIC **Hattah native title claim fraud, says elder** A Native title claim on a huge area of land near the Hattah-Kulkyne National Park is a fraud, according to a local elder. Mr Kennedy, who claims he is a traditional owner of the land, has said that nearly 18 applicants on the title claim were not from the area. *Sunraysia Daily*, (Mildura VIC, 19 January 2009), 3.

20-Jan-09 VIC **Angered family steps up fights for sacred land** The Kennedy's, a Robinvale family, claim Iluka employees have acted illegally and have been mining on their land for years without permission. Brendan Kennedy believes Iluka are definitely on their native title land and as a result they feel they are being dispossessed. *Sunraysia Daily*, (Mildura VIC, 20 January 2009), 5. *Sunraysia Daily*, (Mildura VIC, 19 January 2009), 3.

23-Jan-09 VIC **Land council steps back** Barengi Gadjin Land Council has decided against joining a traditional owner group supporting joint authority to manage Crown land. The Victorian Traditional Land Justice Group, together with the State Government, have formed a steering committee to jointly develop a Victorian native title settlement framework. *Wimmera Mail Times*, (Horsham VIC, 23 January 2009), 19.

Western Australia

8-Jan-09 WA **Shire pushes for LNG inclusion** Environs Kimberley announced that the LNG precinct in Broome

was an environmental disaster waiting to happen. The organisation along with others will be stepping up its campaign against development. The Government has appointed a facilitator to aid in negotiations between environmental activist, Indigenous stakeholders and gas companies. These will be proper negotiations - the facilitation is not about railroading traditional owners and Aboriginal people of the Kimberley. *Broome Advertiser*, (Broome WA, 8 January 2009), 1.

10-Jan-09 WA **Nyoongars seek land veto power** The Nyoongar people are pushing for an essential change in native title legislation that would give them the right to mediate in development plans for unallocated Crown land. South West Land and Sea Council who represent the group, wants the newly proposed system in Victoria to be implemented which allows groups to jointly manage land with the State Government. *The West Australian*, (Perth, 10 January 2009), 7.

16-Jan-09 WA **Changes of responsibility** Premier Colin Barnett has reassigned the areas of early childhood development, women's interests and native title to provide clearer lines of Ministerial responsibility within Cabinet. Native Title responsibilities have been handed to Attorney-General Christian Porter. *Golden Mail*, (Kalgoorlie WA, 16 January 2009), 2. *Geraldton Guardian*, (Geraldton WA, 16 January 2009), 10.

21-Jan-09 WA **Unique title deal brokered** A unique deal was signed last month between the Jjamal Native Title Claim Group and Atlas Iron Limited. The deal sets a new precedent for mining companies throughout WA. It bonds strong protection of Njamal country with community communication and continuing associations throughout the operations. *Pilbara News*, (Pilbara WA, 21 January 2009), 4.

23-Jan-09 WA **System labelled tough and cruel** Yamatji Land and Sea Council have supported a request for changes to native title law after a senior Aboriginal official labelled the current system "tough" and "cruel". *Geraldton Guardian*, (Geraldton WA, 23 January 2009), 12.

29-Jan-09 WA **Gas threat raises ire of owners** Kimberley Land Council deputy chairman Nolan Hunter has called for the state Government to withdraw the possibility of using compulsory acquisition to secure land for a gas hub at James Price Point. WA Premier Colin Barnett announced the selection of James Price Point as a location for an LNG processing site last month, flagging compulsory acquisition of the land as an option. *Broome Advertiser*, (Broome WA, 29 January 2009), 6.

5-Feb-09 WA **Act dismisses 14 WA native title claims**

Fourteen native title claims covering more than 290,000km of the Goldfields, South West, the Pilbara and Geraldton have been dismissed on technicalities in WA recently. *Farm Weekly*, (WA, 5 February 2009), 167.

11-Feb-09 WA **Aboriginals oppose Swan Valley mosque**

Plans to build a mosque in the Swan Valley have upset Nyoongar elders who claim the Caversham land is a sacred site and has been protected under the Aboriginal Heritage Act since 1984. *West Australian*, (Perth WA, 11 February 2009), 13.

12-Feb-09 WA **Aboriginals set for mining deal with Rio**

Aboriginal groups in the Pilbara and mining giant Rio Tinto are on the brink of signing Australia's biggest mining agreement after five years of sensitive negotiations. The agreement, expected to be sealed in April, covers compensation, jobs, training, protection of culturally significant sites, environmental issues and post-mining rehabilitation of the land. *West Australian*, (Perth WA, 12 February 2009), 44.

19-Feb-09 WA **Call to speed up native title** Kimberley Land Council executive director Wayne Bergmann has called for a new Kimberley-wide approach to native title negotiations in order to speed up the construction of key projects in indigenous communities. *Broome Advertiser*, (Broome WA, 19 February 2009), 9.

26-Feb-09 WA **LNG hub gets boost from traditional owners**

The state government's plans for a gas processing hub on the Kimberley coast have received a boost from the region's traditional owners, which have said they are ready to negotiate a deal for a large scale liquefied natural gas development on Aboriginal land. *Business News*, (Perth WA, 26 February 2009), 4.

Applications Lodged with the Federal Court

DATE FILED	APPLICATION NAME	APPLICATION TYPE	STATUS	STATE/ TERRITORY	TRIBUNAL FILE NO.	FEDERAL COURT FILE NO.
30/01/2009	Gandangara LALC #2	Non-claimant application	Active	NSW	NN09/2	NSD82/09
30/01/2009	Gandangara LALC #3	Non-claimant application	Active	NSW	NN09/3	NSD83/09
30/01/2009	Gandangara LALC #4	Non-claimant application	Active	NSW	NN09/4	NSD84/09
27/01/2009	Gwydir Shire Council	Non-claimant application	Active	NSW	NN09/1	NSD65/09

This information has been extracted from the [National Native Title Tribunal website: http://www.nntt.gov.au/Applications-And-Determinations/Search-Applications/Pages/Search.aspx](http://www.nntt.gov.au/Applications-And-Determinations/Search-Applications/Pages/Search.aspx) accessed 13 March, 2009. For further information about native title applications contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

Registration Test Decisions

APPLICATION NAME	NNTT FILE NO.	FEDERAL COURT FILE NO.	DECISION	DECISION DATE	APPLICATION DATE
Kaurareg People #1	QC08/6-1	QUD266/08	Accepted	13/02/2009	28/08/2008
Kaurareg People #2	QC08/7-1	QUD267/08	Accepted	13/02/2009	28/08/2008
Ngarluma People	WC08/2-1	WAD165/08	Accepted	11/02/2009	31/07/2008
Wanyurr Majay People	QC08/9-1	QUD296/08	Accepted	04/02/2009	15/09/2008
Turrbal People	QC98/26-3	QUD6196/98	Accepted	15/01/2009	13/05/1998

This information has been extracted from the [National Native Title Tribunal website: http://www.nntt.gov.au/Applications-And-Determinations/Registration-Test/Pages/search.aspx](http://www.nntt.gov.au/Applications-And-Determinations/Registration-Test/Pages/search.aspx) accessed 13 March, 2009. For further information about Registration Test Decisions contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

ILUAs

NAME	TRIBUNAL FILE NO.	TYPE	STATE OR TERRITORY	REGISTRATION DATE	SUBJECT MATTER
Darling Downs to Wallumbilla Pipelines ILUA	QI2007/028	Area agreement	QLD	29/01/2009	Access
Running Creek ILUA	QI2008/016	Area agreement	QLD	27/01/2009	Co-management
Lilyvale ILUA	QI2008/017	Area agreement	QLD	27/01/2009	Co-management

This information has been extracted from the [National Native Title Tribunal website: http://www.nntt.gov.au/Indigenous-Land-Use-Agreements/Search-Registered-ILUAs/Pages/Search.aspx](http://www.nntt.gov.au/Indigenous-Land-Use-Agreements/Search-Registered-ILUAs/Pages/Search.aspx) 13 March, 2009. For further information about Indigenous Land Use Agreements contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

Determinations

SHORT NAME (NNTT)	CASE NAME	DATE (NNTT)	STATE	OUTCOME	LEGAL PROCESS
Eden Local Aboriginal Land Council	Eden Local Aboriginal Land Council v Minister for Lands and NTSCORP Ltd	17/12/2008	NSW	Native Title does not exist	Consent Determination

[\(unreported, FCA, 17
December 2008, Jacobson J\)](#)

Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples	Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples v State of Queensland [2008] FCA 1855	09/12/2008	QLD	Native title exits in the entire determination area	Consent Determination
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This information has been extracted from the National Native Title Tribunal website: <http://www.nntt.gov.au/Applications-And-Determinations/Search-Determinations/Pages/Search.aspx> accessed 17 March 2009. For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

Due to reconstruction of the National Native Title Tribunal website, as at 13 March 2009 we were unable to ascertain **Future Act consent determinations** for the January-February period. If possible, we will provide information for those two tables in the next edition of the *Native Title Newsletter*.

Items in the AIATSIS Catalogue

The following list contains either new or recently amended catalogue records relevant to Native Title issues. Please check MURA, the AIATSIS on-line catalogue, for more information on each entry. You will notice some items on MURA do not have a full citation because they are preliminary catalogue records.

Audiovisual material of interest to native title includes:

- A DVD of the Handover of Nyangumarta Massacres Songline 2005 by Walmatjari women to Nyangumarta women, filmed by the Wangka Maya Pilbara Aboriginal Language Centre.
- A collection of 7 field tapes of Pilbara languages recorded in 1965 by Howard Coate (COATE_H03).
- A video 'Message disk three: Dugong and Marine Turtle Project' from the North Australian Indigenous Land and Sea Management Alliance (NAILSMA), created in 2008.
- A collection of 12 hours of various recordings from Irra Wangga - Geraldton Language Programme. (IRRA-WANGGA_06).
- An early collection (1981-83) of approximately 15 hours of language, stories and songs recorded at Maningrida and Waruwu, NT (COLEMAN_C02).
- Low resolution photos and quicktime files of rock art in Sutherland Shire, NSW (1985-2000). (BURSILL.RCD23).
- Collection of black and white prints (72) of Depuch Island rock engravings, taken by Adrian O. Gray in 1959 (DAY.A3.CD).
- Collection of 61 black and white prints of ceremonies in the Kimberley and in Arnhem Land, taken by A.P. Elkin between 1928 and 1952 (ELKIN.A1.CD) and 5 black and white prints of women's dance in the Kimberley taken by Elkin in the 1950's (ELKIN.A2.CD).
- Collection of 14 copy negatives (black and white) of photographs taken at Melville Island and other places in the NT c. 1910. (HOUSTON.J2.BW).
- Parts of a series of the Mountford Film Collection (1948) with notes by Martin Thomas and Curtis Levy. (MOUNTFORD-C003). NOTE: Restrictions apply.
- Collection of 38 black and white negatives of photographs and 59 prints taken by Herbert Read at Warrawi, Gould burn Island, NT from 1925-1928. (READ.H1.CD and READ.H1.BW).
- Collections of 15 black and white prints and 8 negatives taken by Herbert Read at Raukkan, SA between 1920 and 1925. (READ.H2.CD, READ.H2.BW).

You will notice a number of articles from the *Indigenous Law Bulletin* in the list below; AIATSIS has recently subscribed to this journal. Information about past issues

online of the *Indigenous Law Bulletin* can be found at <http://www.ilc.unsw.edu.au/publications/ilb/past.asp>

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Hinkson, Melinda. *An appreciation of difference: WEH Stanner and Aboriginal Australia*. Canberra, A.C.T.: Aboriginal Studies Press, 2008.

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Martin, D. F. (David F.) *Autonomy and relatedness: an ethnography of Wik people of Aurukun, Western Cape York Peninsula*. Thesis (Ph.D) 1993--Australian National University, Canberra.

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Arts

Gibson, Lorraine. 'Making art and making culture in far western New South Wales.' *Australian Aboriginal Studies* no.1 (2008), p.67-77.

O'Conner, Sue and Donny Woolagoodja, Anthony Barham. 'Painting and repainting in the west Kimberley.' *Australian Aboriginal Studies* no.1 (2008), p. 22-38.

Taylor, Luke. 'Negotiating form in Kuninjku bark-paintings.' *Australian Aboriginal Studies* no.1 (2008), p. 56-66.

Ward, Graeme and Mark Crocombe. 'Port Keats painting: revolution and continuity.' *Australian Aboriginal Studies* no.1 (2008), p. 39-55.

Welch, David. 'Stylistic change in the Kimberley rock art, Australia.' *Rock Art Studies: The Post-Stylistic Era or Where Do We Go from Here? : Papers Presented in Symposium a of the 2nd Aura Congress, Cairns 1992*, edited by Michel Lorblanchet and Paul G. Bahn. David Brown Book Co, 1993 p. 99-113.

Economics and policy

Egan, Ted. *Due inheritance: reviving the cultural and economic wellbeing of first Australians: a model for consideration*. Nightcliff, N.T.: Niblock Publishing, 2008.

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Turnbull, Paul. 'Theft in the name of science.' *Griffith Review*, Spring (2008), p. [227]-235.

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Briscoe, Gordon. 'Change in Weerong from pre-contact to the present: a Carrahdigang and Cammerraygang perspective.' *Sitelines, Sydney: Sydney Harbour Federation Trust*, 2005, p. [115]-135.

[from] *Chambers' Edinburgh journal*. 'Punishment of Aborigines.' *Chambers' Edinburgh journal* no. 482 (Apr. 24, 1841),p. 108-109.

Currie, Jessica. *Bo-r*a-ne ya-goo-na par-ry-boo-go = Yesterday today tomorrow: an Aboriginal history of Willoughby*. Chatswood, N.S.W.: Willoughby City Council, c2008.

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Stanton, Sue Jean. *Coloureds and Catholics [manuscript]: a colonial subject's narrative of the factors and processes that led to the colonisation and conversion of coloureds at Garden Point Mission, 1941-1967*. Thesis (Ph.D.)--Charles Darwin University, Darwin 2007.

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Indigenous values: Indigenous values and river flows. [Darwin, N.T.] : TRaCK (Tropical Rivers and Coastal Knowledge), [2008].

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Bauman, Toni. 'You mob all agree? the chronic emergency of culturally competent engaged Indigenous problem solving.' *Indigenous Law Bulletin*, Vol. 6, No. 29 (Aug. 2007), p. 13-15.

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Brennan, Sean 'Wet or dry, it's Aboriginal land: the Blue Mud Bay decision on the intertidal zone.' *Indigenous law bulletin*, Vol. 7, No. 7 (Aug. - Sept. 2008), p. 6-9.

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THE NATIVE TITLE RESEARCH UNIT

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