Native Title Newsletter

March/April, No. 2/2010

WHAT'S NEW

people place power
Native Title Conference 2010

Registrations Open!

1–3 June
National Convention Centre
Canberra

people place power

Native Title Conference 2010

Register now for the National Native Title Conference 2010: *People, Place, Power*

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) invite registrations for the 2010 Native Title Conference to be held in Canberra, from Tuesday 1 June to Thursday 3 June 2010. The Native Title Conference will be co-convened by the National Native Title Council and hosted by the Ngunnawal peoples, the traditional owners of the Canberra region.

The first day of the conference, Tuesday 1 June, offers pre-conference workshops for delegates of native title representative bodies, service providers and native title groups. The second and third days, Wednesday 2 June and Thursday 3 June, are open to the public. As with previous conferences there will be Indigenous Talking Circles throughout the public programs.

Professor Marcia Langton, AM, will present the annual Mabo Lecture on Thursday 3 June.

This year, the conference themes reflect the fact the conference will occur in the national capital, the traditional country of the Ngunnawal peoples and a place where significant native title decisions have been made. The following themes will be addressed.

People
- the legacy of native title for future generations
- land justice and social and emotional wellbeing
- human rights and racial discrimination
- women and native title

Place
- governing native title land - roles and responsibilities of PBCs
- land, water, heritage, country
- environment, conservation and joint management
- housing, tenure and community development

Power
- the national policy framework and proposed National Partnership Agreement
- economic development and native title payments
- broader land settlements and native title agreements
- reforms to the Native Title Act.

Program details are available online at http://www.aiatsis.gov.au/ntru/nativetitleconference/conf2010/program.html

Register at: http://www.aiatsis.gov.au/ntru/nativetitleconference/conf2010/registration.html

Accommodation: You are urged to book your accommodation as soon as possible. See the conference website for detailed information about accommodation options.

Bulk discount: If your organisation registers 10 people on a multiple registration form (downloadable from the conference website) you will receive one registration free of charge.

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Caroline Tennant-Kelly collection discovered in a Northern Rivers farmhouse in New South Wales, Australia.

Kim de Rijke, University of Queensland,

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Tony Jefferies, University of Queensland,

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On December 14th 2009 we drove from Brisbane, southeast Queensland, down to the home of Grahame and Stephanie Gooding near Tintenbar in the Northern Rivers district of New South Wales. The purpose of our trip was to take possession of what we have since come to call the 'Caroline Tennant-Kelly Collection'; the papers and effects left by the anthropologist at her passing in 1989. Its discovery was the culmination of some adroit detective work, and considerable perseverance on the part of Kim: first, via Heather Radi's online biography, ascertaining that Tennant-Kelly had passed away in the town of Kyogle, and then taking the steps that led to finding her legacy in the hands of local cattleman Grahame Gooding.

There was a quality of the miraculous in the whole event, for we had been convinced that Tennant-Kelly's fieldnotes, unpublished papers, and the like had long since disappeared. And in regard to the facts of their preservation: undoubtedly the chances of the collection having wound up in the local tip greatly outweighed those of an intelligent and sensitive person utterly untrained in this field recognising their value, and with no prospect of personal gain, holding on to them for the intervening twenty years. Considering the collection had spent twenty years in various spare rooms and sheds it was in marvellous condition: a riotous jumble of letters, manuscripts, notebooks, photographs and miscellanea contained in six dilapidated archival boxes and a large cardboard carton. We have since estimated it to consist of approximately 1,800 separate items.

Tennant-Kelly's career can be divided into four chapters, all of which are represented in the collection: her early life as a playwright and theatrical producer in Brisbane and Sydney (1922 to 1932), as anthropologist working in Aboriginal Studies in Queensland and New South Wales (1932 to 1940), as anthropologist specialising in, particularly, post-war immigration (1944 to 1955), and lastly her career in the sociological aspects of urban-planning, particularly the consequences and implications of Sydney's rapid post-war expansion (1955 to 1970). In addition, there is a great deal of personal material: letters, poems, family photographs, travel writing, and more.

Tennant-Kelly's anthropological work in Queensland initially sparked our interest in her, particularly her well-known Oceania article of 1935: '*Tribes on Cherburg Settlement, Queensland*'. There was also the abstract of a paper, which was presumed lost, delivered at the 21st ANZAAS conference in 1932, '*The Aborigines of Fraser or Great Sandy Island, Queensland*' (thankfully, it is included in the collection).

It is this second period of Tennant-Kelly's professional life that is likely to be of most interest to Australian anthropologists generally. Having now had the opportunity to undertake a preliminary exploration of the collection, we both feel it is no hyperbole to state that, in terms of southern Queensland at least, the collection represents the

most significant body of Aboriginal ethnographic material to emerge since Winterbotham's work with Gaiarbau, Paddy Flynn and Cobbo Williams in the late 1950s, and, in terms of Cherbourg, surpassing in quality and extent the material gathered by Norman Tindale during his much shorter sojourn there some five years after Tennant-Kelly.

Before turning to an elaboration of Tennant-Kelly's Australian ethnographic material it is pertinent to note the private correspondence between Margaret Mead and Tennant-Kelly, of which the collection includes some 100 pages. Their correspondence, particularly that from the late 1920s, is likely to add to the knowledge available on Mead's anthropological work, the Sydney academic social scene in which both moved, and their personal characters more generally. In addition, there is significant correspondence with, and references to, other anthropologists of note: A.P. Elkin, A.R. Radcliffe-Brown, Raymond Firth, Reo Fortune, Gregory Bateson, Ian Hogbin, S.F. Nadel, Camilla Wedgwood, Phyllis Kaberry and Ursula McConnell.

Having worked in native title in Central Queensland, and therefore acutely aware of the general paucity of historical Australian Aboriginal ethnographic material from the region, we could hardly contain our excitement at the quantum leap the Tennant-Kelly Collection represents in this regard. Firstly, there is the purely ethnographic material itself, collected, for the most part, under the headings of the ethno-linguistic groups. These groups are delineated in '*Tribes on Cherburg Settlement, Queensland*' and consist of most of the groups well-known from the region: Batjala, Kabi, Wakka, Goa, Kalali, Bidjara, Gangulu and Darumbal. Significant material however was also collected from other groups such as the Wiri and Yirendali further north while references are made to groups from Cape York and the Gulf of Carpentaria. The amount and quality of information gathered for each one varies and depends, no doubt, on the availability and quality of Tennant-Kelly's respective informants.

Tennant-Kelly's line of enquiry into Aboriginal social organisation and religious life generally conforms to the anthropological interests of her day, and those we associate most strongly with the structural-functionalist approach of Radcliffe-Brown and her mentor Elkin. The primary data therefore includes wordlists (including kin terms), kinship structure diagrams, notes on totemism, religious ritual practices, territorial knowledge and genealogies; all the classic ethnographic concerns.

Broadly speaking, Tennant-Kelly was interested in a theme that stayed with her throughout her professional life and which she referred to as 'culture contact'. Her focus in Queensland was therefore on the effect a Government Settlement like Cherbourg was having on Aboriginal society and culture. Space does not permit here an in-depth study of Tennant-Kelly's background and motivations; suffice to say, she was an extraordinarily independent woman who was neither impressed nor intimidated by the behaviour of Queensland public servants and missionaries, an outlook that would eventually land her in trouble.[1]

From the moment one begins to study Tennant-Kelly, admiration and respect grows. This was a woman unusual in the Australian context: like her friend and colleague, Camilla Wedgwood, from an upper middle-class English background with a strong sense of social duty and confidence around political power. To some degree she stood outside Australian society, which is perhaps an ideal position for an anthropologist who had to negotiate the largely racist jungle of pre-war officialdom and emerge with any integrity. The Caroline Tennant-Kelly collection is a treasure that will assist immeasurably the understanding of various aspects of early to mid-twentieth century Australian society. It contains Aboriginal cultural material previously unknown and missing; and it will assist anthropologists, historians, linguists, political scientists and others in their analysis of key socio-political and cultural aspects of issues that continue to be relevant in Australia today. The collection is being donated to the Fryer Library at the University of Queensland.[2]

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[1]/ See for example: Kidd, R. (1997) The Way We Civilise: Aboriginal Affairs – The Untold Story. St. Lucia: The University of Queensland Press, pp. 125-136.

[2]/ We thank Professor David Trigger, supervisor of our respective PhD and MA anthropological research projects at the University of Queensland, for his assistance in our Tennant-Kelly research. While we are happy to answer questions regarding the significance and background of this collection, questions regarding access should be directed to the Fryer Library (phone: +61 (0)7 3365 6236, email: fryer@library.uq.edu.au).

Claimant comment

Valerie Cooms – Quandamooka Native Title Claim

Valerie Cooms belongs to the Nunukal people of Minjeeriba (North Stradbroke Island in Queensland). She has three children and six grandchildren. Valerie has worked for the Australian Public Service for many years in the areas of Health, Employment and Training, Native Title and the Royal Commission into Aboriginal Deaths in Custody. She is currently completing her PhD with Queensland University of Technology in Brisbane.

Where is the Quandamooka claim at now?

The claim is currently in negotiation/mediation stage. I think the State is about to tell us what the offer looks like. And now we have to decide whether it's a good or bad offer. It's hard to judge what a good or bad offer is. Something, even if it's not really that good, looks better than nothing to people who have never had anything. What we don't want is our PBC to start out in serious debt. You have to be careful what you wish for and what you get. There are interesting times ahead.

What is the toughest thing about the native title process?

The hardest thing about the native title process is how it has split the community. We are used to fighting with white people for land. We've been doing that for a long time and, in a sense, it brings us together. But, because of the nature of native title, it has split a lot of families and parts of the community.

The reaction of non-indigenous people on the island is interesting. It seems like white people don't mind if native title is 'way out', somewhere they never go, or if they do, on a tourist venture. When its there, right under their noses, they don't cope very well. An example of this is the State telling us we are too close to Brisbane… when the Government built Brisbane after we were there; it's not our fault that there is a capital city across the bay. The non-indigenous residents are very paranoid… We hear them saying "the Aborigines in the bush, coming back to live here!" And I think to myself 'so? It's our island! The Court says it's our island, why wouldn't we move back?' This land issue is a big problem for non-indigenous people.

Another tough part of native title, is dealing with the State and the Court. Sitting in the Court and I see this large emblem with a kangaroo and emu looking back at me and I think to myself "why am I in here!?" I also have issues with all the changes to the *Native Title Act*. Whenever there is a change to the Act, it's never a change in our favour, always a change for somebody else.

What will recognition of native title rights and interests mean to you?

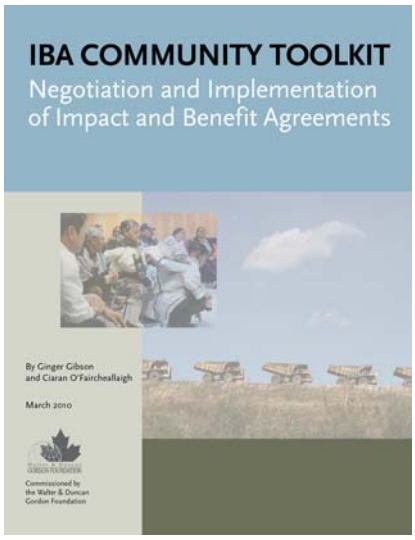
We are almost over the line but there is a still a long way to go yet. I think it will be the end of a long struggle for a lot of our mob. It's so good to get back to 'Straddie'. I get a spring in my step and I think 'does the government even understand how precious this land is to us?' Obviously they don't. But then I think 'it doesn't matter what you white fellas think, this is my country and I belong here, more than you will ever belong and more than you will ever understand'.

It has changed though… My mother didn't recognise any of the landscape after the mines had come and gone. The big sand hills had gone and she thought she was somewhere else. My mum used to know the island like the back of her hand. The first time mother found out that the land wasn't hers was when we lodged the native title claim. With all her experience in dealing with the Government, she said 'they'll just give us the swamp'. We need more than this.

We need to capitalise from native title, get on the front foot and control the National Parks and run tourist ventures. It will not only do us a world of good economically and socially, but it will do the white people who come to the island good, to see us running things, as the recognised owners of this place. We need industry on the island so people don't have to leave their traditional lands to seek work or education. At the moment, if we are lucky we might get a labouring job with the mines. We deserve better than that, hopefully native title will help deliver on some of this.

Toolkit for negotiation of agreements between Aboriginal communities and mining companies

As in Australia, Indigenous peoples in Canada have a growing capacity to negotiate legally-binding agreements governing the terms on which commercial development may occur on their traditional lands. In Canada these agreements are referred to as Impact and Benefit Agreements or IBAs. This Negotiation Toolkit is designed for Canadian Indigenous communities engaged in negotiating such agreements with mining companies. Section 2, which examines the legal and regulatory framework for negotiations, is specific to Canada, but much of the Toolkit is general in focus and is just as applicable to Australia as to Canada.



The goal of the Toolkit is to provide materials, tools and resources for Indigenous communities to help them address the process and content issues relevant to negotiating mining agreements. It can be tempting to focus solely on the content of agreements, on the issue of what people achieved in negotiations, for example the financial benefit they gained. But the authors argue that the process of negotiating and implementing agreements is absolutely critical in shaping the content of agreements and whether their potential benefits are realised.

In developing the Toolkit, the authors reviewed all publicly-available literature on mining agreements in Canada and Australia, and drew extensively on our own experience in negotiating and implementing agreements. The Toolkit was tested in two stages with a group of Aboriginal people from across Canada, as well as consultants and lawyers who work with them. The authors first presented a discussion paper setting out the proposed content of the toolkit to 20 negotiators and experts to ensure that all key issues were covered. Later, five negotiators and experts reviewed the full toolkit and provided feedback and advice both on its content and presentation.

The authors argue that positive outcomes for Indigenous people from negotiations reflect a range of factors, including:

- The wider context - legal, regulatory and policy;
- The nature and extent of community involvement;
- The character of the community;
- The strategies and negotiating positions the community develops;
- The way the community structures its negotiating team;
- The nature of the project and of the company developing it;
- The structures and processes put in place to ensure effective implementation.

All of these factors are addressed in the Toolkit. It starts with an overview of the wider legal, political and regulatory environment in which agreements are negotiated. This is followed by a detailed analysis of three phases of negotiation:

- Preparing for negotiations and establishing a negotiating position (Section 3);
- Conducting negotiations and creating agreements. This section includes a detailed discussion of legal and substantive issues covered by agreements (Section 4); and
- Implementing agreements and maintaining relationships (Section 5).

The toolkit is designed as a practical guide to negotiating agreements. It is not an exposition of theoretical approaches to negotiation and their merits. Nor does it offer a prescriptive template for agreements, given that the goals of communities will differ, as will the appropriate content and structure of agreements. Rather, the toolkit provides a range of options for dealing with issues that arise in negotiations between Aboriginal communities and mining companies.

Ginger Gibson and Ciaran O'Faircheallaigh

IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements, Walter & Duncan Gordon Foundation, Ottawa, 2010
www.ibacommunitytoolkit.ca

NTRU project updates:

Progress report: 'The Future of Connection Material' project

Grace Koch, Native Title Research and Access Officer

The findings from the project, *The Future of Connection Material (FCM)*, have provided a set of guidelines for collection management practice within Native Title Representative Bodies (NTRBs). The *FCM* final report, researched over a period of three years, was based upon visits to NTRBs, workshops, and recommendations agreed upon at a Senior Professional Officers' meeting sponsored by FaHCSIA in March, 2008. It can be found online at: http://www.aiatsis.gov.au/ntru/docs/researchthemes/connection/future/KochFuture.pdf

In 2008, I visited Queensland South Native Title Services in order to compile a report on specific collection management needs based upon the recommendations set by the *FCM* document. The following year, FaHCSIA requested that I present an overview of the state of NTRB collection management practice to a forum that it sponsored in Melbourne on 8 October 2009 for Chief Executive Officers and Senior Professional Officers of NTRBs. At that meeting, it was decided that I would prepare reports for other NTRBs as requested.

Yamatji Marlpa Aboriginal Corporation invited me to write a report on their collection management needs. Airfare and accommodation expenses were met by Yamatji for a visit from 14-18 December 2009, and staff were interviewed at the Perth and Karratha offices. Although the original aim of the visit was to look at all systems, work was limited to the research and heritage areas because of the short time available. The resulting report, which had significant staff input, detailed seven areas for action, including consolidation of multiple databases where possible, privacy and security of documents, storage conditions, and consolidation of documentation. The report was structured to give some background, description of the present situation, and recommendations on steps for improvement for each action area.

Many of the issues raised by the report are relevant to NTRBs in general. Hopefully some progress in collection management practices will result from the findings and the recommendations.

AIATSIS' submission to the Attorney-General's Department: A summary

Zoe Scanlon, Native Title Research Unit, Research Officer

Proposed amendment to enable the historical extinguishment of native title to be disregarded in certain circumstances

The doctrine of extinguishment is a particularly contentious area of native title law that is unquestionably deserving of more critical attention: extinguishment is one of the key racially discriminatory aspects of native title. Specifically, the circumstances prescribed by the *Native Title Act 1993* (Cth) in which the extinguishment of native title may be disregarded are among the few attempts to develop a more just legal framework for the recognition and protection of native title, though they remain far too limited in scope.

In addition to the significant research that is required by native title parties to prove connection with and rights to land and water, state government parties must undertake costly and time-consuming searches of historical tenure over land in order to resolve native title claims. An intricate evaluation of this information is required in order to establish whether each particular act affecting land has occasioned any extinguishment and to what extent. Effectively, a potential dispute arises over each individual tenure granted over past 230 years. Regardless of whether these disputes take the form of negotiation or litigation, the time and cost associated with this aspect of the claims is significant.

The proposed s 47C appears to be a beneficial amendment to the *Native Title Act.* Section 47C could eliminate unnecessary delay and cost currently attached to native title claims over national parks by eliminating tenure assessments, and may facilitate the return of national park lands over which Indigenous peoples continue to hold rights and interests under Indigenous law.

However, a considerable problem with this reform remains in s 47C(1)(c)(ii) which requires claimants and State governments to agree to the operation of s 47C. This further erodes the negotiating power of native title parties and unduly places power in the hands of the State.

Further, reform in this area should be more extensive. Numerous problems exist in relation to the doctrine of extinguishment. These include the discriminatory nature of the doctrine, the unjust enrichment of the Crown, the inadequate justification for permanent extinguishment, the confusing and impractical piecemeal erosion caused by partial extinguishment, and the problem of the inconsistent approaches across jurisdictions.

While the addition of s 47C is certainly a positive step, the problems with the current law of extinguishment could be ameliorated by further reform to expand the circumstances in which historical extinguishment can be disregarded to include all Crown land.

The full submission can be accessed here: http://www.aiatsis.gov.au/ntru/docs/publications/submissions/s47.pdf

What's New?

Recent cases

Edwards v Santos Limited [2009] FCA 1532
(18 December 2009)
Logan J
Federal Court of Australia, Brisbane

The applicants, on behalf of the Wongkumara people, were 'registered native title claimants' over land in south-west Queensland and north-west New South Wales. There had not yet been a determination as to native title in that area.

The first and third respondents (Santos Ltd and Delhi Petroleum Pty Ltd) held an authority to prospect (under the *Petroleum Act 1923* (Qld)) in an area that included part of the claim area. The applicants sought to prevent the respondents seeking a petroleum lease on the basis that this was an impermissible future act.

Justice Logan found that, as the claimants did not hold native title at that time, they were effectively asking for an advisory opinion as to the outcome that would eventuate should native title be found to exist and the petroleum lease be sought by the respondents. His Honour considered that he was bound by *The Lardil People v Queensland* (2001) 108 FCR 298, which confirms the definition of 'future act' in s 223 of the *Native Title Act* as an act that 'affects' native title, not an act which, if native title existed, *might* affect it. He found that this application therefore had a hypothetical nature and that giving an advisory opinion was antithetical to the exercise of federal jurisdiction as this issue did not, in itself, constitute a 'matter'. Therefore the applicants' 'mere status' as registered native title claimants did not give them standing to claim any of the relief sought.

His Honour dismissed the application. The question of costs was not addressed, but scheduled for a later hearing.

Edwards v Santos Limited [2010] FCA 34
(4 February 2010)
Collier J
Federal Court of Australia, Brisbane

The applicants sought leave to appeal the dismissal of their claim (see above *Edwards v Santos* [2009] FCA 1532) before a Full Court.

Justice Collier considered that the submissions supporting the applicants' case held some potential merit, that the original judgment had resulted in important consequences for the parties and that the case raised issues of public importance. Her Honour found that the application involved issues that were suitable for consideration by the Full Court.

Justice Collier referred the application for leave to appeal to a Full Court of the Federal Court of Australia. The application for leave to appeal would be heard concurrently with or immediately before the appeal (subject to any contrary direction of the Full Court).

Edwards v Santos Limited (No 2) [2010] FCA 238
(17 March 2010)
Logan J
Federal Court of Australia, Brisbane

This proceeding concerned the awarding of costs in relation to the decision made in *Edwards v Santos Limited* [2009] FCA 1532 (see above). Logan J found that s 85A of the *Native Title Act 1993* (Cth) was inapplicable, relying on *The Lardil Peoples v Queensland* (2001) 108 FCR 453.

His Honour found that although the applicants' motivation in bringing the case was to resolve a negotiation dispute and there is a public importance in considering whether persons in the applicants' position have standing, this public interest is not greater than that of the respondents to be able to conduct their business without the burden of costs and unnecessary litigation. Neither was he convinced that

it was appropriate for the 'spirit' of s 85A to be taken into account (as some Federal Court Judges have been) and therefore found that discretion as to costs should be exercised in the usual way.

Justice Logan ordered that the applicants pay the first and third respondents' (Santos Ltd and Delhi Petroleum Pty Ltd) costs of and incidental to the application, including the summary judgment.

Sampi on behalf of the Bardi and Jawi People v State of Western Australia [2010] FCAFC 26

(18 March 2010)

Full Federal Court of Australia, Melbourne (via video link to Perth)
North & Mansfield JJ

The Full Federal Court found in favour of the Bardi and Jawi people in their appeal against the state of Western Australia. The successful native title claim concerns the Dampier Peninsula, the islands in the Buccaneer Archipelago and surrounding offshore areas in the Kimberley region, Western Australia. The decision marks a significant win for the Bardi and Jawi people 15 years after they initiated their native title claim.

The primary judge, Justice French in 2005,[3] recognised the interests of the Bardi people but not the Jawi people as his Honour considered the two groups were distinct societies at the time of colonisation. He held further that the remaining Jawi people had been absorbed by the Bardi society. As a result the claim to Jawi territory, in particular, offshore areas failed.

The appeal centred on two issues, firstly the conclusion reached by French J that the Bardi and Jawi people did not form a single society at sovereignty, and secondly, the rejected claim to rights and interests in offshore areas.

The appeal required consideration of the High Court decision of *Yorta Yorta*[4] and its application in subsequent cases. In particular, the Federal Court considered whether 'the rights and interest must originate in a normative system of traditional law and custom which existed at the time of the acquisition of sovereignty.[5]

One or Two societies

On appeal, Justices North & Mansfield held that the primary judge had erred in failing to draw the inference from the evidence that the Bardi and Jawi people formed a single society at sovereignty.[6]

The decision in *Yorta Yorta* was considered, and the central issue was whether the group acknowledged the same body of laws and customs relating to rights in interests in land and waters. The evidence given in the first and second trials by the majority of Aboriginal witnesses and the report by anthropologist Geoffrey Bagshaw were considered sufficient to confirm the unity of the Bardi and Jawi belief systems and system of law.

Specifically the Court held that the difference in language dialect, distinct territories and the existence of self-referents did not displace the notion that the Bardi and Jawi were one society or not inextricably linked by those normative rules which existed at sovereignty. Their Honours also confirmed that Aboriginal testimony is of the highest importance in the court's determination of native title.

Offshore areas

The Full Federal Court affirmed the tentative (not final) view of French J and held that the land and waters north east if the Dampier Peninsula were part of the Bardi and Jawi people's land.

The Court also removed the onerous proviso placed on the native title interests recognised in the intertidal zone, limiting the interests in water to seaward of the mean low water mark and to reefs within that area that are exposed or not covered by more than two metres of water. The Court commented that it has not been practice to impose temporal limitations of this nature in native title determinations and held in favour of the Bardi and Jawi people, lifting the limitations on the ground they were not envisaged by the Act.

The seaward extension of the existence of native title was expanded on appeal. Revisiting the evidence provided in the first and second trials, it was established that since sovereignty it has been customary for the Bardi and Jawi people to use the sea around the coast of the Dampier Peninsula for

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[3] *Sampi v State of Western Australia* [2005] FCA 777.
[4] *Yorta Yorta Aboriginal Community v Victoria* [2002] 214 CLR 422.
As a result the full Federal Court held that the primary judge should not have excluded the country of the Jawi people from the determination, representing a long-awaited success for the Bardi and Jawi peoples.
[5] *Sampi on behalf of the Bardi and Jawi People v State of Western Australia* [2010] FCAFC 26 at 15.
[6] The third judge, Branson J retired and the parties consented to North and Mansfield JJ as the remaining judges constituting the Full Court.

hunting, fishing and travelling. The evidence therefore supported the right to access, use and take resources of the sea from these areas thereby expanding the seaward boundary.

The Bardi and Jawi people were also successful in their appeal to gain the right to care for, maintain and protect offshore areas including 'Alarm Shoals'(raised seabed in the offshore area) and 'Lalariny' (rock feature in offshore area). The Court reversed the primary judge's decision, and recognised native title rights to exclude people from entering these areas. The responsibility to protect areas of spiritual significance includes the right to ensure people do not go there. Likewise with respect to islets in the offshore areas, it was held that land above the high water mark in offshore areas should not be treated differently from such areas on the mainland.

Cross appeal

The West Australian Fishing Industries Council supported by the Commonwealth lodged a cross appeal to limit the native title rights to non-commercial fishing. The primary judge's decision not to impose a limitation, on the grounds that there is no settled practice established, was affirmed on appeal.

Strickland v State of Western Australia [2010] FCA 272

(23 March 2010)
Federal Court of Australia, Perth
McKerracher J

Justice McKerracher of the Federal Court dismissed the application of Majorie May Strickland and Anne Joyce Nudding 23 March 2010. The reason for the dismissal was that the applicants did not amend their submission following their rejected application to the Native Title Register.

As part of amendments to the Native Title Act 1993 (Cth), his Honour referred to the explanatory memorandum of the Act in which it is noted that poor quality claims constitute a burden on the native title system and therefore greater emphasis must be placed on ensuring only high quality claims are considered. Therefore, the case was dismissed as no evidence or indication was provided that the application would be amended in a way that would lead to a different conclusion.

Butterworth on behalf of the Wiri Core Country Claim v State of Queensland [2010] FCA 325

(26 March 2010)
Federal Court of Australia, Brisbane
Logan J

Justice Logan ordered that Mr Norman Johnson and nine others be dismissed as parties to the native title claim. The case concerned the statutory inclusion of Johnson and others in the Wiri Core Country native title claim. Omitted from the claim, and without any authorisation to make amendments to the claim, the Deputy Registrar sought the engagement of anthropologist Dr Taylor to determine why Johnson and others should become parties to the proceeding. It was found that Mr Johnson and others fall within the terms of s 84(3)(a) of the *Native Title Act* and are therefore, by force of statute, members of the native title claim group

The issue for determination was whether a party joined as a right by force ought to be dismissed and his Honour determined that no direct precedent exists. In determining whether to grant the dismissal, his Honour considered the phrase, to "consult with a native title claim group". He held it to mean extending an opportunity to be heard on appropriate occasions but determined that it does not equate to being dictated to by a member of a native title claim group. He concluded that there may be circumstances where consultation of members of the claimant group is inadequate as it does not amount to an opportunity to be directly heard in the proceedings. Therefore those dissentient members ought properly to be joined as parties to the proceedings rather than remain represented by the native title claim group.

Justice Logan dismissed Johnson and others as parties to the proceeding and expressly granted them liberty to apply in respect of a joinder to the proceedings.

Ashwin on behalf of the Wutha People v State of Western Australia [2010] FCA 206

(11 March 2010)
Federal Court of Australia, Perth
Siopsis J

An area in the north-west goldfields of Western Australia was the site of overlapping native title claims. These claims had been made by the Wongatha People, the Yugunga People and the Wutha People.

In the Wongatha Peoples' native title determination, *Harrington-Smith on behalf of the Wongatha People v*

Western Australia (No 9) (2007) 238 ALR 1, Justice Lindgren found that the persons comprising the Wutha applicant were not authorised to make the application as required by s 61 of the *Native Title Act 1993* (Cth).

The applicant on behalf of the Yugunga-Nya People brought an application seeking orders under s 84D(1) of the *Native Title Act* requiring the Wutha applicant to produce evidence of authorisation. They were concerned they would have to prepare for and participate in a lengthy and expensive Wutha trial that would have been unnecessary if the Court then found that the applicant was not authorised. The Wutha applicant, however, argued that the Court should allow its application to go to trial notwithstanding the defect in authorisation found by Justice Lindgren.

Justice Siopsis rejected the Wutha's application, concluding that the defect in authorisation found by Justice Lindgren was a factor that weighed strongly against the Court using s 84D(4) to permit the matter to proceed to trial despite the defects. His Honour found that in the interests of justice, the question of authorisation should be determined as a preliminary matter, before trial. He found that, in the interests of the matter being determined fairly, the applicants should have the opportunity to advance any evidence they wished to rely on and illustrate that the application is lawfully authorised.

Justice Siopsis ordered that the Wuthu applicant file and serve further evidence to satisfy the statutory requirements that they are authorised to bring to the native title determination application.

Akiba on Behalf of the Torres Strait Regional Sea Claim Group v State of Queensland [2010] FCA 321

(1 April 2010)
Federal Court of Australia, Brisbane
Greenwood J

Justice Greenwood considered the application to set aside a subpoena issued to the Torres Strait Regional Authority (TSRA) compelling production of an anthropological report and the allocation of costs in relation to this matter. His Honour found that s 85A of the *Native Title Act*—concerning cost determinations—applies to the application for leave to issue the subpoena, service of the subpoena and the notice of a motion to set aside the subpoena.

The Court found that for the purposes of s 85A, 'the Court must be satisfied that the conduct of the party was so unreasonable that the other party should obtain the costs of the action'. Not satisfied that the respondent's conduct was so unreasonable, his Honour held that no basis was demonstrated for making an order as to costs in relation to the TSRA's notice of motion to set aside the subpoena

However, costs for compliance with the subpoena were awarded, as the TSRA 'ought not to be put to expense' in addressing a matter at the hands of the issuing party. Hence, the respondent was ordered to pay reasonable expenses incurred to the TSRA for compliance with the subpoena.

Tullock v State of Western Australia [2010] FCA 351

(13 April 2010)
Federal Court of Australia, Perth
Gilmour J

Justice Gilmour pursuant to s 85A of the Native Title Act awarded indemnity costs to the Tarlpa applicant (Tullock, Jones, Wonyabong and Bingham) for a discontinued motion, brought without merit by Mr Reynold Allison as the applicant (respondent State of Western Australia).

The basis of the claim for costs concerned Mr Allison's notice of motion, which sought to amend the Tarlpa application. The amendment was disputed by the Tarlpa applicants who claimed Mr Allison was not an appropriate person to be joined as a respondent. Mr Allison did not comply with orders to submit further affidavit evidence and consequently his representative advised the Tarlpa applicants of his intention to no longer proceed with the motion.

His Honour therefore applied the court's discretion under s 85A to order costs in favour of the Tarlpa applicant on an indemnity basis.

Legislation

COMMONWEALTH:

Wild Rivers (Environmental Management) Bill 2010 (Cth)

The Wild Rivers (Environmental Management) Bill 2010 (Cth) was tabled in the House of Representatives on 8 February 2010. The private member's bill is described as 'an Act to protect the interests of Aboriginal traditional owners in the management, development and use of native title land situated in wild river areas, and for related purposes'. The Bill is available for download at ComLaw

A public hearing was held in Canberra on 20 March 2010. A second public hearing took place on 13 April 2010 in Cairns. The transcripts of the hearings are available for download at http://www.aph.gov.au/senate/committee/legcon_ctte/wildrivers/hearings/index.htm

Submissions received by the Committee are available for viewing and download here: http://www.aph.gov.au/Senate/Committee/legcon_ctte/wildrivers/submissions.htm

NEW SOUTH WALES:

Acts
The following Act commenced on 31 March 2010:

Aboriginal Land Rights Amendment Act 2009

> An Act to amend the Aboriginal Land Rights Act 1983 with respect to land dealings by Aboriginal Land Councils and community development levies; and for other purposes.

Explanatory Notes are available by clicking here

Regulations
The following regulations commenced on 9 April 2010:

Aboriginal Land Rights Amendment Regulation 2010

The Act, Regulations and Explanatory Notes are available from the NSW Legislation website http://www.legislation.nsw.gov.au/

QUEENSLAND:

Regulations
The following regulations commenced on 9 April 2010:

Aboriginal Land Amendment Regulation (No. 1) 2010

The following regulations commenced on 24 April 2010:

Aboriginal Land Amendment Regulation (No. 2) 2010

Information regarding the regulations are available from the Queensland Legislation website http://www.legislation.qld.gov.au/

Native title publications

Books:

- L Godden and M Tehan (eds.), *Comparative Perspectives on Communal Lands and Individual Ownership: Sustainable Futures,* Routledge-Cavendish, Melbourne, 2010.
- AJ Connolly, *Cultural difference on trial: the nature and limits of judicial understanding.* Farnham: Ashgate, 2010.

Papers:

- *Indigenous cultural and natural resource management and the emerging role of the Working on Country program,* CAEPR Working Paper 65/2010, Canberra: Centre for Aboriginal Economic Policy Research, 2010.
- J Altman, Wild Rivers and Informed Consent on Cape York, CAEPR Topical Issue Paper 2/2010, April 2010.
  The paper can be viewed by clicking here (2.44Mb)

Toolkits:

- G Gibson and C O'Faircheallaigh, *IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements*, 2010.

  See the IBA Community Toolkit website for more details:
  http://www.ibacommunitytoolkit.ca/

Reports:

- **National Native Title Tribunal Report: Native Title, March 2010**

  The NNTT released the fourth in a continuing series of six monthly status reports on Australia's native title system. The latest report shows a slight increase in the rate of claim resolution and also in the number of claims lodged. Thirty-one applications were finalised and eight new claimant applications were made between July and December last year. The Tribunal's report includes national and state/territory statistics and graphs showing applications and trends since 1994, as well as analysis of the obstacles and ways to overcome them.
  The report can be viewed by clicking here.

Journal articles:

- J Creamer, 'We will mediate the gap closed: 2009 native title amendments', *Indigenous Law Bulletin* Vol. 7 Issue 16, 2010, pp. 21-23.

Native title on television:

- 'Talking Stick: Native Title', *Message Stick,* Australian Broadcasting Commission, Screened 7 March 2010

Guests include: Graeme Neate, President of the National Native Title Tribunal, Monica Morgan, Yorta Yorta spokeswoman and Elder, Yorta Yorta Nation and, Kim Hill, Chief Executive Officer of the Northern Land Council

Visit http://www.abc.net.au/tv/messagestick/stories/s2837732.htm to view the show online or to read the transcript.

Training and professional development opportunities

Also see the Aurora Project: Program Calendar for information about Learning and Development Opportunities for staff of native title representative bodies and native title service providers. Applications are now open for Aurora's NTRB Training Programs.

Native title in the news

National

3 March 2010
Abbott flags land rights overhaul
Federal Opposition Leader, Tony Abbott, has flagged changes to native title laws saying that power should be taken away from land councils and given back to traditional Indigenous family groups. 'If Aboriginal people want to be able to use their land as an economic asset, they must be able to do so. If they really are to have land rights, we can't say, "[h]ere are rights to your land but you can't use it."' They are not real land rights, they are just a sentimental version of Aboriginal land ownership', he said. Mr Abbott is to have further consultations with traditional owners and other groups before finalising the opposition's policy on native title reform. *Sydney Morning Herald* (Sydney NSW, 3 March 2010), 1. *The Age* (Melbourne VIC, 3 March 2010), 6.

31 March 2010
Coalition leads way on land rights, says Pearson
Noel Pearson says the Rudd and Bligh Labor governments have allowed the Coalition to take the lead in the defence of land rights. 'Queensland Premier Anna Bligh's Wild Rivers Act and [Prime Minister] Kevin Rudd's failure to repeal it showed they had abandoned Labor's commitment to land rights by blocking the economic development of Indigenous land', Mr Pearson said at the Public Hearing in Canberra for the Senate Inquiry into Wild Rivers (Environmental Management) Bill 2010 [No.2]. Mr Pearson said it was 'remarkable that this Bill which enhances native title is proposed by the conservative side of the Federal Parliament'. *Australian* (National AU, 31 March 2010), 7. *Canberra Times* (Canberra ACT, 31 March 2010), 4.

New South Wales

5 March 2010
Mine protestors found guilty of trespassing
Twenty-seven protesters have been found guilty of trespassing on Lake Cowal gold mine in Wagga Wagga Local Court by magistrate Geoff Hiatt. Sixteen people, represented by barrister Daniel Brezniak, pleaded not guilty on the grounds that they were invited on to the mine by Aboriginal man, Neville "Chappy" Williams, who has a native title claim over the mine area in the Federal Court. The other eleven people were not legally represented and indicated to

the court they did not accept its jurisdiction. They said they did not recognise Commonwealth law, only the customary law of the Wiradjuri people. Magistrate Hiatt rejected this stance and entered a plea of not guilty for each of them. *Area News* (Griffith, NSW, 5 March 2010), 3.

9 March 2010
Calling for details on 80 homes plan
The NSW state government will be asked to outline its plans for development of the Goolawah Estate at Crescent Head after some confusion about the lands' status. Finalisation of the native title claim is still pending. Minister Kelly has since advised the state government that development can proceed at Goolawah. *General News* (Kempsey NSW, 9 March 2010), 4.

12 March 2010
`Sad day' for Koompahtoo Local Aboriginal Land Council
After seven years in administration, Koompahtoo Local Aboriginal Land Council was dissolved by NSW Aboriginal Affairs Minister Paul Lynch. The council's assets, rights and liabilities will be transferred to the NSW Aboriginal Land Council, including 850 hectares on the shores of Lake Macquarie. *Newcastle Herald* (Newcastle NSW, 12 March 2010), 2. *National Indigenous Times* (Malua Bay NSW, 4 March 2010), 27.

3 April 2010
Protest at mine not on this year
Neville "Chappy" Williams, an Aboriginal elder who has a native title claim over a mine site near West Wyalong, confirmed there would be no Easter weekend official protest against the Lake Cowal gold mine for the first time since 2001. Mr Williams, claiming traditional ownership of the mine land, last year invited the protesters onto the property, where they were arrested and charged. In March 2010, Magistrate Geoff Hiatt ruled that Mr Williams' native title claim did not validate his invitation, and the protesters were found guilty of entering enclosed lands without consent. *Daily Advertiser,* (Wagga Wagga NSW, 3 April 2010), 3. *Daily Advertiser,* (Wagga Wagga NSW, 3 April 2010), 4.

Queensland

3 March 2010
CYLC claim FOI documents prove a secret deal was brokered re: Wild River declarations
A deal involving the Wilderness Society and miners concerning Wild River declarations has been uncovered in government documents obtained by Cape York Land Council (CYLC) through a Freedom of Information application. CYLC claim a deal that applies to Aboriginal freehold land was struck between the Department of Natural Resources and Water (NRW), the Department of Premier and Cabinet (DPC), the Queensland Resources Council (QRC), and The Wilderness Society (TWS). CYLC chairman Ritchie Ahmat said "traditional owners, who have successful or pending native title claims over the majority of the area affected by the declarations, should have been a part of the discussion". *Western Cape Bulletin* (Weipa QLD, 3 March 2010), 4. *National Indigenous Times* (Malua Bay NSW, 4 March 2010), 10.

4 March 2010
Native title application
The Indjalandji-Dhidhanu native title claim has moved into the notification stage of application. The claim covers about 19,730 square km, located about 25km north west of Mt Isa in the vicinity of Camooweal. *Queensland Country Life* (Rural Queensland, 4 March 2010), 25.

Negotiation leads to cultural and environment preservation: Agreement start of new understanding.
Mervyn and Colin Johnson of the Gooreng Gooreng people have witnessed the signing of a Memorandum of Understanding (MoU) between the Gurang People and the Department of Environment, Resource and Management (DERM). The agreement states that DERM Queensland Parks and Wildlife Service (QPWS) will train traditional owner groups in conducting prescribed burns and will work with them to ensure that cultural heritage continues to be protected. The MoU was signed at the Gidarjil Cultural Festival and applies to the Port Curtis Coral Coast native title area. The area runs from the Elliott River, north to Gladstone, and as far west as Monto. *News-Mail* (Bundaberg QLD, 4 March 2010), 5.

19 March 2010
Three-day battle for compensation
Gurang and Gooreng Gooreng traditional owners met with Santos, the Queensland Gas Company and Surat

Gladstone Pipeline over three days to negotiate terms of three Indigenous Land Use Agreements (ILUAs) in the Bundaberg region. The ILUAs relate to gas pipeline projects taking place near Gladstone. Although some Gurang and Gooreng Gooreng peoples were not entirely happy with the deals, the Port Curtis Coral Coast native title claim group authorised the ILUAs. The agreements are in the process of being registered by the National Native Title Tribunal. Interested parties can make objections to the deals for up to three months. *News-Mail (*Bundaberg QLD, 19 March 2010), 2. *News-Mail* (Bundaberg QLD, 23 March 2010), 5. *Advertiser* (Adelaide SA, 27 March 2010), 44.*Gladstone Observer* (Gladstone QLD, 30 March 2010), 5.

25 March 2010
Century searching for zinc
A north west Queensland mine has begun an exploration program to extend its life. The MMG Century mine near Lawn Hill has invested $6 million across the next 18 months to identify new zinc deposits to feed its processing operations. The mine operates under a unique three party agreement between the operators, the Queensland Government, and local native title groups.
North West Star (Mt Isa QLD, 25 March 2010), 3.

29 March 2010
North Queensland Indigenous groups sign marine conservation pact
Nine Indigenous groups from North Queensland are joining forces with conservationists to protect turtles, dugongs and dolphins in the Great Barrier Reef. The Girringun Aboriginal Corporation and World Wildlife Fund (WWF) Australia met in Townsville on Saturday and signed an agreement to advance the capacity of Traditional Owners to conserve and protect their living land and sea resources. The move is set to boost Indigenous employment in the region. *Sunday Canberra Times* (Canberra ACT, 28 March 2010), 4.*Townsville Bulletin* (Townsville QLD, 29 March 2010), 10. *Cairns Sun* (Cairns QLD, 31 March 2010), 3.

7 April 2010
Uni receives valuable research
Kim de Rijke and Tony Jefferies, PhD students at University of Queensland have discovered anthropologist Caroline Tennant-Kelly's field notes, photographs and slides originally thought missing or destroyed. The collection details daily Aboriginal life at Cherbourg Aboriginal Settlement in Queensland in 1934. *Richmond River Express,* (Casino NSW, 7 April 2010), 5. *Northern Star,* (Lismore NSW, 7 April 2010), 7.

27 April 2010
Land Use Agreement
Atherton representatives of the Tableland Yidinji people and the Tablelands Regional Council have signed an Indigenous Land Use Agreement (ILUA) which protects Aboriginal cultural heritage and establishes a consultation framework for development. The ILUA recognises the Yidinji as the traditional owners of 437sq km of land and waters around Atherton, where they have a registered native title claim. *Cairns Post* (Cairns QLD, 27 April 2010), 7. *Tablelander* (Atherton QLD, 27 April 2010), 9. *Cairns Sun* (Cairns QLD, 28 April 2010), 4. *Tablelander* (Alberton QLD, 13 April 2010), 6.

29 April 2010
Reserves returned
Cairns Regional Council's finance and administration committee last week endorsed management plans for nine reserves to be transferred to the Jabalbina Yalanji Aboriginal Corporation (Jabalbina), as well as a Wonga Beach reserve which will be jointly managed by council and Jabalbina. *Port Douglas & Mossman Gazette* (Port Douglas QLD, 29 April 2010), 11.

South Australia

17 March 2010
Construction to start on boat ramp
Construction of a new boat ramp at Middle Beach will begin within weeks. The $442,000 project has received native title clearance, making way for works to begin. It includes a concrete boat ramp, floating pontoon and a car park to be built by construction company Watpac. *Bunyip* (Gawler SA, 17 March 2010), 6. *Plains Producer* (Balaklava SA, 24 March 2010), 2.

14 April 2010
Port Augusta Transcontinental
Adnyamathanha people travelled to Nepabunna on March 30 to commemorate the first anniversary of the state's largest native title claim. In March 2009 the Federal Court formally granted the Adnyamathanha people non-exclusive rights to 41,000 square kilometres of land in the Flinders and Gammon ranges and surrounding areas, nearly a decade after the claim was lodged. *Port Augusta Transcontinental,* (Port Augusta SA, 14 April 2010), 2.

Western Australia

4 March 2010

$196 million Broome native title deal Australia's largest

A $196 million deal has been signed by the Western Australia state government and Broome's Yawuru people. It is the largest value native title agreement in Australian history. About 350 people witnessed the ratification that saw Yawuru native title rights and interests being extinguished in some areas in exchange for a $56 million package for capacity building, economic development, social housing and cultural management. The native title settlement includes land valued at $140 million. *Kimberly Echo* (Kunnunarra, WA, 4 March 2010), 7. *Broome Advertiser*, (Broome WA, 4 March 2010), 1*. Wagin Argus* (Wagin WA, 4 March 2010), 15. *Esperance Express* (Esperance WA, 3 March 2010), 8.

10 March 2010

Cashmere's bid from obscurity to $250 million

David Hendrie, who chairs Cashmere Iron claimed the company could be sitting on the Mid-Western Australia's biggest iron ore deposit and could play a 'key role' in the industry's emergence in the region. Mr. Hendrie said his company had already secured native title access, and environmental studies were well advanced. Cashmere Iron is planning a share market float this year. *West Australian* (Perth WA, 10 March 2010), 46.

22 March 2010

Federal Court case clears way for native title

More native title claims will be able to be resolved regionally, following a Federal Court settlement of a technical issue in relation to a claim by the Bardi Jawi people in the Kimberley. Executive director of the Kimberley Land Council Wayne Bergmann said 'a lot of claims were held up by government lawyers on this issue'.

In a unanimous decision, Justices John Mansfield and Tony North overturned a 2005 decision by Justice Robert French that said the Jawi people were not one society due to regional differences. The Bardi people, of the top end of Dampier Peninsula including Lombadina/Djarindjin and Cape Leveque, and the Jawi people, of island country around King Sound and the Buccaneer Archipelago have fought for native title rights for more than 15 years. *Australian Financial Review* (National AU, 22 March 2010), 7. *Broome Advertiser* (Broome WA, 25 March 2010), 6.

24 March 2010

Native title focus for community open day

Yamatji Marlpa Aboriginal Corporation's Tom Price has welcomed traditional owners from around the Pilbara during an open day on March 12. The day was also an opportunity for traditional owners from around the Pilbara to discuss native title claims and relevant matters such as mining, development and heritage in an informal setting. *Pilbara News* (Pilbara WA, 24 March 2010), 18. *North West Telegraph* (South Hedland WA, 24 March 2010), 23.

High cost of native title talks

Pilbara mining company, FMG, in its submission to the Department of Families, Housing, Community Services and Indigenous Affairs', 'Optimising Benefits from Native Title Agreements' discussion paper, states that it is forced to pay traditional owners more than $60,000 a day to talk about native title matters.

It states that '[n]ative title representative bodies employ a singular tactic in all negotiation matters, which is to delay the process in the hope that a proponent will be inclined to offer more substantial financial compensation in order to ameliorate the prospect of further delay'. It also states that deals under the *Native Title Act* were shrouded in secrecy, lacked accountability and rarely created jobs. *West Australian* (Perth WA, 24 March 2010), 16.

25 March 2010

Should Native title cash bring wider benefits?

WA state government estimates predict as much as $3 billion will be paid to Aboriginal groups from current iron ore projects. WA Regional Development Minister Brendon Grylls wants to unlock some of these funds for community projects and is offering access to matching funds from the Royalties for Regions scheme for Aboriginal groups. For this to happen, Mr Grylls needs to convince the Federal Government, which is in charge of the native title process, to make changes to ensure the system is transparent and real advances flow to the people most in need.

National Native Title Council chief executive Brian Wyatt disagrees with Mr. Grylls' call for payments to be used to provide greater community benefit. "Why is it that native title holders are expected to spread their entitlements to other groups and subsidise government services," Mr. Wyatt said. "Individual mining magnates worth billions of dollars receive five times the royalties that traditional owners get. Do they spend their billions on improving health, education and living conditions for the wider community? No they

don't, and nor should they - this is the responsibility of governments. *West Australian* (Perth WA, 20 March 2010), 23. *West Australian* (Perth WA, 22 March 2010), 1. *West Australian* (Perth WA, 23 March 2010), 16. *West Australian* (Perth WA, 25 March 2010), 20. *West Australian* (Perth WA, 27 March 2010), 32. *Australian Financial Review* (National AU, 29 March 2010), 6.

Gas region faces native title claim

Goolarabooloo and Jabirr Jabirr people are set to vote on whether to resubmit a native title claim lodged in the Federal Court more than a decade ago covering land that includes James Price Point. A meeting will be held between the Kimberley Land Council (KLC), Goolarabooloo and Jabirr Jabirr people on 7 April 2010. KLC deputy director Nolan Hunter said since the original claim was lodged, the pastoral lease over Water Bank station had been surrendered. This means the claimant group could now lodge a claim for exclusive native title over land covering more than three quarters of the claim area. *Broome Advertiser* (Broome WA, 25 March 2010), 6.

26 March 2010

Land talks welcomed

The Goldfields Land and Sea Council last night welcomed news that the State Government is prepared to start native title negotiation over parts of the Esperance region. The Esperance Nyungar claim was first lodged in 1996. 'I thank the Esperance Nyungar claimants for their hard work and commitment to the process. For everyone to stick together under such trying circumstances is testament to the strength and tenacity of the Esperance Nyungar community,' said Brian Wyatt, the CEO of the Goldfields Land and Sea Council. *Kalgoorlie Miner* (Kalgoorlie WA, 26 March 2010), 5. *West Australian* (Perth WA, 26 March 2010), 7. *Esperance Express* (Esperance WA, 30 March 2010), 4.

1 April 2010

Santos LNG project is economic rape and native title plunder says tribal leaders

Indigenous leaders have announced they will continue to renegotiate the terms of their compensation package under an Indigenous Land Use Agreement (ILUA) with Australian energy company Santos.

Gurang leader Shayne Blackman said the Company's proposed native title recompense deal under its multibillion-dollar Gladstone Liquefied Natural Gas (LNG) project fell well short of Indigenous and non-Indigenous people's expectations.

"Santos has a valuable opportunity to help Close the Gap by providing a package sufficient to not only provide real training, real jobs and ultimately a better community for Indigenous people but one that responds to Indigenous people's vision for the region, and that extends well beyond basic tokenism measures" said Mr. Blackman. *Coober Pedy Regional,* (Coober Pedy, 1 April 2010), 8.

6 April 2010

Port deal upsets Aboriginal group

Traditional owners of land earmarked for a new privately owned deepwater port 30km east of Karratha have criticised the State Government for putting its support behind the project without consulting them. Ngarluma Aboriginal Corporation chairwoman Jeannie Churnside said the corporation had written to Premier Colin Barnett raising its concerns.

Ms Churnside said the land and sea areas along the coast from the islands of the Burrup to Balla Balla near Whim Creek were of great importance from a spiritual point of view and also for sustenance and recreational use. *West Australian,* (Perth WA, 6 April 2010), 17.

7 April 2010

Indigenous split on gas project

Energy giant Woodside's plan to build a $30 billion gas plant in Western Australia's Kimberley is facing a major new threat with a Federal Court challenge to the validity of a compensation deal struck with Traditional Owners.

The process has been thrown into chaos after members of the Jabirr Jabirr people, who support Woodside's bid to build the gas plant at James Price Point, 60km north of Broome, split from the main claim group to lodge their own native title claim. It is unclear whether the emergence of the breakaway claimant group would jeopardise attempts by Woodside and the Barnett government to sign an ILUA by June to clear the way for the project. *West Australian*, (Perth WA, 7 April 2010), 19. *Australian,* (National AU, 8 April 2010), 7. *West Australian,* (Perth WA, 8 April 2010), 5. *National Indigenous Times,* (Malua Bay NSW, 1 April 2010), 11. *Australian,* (Australia AU, 7 April 2010), 7. *Australian*, (Australia AU, 6 April 2010), 5. *West Australian,* (Perth WA, 6 April 2010), 7. *The Australian,* (Australian AU, 6 April 2010), 5. *The Australian* (National AU, 12 April 2010), 7. *West Australian,* (Perth WA, 15 April 2010), 10. *Kalgoorlie Miner,* (Kalgoorlie Miner, 14 April 2010), 15. *Australian,* (Australia NA, 14 April 2010), 32. *Sunshine*

Coast Daily, (Maroochydore QLD, 14 April 2010), 38. *Northern Territory News,* (Darwin NT, 21 April 2010), 25. *Broome Advertiser,* (Broome WA, 15 April 2010), 1.

8 April 2010

Appeal to green groups

Kimberley Land Council director Wayne Bergmann has further distanced his organisation from green groups. Mr Bergmann informed the Broome Advertiser that Aboriginal people across Australia needed to reassess their traditional alliance with environmental groups, as an anti-development stance would not end the cycle of Indigenous disadvantage.
Broome Advertiser, (Broome WA, 8 April 2009), 9. *Kimberley Echo* (Kununarra WA, 15 April 2010), 6.

Heritage eyes on massive Kimberley pastoral area

The Australian Heritage Council (AHC) has shown interest on 20 million hectares of WA pastoral country in the Kimberley for heritage listing. Assessment of the heritage values of the west Kimberley is being undertaken at the request of Federal Environment and Heritage Minister Peter Garrett. A preliminary assessment has identified a large area which might qualify for National Heritage Listing (NHL). The next process is to consult owners, occupiers and Indigenous people with rights or interests in the area, to determine what areas the AHC will be recommended for the NHL. Any part of the area included in the NHL, would not affect current lawful use. For example, previously approved mining and exploration activities that are permitted, or recreation activities like fishing, camping or hiking, and any activities allowed under native title will not be affected. *Countryman,* (Western Australia, 8 April 2010), 15.

14 April 2010

Milestone Native Title Deal Signed

A milestone Native Title Mining Agreement has been signed between Palyku Native Tittle Claim Group signatory, for the Nullagine Iron Ore joint venture with Fortescue Metals Group. BC Iron is on track to begin operations at Warrigal later this year with an initial target of three million tonnes of high grade ore per anum. The agreement followed six months of close consultation with the Palyku people, recognising the importance of their culture and heritage in the commercial contract to ensure both parties benefit from the joint venture. *North West Telegraph,* (South Hedland WA, 14 April 2010), 1. *Age,* (Melbourne VIC, 12 April 2010), 6. *Ballarat Courier,* (Ballarat VIC, 12 April 2010), 12. *Summaries – Australian Financial Review,* (Australia NA, 12 April 2010), 17.

19 April 2010

Native title Payout plans uncovered

The Barnett Government will pay a Murchison Indigenous group around $10 million to drop their native title objections to the CSIRO's square kilometre array space telescope project. The State Government, the CSIRO and the Geraldton-based Yamatji Marlpa Land Council have previously released no details of the payments. *Geraldton Guardian,* (Geraldton WA, 19 April 2010), 1. *Geraldton Guardian* (Geraldton WA, 19 April 2010), 3. *West Australian* (Perth WA, 19 April 2010), 23.

27 April 2010

Native title investigation

Investigations into Aboriginal heritage issues at the planned construction site for a bridge to connect Australind and Eaton have revealed traditional cultural activities could be disturbed. Dardanup Shire Council planning services manager Robert Quinn said the investigation, being conducted by Dunsborough based archaeologist Brad Goode, was a legislative requirement under the Aboriginal Heritage Act.

"Shire officers intend to investigate whether native title exists on the proposed Collie River bridge area," Mr Quinn said. He also said a Noongar group that met with Mr Goode last month expressed concerns over the "cumulative negative environmental effects of urbanisation" on the Collie River and the impact on Noongar people being able to continue their traditional cultural activities in the area. *Bunbury Herald* (Bunbury WA, 27 April 2010), 9.

Indigenous Land Use Agreements

As of 15 March 2010, Registered ILUAs can be searched, and copies of extracts from particular ILUAs, attachments, and maps, can now be viewed online and downloaded from the NNTT website. Previously, it was possible to search a log of registered ILUAs, but it was necessary to contact the Tribunal directly if more detailed information was required.

NAME	TRIBUNAL FILE NO.	TYPE	STATE OR TERRITORY	REGISTRATION DATE	SUBJECT-MATTER	REGISTER EXTRACT
Yandruwandha Yawarrawarrka Fishing ILUA	SI2008/004	AA	South Australia	05/03/2010	Fishing	
Innamincka Regional Reserve ILUA	SI2008/003	AA	South Australia	05/03/2010	Access Consultation protocol	
Strzelecki Regional Reserve ILUA	SI2008/002	AA	South Australia	05/03/2010	Consultation protocol	
Coongie Lakes National Park ILUA	SI2008/001	AA	South Australia	05/03/2010	Co-management	
InnaminckaTownship ILUA	SI2005/008	AA	South Australia	05/03/2010	Extinguishment	
Gunditj Mirring Non-Extinguishment Principle ILUA	VI2010/001	BCA	Victoria	30/03/2010	Government	
Santos Petronas Gangulu GLNG ILUA	QI2009/032	AA	Queensland	07/04/2010	Pipeline	
Warburton Corrective Services Work Camp ILUA	WI2010/002	BCA	Western Australia	20/04/2010	Infrastructure	
Pipeline SGP and Wulli Wulli People ILUA	QI2009/049	AA	Queensland	29/04/2010	Pipeline	
Djiru Cassowary Coast Regional Council Area ILUA	QI2009/063	AA	Queensland	29/04/2010	Consultation protocol Infrastructure	

This information has been extracted from the Native Title Research Unit ILUA summary: http://ntru.aiatsis.gov.au/research/ilua_summary.html , 30 April 2010. For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

Determinations

SHORT NAME	CASE NAME	DATE	STATE OR TERRITORY	OUTCOME	LEGAL PROCESS	TYPE
No determinations took place from 1 March 2010 to 30 April 2010.						

This information has been extracted from the Native Title Research Unit Determinations summary: http://ntru.aiatsis.gov.au/research/determinations_summary.html , 30 April 2010. For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

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.

Native Title News (Butterworths) is now being annotated by the AIATSIS Library. You will be able to find annotated entries on all articles and listings of determinations for each volume. Work has commenced on the most recent issues and will include information on all issues going back to 1994.

AIATSIS holds copies of the implementation reports for the Royal Commission Into Aboriginal Deaths In Custody for all states.

Several collections of papers of historical interest that have been recently catalogued include:

- The Aurukun dispute : a collection of newspaper and journal articles, flyers, seminar papers and statements and press releases by federal and state politicians. 1976-1979.
- Collection of journal and newspaper articles and a book excerpt containing information on a 'warrior chief' from the Wollongong area known as Kanahooka. 1970-1995.
- Papers related to the acquisition of sacred boards from the La Grange (WA) storehouse by Ralph Piddington in 1931. 1967-1968.
- A collection of early drafts and notes related to S.R. Mitchell's Stone-age craftsmen; two papers by S.R. Mitchell; correspondence between A.S. Kenyon and C.C. Towle; and Lindsay Black, Melbourne Ward, C.C. Towle and Fred B. Smith. 1949.
- A folder of miscellaneous papers on Australian languages from all over Australia compiled by Arthur Capell. See MS 4577 for a list of languages.

The AIATSIS Library has received a copy of volume 9 of the field notebooks of Géza, Róheim.

Audiovisual material of interest to native title includes:

Video and film:

Kentish, Rupert James. 2 videos of Croker Island Mission general scenes. C1940-1950. AIATSIS No. DAC00011_1-2.

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