# Native Title Newsletter

**May / June, No. 3/2011**

## WHAT'S NEW

National Native Title Conference 2011

Our country, our future

Speeches now available on the conference website.

Go to:
http://www.aiatsis.gov.au/ntru/nativetitleconference/conf2011/conf2011.html
for more details

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# Native Title Conference 2011: Our Country, Our Future

## By Jessica Weir and Alicia Barnes

The Turrbal, Jagera, Yuggera and Ugarapul Peoples, the traditional owners of the wider Brisbane area, welcomed delegates to this year's conference in an evening ceremony performed by Maroochy Barambah and the Wakka Wakka Dancers. Queensland South Native Title Services were our co-conveners, and the QSNTS board and staff made a huge contribution to the program as chairs and speakers, and the overall running of the conference. Almost 600 delegates met at the Brisbane Exhibition and Convention Centre from 1-3 June, to participate in what is Australia's largest Indigenous policy conference.

Nunukal Yugera Aboriginal Dancers

This year the annual Mabo Lecture was delivered for the first time by a Meriam woman, Dr Kerry Arabena, who is Chief Executive of the Lowitija Institute. Dr Arabena gave a deeply personal lecture – sharing her life's instructions and respect for those she has learnt from, her Meriam peoples and other warriors. She spoke about Eddie Koiki Mabo as a great visionary, and urged the audience about the need for great vision for the next 50 years – not just for native title, but for the role of traditional owners and their knowledge of land and sea in a future that faces great environmental challenges, including climate change. Dr Arabena also spoke about the principle of equality in diversity, and recognising the equal value of Indigenous knowledge in helping to determine a vision and strategy for the management of country.


Dr Kerry Arabena, who is Chief Executive of the Lowitija Institute, delivered the 2011 Mabo Lecture

Our international keynote speaker was Andrew Leach CEO of the Aboriginal Housing Management Association, Canada, and member of the St'at'imc Nation. Mr Leach spoke about good leadership and strong Indigenous organisations, by drawing on stories from Canada's First Nations. Mr Leach recalled how far Canada's First Nations have come since the 1980s, when leases and limited jobs were the primary benefits sought out of agreements for use of native title land. Today, Mr Leach revealed how there are more meaningful and longer term strategies that will deliver money and development into the future. He identified a common thread through all the success stories: strong leadership, sound management, strong partnerships, organisational cohesion, internal accountability, and dedication to following through on an agreed strategy.


International keynote speaker Andrew Leach CEO of the Aboriginal Housing Management Association, Canada

The Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda gave a keynote about moving forward as a nation through the recognition of Indigenous peoples rights, and through addressing lateral violence within Indigenous societies. He spoke about the United Nations Declaration on the Rights of Indigenous Peoples, and urged the Australian Government, which has signed this declaration, to now implement it. Mr Gooda also spoke about the recognition of Australia's first peoples in the constitution – asking the audience, if the constitution is our birth certificate, then surely it should reflect our complete genealogy as a nation, not just one branch of the family tree. Lateral violence was the other key issue Mr Gooda spoke about. This violence is the rage, anger, terror and fear that Indigenous people inflict on each other, as a result of the experience of disadvantage, discrimination and oppression. As Mr Gooda said:

> Lateral violence is something we need to address ourselves, but we also need to be aware of how governments can create the environment for lateral violence through a lack of recognition and engagement and pitting [native title] groups against each other.

The Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda

Chief Justice of the Federal Court Patrick Keane gave a keynote centering on the ability of native title holders to unlock, if they choose, the economic potential of their land. More specifically, he questioned the validity of the view that native title rights in relation to land are in all cases inalienable. Chief Justice Keane considered this question in relation to determined native title for trustee Prescribed Bodies Corporate (PBCs). The *Native Title Act* and relevant regulations appear to allow trustee PBCs to surrender, transfer or otherwise deal with native title rights and interests, but do not suggest that the Crown is the only party capable of receiving such rights and interests. Accordingly, his Honour argued that native title rights post-determination were alienable to some extent.


Chief Justice of the Federal Court Patrick Keane

He found the trustee PBC provisions may empower native title holders to deal with native title in ways that can unlock economic potential. Chief Justice Keane also noted that in consent determination negotiations, the parties should not expect the Court to delay the hearing of the claim simply because arrangements for the accommodation of native title interests have not been concluded. This is because the Court's role is determining who holds native title and establishing a PBC to deal with this title. Land management issues, the interaction of native title rights with the broader economy, and the intersection between native title interests and the interests of others, can be managed in the future through choices made by Indigenous people and given effect through their PBC and the negotiations conducted by it.

A feature of this year's conference was a new session format called the Dialogue Forums, which was introduced by program convener Dr Jessica Weir to increase interaction between speakers and the audience. There were five Dialogue Forums held in the Public Program, each discussing a set question about native title, including: development issues on country, how to reform 'proof' of native title, case management loads, native title benefits, and constitutional reform. These Forums gave a greater role to the audience in setting the native title agenda at the conference. After seeing the new

format in action, it will be further refined and included in next year's conference. The next conference will be held in Townsville in early June, and will mark the 20th anniversary of the Mabo decision. As always, a pre-conference workshop will be held the day before the conference for Indigenous people and their native title representative bodies to discuss matters of strategic importance. In 2011, the pre-conference workshops considered the potential of the Greens holding the balance of power in the Senate in reforming the *Native Title Act.*

The conference program was streamlined this year into four concurrent sessions after morning tea, and closing plenaries at the pre-conference workshop and on the last day of the conference, to allow a greater shared experience across the conference body.

Conference sessions covered a broad range of topics, including legal developments, urban native title, carbon markets, heritage, water, and native title anthropology. Indigenous Talking Circles were held throughout the conference and this year the first Men's Talking Circle was held with the topic social and emotional wellbeing. The Women's Talking Circle developed a list of recommendations, including greater recognition for the voice of women in native title, and more opportunities for women to meet and discuss native title. A Youth Talking Circle was held to strengthen the native title conversation between Indigenous youth and older generations. Papers and Presentations are being made available on the conference website, depending on availability and permission by the speaker.

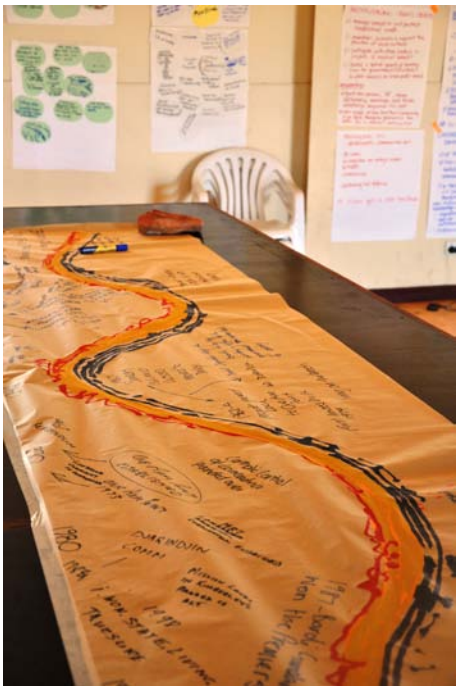
Wagga Torres Strait Island Dance Company

Dialogue Forum: Greg McIntyre, Glen Kelly, Joe Edgar, Gordon Marshall, Nolan Hunter, Perry Agius and Jessica Weir discuss the question 'do we need to choose betweeen country and development, or can we have both?'

# What is the Bardi Jawi Governance Project?

## Kimberley Land Council

The Bardi Jawi Governance Project is a joint initiative of the Bardi Jawi PBC and the three community councils – Ardyaloon, Djarindjin and Lombadina. The project is supported by the Kimberley Land Council (KLC) and the Local Operations Centre (LOC) which was established in the area as the main point of contact for all government business in the community. The project is funded by the Remote Service Delivery Special Account and aims to achieve outcomes identified as part of the Local Implementation Plan (LIP). The LIP for the Bardi Jawi area includes this important project as its first priority under the Governance and Leadership Building Block.



The shared history of Bardi Jawi Country and its people. Photo provided by KLC

In early May 2011, the Local Area Coordinator held individual meetings with the three community councils and the KLC held a meeting with the Bardi Jawi PBC to talk about the problems with current decision making processes and future planning for Bardi Jawi country and what councils and the PBC would expect from this project. All agreed that there was:

- A lack of clarity about who makes decisions and about what;
- Confusion about the roles and responsibilities of the PBC and Community Councils;
- Lack of coordination or collaboration for future planning in Bardi Jawi country; and
- A need for better communication between the community councils and the PBC.

A joint meeting was held on the 17th and 18th of May 2011 at Ardyaloon with members of the Bardi Jawi PBC, and Lombadina, Djarindjin and Ardyaloon community councils. This two day workshop was facilitated by Toni Bauman and Lisa Strelein from AIATSIS supported by KLC and Local Operations Centre staff. Also in attendance was Bruce Gorring from the Centre for Indigenous Studies, Tyronne Garstonne a KLC consultant working on a scoping study for economic development aspirations on the Dampier Peninsula, Richard Aspinall, FaHCSIA State Manager for Western Australia and Rob Baker from the Lands Branch of the Department of Indigenous Affairs.

The workshop was very successful as it clearly identified the concerns and frustrations shared by all groups and that a cooperative approach was needed. The workshop also identified that more gatherings were needed to work out decision making and land issues. A series of future workshops was requested by the meeting that will aim to cover all of the identified concerns:

1. Cultural Governance
2. Land Use Planning – Outstations, Leases, Land Tenure and Community Layout Plans (CLPs)
3. Corporate Governance and Policy Making
4. Land Tenure Reform

These workshops will be held throughout 2011 and 2012.

The workshop also elected a Steering Committee to keep the project on track and provide advice to KLC and LOC staff planning for future workshops. The *Bardi-Jawi Governance Steering Committee* is made up of a representative from each interest group. The *Bardi-Jawi Governance Steering Committee* aims to meet before and after each workshop to talk about the outcomes of the workshop/s and plan for the next. This group will also communicate back to the organisations they represent so that everyone knows what is going on.

The workshops with the four organisations (Lombadina, Ardyaloon and Djarindjin community councils and the Bardi Jawi PBC) will work through cultural governance; land tenure reform and land use planning; corporate governance; and heritage and conservation processes. The main aim of the project is to agree to a process for making decisions on Bardi Jawi country together.

# Claimant Comment

## Nyaparu Margaret Rose, Nyangumarta woman

I am a Nyangumarta woman. Nyangumarta country is in the northwest of Western Australia between the Pilbara and the Kimberley regions. The Nyangumarta people had a positive determination of native title in July 2009.

In the late 1970s a road was built between Sandfire and Broome, which goes right through a Nyangumarta sacred site. This is the kind of story that we have all heard before, and was much too common in the sixties and seventies. Unfortunately in Western Australia we are still operating under the same law that allowed that to happen. This law needs to change.

Nyaparu Margaret Rose at Nyangumarta native title determination. Photo provided by YMAC

The law doesn't require companies to come and talk face to face with the traditional owners before they show up on their land. Many companies even when they do the proper paperwork with the land council, the first time they meet a traditional owner is when they come on a heritage survey. The law lets the Minister for Indigenous Affairs make decisions about our heritage without talking to us at all.

Any law about Aboriginal heritage needs to make it clear that the most important part of Aboriginal heritage protection is consultation with the traditional owners whose land you are on. You have to come talk to people face to face, and show them respect. Some companies do this already. It isn't expensive, but it is about forming a relationship so you can work as a team.

There are some companies operating on Nyangumarta country that show respect to the Nyangumarta people and come talk to the elders and are clear about their plans and processes. We work with these kinds of companies, and we acknowledge that we can all learn from each other and benefit from working together.

The Department of Environment and Conservation, for example, has come to talk to all of the traditional owners along the coastline at 80 Mile Beach where they are considering declaring marine parks and reserves. They have come to our country and talked to our people and listened to what we have to say about our sites and our cultural practices.

The problem is, not all companies or agencies believe that Aboriginal people have a right to have a say in what happens to their sacred sites. The law in Western Australia says that our sacred sites are the property of the State. An example of this is the road to Broome that goes through our site. That could happen again, and just like in the seventies, the Nyangumarta people would have no right to appeal the decision of the Minister, even though we are now recognised native title holders.

Why is the Western Australia Government stuck in a past that says traditional owners don't deserve any power over their heritage?

If the Department of Environment and Conservation, successful mining companies and the Federal Court recognise that the Nyangumarta people are the ones to talk to about activities that effect our heritage, why does the State of Western Australia insist that the Minister of Indigenous Affairs is the only person with the power to decide when it is ok for our sites to be destroyed?

In conclusion, I would like to leave you with this: Traditional owners deserve acknowledgement and respect from our government. We have rights to speak for our country coming from our ancestors and from the *Native Title Act*. All levels of government need to respect and protect those rights. For us it's not about money, it's about our country, and our people are crying out for our country with our hearts and souls.

# NTRU Project Report

## Commonwealth Minimum Connection Threshold Project

The Attorney-General's Department has contracted AIATSIS to research the current law, policy, and stakeholder attitudes about the "connection" tests applied by government parties when negotiating native title consent determinations. The Commonwealth aims to develop a formal policy position on connection requirements when entering into consent determinations (in matters to which the Commonwealth is a party), and the Native Title Research Unit at AIATSIS will provide options and recommendations based on our own research as well as engagement with stakeholders, to inform this approach.

Initial consultation with key stakeholders on the terms of reference and the questions to be used in stakeholder interviews has been completed, and substantive stakeholder interviews are currently being scheduled for July and August. A call for written submissions will be made in mid-July. The aim of interviews and submissions will be to: (i) gauge understandings of current Commonwealth connection policy and practice, and in particular how it interacts with and compares to state and territory policy and practice; (ii) to seek views on Commonwealth connection policy and practice, including whether there are lessons to be learned from state and territory policy and practice; and (iii) to generate discussion and suggestions which may inform the future direction of Commonwealth policy on connection requirements when entering into consent determinations (in matters to which the Commonwealth is a party).

Stakeholders will include Native Title Representative Bodies and Service Providers, representatives of relevant State, Territory and Commonwealth government departments, National Native Title Tribunal members, Federal Court Registrars and Judges, anthropologists, lawyers/barristers, industry representatives and others. The final report, combining desktop research with the stakeholder input, will be submitted to Attorney-General's Department at the end of October.

If you have any comments, suggestions or questions about this project please contact Nick Duff on nick.duff@aiatsis.gov.au or (02) 6246 1140.

# What's New

## Recent Cases

***Bullen v State of Western Australia (No 2)* [2010] FCA 1206**
**29 September 2010**
**Siopsis J**
**Federal Court of Australia, Perth Registry**
This was an application by the native title party for the legal costs of an earlier matter in which they had been successful. Section 85A of the *Native Title Act 1993* (NTA) provides that parties to proceedings bear their own costs, unless the Court orders otherwise. The Court noted the decision in *Lardil Peoples v Queensland* (2001) 108 FCR 453 which was that s. 85A NTA only applies to applications for a native title determination. The parties agreed that their original matter was not in that category, thus s. 85A would technically not apply. So, the applicants argued that they should be awarded costs as the successful party, as *Edwards v Santos Limited (No 2)* [2010] FCA 238 (*Edwards*). However, the Court preferred the argument of the respondents, including the state of Western Australia, that 'the spirit of s 85A' should apply here. This approach follows *Murray v Registrar of the National Native Title Tribunal* [2003] FCA 45, in which the Court used its discretion under the *Federal Court of Australia Act 1976* (Cth) to rule in the spirit of s. 85A because the original matter was chiefly concerned with the NTA. The application for costs was unsuccessful, and each party bore their own costs.

***Aplin on behalf of the Waanyi People v State of Queensland (No 2)* [2010] FCA 1326;**
**12 October 2010**
**Dowsett J**
**Federal Court of Australia, Brisbane**
***Aplin on behalf of the Waanyi Peoples v State of Queensland (No 3)* [2010] FCA 1515**
**9 December 2010**
**Dowsett J**
**Federal Court of Australia, Century Zinc Mine**
These two judgments of Dowsett J concern a motion that was heard on 12 October 2010 and a native title determination made on 9 December 2010. The reasons for judgment were published on 14 June 2011. The main issue in both judgments related to whether or not one Indigenous respondent, Mr Gregory Lloyd Phillips, was a Waanyi man and therefore a part of the claim group. In a previous hearing, Dowsett J had considered the Waanyi people's traditional laws and customs concerning that question, and made

binding declarations to the effect that, while Mr Phillips' great-grandmother had been recognised as Waanyi by some Waanyi during her lifetime, contemporary Waanyi did not now recognise her as Waanyi. Accordingly, Mr Phillips was not recognised under Waanyi laws and customs as a Waanyi man. There was no appeal from those findings.

In the first judgment ([2010] FCA 1326) the applicants had applied to remove Mr Phillips as a party to the proceedings (s 84(8) *Native Title Act* 1993 (Cth), O 6 r 9 *Federal Court Rules*), and Mr Phillips applied for orders to adjourn the application until the claim group reconsider their exclusion of Mr Phillips' great-grandmother from the list of known Waanyi ancestors, in light of the declarations made at the earlier hearing. On the s 84(8) motion, Dowsett J considered that Mr Phillips should remain a party, in light of his ongoing interest in this matter and the factual concessions that he had made. While Dowsett J's earlier decision may have effectively left Mr Phillips without any prospect of success in the proceedings, his Honour considered it valuable for Mr Phillips' factual concessions to be incorporated into the eventual determination so that they would be clearly binding upon him as a party to the proceedings. On Mr Phillips' motion, Dowsett J doubted the Court's power to make the orders sought. His Honour concluded from evidence brought by Mr Phillips that the Waanyi applicants demonstrated an ongoing reluctance to recognise Mr Phillips' great-grandmother as an apical Waanyi ancestor. There was, however, no legal remedy available to Mr Phillips in respect of that reluctance. Mr Phillip's motion was dismissed. Dowsett J noted that the claim group's description in the application is drawn in a way which would not exclude the inclusion of new members as apical ancestors after the determination, if the native title holders conclude that they are in fact apical ancestors.

The second judgment ([2010] FCA 1515) was the determination of native title. The Court determined that native title exists in relation to the Determination Area. It was not, according to Dowsett J, technically a consent determination since Mr Phillips remained a party and did not consent to the making of the orders. Yet his Honour considered that all of the matters which needed to be resolved in order to justify a determination as to the existence of native title, had been resolved as between all of the parties (including Mr Phillips). On 8 November 2010, all of the parties except Mr Phillips had filed an agreement on the terms of a proposed determination of native title, as well as a statement of agreed facts and contentions. Mr Phillips had admitted the facts pleaded by the applicant in the statement of claim except for those pertaining to the description of the native title claim group. In light of these admissions, together with the declarations Dowsett J had made previously as to Mr Phillips' status as a Waanyi man, his Honour considered that there were no outstanding factual disputes as between Mr Phillips and any of the other parties. Dowsett J made findings of fact based on the evidence before the Court and on the statement of agreed facts, and accordingly made the determination that native title exists in relation to the Determination Area. Note that the Court's orders which make the determination will not take effect unless and until an Indigenous land use agreement referred to in a Schedule is registered. Should that agreement not be registered within 6 months of the date of the orders, the matter is to be listed for further directions.

***Roberts v Northern Territory of Australia* [2011] FCA 242**
***Roberts v Northern Territory of Australia* [2011] FCA 243**
**18 March 2011**
**Mansfield J**
**Federal Court of Australia, Darwin**
In these matters Mansfield J ordered that two amendments be made to the relevant applications. Both amendments were unopposed. The first removed the name of a deceased applicant. The second replaced the existing application with a "Further Amended Application". The effect of the Further Amended Application was to insert a reference to the Guyanggan Nganawirdbird Group in the description of the applicant, to revise the description in the application of the native title claim group and native title rights and interests claimed, the addition of an example of traditional physical connection, the replacement of references to the Yangman-Mangarrayi People with references to the Najig and Guyanggan Nganawirdbird Groups, and some other procedural matters.

***Hill on behalf of the Yirendali People Core Country Claim v State of Queensland* [2011] FCA 472**
**3 May 2011**
**Logan J**
**Federal Court of Australia, Brisbane**
The applicants in this matter were required by Logan J to show cause why the proceedings should not be dismissed. Logan J referred to a number of occasions on which the applicants had been in default of previous orders, and was considering his power to dismiss the application under O 35A of *the*

*Federal Court Rules* (Cth). His Honour noted that mere default was sufficient to allow him to dismiss, but the evidence already before the Court indicated that there was sufficient substance in the claim that a dismissal would not be appropriate in the circumstances. Mansfield J made directions for the conduct of the application for the following 14 months. It sets out a timetable for work to be completed by the consultant anthropologist and consultant historian, with a preliminary connection report and a historical report to be completed by November 2011, periodic progress reports to be provided after that, and the final connection report to be completed by August 2012.

***Kngwarrey on behalf of the members of the Irrkwal, Irrmarn, Ntewerrek, Aharreng, Arrty/Amatyerr and Areyn Landholding Groups v Northern Territory of Australia* [2011] FCA 428**

**5 May 2011**

**Reeves J**

**Federal Court of Australia, Ooratippra**

The Irrkwal, Irrmarn, Ntewerrek, Aharreng, Arrty/Amatyerr and Areyn landholding groups' exclusive possession of native title to their country within Ooratippra Perpetual Pastoral Lease, north east of Alice Springs, was determined by consent. The rights of Ooratippra Aboriginal Corporation within the determination area were found not to extinguish native title as their perpetual pastoral lease is only partly inconsistent with the continued enjoyment of native title rights. The rights of Irretety Aboriginal Corporation to freehold possession of 10 hectares of the determination area, where Irretety Community is located, is settled by the Irretety ILUA of 2003, and native title rights are not extinguished by the grant of freehold. Another pastoral lease in the determined area also affects the continuing enjoyment of native title rights on the lease area, but does not extinguish native title. The Court, somewhat reluctantly, agreed to make this determination although no PBC had yet been nominated, but noted that the matter will come before a registrar if no PBC is nominated within 12 months. His Honour described the Ooratippra country and the traditional beliefs of the native title holders in his published reasons.

***Starkey v State of South Australia* [2011] FCA 456**

**9 May 2011**

**Mansfield J**

**Federal Court of Australia, Adelaide**

This decision by Mansfield J removes Mr Ningil Richard Reid, a senior law man, as a respondent to the Kokatha Uwankara native title application. Mr Reid is a member of the Kokatha Uwankara claim group, but nevertheless applied to become a separate party, which resulted in him becoming a respondent to the application. Mr Reid applied to become a party because he disputes the authority of the current named applicants to make the native title claim on behalf of the claim group. The issue before the Court was whether Mr Reid should be permitted to remain as a party to the proceeding, or whether it should be ordered that he cease to be a party, pursuant to s 84(8) of the *Native Title Act 1993* (Cth).

Mansfield J considered that the power to remove a party under s 84(8) involved a broad discretion, similar in breadth to the discretion to join a party under s 84(5), and involving similar considerations. He held that while there is no legal impediment to a member of a claim group being a respondent party to the claim, the circumstances in which a "dissentient" member of a claim group will be permitted to be a respondent party will be rare. Claim groups are empowered by ss 251B and 66B to choose the person or persons who will represent them in the application, and such choice is to be made by traditional law and custom (if any) or by an agreed process. Unanimity is not required for ss 251B or 66B unless the traditional or agreed processes involve unanimity. Mansfield J considered that the Act does not allow individual dissenting members of a claim group to routinely play a direct role in the presentation of the case. Mr Reid had argued that, according to traditional law and custom, he was the only person capable of authorising the claim. Mansfield J did not consider that Mr Reid had presented sufficient material to establish this.

Mansfield J held that it would not be in the interests of justice for Mr Reid to remain a party to the proceeding, on the grounds that his continued status as a respondent would be likely to cause unwarranted costs and delays, interfere with the claim's progress towards consent determination, and was not supported by any other sufficient reason. Further, Mansfield J drew attention to an alternative procedural avenue available to Mr Reid, namely to apply under s 84D(2)(c) for an order requiring the named applicants to produce evidence that they are authorised to make the claim.

***Lennon on behalf of the Antakirinja Matu-Yankunytjatjara Native Title Claim Group v The State of South Australia* [2011] FCA 474**
**11 May 2011**
**Mansfield J**
**Federal Court of Australia, Adelaide**
The Antakirinja Matu-Yankunytjatajara people's native title, first claimed in 1995, was determined by consent, including both non-exclusive and exclusive possession areas. Antakirinja Matu-Yankunytjatajara Aboriginal Corporation is the PBC. They compromised with the state on the question of whether native title rights and interests in Tallaringa Conservation Park are suppressed for as long as those areas remain vested in the Crown under the *National Parks and Wildlife Act 1972*, or other state legislation. They agreed, however, that the non-extinguishment principle applies because the land was vested. There are also areas where extinguishment of native title 'must be disregarded' including Aboriginal Lands Trust land, and tenure held by the Coober Pedy Aboriginal Housing Society Inc. The determination area includes Aboriginal-held pastoral leases at Mabel Creek, Mount Clarence and Mount Willoughby. Schedule 7 lists current or potential ILUAs in the determination area including agreements for minerals exploration, individual pastoral agreements, and ILUAs referred to as 'Tallaringa ILUA', 'Whole of Claim ILUA' and 'Breakaways ILUA', and 'Coober Pedy ILUA'. His Honour described the evidence that had proved this claim. The native title holders were represented by private solicitors.

***Maldorky Iron Pty Ltd v South Australia Native Title Services* [2011] SAERDC 16**
**20 May 2011**
**Judge Costello**
**South Australian Environment Resources and Development Court, Adelaide**
This case considers the alternative future act process under the *Mining Act 1996* (SA). The mining company applied for summary determination allowing mining on native title land, on the basis that it had given notice as required, and there was no party holding or claiming native title over that area after two months. The SA Environment, Resources and Development Court (ERD Court) considered section 63K2 of the *Mining Act*, which prohibits a native title agreement for mining to be made if the company does not hold, and is not an applicant for, a production tenement, or if there is no registered native title holder. The ERD Court agreed with South Australian Native Title Services (SANTS), that the company had not triggered the notice and negotiation process, as it had given notice of an *intention* to apply for mining leases, rather than notice of an application already *made*. So, when the company gave notice of its intention, it did not trigger the process under Part 9B, and it was not entitled to a summary determination.

SANTS also argued that the company was in breach of the *Mining Act* by carrying out drilling and associated 'mining operations' on the land under a mere exploration authority. The parties disagreed as to whether the company's actions made it a 'proponent' under the Mining Act, but the Court found that these arguments were not directly relevant to the proceeding. The ERD Court noted that the *Mining Act* provisions were enacted to administer rights under the *Native Title Act 1993* (Cth) (NTA), and can therefore be interpreted by the ERD Court with some reference to the NTA.

***Barunga v State of Western Australia* [2011] FCA 518**
**26 May 2011**
**Gilmour J**
**Federal Court of Australia, Yaloon**
This is a consent determination for the Wanjina-Wunggurr Dambimangari claim in the Kimberley. The parties agreed to the dismissal of an application in respect of the land and waters of Cone Island. The Court made orders in terms of the Minute of Proposed Consent Determination filed by the parties, to the effect that native title exists in relation to the Determination Area. The applicant nominated the Wanjina-Wunggurr (Native Title) Aboriginal Corporation RNTBC to hold the determined native title in trust for the native title holders. The Court ordered, by consent, that the Wanjina-Wunggurr (Native Title) Aboriginal Corporation RNTBC and the State of Western Australia enter into negotiations in good faith to reach agreement on the relationship between the native title rights and interests recognised in the Determination Area, and the non-native title rights and interests which exist on the land and waters within the Determination Area.

***Long v Northern Territory of Australia* [2011] FCA 571;**
***Rosewood v Northern Territory of Australia* [2011] FCA 572;**
***Button Jones v Northern Territory of Australia* [2011] FCA 573;**
***Paddy v Northern Territory of Australia* [2011] FCA 574;**
***Simon v Northern Territory of Australia* [2011] FCA 575;**
***Carlton v Northern Territory of Australia* [2011] FCA 576;**
**31 May 2011**
**Mansfield J**
**Federal Court of Australia, Jinumum Walk**
These six judgments are consent determinations, made at the same hearing, over land and waters within the bounds of several pastoral leases in the Northern Territory:

- Auvergne Pastoral Lease (Long on behalf of the Gajerrong-Ngalinjar, Ngarinyman-Wulayi, and Ngarinyman-Nyiwanawam groups);
- Rosewood Pastoral Lease (Rosewood on behalf of the Miriuwung-Larru, Miriuwung-Mambitji, Miriuwung-Gudim, and Malngin-Yunur-Jurrtakal groups);
- Newry Pastoral Lease (Button Jones on behalf of the Miriuwung-Damberal, Miriuwung-Nyawam Nyawam, Miriuwung-Gudim, and Ngarinyman-Nyiwanawam groups);
- Bullo River Pastoral Lease (Paddy on behalf of the Gajerrong-Pulthuru, Gajerrong-Ngalinjar, Gajerrong-Gurrbijim, and Gajerrong-Djarradjarrany groups);
- Legune Pastoral Lease (Simon on behalf of the Gajerrong-Wadanybang, Gajerrong-Gurrbijim, and Gajerrong-Djarradjarrany groups);
- Spirit Hills Pastoral Lease (Carlton on behalf of the Miriuwung-Nyawam Nyawam, Miriuwung-Bindjen, Gajerrong-Gurrbijim, Gajerrong-Djarradjarrany, Gajerrong-Djandumi group, and Gajerrong-Wadanybang groups).

In each case, Mansfield J made orders in the terms agreed by the parties, noting that s 87 of the *Native Title Act*1993 (Cth) requires that the agreement between the parties be in writing, that the orders sought be both within the power of the Court and appropriate in the opinion of the Court. His Honour quoted North J in *Lovett on behalf of the Gunditjmara People v State of Victoria* [2007] FCA 474, who had stated that the Court is not required to examine whether the agreement is grounded on a factual basis which would satisfy the Court at a hearing of the application.

Two matters remain outstanding in each of these claims. First, the determination provides for an Aboriginal corporation to be nominated to the Court within 12 months, to be the prescribed body corporate for the purposes of s 57 of the Act. Second, the parties may apply to the Court to establish the precise location of certain public works and other improvements within the Determination Area, in relation to extinguishment issues.

***Campbell v Northern Territory of Australia* [2011] FCA 580;**
***Wavehill v Northern Territory of Australia* [2011] FCA 581;**
***King v Northern Territory of Australia* [2011] FCA 582;**
***Young v Northern Territory of Australia* [2011] FCA 583;**
***Wavehill v Northern Territory of Australia* [2011] FCA 584;**
***Young v Northern Territory of Australia* [2011] FCA 585;**
**2 June 2011**
**Mansfield J**
**Federal Court of Australia, Pigeon Hole**
These six judgments are consent determinations, made at the same hearing, over land and waters within the bounds of several pastoral leases in the Northern Territory:

- Camfield Pastoral Lease (Campbell on behalf of the Ngapurrpinkakujarra, Narrwan, Walanypirri, Yingawunarrri, Purruruka, Yilyilyimarri, Japuwuny-Wijina, Bilnara, and Wampana Groups);
- Dungowan Pastoral Lease (Wavehill on behalf of the Ngapurrpinkakujarra, Narrwan, Walanyipirri, Yingawunarri, and Narlwan Groups);
- Montejinni East Pastoral Lease (King on behalf of the Ngapurrpinkakujarra, Yingawunarri, and Purrurruka Groups);
- Montejinni West Pastoral Lease (Young on behalf of the Nirrina, Yingawunarri, Purrurruka, Yilyilimarri, and Billinara Groups);
- Birrimba Pastoral Lease (Wavehill on behalf of the Ngapurrpinkakujarra, Yingawunari, Narlwan, Luwaja, Tururrutpa, and Beregumayin-Ngarrajanaggu Groups);
- Killarney Pastoral Lease (Young on behalf of the Ngapurrpinkakujarra, Yingwunarri,

Liwi, Luwaja, Nirrina, and Beregumayin-Ngarrajanaggu Groups).

In each case, Mansfield J made orders in the terms agreed by the parties, noting that s. 87 of the *Native Title Act* 1993 (Cth) requires that the agreement between the parties be in writing, that the orders sought be both within the power of the Court and appropriate in the opinion of the Court. His Honour quoted North J in *Lovett on behalf of the Gunditjmara People v State of Victoria* [2007] FCA 474, who had stated that the Court is not required to examine whether the agreement is grounded on a factual basis which would satisfy the Court at a hearing of the application.

Two matters remain outstanding in each of these claims. First, the determination provides for an Aboriginal corporation to be nominated to the Court within 12 months, to be the prescribed body corporate for the purposes of s 57 of the Act. Second, the parties may apply to the Court to establish the precise location of certain public works and other improvements within the Determination Area, in relation to extinguishment issues.

***Dodd on behalf of the Gudjala People Core Country Claim #1 v State of Queensland* [2011] FCA 690**

**17 June 2011**

**Logan J**

**Federal Court of Australia, Brisbane**

This judgment of Logan J dealt with the procedural requirements to remove a person from the list of named applicants. Mr William Santo no longer wished to be named as an applicant, but the other named applicants wished to continue with the application. The Commonwealth argued that such a change to the list of applicants would have to be freshly authorised by the claim group, because of the requirements of s 66B *Native Title Act* 1993 (Cth). The remaining applicants argued that the Court was empowered either by s 66B or by O 6 r 9 of the *Federal Court Rules* to grant their application jointly to replace the current list of applicants with one which omitted Mr Santo.

The question for Logan J was whether s 66B is the only means available to amend the applicant to a native title application, and whether every amendment required a fresh authorisation by the claim group. Logan J considered the expense, delay and inconvenience which this interpretation would entail, and viewed s 66B as conferring a discretionary power rather than a mandatory obligation on the claimant group to authorise new applicants. Logan J examined the evidence of the original authorisation of the named applicants, and found that it was not expressed in terms of joint authority, but rather authorised each of the named persons personally. Since the remaining applicants wished to remain in their representative role and retained the authorisation of the claim group, and since Mr William Santo did not wish to continue and consented to his removal, s 66B empowered the Court to remove Mr Santo from the application. Further, the Court had the additional power to make the relevant order under O 6 r 9 of the *Federal Court Rules*.

***Dillon on behalf of the Barunggam People v State of Queensland* [2011] FCA 713**

**23 June 2011**

**Reeves J**

**Federal Court of Australia, Brisbane**

Reeves J dismissed the application in this matter under s 190F(6) of the *Native Title Act* 1993 (Cth). On 16 September 2010, a delegate of the Native Title Registrar refused to accept the application, on the grounds that the application did not satisfy the requirements of ss 190B(5)(b) and (c), 190B(6) and 190B(7). These subsections relate to the Registrar's assessment of the factual basis for the assertion of the native title rights and interests, the prima facie possibility of establishing the rights and interests, and the traditional physical connection to any part of the relevant land or waters of at least one member of the claim group. Reeves J had previously given the applicants the opportunity to amend the application, but Counsel for the applicants at the hearing of the dismissal motion conceded that, based on his discussions with four of the six named applicants there was "little realistic hope of overcoming the impediments" presented by s 190F(6). Reeves J was satisfied of the relevant conditions for dismissal in s 190F(5) and (6): that all of the avenues identified in s 190F(5)(b) of the Act have been exhausted; that the application was not likely to be amended such that the Registrar would be likely to come to a different conclusion; and that there was no other reason why the application should not be dismissed.

***Atkinson on behalf of the Mooka and Kalara United Families Claim v Minister for Lands for the State of New South Wales* [2011] FCA 701**
**23 June 2011**
**Jagot J**
**Federal Court of Australia, Sydney**
This judgment arose from a motion before Jagot J to set aside orders made on 1 October 2010 – self-executing orders which would dismiss the application if certain steps were not taken by 29 October 2010 (steps which were in fact not taken by that date). The applicants' primary submission was that they would suffer substantial prejudice if their native title application were dismissed. Because many of the key knowledge-holders were elderly, there was a risk that they would pass away or be otherwise unable to give evidence by the time a fresh application was authorised, filed, registered, and brought on for trial. Despite that, Jagot J dismissed the motion, and further ordered that no additional application seeking to reinstate the proceeding could be made without leave of the Court.

Jagot J accepted the NSW Minister for Lands' submission that, because of the self-executing nature of the October orders, the present motion was essentially an application to vary orders before they are entered (O 35 r 7(1) *Federal Court Rules*), rather than an application to dismiss a proceeding under the *Native Title Act* 1993 (Cth). Accordingly, the applicant's arguments by reference to ss 94C(3) and 190F(6) – both dealing with the exercise of discretion to dismiss a native title application – were of little weight. Instead, Jagot J applied common law tests which prescribed that the power to vary orders be exercised cautiously, and that variation was an indulgence rather than a right of parties. His Honour noted that the delay which was said to be prejudicial to the applicants was in fact due to their own decisions. Jagot J did not consider that the application's prospects of passing the registration were relevant to the exercise of his power to vary the dismissal orders, but noted the Minister's view that the application would be unlikely to pass the registration test. His Honour noted generally the applicants' failure to meet previous deadlines ordered for the filing of evidence.

# Legislation

**Native Title Amendment (Reform) Bill 2011**

On 12 May 2011 the Senate referred the Native Title Amendment (Reform) Bill 2011 for inquiry and report.

The Bill amends the *Native Title Act 1993* to effect reforms that address two key areas for native title claimants: the barriers claimants face in making the case for a determination of native title rights and interests; and procedural issues relating to the future act regime. These measures include: the application of the principles of the United Nations Declaration on the Rights of Indigenous Peoples to decision-making; heritage protection; the application of the non-extinguishment principle to the compulsory acquisition of land; the right to negotiate to apply to offshore areas; good faith negotiations; profit sharing and royalties in arbitration; enabling extinguishment to be disregarded; burden of proof; the definition of 'traditional'; and commercial rights and interests. Submissions should be received by 29 July 2011. The reporting date is 20 September 2011. More information is available from the Senate Committee website

# Native Title Research Unit Publications Survey

Your feedback about NTRU publications is vital to keep our publications relevant and informative. We would appreciate if you could spend approximately 5 minutes to complete the following survey. All responses will be compiled and analysed as a group. Responses will not be identified by individual. We thank you for your assistance.

**Visit http://www.tfaforms.com/208207 to fill in the survey**

If you have any questions or concerns, please contact Matthew O'Rourke, Research Officer at the Native Title Research Unit on (02) 6246 1158 or morourke@aiatsis.gov.au

# Native Title Publications

**AIATSIS Publications**

- M Burns, Challenging the assumptions of positivism: an analysis of the concept of society in *Sampi on behalf of the Bardi and Jawi People v Western Australia* [2010] and *Bodney v Bennell* [2008], *Land, Rights, Laws: Issues of Native Title*, Issues Paper Vol. 4, No. 7, Native Title Research Unit, AIATSIS, Canberra, May 2011.
- D Martin, T Bauman and J Neale, *Challenges for Australian native title anthropology: practise beyond the proof of connection*, Discussion Paper 29, Native Title Research Unit, AIATSIS, Canberra, May 2011.
- J Weir, *Karajarri: A West Kimberley experience in managing native title*, Discussion Paper 30, Native Title Research Unit, AIATSIS, Canberra, May 2011.

**Speeches from the Native Title Conference 2011**
The following speeches are available for download from the Native Title Conference website:

- Patrick Keane
- Mick Gooda
- Rowan Foley
- Jilpia Jones
- Pam McGrath
- Sturt Glacken

**Other Publications**

- South Australian Native Title Services - Aboriginal Way - May 2011 [PDF 3.2Mb]
- Paul R. Smith, 'Queensland's planning law: a lost opportunity to deliver justice to native title holders - or is it?', *Queensland Environmental Practice Reporter,* Vol. 16 Issue 73, 2011, pp. 127-135.
- Queensland South Native Title Services – Native Title Handbook - June 2011 [PDF 1.4Mb ]
- National Native Title Tribunal & Australian Local Government Association- Developing indigenous land use agreements: A guide for local government – June 2011 [PDF 900Kb]

**Native Title Resource Guide (NTRG)**

The NTRG provides a summary of resources and information relating to key areas of native title. The guide provides information pertaining to:

- Native title legislation and case law;
- Federal, State and Territory Governments' native title policies and procedures;
- Native title representative bodies, registered native title bodies corporate, government agencies and other organisations involved in native title;
- Native title applications and determinations;
- Indigenous Land Use Agreements, future acts and other native title related agreements;
- Land rights legislation;
- Indigenous Land Corporation acquisitions;
- Indigenous Protected Areas; and
- Indigenous population profiles

Information is gathered from a range of sources including Agreements, Treaties and Negotiated Settlements Project; Native Title Representative Bodies; the National Native Title Tribunal; the Indigenous Land Corporation; The Office of the Registrar of Aboriginal and Torres Strait Islander Corporations; federal, state and territory government departments; the Federal Court and the Australasian Legal Information Institute and many more.

Information is provided at a national level as well as relating to each state and territory:

- National Overview ()
- Australian Capital Territory ()
- New South Wales()
- Northern Territory ()
- Queensland ()
- South Australia ()
- Tasmania ()
- Western Australia ()
- Victoria ()

# Native Title in the News

## National

**26/05/2011**
**Carbon farming initiative**
Indigenous land managers across remote regions of the north of Australia may be able to earn carbon credits for improving fire management under the Government's Carbon Farming Initiative (CFI). The proposal is the first methodology to be released for public comment under the Government's CFI, bringing a step closer the Government's plans to financially reward farmers and landholders for reducing Australia's carbon pollution.

Parliamentary Secretary for climate change and energy efficiency, Mark Dreyfus, said the methodology for savannah burning was developed by Government in close consultation with Indigenous groups and the CSIRO. 'Under the CFI eligible projects will gain carbon credits, which they will then be able to sell to companies in Australia looking to voluntarily offset their carbon emissions, or on the established international marketplace.' Comments are invited by Friday, June 30, 2011.

Copies of the draft methodology and the Carbon Farming Initiative is available on the Department of Climate Change and Energy Efficiency website at: www.climatechange.gov.au/cfi
*Land* (Sydney NSW, 26 May 2011), 40.

**28/05/2011**
**Disclosure call on native title deals**
Attorney-General Robert McClelland has called for greater disclosure about payments made by resources companies to Indigenous groups during negotiations to mine their lands, and in the final settlements. Mr McClelland strongly endorsed the need for more information to be disclosed so the government could be convinced native title agreements were providing 'sustainable and intergenerational benefits to the native title holders'. 'I believe more information about agreements and the negotiation process will give government a better sense of industry practice and how payments are being made,' Mr McClelland said. *Weekend Australian* (National AU, 28 May 2011), 12.

**01/06/2011**
**Native title onus unjust: Keating & Pearson**
Former Prime Minister, Paul Keating, delivered the annual Lowitja O'Donoghue address in Adelaide on 31 May 2011. At this address, he argued for changes to native title legislation to shift the presumption in favour to Indigenous claimants who he said carried an unjust burden in proving their continued connection to land.

Mr Keating reiterated a call by the Chief Justice of the High Court, Robert French, two years ago for reform to make native title more equitable and efficient. "Chief Justice Robert French has suggested a reverse onus of proof where proof of any interruption would need to be established to be proved," Mr Keating said. "I can only add my recommendation that the federal government give legislative effect to such changes so as to enhance the efficiency, effectiveness and equity of the *Native Title Act 1993*."

Aboriginal leader Noel Pearson has backed Paul Keating's call for the onus of proof to be reversed. Mr Pearson, a lawyer and director of the Cape York Institute, was involved in negotiating the *Native Title Act* in 1993. *Sydney Morning Herald* (Sydney NSW, 1 June 2011), 3. *The Australian* (National AU, 1 June 2011), 1, 3 and 16. *Sydney Morning Herald* (Sydney NSW, 1 June 2011), 15. *The Age* (Melbourne VIC, 1 June 2011), 17. *Weekend Australian* (National AU, 4 June 2011), 10. *Daily Advertiser* (Wagga Wagga NSW, 4 June 2011), 20. *Weekend Post* (Cairns QLD, 4 June 2011), 4. *Border Mail* (Albury Wodonga, VIC, 4 June 2011), 22. *Northern Daily Leader* (Tamworth NSW, 4 June 2011), 17.

**03/06/2011**
**Mick Gooda targets 'lateral violence'**
At the National Native Title Conference in Brisbane, the Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda said "Aboriginal and Torres Strait Islanders are being pressured by governments to achieve "zero tolerance" of abuse in their communities, however they are being hindered in that aim by other government policies, such as native title, which pit Indigenous people against one another."

Mr Gooda defined "lateral violence" as "the organised, harmful behaviours that we do to each other collectively as part of an oppressed group, within our families, within our organisations and within our communities". "It is described as internalised colonialism the expression of rage and anger, fear and terror, which can only be safely vented upon those closest to us when we are being oppressed." Mr. Gooda agreed that there is still no excuse for the violence and that a view of zero tolerance must still be taken.

See Mick Gooda's speech online at the Native Title Conference Website. *The Australian* (National AU, 3 June 2011), 6.

**09/06/2011**
**Indigenous leaders want more say on carbon farming laws**
Australia's Indigenous leaders have told the Gillard Government they must have a greater role in drafting new laws to establish a national carbon farming scheme. Approximately 40 Aboriginal and Torres Strait Islander leaders from across Australia met Federal Climate Change Parliamentary Secretary Mark Dreyfus at Parliament House to discuss concerns over the scheme's treatment of native title rights.

The chief executive of the North Australian Indigenous Land and Sea Management Alliance, Joe Morrison, said the meeting was "the first real engagement" with the Government to resolve the issue. Under the proposed carbon farming initiative, farmers and other land owners can create carbon credits from eligible greenhouse abatement activities and sell them on domestic and global markets. The Kimberley Land Council told the inquiry the scheme failed "to include a provision for the consent of native title holders as eligible interest holders" in cases where carbon offset projects were being planned on land subject to native title. *Canberra Times* (Canberra ACT, 9 June 2011), 3.

## New South Wales

**28/05/2011**
**Worimi traditional owners to lodge claim**
Worimi traditional owners will lodge a native title claim over Newcastle and surrounds. Traditional owner Jaye Quinlan (nee Dates) said about nine Worimi descendants had been researching their right to make the claim for several years. She confirmed the lack of recognition given to the Worimi people in the recent excavation of ancient artefacts at the Newcastle West KFC site had been a factor in the decision to pursue legal action. *Newcastle Herald* (Newcastle NSW, 28 May 2011), 1 and 4.

**16/06/2011**
**Water workshops for Aboriginal communities**
Aboriginal communities across the central west of New South Wales attended a series of workshops on water at Dubbo and Nyngan. The first series of workshops saw members of local Aboriginal communities meet with staff from the NSW Office of Water to find out more about water sharing processes and licensing. The Office of Water's Lillian Moseley, said that issues specific to native title rights surrounding water and Aboriginal cultural and community water licenses were discussed. "Many of the Aboriginal people who came to the first series of workshops said they were not familiar with the opportunities for Aboriginal people under the water reforms, especially those affecting water sharing plans for their local area," Ms Mosley explained. Stage one community engagement workshops provided information on the water planning process, water licensing opportunities and the relevance of water sharing plans for Aboriginal people. Follow-up workshops ("stage two") will be held at the same locations in late June, where Aboriginal people are invited to have further discussions on high priority water dependent assets, cultural flow requirements and sensitivities to water extraction. *Lake News* (Cargelligo NSW, 16 June 2011), 10.

## Northern Territory

**04/05/2011**
**Kidman offloads Banka Banka land**
The Indigenous Land Corporation (ILC) has purchased part of a cattle station in the Northern Territory. S. Kidman & Co subdivided Banka Banka Station, which is 100kms north of Tennant Creek. The ILC's acting manager, Jodie Lindsay said the land contained several significant cultural and burial sites. 'The property is a pastoral station, so we will continue a small scale pastoral operation on it and continue the tourism, in order to provide employment opportunities and training opportunities for Indigenous people,' she said. *Australian Financial Review* (National AU, 04 May 2011), 54. *National Indigenous Times* (Malua Bay NSW, 12 May 2011), 7.

**06/05/2011**
**Station now native title**
In 2001, the Central Land Council lodged the Ooratippra native title application on behalf of native title claimants. The claim is on behalf of several hundred Aboriginal people comprising the Irrkwal, Irrmarn, Ntewerrek, Aharreng, Arrty/Amatyerr and Areyn estate groups of the Alyawlarr language group. A Federal Court ruling now means the groups hold exclusive native title rather than a pastoral lease over the area. The land will continue to be leased to a neighbouring pastoralist, who plans to revive local cattle management. *Centralian Advocate* (Alice Springs

NT, 06 May 2011), 3. *National Indigenous Times* (Malua Bay NSW, 12 May 2011), 8.

**09/05/2011**
**Nuclear waste dump questioned**
Martin Hyde, senior associate of the law firm Maurice Blackburn, said discovery of documents in the National Archives shows that the Muckaty site was not exclusively owned by the family of Amy Lauder as claimed by the Northern Land Council. Mr Hyde said that these documents raise serious questions about the nomination of the site by the Northern Land Council. The NLC's Chief Executive, Kim Hill, said the claim that the documents contained fresh evidence was misleading because they were considered by the council when nominating the site in 2007. *Border Mail* (Albury-Wodonga SA, 9 May 2011), 4. *The Age* (Melbourne VIC, 9 May 2011), 5.

**17/05/2011**
**No to new land council**
A plan to set up a new land council which would encroach on most of the Northern Land Council's (NLC) jurisdiction was proposed in 2010 by the Jawoyn Association. However, Kim Hill, CEO of the NLC, said traditional owners had opposed the move at meetings earlier this year. 'Supporters of the breakaway appear to be upset with some functions of the NLC,' he said. 'But any new land council would, if given the right anthropological advice, most likely make the same decisions [as we did].' The proposal for the new 'Katherine Regional Land Council' is under Federal Government review. Indigenous Affairs Minister Jenny Macklin will announce her stance after recommendations from the Aboriginal Land Commissioner, due on July 31. If it is favourable, traditional landowners will vote on the issue. *Northern Territory News* (Darwin NT, 17 May 2011), 11.

**27/05/2011**
**Rio Tinto Alcan Gove Traditional Owners Agreement**
The future of mining on the Gove peninsula has been assured after an agreement was signed with traditional owners. The Rio Tinto Alcan Gove Traditional Owners Agreement has been approved by the Federal Government. Indigenous Affairs Minister Jenny Macklin said this was the first negotiated agreement in Gove. She said the historic agreement was made between Rio Tinto Alcan, the Northern Land Council and the Gove Peninsula traditional owners. *Northern Territory News* (Darwin NT, 27 May 2011), 3. *Weekend Australian* (National AU, 28 May 2011), 14.

**30/05/2011**
**Sacking invalid, says native title head**
Darryl Pearce, the Chief Executive of the Lhere Artepe group of companies that represents native title holders in Alice Springs, said 'dissidents' had tried to sack him from the Lhere Artepe Aboriginal Corporation. The group of traditional owners had the locks changed at the organisation's headquarters, but Mr Pearce said he had them changed back. He said he was employed by Lhere Artepe Enterprises, which he claimed nullified the resolution to suspend him. *The Australian* (National AU, 30 May 2011), 9.

**03/06/2011**
**Land rights at Pigeon Hole**
Traditional owners at the Aboriginal settlement of Pigeon Hole, 700 kilometres south of Darwin were recognised as having rights to hunt, fish, camp and perform ceremonies on their traditional land. The Federal Court's determination of native title over more than 15,000 square kilometres of the Northern Territory, including Pigeon Hole, was an historic day for six Aboriginal clan groups whose land covers six cattle stations. Justice Mansfield granted the determination by consent as the NT Government and station owners accepted claims to native title rights by Aboriginal clans who were represented by the Northern Land Council. *Sydney Morning Herald* (Sydney NSW, 3 June 2011), 3. *Northern Territory News* (Darwin NT, 11 June 2011), 36.

**20/06/2011**
**Temporary fishing arrangements continue**
The Northern Land Council has extended the temporary fishing arrangements prompted by the Blue Mud Bay decision until the end of 2011. It will allow commercial and recreational fishers to continue to access waters overlying Aboriginal land without a permit. The July 2008 Blue Mud Bay High Court decision gave Aboriginal landowners control over the intertidal zones of waters adjoining their lands. The NT Government has since been negotiating with land councils for temporary fishing permits for access to the waters. A final agreement was due to be reached on 30 June 2011. *Northern Territory News* (Darwin NT, 20 June 2011), 5.

## Queensland

**12/05/2011**
**Apudthama Land Trust signs bauxite mine deal**
The mining company Cape Alumina has finalised agreements with the Cape York Aboriginal land owners for the proposed Bauxite Hills mine and port project in Queensland. Exploration consent and compensation agreements were signed between the company and the Apudthama Land Trust. Acting CEO Neville Conway said the agreements were a 'major milestone' in the project's development and was further evidence of the positive relationship that existed between Cape Alumina and the Aboriginal people of western Cape York. *National Indigenous Times* (Malua Bay NSW, 12 May 2011), 6. *Western Cape Bulletin* (Weipa QLD, 11 May 2011), 3.

**07/06/2011**
**Katter calls for native title holders to be given formal deeds**
Queensland MP Bob Katter has unveiled a policy to give Indigenous Australians formal deeds to land they hold under native title. It is one of a number of policies he has outlined since launching the Australian Party. "We are determined that the first Australians, Aboriginal Australians, will get a title deed ... on the 25 per cent of Australia they are supposed to own," he said. "At the present moment they can't own a home, they can't open up a business - banks want mortgage but you can't get a mortgage if you haven't got a title deed." *Daily Liberal* (Dubbo NSW, 7 June 2011), 14.

**10/06/2011**
**Stradbroke Island determination not far away**
Traditional owners of North Stradbroke Island have signed two Indigenous land use agreements (ILUAs), paving the way for the Federal Court to rule on native title for the island on July 4.

Native title applicant for the Quandamooka people Ian Delaney says now that the land use agreements have been signed, the future is bright for the island's Aboriginal communities. However, Dale Ruska, a descendent of the original Stradbroke Island people, said he was disappointed with the outcome. He said he and his family refused to consent to the ILUAs because they would "validate invalid acts against Aboriginal people" on "Indigenous land".

Queensland South Native Title Service's Graham Hiley QC and barrister Tony McAvoy briefed traditional owners about the content of each agreement and people's rights. They also answered questions before more than a dozen resolutions were passed on the two claims. Celebrations are planned on Stradbroke Island for the Federal Court's recognition of native title rights on July 4. *Redland Times* (Brisbane QLD, 10 June 2011), 1, 5 and 6.

**22/06/2011**
**Land handed back to its traditional owners**
Lakefield National Park will be renamed Rinyirru National Park today when the land is handed back to its Aboriginal owners. After more than 20 years of negotiations, traditional owners will co-manage the park with the QLD Government. The co-management partnership has been welcomed by native title holders which include the Lama Lama people, Kuku Thaypan people, Bagaarrmugu clan, Mbarimakarranma clan, Muunydyiwarra clan, Magarrmagarrwarra clan, Balnggarrwarra clan and Gunduurwarra clan. Covering 542,856ha the Rinyirru National Park is the second largest national park in Queensland and features wetlands, waterfalls and extensive river systems. Traditional owners said it was rich in sacred sites and stories. *Cairns Post* (Cairns QLD, 22 June 2011), 9. *Kalgoorlie Miner* (Kalgoorlie WA, 23 June 2011), 4.

## South Australia

**12/05/2011**
**Native title in SA**
Sixteen years after first lodging a claim, the Antakirinja Matu-Yankunytjatajara people were recognised as native title holders of 78,672 square kilometres at a special sitting of the Federal Court in Coober Pedy on 11 May 2011. Federal Court Justice Mansfield said the Court was not granting them that status but recognising it has always existed. The determination - the fifth in SA history - extends from the Tallaringa Conservation Park, near Coober Pedy in the northwest and south to the eastwest railway line. It gives the group non-exclusive hunting, fishing, camping and cultural ceremony rights in the area, as well as the use of all natural resources. It does not grant the power to oppose current land use or to prevent future farming or mining in the area. *Barrier Daily Truth* (Broken Hill NSW, 12 May 2011), 7. *Advertiser* (Adelaide SA, 12 May 2011), 13. *Kalgoorlie Miner* (Kalgoorlie WA, 12 May 2011), 4. *Coober Pedy Regional Times* (Coober Pedy SA, 26 May 2011), 8. *National Indigenous Times* (Malua Bay NSW, 26 May 2011), 22.

**01/06/2011**
**Changes to SA *Mining Act***
Amendments to the South Australian *Mining Act* came into effect 1 July 2011. In November 2010 a range of changes were passed through the SA Parliament. Both Houses of Parliament supported the changes, which included new provisions to support greater transparency, compliance and enforcement, effective regulation, reduction in red tape and greater clarity on rights of access. The changes were made with contributions from the SA Chamber of Mines and Energy, Cement Concrete and Aggregate Association, environment and heritage groups and native title holders plus farming and pastoral interests. *Paydirt* (National AU, June 2011), 51.

## Western Australia

**02/05/2011**
**Environmental pledge boosts gas hopes**
Environmental assurances from energy company Woodside and the West Australian State Government have been given to the Kimberley Land Council who represent the Goolarabooloo Jabbir Jabbir native title claim group.

If the claimant group rejects the agreement at a meeting on 6 May 2011, a negotiated outcome is unlikely because the WA State Government is expected to proceed with Court action to compulsorily acquire the land. If native title claimants vote in favour of the deal, Mr Bergmann, ex-CEO of the Kimberley Land Council said the only remaining obstacle for the development would be the approval of Federal Environment Minister Tony Burke. Mr Burke has to consider the social and environmental impacts of the development and has the right to veto the project. *The Australian* (National, AU, 02 May 2011), 8.

**07/05/2011**
**Deal reached**
After much deliberation, the Goolarabooloo Jabbir Jabbir native title claim group agreed to support Woodside's $30 billion liquefied natural gas hub to be built at James Price Point. The traditional owners will now receive more than $1.5 billion in benefits such as business opportunities, housing, education and funds to address social issues in the area. The claimants cast a secret ballot: 164 in favour, 108 against and 5 abstaining.

The group then authorised their negotiating committee to formalise a land use agreement with Woodside and the State Government, relinquishing their native title interests in 3500ha of land and water north of Broome.

Premier Colin Barnett, who this month advanced moves to acquire the land compulsorily, described the vote as 'historic for the nation' and the deal 'by far' the most valuable and complex native title settlement in Australian history. Former Kimberley Land Council boss Wayne Bergmann, who led the negotiations, said the deal had set a benchmark and included an 'incredible range of opportunities' for Aboriginal people in the region. *Australian Financial Review* (National AU, 02 May 2011), 11. *Border Mail* (Albury Wodonga VIC, 07 May 2011), 16. *Australian Financial Review* (National AU, 07 May 2011), 8. *The Weekend West* (Perth WA, 07 May 2011), 5. *The Sydney Morning Herald* (Sydney NSW, 07 May 2011), 6. *The Saturday Age* (Melbourne VIC, 07 May 2011), 3. *The Weekend Australian* (National AU, 07 May 2011), 1, 25, 27. *Australian Financial Review* (National AU, 09 May 2011), 14. *Broome Advertiser* (Broome WA, 05 May 2011), 1, 10. *Business News* (Perth WA, 12 May 2011), 2 and 33. *National Indigenous Times* (Malua Bay NSW, 12 May 2011), 6. *Broome Advertiser* (Broome WA, 12 May 2011), 1.

**26/05/2011**
**Native title in the Kimberley**
Traditional owners have been recognised as native title holders over 26,000 square kilometres in Western Australia's north Kimberley region. The Wanjina Wunggurr community immediately declared an Indigenous Protected Area (IPA) in the region after the Federal Court of Australia officially made the determination. The IPA covers more than 340,000 hectares of country, which will be managed by the Uunguu rangers. The Wanjina Wunggurr Uunguu native title claim is linked to the Wanjina Wunggurr Wilinggin and the Wanjina Wunggun Dambimangarri claims.

The Kimberley Land Council (KLC) acted on behalf of the Wanjina Wunggurr Uunguu claimants. It was the culmination of a legal battle lasting about 14 years and the last of three claims to be settled. The Wanjina Wunggurr Dambimangarri claim takes in Mt Gibson Iron Ore's mine at Koolan Island and, under an agreement struck about four years ago, the company pays between $4 million and $6m a year to the Dambimangarri Aboriginal Corporation. *National Indigenous Times* (Malua Bay NSW, 26 May 2011), 65. *Kimberley Echo* (Kununurra WA, 26

May 2011), 3. *Launceston Examiner* (Launceston TAS, 27 May 2011), 8. *Gold Coast Bulletin* (Gold Coast QLD, 27 May 2011), 17. *West Australian* (Perth WA, 27 May 2011), 6. *Kalgoorlie Miner* (Kalgoorlie WA, 27 May 2011), 5. *The Australian* (National AU, 27 May 2011), 2. *West Australian* (Perth WA, 27 May 2011), 1. *Border Mail* (Albury Wodonga VIC, 27 May 2011), 14. *Weekend Australian* (National AU, 28 May 2011), 1. *Sunday Mail* (Brisbane QLD, 29 May 2011), 47.

**02/06/2011**
**Wanjina Wunggurr Dambimangari Determination**
A native title determination took place at an on-country sitting of the Federal Court by Justice Gilmour on 26 May 2011 at Cone Bay. After making the determination, Justice Gilmour said it was a historic day for the Wanjina Wunggurr Dambimangari people. "And it is a privilege and an honour for a Federal Court judge to preside over a sitting of the court on country" he said.

The area which takes in more than 27,932 sqkm of land and sea from King Sound to St Georges Basin, in the North West Kimberley was determined as exclusive possession, the strongest form of native title. At the determination hearing, traditional owners declared the 340,000ha of coastline included in the claim would become an Indigenous Protected Area, managed by Aboriginal rangers and Bush Heritage Australia. *Broome Advertiser* (Broome WA, 2 June 2011), 1 and 5. *Kimberley Echo* (Kununurra WA, 2 June 2011), 10.

**02/06/2011**
**Miner gives up rights in deal with Yawuru**
Buru Energy and joint-venture partner Mitsubishi Corporation have voluntarily given up rights to explore for oil and gas around Broome and Roebuck Bay. The two companies have come to an agreement with Yawuru traditional owners over the exploration permit, which covered much of the area covered by the Yawuru native title determination. In a statement to the Australian Stock Exchange, the company recognised the environmental and cultural importance of the area. Yawuru's Pat Dodson said the announcement was a "demonstration of industry leadership in Aboriginal and resource development co-operation and partnership in the Kimberley". Buru Chairman Graham Riley said the company was pleased to be able to work on the project with Yawuru people. "Recognition and respect for the cultural, environmental and social context we operate in is central to the way Buru runs it business," he said. *Broome Advertiser* (Broome WA, 2 June 2011), 8.

**03/06/2011**
**Agreement Rio deal to deliver billions to Indigenous people**
Aboriginal owners stand to receive more than $2 billion over 40 years under an agreement with Rio Tinto that sets a new standard for negotiations between miners and Indigenous Australians. Seven years in the making, the agreement will allow about 40 new iron ore mines to proceed in an area of 70,000 sqkm.

The deal commits Rio Tinto to have Aboriginal workers from the Pilbara comprise 14 per cent of its workforce, to support local Indigenous business to a similar level and to provide its entire workforce with cultural awareness training. If it fails to meet the job target, Rio Tinto will be required to spend $200,000 a year for each of the groups on education scholarships. "This is about people in the Pilbara being in charge of this transforming process in their lives," said Janina Gawler, Rio's chief negotiator in the agreement. *The Age* (Melbourne VIC, 3 June 2011), 1. *Kimberley Echo* (Kununurra WA, 2 June 2011), 10. *West Australian* (Perth WA, 3 June 2011), 1. *The Australian* (National AU, 3 June 2011), 1. *West Australian* (Perth WA, 3 June 2011), 4. *Australian Financial Review* (National AU, 3 June 2011), 10. *Illawarra Mercury* (Wollongong NSW, 4 June 2011), 50. *Sunshine Coast Daily* (Maroochydore QLD, 4 June 2011), 18. *Weekend Gold Coast Bulletin* (Gold Coast QLD, 4 June 2011), 109. *Morning Bulletin* (Rockhampton QLD, 4 June 2011), 37. *Daily Mercury* (Mackay QLD, 4 June 2011), 12. *Gladstone Observer* (Gladstone QLD, 4 June 2011), 18. *Courier Mail* (Brisbane QLD, 4 June 2011), 75. *Sydney Morning Herald* (Sydney NSW, 4 June 2011), 5 and 6. *Mercury* (Hobart TAS, 4 June 2011), 33. *Morning Bulletin* (Rockhampton QLD, 4 June 2011), 53. *Newcastle Herald* (Newcastle NSW, 4 June 2011), 39. *The Weekend West* (Perth WA, 4 June 2011), 32. *Canberra Times* (Canberra ACT, 4 June 2011), 3. *Advertiser* (Adelaide SA, 4 June 2011), 77. *Launceston Examiner* (Launceston TAS, 4 June 2011), 28. *Fraser Coast Chronicle* (Maryborough QLD, 4 June 2011), 16. *Border Mail* (Albury Wodonga VIC, 4 June 2011), 77. *Sunraysia Daily* (Mildura VIC, 4 June 2011), 33.*Shepparton News* (Shepparton VIC, 4 June 2011), 50. *Daily Advertiser* (Wagga Wagga NSW, 4 June 2011), 61. *Northern Star* (Lismore NSW, 4 June 2011), 23. *Weekend Post* (Cairns QLD, 4 June 2011), 37. *The Chronicle* (Toowoomba QLD, 4 June 2011), 41. *Townsville Bulletin* (Townsville QLD, 4 June 2011), 50. *North West Telegraph* (South Hedland WA, 8 June 2011), 1 and 8. *Yamaji News* (Geraldton WA, June 2011), 3.

**18/06/2011**
**Blockade in the Kimberley**
A protest group blocking access to the proposed site for a $30 billion gas hub at James Price Point in the Kimberley has prevented Woodside Petroleum contractors from accessing the site to clear vegetation and carry out geotechnical work for the liquefied natural gas plant since 7 June 2011. The Kimberley Land Council (KLC), representing Indigenous land claimants, reached an agreement with Woodside and the West Australian government for the gas hub project to go ahead. Under the deal, Kimberley Aboriginal communities would receive an estimated $1.5 billion in benefits during a 30-year time frame. But people of the blockade said the agreement was forced after WA Minister Colin Barnett threatened compulsory acquisition of the James Price Point site. *Advertiser* (Adelaide SA, 18 June 2011), 4. *Northern Territory News* (Darwin NT, 18 June 2011), 36. *Kalgoorlie Miner* (Kalgoorlie WA, 18 June 2011), 12. *Herald Sun* (Melbourne VIC, 18 June 2011), 35. *Advocate* (Coffs Harbour NSW, 18 June 2011), 22. *Townsville Bulletin* (Townsville QLD, 18 June 2011), 31. *Daily Advertiser* (Wagga Wagga NSW, 18 June 2011), 35.

**29/06/2011**
**Mayala people agreement with Pluton**
Pluton Resources has achieved 50 per cent Aboriginal employment even before striking a formal agreement with the Mayala people yesterday to develop a new iron ore mine on Irvine Island, 250km north east of Broome off the Kimberley coast. Mayala traditional owners will access a royalty stream and milestone payments as well as become the company's biggest shareholders, should they choose to convert their equity options. Pluton managing director Tony Schoer described the deal as the "best native title agreement, possibly in Australia, if not the world". "We went in there with a different approach, a lot of mining companies enter native title deals because it's something they have to do by law," he said. For traditional owners, the deal includes construction of a cultural arts centre and development of a ranger program. The Mayala people will also be consulted on environmental matters. Negotiated by KRED Enterprises led by former Kimberley Land Council chief executive Wayne Bergmann the package also includes regional benefits to be administered by the charitable Ambooriny Burru Foundation. *West Australian* (Perth WA, 29 June 2011), 40.

# Indigenous Land Use Agreements (ILUAs)

| NAME | TRIBUNAL FILE NO. | TYPE | STATE OR TERRITORY | REGISTRATION DATE | SUBJECT-MATTER |
|---|---|---|---|---|---|
| Mandandanji People and QGC Pty Limited ILUA | QI2010/034 | AA | QLD | 12/05/2011 | Pipeline |
| Darumbal Marmor ILUA | QI2010/039 | AA | QLD | 16/05/2011 | Mining |
| Darumbal Stony Creek ILUA | QI2010/038 | AA | QLD | 16/05/2011 | Access Pipeline Energy |
| Tennant Creek Corrections Facility ILUA | DI2011/004 | BCA | NT | 10/06/2011 | Government |
| Dulcie Ranges Community Living Area ILUA | DI2011/001 | AA | NT | 29/06/2011 | Community living area; Development |

This information has been extracted from the Native Title Research Unit ILUA summary: http://ntru.aiatsis.gov.au/research/ilua_summary.html, 1 July 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 |
|---|---|---|---|---|---|
| Ooratippra | *Kngwarrey on behalf of the members of the Irrkwal, Irrmarn, Ntewerrek, Aharreng, Arrty/Amatyerr and Areyn Landholding Groups v Northern Territory of Australia* [2011] FCA 428 | 5/05/2011 | NT | Native title exists in parts of the determination area | Consent determination (conditional) |
| Antakirinja Matu-Yankunytjatjara | *Lennon on behalf of the Antakirinja Matu-Yankunytjatjara Native Title Claim Group v The State of South Australia* [2011] FCA 474 | 11/05/2011 | SA | Native title exists in parts of the determination area | Consent determination |
| Uunguu Part A | *Goonack v State of Western Australia [2011]* FCA 516 | 23/05/2011 | WA | Native title exists in parts of the determination area | Consent determination |
| Dambimangari | *Barunga v State of Western Australia [2011]* FCA 518 | 26/05/2011 | WA | Native title exists in parts of the determination area | Consent determination |
| Spirit Hills Pastoral Lease No.2 | *Carlton v Northern Territory of Australia [2011]* FCA 576 | 31/05/2011 | NT | Native title exists in parts of the determination area | Consent determination |

| | | | | | |
|---|---|---|---|---|---|
| Auvergne Pastoral Lease | *Long v Northern Territory of Australia [2011]* FCA 571 | 31/05/2011 | NT | Native title exists in parts of the determination area | Consent determination |
| Rosewood Pastoral Lease | *Rosewood v Northern Territory of Australia [2011]* FCA 572 | 31/05/2011 | NT | Native title exists in parts of the determination area | Consent determination |
| Newry Pastoral Lease | *Button Jones v Northern Territory of Australia [2011]* FCA 573 | 31/05/2011 | NT | Native title exists in parts of the determination area | Consent determination |
| Bullo River Pastoral Lease | *Paddy v Northern Territory of Australia [2010]* FCA 574 | 31/05/2011 | NT | Native title exists in parts of the determination area | Consent determination |
| Legune Pastoral Lease | *Simon v Northern Territory of Australia [2011]* FCA 575 | 31/05/2011 | NT | Native title exists in parts of the determination area | Consent determination |
| Camfield Pastoral Lease | *Campbell v Northern Territory of Australia [2011]* FCA 580 | 02/06/2011 | NT | Native title exists in parts of the determination area | Consent determination |
| Dungowan Pastoral Lease | *Wavehill v Northern Territory of Australia [2011]* FCA 581 | 02/06/2011 | NT | Native title exists in parts of the determination area | Consent determination |
| Montejinni East Pastoral Lease | *King v Northern Territory of Australia [2011]* FCA 582 | 02/06/2011 | NT | Native title exists in parts of the determination area | Consent determination |
| Montejinni West Pastoral Lease | *Young v Northern Territory of Australia [2011]* FCA 583 | 02/06/2011 | NT | Native title exists in parts of the determination area | Consent determination |
| Birrimba Pastoral Lease | *Wavehill v Northern Territory of Australia [2011]* FCA 584 | 02/06/2011 | NT | Native title exists in parts of the determination area | Consent determination |
| Killarney Pastoral Lease | *Young v Northern Territory of Australia [2011]* FCA 585 | 02/06/2011 | NT | Native title exists in parts of the determination area | Consent determination |

This information has been extracted from the Native Title Research Unit Determinations summary: http://ntru.aiatsis.gov.au/research/determinations_summary.html , 1 July 2010. For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

# Featured 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.

The cataloguing of the Native Title Research Unit continues with links being added or updated. The listing below includes items that have come from earlier native title conferences. For all Native Title Research Unit publications, enter the query term "ntru" into the search box of the AIATSIS MURA online catalogue.

Under the category, "History – exploration and accounts" you will find listings of many local histories, often by local historical societies. Under "Archaeology" are listings of important articles on the Torres Strait from *Memoirs of the Queensland Museum* Vol. 3, no. 1 (June 2004).

**Audiovisual material of interest to native title includes:**

***Audio***

HILL_C02
Tapes consisting of 4 hours of oral histories and interviews held in 2004 with Umpila and Kuuku Ya'u people at Lockhart River, Qld.

***Photographs***

AIATSIS.156.CD
Studio portrait of Murray Jack. [taken in 1800]. NOTE: Murray Jack was an important leader from the Monaro area, NSW.

GOODALE.J1.CS
A collection of 755 colour slides taken by Jane Goodale in 1954 of the Tiwi Kulama and Pukumani ceremony.

HILL_C02
Tapes consisting of 4 hours of oral histories and interviews held in 2004 with Umpila and Kuuku Ya'u people at Lockhart River, Qld.

LEQUESNE.J1.BW
A collection of 31 black and white slides taken by Ossie Heinrich of an expedition to the Petermann Ranges in 1939.

**Print and online resources**

**Agreements, settlements, and mediation**

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