Native Title Newsletter

November/December, No. 6/2010

WHAT'S NEW

2011 National Native Title Conference

'Our Country, Our Future'

Call for papers

This years National Native Title Conference will be held at the Brisbane Convention and Exhibition Centre from 1-3 June 2011.

Proposals for papers, panels and talking circles are invited for consideration by the conference conveners. Please submit your proposal with an abstract and biography to nativetitleconference@aiatsis.gov.au by Monday 14 March 2011.

For further information visit the conference website at http://www.aiatsis.gov.au/ntru/nativetitleconference/conf2011/conf2011.html

National Native Title Conference 2011: Our Country, Our Future

In 2011 the annual National Native Title Conference will be co-convened by the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) and Queensland South Native Title Services (QSNTS) on the traditional lands of the Yagera and Turrbal Peoples of the Brisbane River.

The conference will be held on the traditional lands of the Yagera and Turrbal peoples of the Brisbane River. *Image courtesy of Brisbane Marketing*

This year the theme of the conference is 'Our Country, Our Future'. It will be held at the Brisbane Convention and Exhibition Centre from 1-3 June 2011. The conference will address the following sub themes:

- Decisions, Actions, Results
- Enduring cultures, resilient societies
- Country, Heritage and Development
- Tenure, Title and Possession

Relevant topics within these themes include: regional alliances, shared country, decision making, capacity, mediation, native title benefits, native title achievements, PBCs (prescribed bodies corporate), sea country, urban native title, country and belonging, unity and diversity, social and emotional wellbeing, natural resources and mining, conservation, climate change, water, history and ethnography, connection, reversing the onus of proof, claim management, collections management, alternative settlements, agreement making, compulsory acquisition, community development, housing, NTRB and non-NTRB representation, amending the NTA, the role of the judiciary, Federal Court developments, state and territory comparisons, and constitutional reform.

Conference presentations will be in five formats: keynotes and plenary speeches, debate forums (a new format), technical workshops, topical workshops, and Indigenous talking circles.

Call for Papers

Proposals for papers, panels and talking circles are invited for consideration by the conference conveners. Please submit your proposal with an abstract and biography to nativetitleconference@aiatsis.gov.au by Monday 14 March 2011. You may also register an 'expression of interest' for discussion with the conveners.

For further information please contact the NTRU on (02) 62461167 or at nativetitleconference@aiatsis.gov.au
For regular conference updates visit the website:
http://www.aiatsis.gov.au/ntru/nativetitleconference/conf2011/conf2011.html

The impact of the recent floods on the Brisbane Convention and Exhibition Centre did not affect the event spaces, and was limited to car parking and service areas. The Centre has now resumed normal operation.

Economic development, governance, and what self-determination really means

By Professor Stephen Cornell, Native Nations Institute (University of Arizona) and Co-Director of the Harvard Project on American Indian Economic Development

Many Native nations in North America today are pursuing economic development for their communities. However there is a lot of confusion about what economic development is and a tendency to view the term as referring only to capitalist economic activity.

We have a broad conception of economic development. To us, it refers to the process of improving the welfare of a community or a people by enhancing economic activity. This is a priority for most of the leaders—elected and otherwise—of Native nations that we work with in both the United States and Canada. They are typically concerned about two things (among many others): the poverty of their peoples (as one Navajo leader said, 'poverty is *not* a Navajo tradition') and their dependence on monies from federal and provincial or state governments—a dependence that severely constrains their choices. One tribal leader in the U.S. told us that he believed Indian nations were owed far more money than the U.S. government would ever pay them for the land they took. But, he said, in his experience, 'every federal dollar is a leash around my neck.' His nation wants to be able to support itself without depending on federal dollars because they see that as the key to their freedom to rebuild their communities in their own ways—not in the ways that Washington or some other outsider might impose. Economic development, to him, is 'my freedom program.' He looks for ways to expand economic activity on the lands of his nation, hoping both to provide citizens with opportunities to lead productive and satisfying lives and to support a strong and independent government for his people.

Economic development can take numerous forms, and it does so in Indigenous North America, from starting up a manufacturing plant to expanding hunting rights, from building gambling casinos to developing trade relations among Native nations. When Indigenous peoples in the vast Yukon Flats region of the interior of Alaska look for ways to improve their ability to survive through subsistence hunting, trapping, and fishing—whether this involves taking control of wildlife management away from federal and state governments and getting it into Indigenous hands, or expanding the land base over which they hunt, or improving the trapping skills of their young people who currently are uninvolved in these activities, or investing in expanding their own wildlife management capacity—they are embarked on an economic development strategy: a course of action designed to improve their ability to adequately support their people and sustain their culture and community. When the late Chief Philip Martin of the Mississippi Band of Choctaw Indians tried to persuade a corporation to build a manufacturing plant on his nation's reserved lands so that more of his people could support their families and so that he could obtain the necessary revenues to invest in language revitalization in his nation's schools, he also was embarked on an economic development strategy.

These two strategies are very different, but in each case, they are strategies chosen by the people whose lives are at stake. Our concern is less with which strategy a people is engaged in than with whether that people is in a position to choose how they want to support themselves and to implement the course of action that they believe is right for them. Some of their strategies may be capitalist; others may not be. Our objective has been not to support any particular economic system or 'ism' but instead to support the right and ability of Native nations to pursue their own economic visions: expanded buffalo herds at Cheyenne River, tribal citizen entrepreneurship at Flathead or Pine Ridge, holistic forest management at the White Mountain Apache Tribe, tourism at the Siksika Nation, a seafood industry at the Membertou First Nation,

telecommunications at San Carlos Apache, subsistence hunting in the Yukon Flats, and so forth. Freedom to choose means some nations will build nation-owned enterprises; others will focus on private enterprise by citizen entrepreneurs; some will enter into joint venture agreements with outsiders; some will market their natural resources; others will leave those resources alone. The emerging world of Indigenous economic development is hugely diverse.

We also link economic development to systems of governance. We do so because our research indicates that capable governing systems are crucial foundations for sustainable development—regardless of the form development takes. We often talk about 'formal institutions of governance.' Some people think this phrase refers to western governing institutions. It doesn't. All sustainable human communities have formal ways of governing: more or less stable rules that the community understands and follows. Those rules typically have to do with who has authority over what; how collective decisions should be made; how disputes within the community should be dealt with; how people should treat each other, outsiders, the land, the animals; and so forth. Such rules aren't necessarily written down, even today. At the Navajo Nation there is a body of law, built up over many generations, that embodies the teachings of the Diné—the people. Most of it is not written down. Instead it is passed from generation to generation through the teachings of elders, parents, and medicine people and through the experience of living within the web of Navajo culture. It is formal in the sense that it constitutes a stable set of rules, a structure of governance for Navajo society. It is not just a set of ideas; it is concrete and specific. Those rules guide action. Certain people can do things that others cannot; disputes are to be settled this way and not in some other way; there are certain ways to treat the land or special places within it; kinship obligations should be carried out this way and not that way; etc.

Similarly, in some of the Aboriginal communities we have visited in Australia, there is a complex body of Indigenous law—unwritten and perhaps unshared beyond the community itself—that specifies, for example, how certain things should be done, how country should be cared for and by whom, who can deal with what kinds of business, who has authority over what. Again, this has formality in the sense that it is a stable set of rules for action and relationships. It is a governance system.

This is what we mean by formal governing institutions: stable, shared sets of rules that govern how the people act, individually and together. It doesn't matter if the rules are written down somewhere or not, nor does it matter whether they look like western rules or something else altogether. What matters is that the people know them and live by them—and that they work: that they create a stable foundation for community success.

Indigenous peoples in North America had such sets of rules by which they governed themselves. In some cases, those rules—many of them with ancient roots—still play a central, governing role in those communities. But the disaster of colonialism replaced many of these Indigenous governance systems with external controls, with imposed rules that were developed by someone else. And when colonial powers eventually allowed Indigenous peoples in North America modest decision-making power over a few things, they did so through governmental structures that were radically different, in most cases, from Indigenous ones. As a result, some nations lost touch with their own systems; others struggled to operate within new systems but retained powerful beliefs in the systems they themselves had developed under conditions of freedom; still others retained much of their own system but followed it in secret, out of sight of colonial administrators.

When we talk about cultural match or mismatch—another topic we focus on—we are talking about the degree to which current governing institutions—the organization of authority, decision-making, dispute resolution, and the like that in fact are in place in Native nations—do or do not match that people's own ideas of what those rules should be, of how things should be done. Some of the New Mexico pueblo nations have carefully protected those older

systems while modifying them when necessary, and use them to this day, maintaining a close link between their own, Indigenous political cultures and the formal institutions of day-to-day governance. That's cultural match, and it works. Federally imposed governance structures would have devastating effects in those pueblos, and we have argued strongly against those structures. In contrast, among the Lakota peoples in the plains region of the U.S., older systems have been almost completely replaced by federally imposed, western structures. Yet many Lakota retain older beliefs about how authority should be organized and exercised and would prefer to do things very differently. The result is a cultural mismatch, and our argument is that the imposed system is counterproductive and that a system more closely fitted to prevailing Lakota ideas would have more legitimacy with the people and would be more effective as an instrument for getting things done.

Does this mean Indigenous governing systems should be traditional? Not necessarily. On the Flathead Reservation in Montana, home to Bitterroot Salish, Upper Pend d'Oreille, and Kootenai peoples, the three tribes have freely chosen to adopt mostly western structures, in part because their own traditions are diverse and sometimes at odds with each other. They believe that the western structures they currently use are appropriate for them and, indeed, those structures work very well in supporting those tribes as they collectively pursue their objectives. That, too, is cultural match: a fit between the rules by which things *are being done* and the belief in the community about how things *should be done*. As this suggests, the task is not to resuscitate traditional governing systems. It is to develop a governing system—traditional or not—that has the support of those being governed and that can govern effectively.

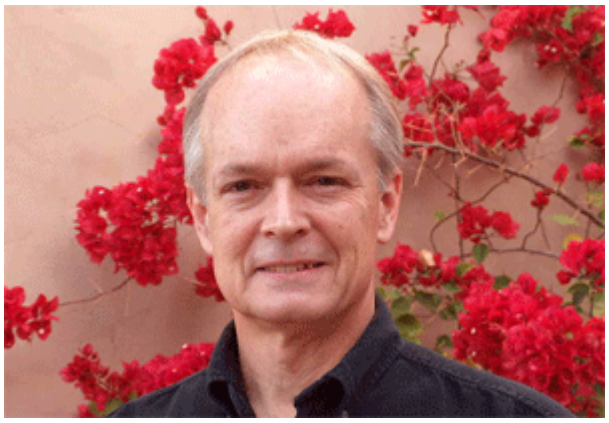
Some believe we are supporters of western governance systems because we talk about things like separations of power or checks and balances. But these are not simply western ideas. Traditional Lakota government, for example, was full of such things. The *akicita*, or warrior societies, were charged with enforcing the law; they had the power to enforce the law even with the most senior political leaders of the nation. That separation among law-making, executive action (the first in the hands of the council, called the Big Bellies; the second in the hands of the executive, called the Shirt Wearers), and law enforcement and dispute resolution (in the hands of the *akicita*) is the sort of thing communities throughout the world have done. When one of the New Mexico pueblo nations alternates selection of leaders between the Turquoise and Pumpkin kivas, as they have done in one form or another for generations, they are implementing a kind of check-and-balance system designed, by their own account, to prevent either 'side' of the pueblo from accumulating too much power.

Such things are indigenously generated solutions to classic governance problems: How do you protect the community from occasional mistakes in picking leaders? How do you assure citizens that disputes will be settled fairly? How do you keep leaders from using their positions of power to benefit their friends instead of the community at large? How do you keep one set of interests from becoming entrenched in power at the expense of others? Out of necessity, Indigenous nations—like others—had developed solutions to these and other governance challenges. In many cases, those solutions remain viable today. In others, it is difficult to return to those solutions, either because many of the details have been lost through the colonial experience or because the problems those nations face have changed dramatically. In such cases, Native nations are inventing new solutions, remaking their own governance tools—the law, decision-making processes, the organisation of cooperative action, ways of settling disputes, and so on—as they did in the past when faced with radically changed situations. This is nation rebuilding, as Chief Oren Lyons, traditional faithkeeper of the Onondaga Nation, calls it.

Our argument is that Native nations should have the freedom to exercise governing power, not

necessarily in western ways, but in ways of their own choosing. This means lifting the yoke of colonial control, ending the insistence that Indigenous governance look like U.S. or Canadian governance, and accepting the fact that the solutions those nations develop will be diverse. Some will have traditional roots; some will not. But once that freedom is achieved, once those nations have put in place the governance solutions they want and have tested those solutions against the realities of their current situations, once they have the freedom to make mistakes and learn from them and make the adjustments they decide they need to make, then we believe they will be in a stronger position to develop the kinds of economies and communities they envision.

This is what self-determination really means.



Professor Stephen Cornell, Native Nations Institute (University of Arizona) and Co-Director of the Harvard Project on American Indian Economic Development.

For further information, visit the Harvard Project on American Indian Economic Development website: http://hpaied.org/

Case note: Mullet on behalf of the Gunai/Kurnai People v State of Victoria [2010] FCA 1144

By Zoe Scanlon, Research Officer, NTRU, AIATSIS

22 October 2010
Federal Court of Australia, Knobs Reserve, Stratford
North J

The applicants sought a native title determination over approximately 8,000 specific parcels of land within the general area of Gippsland in Victoria. The outer boundary of the application area extends to approximately a short distance east of Warragul on the western side, to the waters off the southern coast of Victoria on the southern side, to the Snowy River on the eastern side and to the Great Diving Range on the northern side. This covers 45,000 hectares of Crown land, amounting to 20% of the Crown land in Victoria.

Native title is held by the Gunai/Kurnai people being those who identify as Gunai, Kurnai or Gunai/Kurnai and are descended from one or more of twenty-five Gunai/Kurnai apical ancestors.

The native title rights and interests in relation to the native title area consist of the non-exclusive right to; have access to or enter and remain on the land and waters, to use and enjoy the land and waters, to take resources of the land and waters for the purpose of satisfying their personal, domestic or communal needs but not for any commercial purposes; to protect and maintain places and areas on the land and waters which are of importance according to Gunai/Kurnai traditional laws and customs.

Without limiting the generality of the rights and interests referred to above, they include the right to undertake the following activities on the land and waters; camping, and for that purpose, erecting shelters and other temporary structures landward of

the high water mark of the sea, engaging in cultural activities, engaging in rituals and ceremonies, holding meetings and gatherings, teaching and learning about the physical, spiritual and cultural attributes of places and areas of importance. The native title rights and interests are subject to and exercisable in accordance with the traditional laws and customs of the native title holders and the laws of Victoria and the Commonwealth. Where there is an inconsistency between native title rights and interests and any other right or interest, the native title rights and interests continue to exist in their entirety but have no effect in relation to the other interests to the extent of the inconsistency during the currency of the other interests. There is no native title in minerals, petroleum or groundwater.

In determining whether the agreement was arrived at voluntarily and on a fully informed basis, the Court had heard and determined the Kurnai application and also heard evidence from expert anthropologists and historians as well as evidence from Indigenous witnesses. Justice North considered that the depth and richness of all the evidence confirmed the conclusion that it was appropriate for the Court to make orders which reflected the agreement of the parties. Being satisfied that the terms of the proposed determination were reflected in an agreement between the parties and that the meaning of the clauses was clear, North J made the native title determination.

The Gunai/Kurnai Land and Waters Aboriginal Corporation (GLaWAC) has been established as a prescribed body corporate and has been nominated to hold the native title on trust.

Although the majority of the negotiations in the present application were complete before the recent introduction of the *Traditional Owner Settlement Act 2010* (Vic), North J commented that there is hope that the introduction of this Settlement Framework will make it easier for Indigenous people to achieve land justice in Victoria in the future.

Summary of AIATSIS response to AGD/FaHCSIA Discussion Paper, 'Leading practice agreements: Maximising outcomes from native title benefits'

By Joe Fardin, Research Fellow, AIATSIS

On 30 November AIATSIS released a submission (the Submission) in response to the discussion paper, *Leading practice agreements: Maximising outcomes from native title benefits* (the Discussion Paper) produced by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Attorney-General's Department (AGD).

The Discussion Paper—and consequently AIATSIS' submission in response—focussed on the following three areas:

1. Governance Measures

Several governance measures were proposed in the Discussion Paper:

- incorporation of entities that receive native title payments;
- independent directors on the Board of entities that receive native title payments;
- adopting enhanced 'democratic controls' to improve transparency and accountability to native title beneficiaries; and
- linking such measures to beneficial tax treatment.

AIATSIS submitted that there is no rationale for making additional measures compulsory for Indigenous entities in a racially discriminatory manner. Rather, the government should invest in existing organisations and mechanisms to allow them to improve their own practice.

In addition, AIATSIS put forward the view that culturally appropriate decision making and

governance arrangements may not accommodate independent directorships.

On the issue of communication and transparency, AIATSIS submitted that most RNTBCs and native title groups do not have the capacity to implement, monitor and enforce benefits contained in agreements, nor to communicate and work effectively with members and native title holders to arrive at sustainable outcomes. There is thus a strong argument for increased funding and resources for NTRBs and RNTBCs to provide a basic level of corporate capacity to undertake these functions.

Finally, the Discussion Paper's proposal to link governance measures to tax treatment was described in the Submission as ill-conceived. It would create greater complexity and diversity rather than certainty and simplicity and is thus anathema to good tax policy design.

2. Improving Governance and Native Title Agreements

The Discussion Paper proposed a new independent body to register, review and assess native title agreements. The rationale for the new body is to support parties to maximise positive outcomes. The Submission identified a number of concerns about the capacity of the proposal as presented in the Discussion Paper to address the issues identified. In summary AIATSIS highlighted the following points:

- Regulating the content of native title agreements may give rise to minimum compliance approach by causing a 'rush to the bottom', if generic standards are established. A precedent for this exists in the case of the Fair Work Australia Tribunal set up in 2009 to assess enterprise agreements against specified standards (*Fair Work Act 2009* (Cth) s.193).
- It is not clear how the proposed review body could cause parties to change the terms of an agreement, where the terms of the agreement are of a low standard, given the review body has no direct or indirect powers of compulsion.
- The key term 'benefits' is insufficiently defined. 'Financial benefits' alone form a broad category including compensation, benefit sharing and commercial components. Incorporating non-financial benefits would extend the scope of the proposal dramatically. In either case a proportion of the 'benefits' the proposal seeks to regulate are not native title related.
- Analysis of the available empirical data suggests the number of agreements subject to registration by the proposed regulatory body is very low.

3. Future Acts Reforms

The Discussion Paper proposed two primary means to reform the 'future acts' process: streamlining of Indigenous Land Use Agreement (ILUA) processes, and clarifying good faith requirements contained in the future acts framework.

AIATSIS submitted that disputes amongst Indigenous people over the distribution of benefits, overlapping claims and group membership are a major issue in future act negotiations. In relation to this AIATSIS thus identified an urgent demand for a national Indigenous dispute resolution service.

Where disputes appear to be intractable, AIATSIS argued that there are various third party arbitration contingencies that might be negotiated at the outset of any agreement making process. Such contingencies might involve arbitration by a group of regional elders, the NNTT, or Land Councils, or a specifically dedicated Tribunal to deal with Indigenous land disputes.

Encouraging Continuity: The ANU and Attorney-General's Department provide career development opportunities for native title anthropologists

By Pam McGrath, Research Officer, Centre for Native Title Anthropology

The critical shortage of skilled native title anthropologists has been news for some time now. Attracting a new generation of junior anthropologists to native title work and encouraging more experienced anthropologists to continue to practise in what is a challenging and dynamic research environment seems crucial to addressing the problem. Drawing on funding provided through the Australian Government Attorney-General's Department Native Title Anthropologist Grants Program announced in 2010, the ANU has recently established a number of innovative programs aimed at doing just that.

In 2011 the ANU Centre for Native Title Anthropology (co-located between the Institute of Professional Practice and the Arts and the School of Archaeology and Anthropology within the Research School of Humanities and the Arts) will be running a number of programs that provide career development opportunities for native title anthropologists. CNTA is governed by a Board of Directors comprising a number of experienced native title practitioners from university, industry and government, native title representative bodies, as well as self-employed consultant anthropologists. AIATSIS Native Title Research Unit Research Fellow, Ms Toni Bauman, also sits on the CNTA Board.

CNTA has kicked off their program with the announcement in early January of four 10-week Writing Fellowships at the ANU. Away from the day-to-day demands of their usual work environment, these research fellowships provide an opportunity for applied practitioners to make a contribution to native title scholarship through a dedicated period of research, reflection and writing. It is hoped the program will build the kinds of skills, academic confidence and professional networks that support the development of long-term careers in native title anthropology. Fellows will receive a stipend for the duration of their tenure, and funding is available to assist with travel and accommodation.

Also in the works are three Student Fieldwork Placements providing opportunities for third year or Honours level anthropology students to gain direct experience of native title fieldwork under the mentorship of senior native title anthropologists. Throughout the year CNTA will host a series of workshops exploring both practical and theoretical issues relevant to the practice of native title anthropology, such as key concepts in native title, the professionalisation of native title anthropology, and relationships between legal, policy and anthropological frameworks. And in 2012 CNTA will be running an intensive graduate course in the anthropology of native title.

ANU Enterprise is the other successful recipient of the Attorney-General's Department's Native Title Anthropologist Grants Program for 2010-2011. Drawing on native title expertise located within the ANU, ANUE has plans for two week field-based training program for young anthropologists to be staged in the Northern Territory in June and July 2011. This will be complemented by a classroom-based workshop program located at the ANU in Canberra. CNTA will be collaborating with ANUE to provide participants with what promises to be a stimulating and rewarding opportunity to develop important fieldwork, analysis and writing skills.

For more information about any of the CNTA programs contact CNTA Director, Professor Nicolas Peterson on (02) 6125 4727 or by email at nicolas.peterson@anu.edu.au.

For more information about ANU Enterprise's field school, contact Andrew McWilliam at andrew.mcwilliam@anu.edu.au.

Information about the Attorney-General's Department's Native Title Anthropologists Grants Program can be found at http://www.ag.gov.au/www/agd/agd.nsf/Page/IndigenouslawandnativetitleNativetitle_NativeTitleAnthropologistGrantsProgram.

What's New?

Recent cases

Atkinson on behalf of the Gunai/Kurnai People v State of Victoria (No 6) [2010] FCA 1036
Atkinson on behalf of the Gunai/Kurnai People v State of Victoria (No 5) [2010] FCA 1035
16 September 2010
Federal Court of Australia, Melbourne
North J

Letters from the Sporting Shooters Association and Mr Clive Sydney Hammett informed the Court that, contrary to their previous applications, neither party wished to be joined as a respondent to the proceedings any longer. Justice North dismissed the original applications that those parties be made respondents to this proceeding.

Mangarrayi Aboriginal Land Trust v Banibi Pty Limited [2010] FCA 1195
3 November 2010
Federal Court of Australia, Adelaide via video link with Darwin and Melbourne
Mansfield J

This proceeding concerned a disagreement between the Northern Land Council (NLC) and Banibi Pty Ltd (Banibi), a company whose shares were held by Mangarrayi Aboriginal Corporation (MAC). The disagreement concerned a Pastoral Land Use Agreement made in 2004 and varied in 2006 and 2008. Banibi saw the agreement as void but continued to occupy the pastoral station it covered. As the NLC considered that Banibi has repudiated the agreement, it gave notice of termination in 2010.

Justice Mansfield ordered that Banibi's first notice of motion; that MAC be joined as a respondent, was refused, as it was not supported by adequate evidence and MAC's status was not an impediment to progressing the proceeding.

In the second notice of motion, Banibi pleaded that ss. 19(6) and 5(2) of the *Land Rights (Northern Territory) Act 1976* (NT) were invalid because they purported to permit compulsory acquisition of property otherwise than on just terms, contrary to s. 51(xxxi) of the Constitution and that therefore the NLC could not rely on those sections to maintain the validity of the 2008 agreement. Justice Mansfield allowed this notice of motion but required that an amended defence be filed by 5 November which would provide proper particulars in relation to several matters that he considered had not been properly addressed.

Certain paragraphs of the defence were not allowed but Banibi had leave to file a cross claim or a supplementary amended defence raining those general matters. The NLC also had leave to file an amended reply by 11 November 2010.

The application was listed for hearing on 15 November and costs were reserved.

Allen, in the matter of North East Wiradjuri Co Limited (Administrators Appointed) [2010] FCA 1248
5 November 2010
Federal Court of Australia, Sydney
Jacobson J

Bill Allen, Ester Cutmore and Robert Bugg applied for an interlocutory order appointing David Shannon and Bruce Gleeson as receivers and managers of the third plaintiff, North Eastern Wirudjuri Company Limited (NEWCO) and the defendant, North Eastern Wiradjuri Community Fund (NEWCF).

NEWCO and NEWCF are companies that were established to deal with payments received from native title properties. A dispute arose between two groups of shareholders of the two companies which resulted in a deadlock between them and an inability to conduct company affairs. Justice Jacobson considered that this deadlock was sufficient to justify the appointment of receivers. He found that it was just and convenient to appoint receivers to oversee the affairs of both companies and to supervise the receipt and safekeeping of moneys coming in while the ultimate dispute pended, as this would preserve the assets of both companies.

Lovett on behalf of the Gunditjmara People v State of Victoria (No 2) [2010] FCA 1283

15 November 2010
Federal Court of Australia, Melbourne
North J

The Framlingham Aboriginal Trust had been a party to this application, but as a representative did not appear at the directions hearing of 15 November 2010, North J ordered that it cease to be a party to the application.

Naghir People #1 v State of Queensland [2010] FCA 1265

17 November 2010
Federal Court of Australia, Brisbane
Greenwood J

Mr Phillip Mills applied on behalf of the Nagilgaul people to adjourn a mediation of the claims and contentions of the Nagilgaul people, the Mualgal people and the interests of the Billy family, scheduled for 17 and 18 November on Thursday Island in the Torres Strait.

The adjournment was necessary as two senior members of the Nagilgaul people had died earlier that week. The traditional laws and customs of the Nagilgaul people provide that the three individuals who were planning to travel to Thursday Island to participate in meetings should not do so until after the funerals of the deceased. There was some concern from the Torres Strait Regional Authority as Mr Mills had earlier advised that he wished to adjourn the meeting due to a meeting in Canberra he planned to attend on that date.

Justice Greenwood found that the proper course of action (despite the significant cost of the organisation of the meeting) was to adjourn the mediation, noting the importance of honouring and respecting the traditional laws and customs of the Nagilgaul people and as a matter of respect and dignity shown to the deceased. The Mualgal people and Torres Strait Regional Authority accept that adjourning the mediation in these circumstances is the correct approach.

Mr Phillip Mills was required to provide an affidavit stating whether he engaged in any air travel or meetings in Canberra and whether he participated in any meetings with Commonwealth Government employees in other places during the period in which he first became aware of the deaths and the date of the funeral of each person.
The costs incidental to the adjournment were reserved for later determination.

Cheedy v State of Western Australia [2010] FCA 1305

25 November 2010
Federal Court of Australia, Perth
Gilmour J

The appellant sought orders that the judgment in *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2010] FCA 690 and two determinations of the National Native Title Tribunal (NNTT) (which were the subject of that judgment) be stayed, pending the outcome of the appeal to the Full Court of the Federal Court of Australia.

The order made by the Primary Judge was that the appeal be dismissed. As such an order is not executory, Gilmour J found that it was incapable of being stayed.

Justice Gilmour did not consider that staying the NNTT's orders was apt since the determinations were permissive in nature and did not require that any positive action be taken. He found that a more appropriate course of action in this case would have been for the appellant to approach the Court for orders restraining the respondent from taking steps to obtain mining leases (permitted by the NNTT's determinations). He also considered that any power to stay the determinations under s. 170(2) of the *Native Title Act 1993* (Cth), if this were possible, lay with the Primary Judge because it was before him that the appeals of those determinations, referred to by the NTA, were brought.

The motions were dismissed.

Doyle on behalf of the Kalkadoon People #4 v State of Queensland (No 2) [2010] FCA 1398
8 December 2010
Federal Court of Australia, Brisbane
Collier J

As they had not complied with a previous court order to indicate in writing whether they adopted the admissions of the State of Queensland, the Court ordered that Joseph Sandham Rogers, Italo Foschi, Elizabeth June Holt and Ernest William Arthur Holt ceased to be parties to the proceedings.

Nelson v Northern Territory of Australia [2010] FCA 1343
8 December 2010
Federal Court of Australia, Newhaven
Reeves J

This was an application for a determination of native title over an area of 2,610 square kilometres in the Northern Territory.

The native title holders are members of the Jipalpa-Winitjaru, Pikilyi, Yarripilangu-Karrinyarra, Watakinpirri and Winparrku landholding groups by virtue of descent (including adoption) through father and father's father and mother and mother's father.

The native title rights and interests possessed by the native title holders include the right to access and travel over any part of the land and waters; the right to live on the land, and for that purpose, to camp, erect shelters and other structures; the right to hunt, gather and fish on the land and waters; the right to take and use the natural resources of the land and waters; the right to take and use the natural water on or in the land; the right to light fires for domestic purposes, but not for the clearance of vegetation. They also include the right to access and to maintain and protect sites and places on or in the land and waters that are important under traditional laws and customs; the right to conduct and participate in the following activities on the land and waters: cultural activities; ceremonies; meetings; cultural practices relating to birth and death including burial rites; teaching the physical and spiritual attributes of sites and places on the land and waters that are important under traditional laws and customs including the power to regulate the presence of others at any of these activities on the land and waters, other than persons exercising a right conferred by or arising under a law of the Northern Territory of Australia or the Commonwealth of Australia in relation to the use of the land and waters. They include the right to make decisions about the use and enjoyment of the land and waters including traditional items made from the natural resources; the right to be accompanied on the land or waters by persons who, though not native title holders are: people who have rights in relation to the land and waters according to the traditional laws and customs acknowledged by the native title holders or people required by the native title holders to assist in, observe, or record traditional activities on the areas.

The native title rights and interests do not confer rights and interests to the native title holders to the exclusion of all others. The native title rights and interests are subject to and exercisable in accordance with federal laws, laws of the Northern Territory and the traditional laws and customs of the native title holders.

Other interests in the area include that of the Australian Wildlife Conservancy, the rights of Aboriginal people pursuant to the reservation established under the *Pastoral Land Act 1992* (NT) and by virtue of the *Northern Territory Aboriginal Sacred Sites Act* 1989 (NT), the rights of access by an employee, servant, agent or instrumentality of the Northern Territory or Commonwealth as required in the performance of statutory duties and the interests of persons to whom valid interests have been granted by the Crown pursuant to statute.

There are no native title rights and interests in minerals, petroleum or prescribed substances under the *Atomic Energy (Control of Materials) Act* 1946 (Cth) or the *Atomic Energy Act 1953* (Cth).

The determination area covers 2,610 square kilometres of land in the central area of the Northern Territory that is held under a Perpetual Pastoral Lease called 'Newhaven'. Native title rights

and interests are wholly extinguished in the homestead, house, sheds and other buildings, the airstrip, bores, turkey nests, squatters' tanks, constructed dams and other constructed stock watering points, stockyards and trapyards.

Based on the description of the steps taken in the materials filed and the fact that the parties all had competent legal representation, Reeves J was satisfied that the agreement reached between the parties was free and informed and further, that terms of the proposed orders were unambiguous and clear. He was satisfied that the native title rights and interests were capable of being recognised by the common law of Australia.

The Court made the order to determine under the laws of Australia that native title exists according to the traditional laws and customs of the claimants' society and is held by the five landholding groups mentioned.

The native title holders had not yet nominated a prescribed body corporate to hold the native title on trust. An order was made that the operational commencement of the determination be delayed until a prescribed body corporate had been nominated and accepted by the Court.

Roberts v State of Western Australia [2010] FCA 1483

9 December 2010
Federal Court of Australia, Perth
North J

The Kariyarra people had divergent views as to which families formed part of their native title claim group. Both the applicant party and the State suggested that a Court expert be appointed to attempt to resolve the uncertainty in this case.

Justice North was satisfied that the case was of sufficient importance that the Court should devote its resources to funding the reasonable costs of an independent anthropological expert. He ordered that before 31 January 2011, the native title claim group and the State meet to attempt to agree on a suitably qualified and experienced anthropologist to be appointed as a Court expert. He ordered that both parties report on any agreement reached by 14 February 2011. If agreement could not be reached, he ordered that by 14 February 2011 both parties file and serve the curriculum vitae of an anthropologist that the party believed the Court should engage. The matter was relisted for 21 February 2011.

Doctor on behalf of the Bigambul People v State of Queensland [2010] FCA 1406

15 December 2010
Federal Court of Australia, Brisbane
Collier J

An ILUA had been negotiated between the Bigambul native title claim group and the Queensland government which all of the members of the applicant for the claim group had signed, except for one individual. A claim group meeting was scheduled for 5 June 2010 to allow the group the opportunity to consider what should be done (if anything) in order to properly execute the ILUA. A decision was made at the meeting to replace the previous applicant with a new, proposed applicant.

A notice of motion was brought, seeking orders to replace the previous applicant with the proposed applicant who had been authorised at the claim group meeting. Those individuals who had been members of the previous applicant, but who, after the meeting, did not form part of the proposed applicant opposed the notice of motion.

Justice Collier considered the contentions of those members but did not uphold them. He found that that the authorisation meeting was properly conducted, that the authorisation had not been corrupted by the will of the individuals who wanted to replace the previous applicant, that those who attended the authorisation meeting were claim group members and therefore authorised to vote on resolutions and further, that those who attended were representative of the claim group.

Justice Collier stated that the evidence was clear that the resolutions at the claim group meeting were

passed with significant majorities and that the will of the Bigambul People as expressed at the meeting was to replace the previous applicant with the proposed applicant. An order was made to replace the applicant.

Roe v State of Western Australia [2010] FCA 1436

17 December 2010
Federal Court of Australia, Perth
Gilmour J

The Court had previously upheld a claim of legal professional privilege asserted by the Kimberley Land Council (KLC) in relation to a connection report associated with the applicant's native title claim. The applicant called for the connection report to be published, claiming that the legal professional privilege had been waived because it had been used by Ms Rubinich, a consultant anthropologist for the KLC, in the formulation of her opinions expressed in her affidavit evidence.

Justice Gilmour found that Ms Rubinich had not used the report to formulate opinions expressed in her affidavit; rather that those opinions were based on materials in the affidavits that she had identified. He considered that she had used the report as a 'convenient reference' to enable her to locate relevant secondary sources. He found that Ms Rubinich had not disregarded or contravened the Court's guidelines for expert witnesses when preparing her affidavit by not mentioning the report in those affidavits.

Justice Gilmour upheld the KLC's claim for client privilege.

Murray on behalf of the Yilka Native Title Claimants v State of Western Australia (No 3) [2010] FCA 1455

21 December 2010
Federal Court of Australia, Perth
McKerracher J

In this hearing, McKerracher J considered the future timetabling of this application. He outlined a number of key dates and conditions for the filing of draft reports, written submissions and future hearing dates.

Ashwin on behalf of the Wutha People v State of Western Australia (No 2) [2010] FCA 1472

23 December 2010
Federal Court of Australia, Perth
Siopis J

The State of Western Australia sought an order striking out the Wutha people's native title determination application on the basis that the application had not been properly authorised and was bound to fail. The State claimed that Lindgren J's decision in *Harrington Smith on behalf of the Wongatha People v State of Western Australia (No 9) (2007)* 238 ALR 1 (Wongatha), where he found that in respect of the area of overlap, the Wutha claim was not authorised and dismissed it meant that the case was now bound to fail.

Justice Siopis found that, first, Lindgren J's decision was binding only in respect of what it decided: that in relation to the land comprising the overlap with the Wongatha claim, the Wutha claim was dismissed. He found that he was therefore not bound to follow that decision.

Second, he considered that Lindgren J was, based on his findings at that time, bound to dismiss the Wutha claim in so far as it related to overlap of land, however, since the introduction of s. 84D into the *Native Title Act 1993* (Cth) (after the Wongatha decision), the Court is now allowed the discretion to determine whether a defect is conclusive to the fate of that determination and the Court was not bound to reach the same result. The State's application was therefore dismissed.

Justice Siopis stated that he would hear the parties on directions for the trial of whether the Wutha claim is lawfully authorised.

Legislation

Commonwealth:

Native Title Amendment Act (No. 1) 2010
The Act commenced on 16 December 2010, after receiving assent on 15 December 2010. The Act can be downloaded from: http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/all/search/731C9AA6BF0E7D3ACA2577FF0002D6C7?OpenDocument

Native Title (Notices) Amendment Determination 2010 (No. 1) Legislative Instrument - F2010L03001
This Determination amends the Native Title (Notices) Determination 1998 to include new provisions to give effect to the Native Title Amendment Act (No. 1) 2010. The Determination can be downloaded from: http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/all/search/71736B8C610765FBCA2577D7007A28CB?OpenDocument

Wild Rivers (Environmental Management) Bill 2010
This Bill proposes that the development or use of native title land in a wild river area cannot be regulated under the *Wild Rivers Act 2005* (Qld) without the agreement of the land owner. The Bill was referred to the Standing Committee on Economics on 17 November 2010. Report from the Committee is due end of autumn sittings in 2011.

Further information available at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4467%22

Queensland:

Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Bill 2010
Click here to download a PDF version of the Bill: http://www.legislation.qld.gov.au/Bills/53PDF/2010/AbLTSILOLAmB10.pdf

Click here to download a PDF version of the Explanatory Notes: http://www.legislation.qld.gov.au/Bills/53PDF/2010/AbLTSILOLAmB10Exp.pdf

Native title publications

AIATSIS Publications:
R Morgan and H Wilmot, *Written proof: the appropriation of genealogical records in contemporary Arrernte society,* Land, Rights, Laws: Issues of Native Title, Vol 4. Issue Paper 5, 2010.

Articles:

- M Durette, A comparative approach to Indigenous legal rights to freshwater: key lessons for Australia from the United States, Canada and New Zealand, *Environmental and Planning Law Journal,* Vol. 27, No. 4, 2010, pp. 296-315.
- D Howard-Wagner & A Maguire, 'The holy grail' or ' the good, the bad and the ugly'?: a qualitative exploration of the ILUAs agreement making process and the relationship between ILUAs and native title, *Australian Indigenous Law Review,* Vol. 14, No. 1, 2010, pp. 71-85.
- J Hunt, *Looking After Country in New South Wales: Two Case Studies of Socioeconomic Benefits for Aboriginal People*, CAEPR Working Paper 75, 2010. Download at: http://caepr.anu.edu.au/Publications/WP/2010WP75.php
- J Hunt & D Campbell, *Community Development in Central Australia: Broadening the Benefits from Land Use Agreements*, Centre for Aboriginal Economic Policy Research, Topical Issue 7 / 2010, December 2010. The article can be downloaded from: http://caepr.anu.edu.au/Publications/topical/2010TI7.php
- C Ross and B Merner, *Traditional Owner Settlement Bill 2010,* [Victorian] *Parliamentary Library Research Service, Research Brief,* Number 13, August 2010.

- U Secher, The concept of 'operational inconsistency' in Australia: implications for native title: the common law and statutory positions. Part 1, *Australian Property Law Journal,* Vol. 18, No. 2, 2010, pp. 150-184
- U Secher, The concept of 'operational inconsistency' in Australia: implications for native title: the common law and statutory positions. Part 2, *Australian Property Law Journal,* Vol. 18, No. 3, 2010, pp. 218-244.
- R Webb & M McKenna, Proving continuity in community: reviewing implications of the *Sampi/Bardi* 2010 decision, *Native Title News*, Vol. 9, Iss. 9, 2010, pp. 145-150.

Books:

- L Godden and M Tehan (eds), *Comparative perspectives on communal lands and individual ownership: sustainable futures*, Abingdon, Oxon, [England]; New York, NY : Routledge, 2010.
- R. J. Miller, J Ruru, L Behrendt and T Lindberg, *Discovering indigenous lands: the doctrine of discovery in the English colonies*, Oxford: Oxford University Press, 2010.

Reports:

Browse LNG Precinct Strategic Assessment Report (SAR)

The Department of State Development on behalf of the State of Western Australia, proposes to develop the Browse LNG Precinct as a common user facility to process natural gas from the Browse Basin gas fields, near James Price Point, approximately 60 kilometres north of Broome, on the West Kimberley coast of Western Australia. A Strategic Assessment Report on the proposed precinct has been prepared by the Department of State Development in accordance with Western Australian Government procedures and Terms of Reference agreed between the State and the Commonwealth. The Strategic Assessment Report describes the proposal, examines the likely environmental and social effects and the proposed environmental management procedures associated with the proposed development. The Strategic Assessment Report is released for 12 weeks public review commencing on Monday 13 December 2010. (Summary provided by NNTT). The report can be downloaded from: http://www.dsd.wa.gov.au/8249.aspx

Kimberley Land Council – Indigenous Impacts Report.

The Kimberley Land Council has released a six-volume Indigenous Impacts Report that identifies what is needed to achieve responsible development of natural gas resources off the Kimberley Coast. The Indigenous Impacts Report examines the likely effects of LNG development in one of the most comprehensive studies of its type undertaken in Australia, funded by the Government of Western Australia and prepared under the direction of the KLC and Traditional Owners for James Price Point. Volume 1 of the Report provides an overview of the remaining five volumes and consolidates all of their recommendations. Volume 2 looks at the issue of Traditional Owner consent and Indigenous community consultations. Volume 3, the most extensive part of the Report, examines the economic and social impacts of LNG development. Volume 4 examines impacts on heritage; Volume 5 provides an archaeological site survey of James Price Point; Volume 6 is an ethnobiological report that focuses on Indigenous environmental values. (Summary provided by NNTT). The report can be downloaded from:
http://klc.org.au/2010/12/09/james-price-point-indigenous-impacts-report-released/

Administration of Funding Agreements with Regional and Remote Indigenous Organisations / Report by the Commonwealth Ombudsman

Indigenous organisations working in regional and remote areas face unique challenges, particularly when their funding is largely derived from government grant programs. Complex grant requirements and a failure to adequately support Indigenous organisations to meet reporting requirements increase the risk that these organisations will fail, even where the programs are being delivered successfully. A focus on delivering services efficiently whilst simplifying and reducing

the burden of administrative and reporting requirements is needed. This report explores some of these challenges and outlines five principles for better administration by government agencies of funding agreements with regional and remote Indigenous organisations. (Summary provided by NNTT). The report can be downloaded from: http://www.ombudsman.gov.au/files/office_for_the_arts_dpmc_admin_of_funding_agreements.pdf

Annual Highlights Report for Queensland's Discrete Indigenous Communities July 2009 – June 2010

This report evidences the Queensland Government's ongoing commitment to closing the gap between the life outcomes and opportunities experienced by Aboriginal and Torres Strait Islander Queenslanders and non-Indigenous Queenslanders. It is the first *Annual Highlights Report for Queensland's Discrete Indigenous Communities July 2009 – June 2010* and provides information on achievements in Queensland's discrete Indigenous communities. It incorporates the *Quarterly report on key indicators in Queensland's discrete Indigenous communities for April – June 2010* and significantly, for the first time, provides a detailed trend analysis of data on key indicators over the years since this data has been collected. (Summary provided by NNTT). The report can be downloaded from: http://www.parliament.qld.gov.au/view/legislativeAssembly/tableOffice/documents/TabledPapers/2010/5310T3779.pdf

Native title in the news

National

20/12/2010

Tax Toll on Native Title Payments

The Australian Treasury has received 33 submissions in regards to the Native Title, Indigenous Economic Development and Tax Consultation Paper. Thirty-two of these are public submissions and one is confidential. This article outlines some of the submissions including The Minerals Council of Australia, who have argued that the payments to Indigenous landholders be exempt from the mineral resources rent tax.

Some of the proposals included in the Consultations Paper include a blanket tax exemption for native title payments, the creation of a tax exempt Indigenous community fund and a native title withholding tax originally considered by the Howard government in 1998. While the mining sector has broadly backed the concept of the community fund, BHP is opposed to tax breaks for native title payments to individuals, declaring they would be 'free to spend (the benefits) at their discretion' rather than preserving them for future generations.

All public submissions are available for download from:
http://www.treasury.gov.au/contentitem.asp?ContentID=1916&NavID=037 *Australian* (Australia, 20th December 2010), 2.

New South Wales

16/11/10

Hunter Valley Mining Lease

The Wonnarua Nation Aboriginal Corporation has distanced itself from statements made by another Aboriginal Group who is preparing to negotiate with Ashton Coal over a mining lease in the Hunter Valley. Their acting chief executive officer Laurie Perry has said that his organisation did not support the statements by Scott Franks, on behalf of the Wanaruah Plains Clans in *The Singleton Argus*. Mr Perry said 'it is important that people understand that The Wonnarua Nation Aboriginal Corporation, at this stage, has no involvement in the negotiations with Ashton Coal, in relation to the proposed expansion of mining through the south east open cut project.' *Singleton Argus (Singleton NSW, 16 November 2010), 2.*

01/12/2010

Hay Community Sign MOU

Head of the National Parks and Wildlife Service, Sally Barnes said environmental and cultural

management in the region has been given a boost with the signing of a Memorandum of Understanding by the Nari Nari Tribal Council, Hay Local Aboriginal Land Council and NSW Department of Environment, Climate Change and Water.

'The MOU formalises the existing positive partnership between the organisations and helps to ensure future support and involvement in the management of parks, reserves and protected land,' Ms Barnes said. *Riverine Grazier* (Hay NSW, 1 December 2010), 5.

03/12/2010
Wonnarua Peoples Land Claim
Ashton Coal is required to negotiate its plans to mine under Bowman's Creek near Singleton due to the National Native Title Tribunal approving a native title claim from the Plains Clans of the Wonnarua People relating to a part of land opposite Camberwell Village.

Scott Franks, spokesman of the Plains Clans of the Wonnarua People, said the area affected by the claim was of major importance to the Aboriginal people of this region. Ashton Coal and the traditional owners are now in confidential discussions as part of the native title claim process. A separate Aboriginal group, the Wonnarua Nation, is also in the process of lodging a claim relating to the area. *Newcastle Herald* (Newcastle NSW, 3 December 2010), 23.

Northern Territory

16/11/2010
Alice Springs Telegraph Station Historical Reserve
Locals are invited to have their say on a new joint management plan for the Alice Springs Telegraph Station Historical Reserve. The 1171ha reserve will be jointly managed by the Lhere Atrepe native title body and the NT government. Parks and Wildlife Minister Karl Hampton stated 'the joint management plan will provide direction for the management of the Reserve for the next 10 years, outlining how the interests of the community, traditional owners, heritage and conservation values will be served.' *Centralian Advocate* (Alice Springs NT, 16 November 2010), 4.

19/11/10
Dispute Resolved
The Federal Court has ordered a private company, Banabi Pty Ltd, which has held the grazing licence at Elsey Station for nearly 10 years to leave by November 26, 2010. Banabi Pty Ltd is owned by traditional owners and is backed by the federal Indigenous Land Corporation. It has held the grazing licence at Elsey Station, about 120km south of Katherine, for nearly 10 years. The Northern Land Council applied to the Federal Court to evict Banabi after allegations that the property was not being managed well. *Northern Territory News* (Darwin WA, 19 November 2010), 7.

Queensland

9/11/10
Wild Rivers
Tony Abbott, the federal opposition leader, has announced that he intends to table a private members bill in Parliament designed to roll back existing Wild Rivers declarations, and limit the capacity for future declarations to be made, with or without the support of key Indigenous leader Murrandoo Yanner.

Mr Abbott has the support of powerful Cape York Aboriginal leader Noel Pearson, other Cape York Indigenous leaders, mining companies, farming lobby groups and north Queensland independent MP Bob Katter for his bill, but has so far failed to convince Mr Yanner. Mr Abbott met with Mr Yanner during November to try and gain support for his Bill. Mr Yanner said 'the greatest minds in my region are perplexed by this [the bill] because we don't see the reason for it'.

In related news, Anna Bligh has announced five new Aboriginal ranger jobs in north Queensland; this will take the total to 35. *Courier Mail* (Brisbane QLD, 9 November 2010), 19. *Courier Mail*

(Brisbane QLD, 10 November 2010), 2. *Australian* (Australia, 10 November 2010), 2. *Cairns Post* (Cairns QLD, 10 November 2010), 4. *Cairns Post* (Cairns QLD, 10 November 2010), 4. *Courier Mail* (Brisbane QLD, 12 November 2010), 8. *Courier Mail* (Brisbane QLD, 16 November 2010), 18. *Sydney Morning Herald* (Sydney NSW, 16 November 2010), 7. *Age* (Melbourne VIC, 16 November 2010), 8. *Townsville Bulletin* (Townsville QLD, 16 November 2010), 3. *North West Star* (Mount Isa QLD, 17 November 2010), 7. *North Queensland Star* (Townsville QLD, 18 November 2010), 11.

11/11/10

Native Title Agreement for Palm Island

Palm Island Aboriginal Council and the Manbarra people have met to work towards the first native title agreement which will include social housing, home ownership, and economic and commercial development, while preserving the native title rights and interest of the Manbarra people. Natural Resources Minister Stephen Robertson welcomed the ratifying of a decision to move towards an Indigenous land use agreement. *Townsville Bulletin* (Townsville QLD, 11 November 2010), 5. *National Indigenous Times* (Malua Bay NSW, 25 November 2010), 14.

24/11/10

New Bill Introduced to Parliament

Aboriginal and Torres Strait Islander communities could gain more options to manage and develop their land under the Aboriginal and Torres Strait Islander Land and Other Legislation Amendment Bill (QLD), which was introduced to Queensland Parliament. The bill proposes additional leasing and land transfer arrangements for Indigenous communities. If passed, the bill will allow Indigenous communities to appoint existing community groups to manage land. *Cairns Post* (Cairns QLD, 24 November 2010), 7.

25/11/10

Claim Lodged on Gold Coast

The Gold Coast Native Title Group lodged an application for a determination of native title with the Federal Court in September 2006 over an area of 1640sq km between Beenleigh and Tweed Heads. The Native Title Registrar has accepted the application for registration. *Gold Coast Sun* (Gold Coast QLD, 24 November 2010), 3.*Gold Coast Sun* (Gold Coast QLD, 25 November 2010), 3.

26/11/10

Cape York National Park

The Queensland State Government will return more than 75,000ha of Cape York national park to traditional owners and rewrite a shameful chapter in Queensland's history', Sustainability Minister Kate Jones says. Another 380,000ha of land that makes up the remainder of the Mungkan Kanju National Park, northwest of Cairns will be jointly managed by the Government and the Wik Mungan people under changes approved in State Parliament. *Courier Mail* (Brisbane QLD, 26 November 2010), 22.

05/12/2010

Fraser Island Claimants

Butchulla elder Frances Gala, 68 has lodged for 'party status' in the Federal Court against current native title claims on Fraser Island. There are currently two applications registered with the National Native Title Tribunal by the Butchulla people for more than 8500sq km of Hervey Bay land and sea and for Fraser Island. *Sunday Mail* (Brisbane QLD, 5 December 2010), 24. *Fraser Coast Chronicle* (Hervey Bay QLD, 7 December 2010), 4.

16/12/2010

Largest Native Title Determination in Qld

The largest single native title determination in Queensland's history which covers about 1.73 million hectares was handed down to the Waanyi People. The determination area extends to the town of Gregory Downs in the east, north to the Nicholson River, south to O'Shannassy River and across to the state's border with the Northern Territory.

The Queensland Government says the decision affirms the Waanyi People as custodians of their ancestors' land. This decision formally

acknowledges that Waanyi People have, and always have had, the right to camp, hunt, fish and gather in the area, maintain places of significance, and conduct ceremonies in accordance with their traditional laws and customs. *North Queensland Register* (Townsville QLD, 16 December 2010), 12.

17/12/2010
Land Secured
In an historic celebration on the weekend at Kuranda, 1600ha of land was leased to the people of Mona Mona. Aboriginal and Torres Strait Islander Partnerships Minister Desley Boyle and Member for Barron River Steven Wettenhall attended the celebration. Ms Boyle said the lease was a significant step forward for Indigenous land management in Queensland. It also delivers on a 2009 election commitment to re-examine the future land tenure of the reserve. 'The lease effectively returns a place of spiritual significance to the people of Mona Mona'. Mr Wettenhall said the Mona Mona Bulmba Aboriginal Corporation would hold the lease and manage the land. *Tablelands Advertiser* (Mareeba QLD, 17 December 2010), 7.

Western Australia

3/11/10
Housing Shortage in Coral Bay
Western Australia's Lands Minister Brendon Grylls and members of the Baiyungu Aboriginal Corporation (BAC) have signed a land transfer document which gives the BAC freehold ownership of about 30ha of the crown land near the town centre of Coral Bay. In return the state will be able to lease back just over one hectare of the site to provide seasonal staff accommodation in the town. Mr Grylls said the agreement would enable the development of a 70-bed facility to provide short term accommodation for people employed in the local tourism industry. *Northern Guardian* (Carnarvon WA, 3 December 2010), 4. *Yamadji News* (Geraldton WA, November 2010), 16.

4/11/10
10 Year Conservation Plan
A 10 year conservation plan covering 16 million hectares of southeast WA is aimed at halting the loss of native vegetation. Western Australia's Environment Minister Donna Faragher said the plan will eradicate feral dogs and other pests through a buffer zone, support the resolution of many native title claims, implicate joint management with traditional owners and provide a tourist attraction. *West Australian* (Perth WA, 4 November 2010), 18.

4/11/10
James Price Point
The Western Australian State Opposition has slammed Premier Colin Barnett's move to compulsorily acquire the land surrounding James Price Point, saying the move slapped indigenous land holders and the Broome community squarely in the face. Shadow treasurer Ben Wyatt and shadow regional development minister Mark McGowan claimed the Broome community requires better consultation from the State Government on gas issues. In other related articles, Premier Colin Barnett has denied stalling a string of native title claims to gain a 'bargaining chip' to force the Kimberley Land Council to reach settled negotiation on the James Price Point land. *Broome Advertiser* (Broome WA, 4 November 2010), 16. *West Australian* (Perth WA, 18 November 2010), 10.
Perth Voice (Perth WA, 20 November 2010), 5. *Fremantle Herald* (Perth WA, 20 November 2010), 5. *Sydney Morning Herald* (Sydney NSW, 20 November 2010), 4. *The Weekend West* (Perth WA, 20 November 2010), 65. *Sydney Morning Herald* (Sydney NSW, 22 November 2010), 2. *West Australian* (Perth WA, 22 November 2010), 13. *Broome Advertiser* (Broome WA, 25 November 2010), 7. *Age* (Melbourne VIC, 25 November 2010), 12.

6/11/10
Woodside Gas Tests
Woodside Petroleum has started preliminary work for the design of the $30 billion gas precinct. Kimberly Land Council members have stated that this is a 'kick in the guts for traditional owners [who are] working hard to see this project done

responsibly'. Jabirr Jabirr man Anthony Watson said 'it's worrying us to consider Woodside is willing to progress this work on country regardless of the concerns of traditional owners'. Mr Watson also said the work was in breach of a heritage protection agreement between the land council and Woodside. *Canberra Times* (Canberra ACT, 6 November 2010), 6. *Herald Sun* (Melbourne VIC, 6 November 2010), 87. *Oil & Gas Review* (Australia, November 2010), 3. *National Indigenous Times* (Malua Bay NSW, 25 November 2010), 4,5.

10/11/10

WA Native Title Amendments

Native title groups have reacted strongly to the WA Government proposal to streamline native title. The proposal requires Indigenous land use agreements (ILUAs) to be negotiated at the same time as claimants are proving they are traditional owners. Native title groups have said it would result in fewer claims being determined and less certainty for the resource industry.

Yamatji Marlpa Aboriginal Corporation chief executive Simon Hawkins said combining the two processes would add an extra level of complexity to the already complex process. The proposed amendment was slammed by National Native Title Council chief executive Brian Wyatt as taking WA back to the dark ages. 'The Western Australian Government has an attitude of development at any cost but this type of approach will not contribute to the goal of closing the gap that all other stakeholders, including industry are striving to achieve,' Mr Wyatt said. *North West Telegraph* (South Hedland WA, 10 November 2010), 19.

30/11/10

Joseph Roe Challenge

Joseph Roe commenced a legal challenge to being ousted as a named applicant on the Goolarabooloo Jabirr Jabirr native title claim. The Broome hearing was instigated by the Kimberley Land Council for the claimant group after its members voted in August to remove Mr Roe and Cyril Shaw as named applicants and replace them with six others. The move followed a breakdown in negotiations after the group entered into an agreement with Woodside Pty Ltd and the WA State Government to allow a $30 billion gas processing precinct at James Price Point a move Mr Roe strongly opposes. Mr Roe lodged an objection in the Federal Court, claiming several of the new applicants were not authorised to speak for the Goolarabooloo Jabirr Jabirr people. *West Australian* (Perth WA, 30 November 2010), 13.

Indigenous Land Use Agreements

NAME	TRIBUNAL FILE NO.	TYPE	STATE OR TERRITORY	REGISTRATION DATE	SUBJECT-MATTER	REGISTER EXTRACT
Djaku-nde & Jangerie Jangerie & Wakka Wakka People and QGC Pty Limited (Balance Area) ILUA	QI2010/014	AA	Queensland	01/11/2010	Pipeline	Register Extract
Surat Gladstone Pipeline Pty Ltd and Port Curtis Coral Coast ILUA	QI2010/017	AA	Queensland	02/11/2010	Pipeline	Register Extract
Ma:Mu Tablelands Regional Council Area ILUA	QI2010/020	AA	Queensland	15/11/2010	Co-management Consultation protocol	Register Extract
Ma:Mu Cassowary Coast Regional Council Area ILUA	QI2010/019	AA	Queensland	15/11/2010	Consultation protocol Government	Register Extract
Santos/Petronas/Bidjara/Karingbal GLNG ILUA	QI2010/016	AA	Queensland	16/11/2010	Pipeline	Register Extract
Santos/Petronas/Bidjara GLNG ILUA	QI2010/015	AA	Queensland	16/11/2010	Pipeline	Register Extract
Ilkurlka ILUA	WI2010/022	BCA	Western Australia	30/11/2010	Access Tenure resolution Commercial	Register Extract
Gangulu and Warrabal and QGC Pty Limited ILUA	QI2010/022	AA	Queensland	09/12/2010	Pipeline	Register Extract
Tableland Yidinji People and Tablelands Regional Council ILUA	QI2010/023	AA	Queensland	10/12/2010	Consultation protocol Government	Register Extract
Nywaigi ILUA	QI2010/021	AA	Queensland	13/12/2010	Consultation protocol	Register Extract
Wulgurukaba People ILUA	QI2010/018	AA	Queensland	22/12/2010	Access Government Infrastructure	Register Extract
Barunggam, Cobble Cobble, Jarowair, Western Wakka Wakka, Yiman and QGC ILUA	QI2010/006	AA	Queensland	22/12/2010	Pipeline	Register Extract

This information has been extracted from the Native Title Research Unit ILUA summary: http://ntru.aiatsis.gov.au/research/ilua_summary.html, 11 January 2010.

AA = Area Agreement BCA = Body Corporate Agreement

The information included in this table has been sourced from the NNTT.

For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit http://www.nntt.gov.au

Determinations

SHORT NAME	CASE NAME	DATE	STATE OR TERRITORY	OUTCOME	LEGAL PROCESS
Ngurrara Part A	Kogolo v State of Western Australia [2007] FCA 1703	22/11/2010	Western Australia	Native title exists in the entire determination area	Consent determination
Newhaven, NT Portion 2406	Harry Jakamarra Nelson & Ors on behalf of the Ngaliya (Southern Warlpiri) People v Northern Territory of Australia (unreported, FCA, 8 December 2010, Reeves J)	08/12/2010	Northern Territory	Native title exists in parts of the determination area	Consent determination (conditional)
Waanyi Peoples	Walden & Ors on behalf of the Waanyi Peoples v State of Queensland & Ors (unreported, FCA, 9 December 2010, Dowsett J)	09/12/2010	Queensland	Native title exists in the entire determination area	Consent determination (conditional)

This information has been extracted from the Native Title Research Unit Determinations summary: http://ntru.aiatsis.gov.au/research/determinations_summary.html, 11 January 2011.

The information included in this table has been sourced from the NNTT.

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.

Special collection
Last newsletter we mentioned the Australian Indigenous Languages Electronic Collection (AILEC). At this time, 207 records from this set of collections are available for downloading. In addition to word lists and grammars, etc., there are items of interest to native title researchers, such as:

- Bates, Daisy. Bates Nyungar sources – comparison of compilations. (AILEC 0714)
- Daniel, David. Thalu sites of the west Pilbara. (AILEC 0503)
- Kamminga, Johan. Timber database. (AILEC 0729)
- Radcliffe-Brown, A.R. Field notes, northern NSW. (AILEC 0689)
- Sutton, Peter. Realism, pluralism and materialism: competing myths of origin for Australian languages. (AILEC 0401)

You can find these open records in Mura, the AIATSIS online catalogue, if you type in 'AILEC' and 'Access – open access for downloading.'

Also, new items are being added into the online exhibition, 'To Remove and Protect.' See http://www1.aiatsis.gov.au/exhibitions/removeprotect/index.html

All of the publications by the Native Title Research Unit are being catalogued gradually. If you use the query term, 'ntru' you will be able to get a listing of all of these records. Papers from the native title conferences can be accessed this way as well. Please check the website as not all of the papers have been included in this listing.

Audiovisual material of interest to native title includes:

Video and film:

Cape York Pennisula (sic): the land needs its people. Cairns: Wilderness Society and Council for Aboriginal Reconciliation, 1996.

NOTE: Four videos made by the Council for Aboriginal Reconciliation concern native title issues:

Comalco regeneration. [production company] Dynamic Vision. [Cairns] : Dynamic Vision, 1992.

Talking Native Title: Aboriginal and white Australians speak out. [production company] Video Education Australasia Bendigo, Vic.: VEA, 1997.

An act of justice: the Mabo judgement and the Native Title Act. Canberra: OZIRIS, 1994. (PDAC00018_44)

We come from the land [production company] Jerringa Local Aboriginal Land Council; Wreck Bay Aboriginal Community Council; Common Films. Sydney: Common Films, 1988.

Face to face: Native Title discussion including Noel Pearson / [production company] Seven News. Sydney: Seven, 1993. (PDAC00018_35)

Native title and racism: insight / [production company] Special Broadcasting Commission. Sydney: SBS, 1996. (PDAC00018_31)

Photographs:

Kabaila, Peter. Bomaderry Aboriginal Children's Home. 1 CD containing 245 black and white prints taken from 1950-1956. (KABAILA.P1.CD).

Meehan, Betty and Rhys Jones. Anbarra Hunting, Gathering and Processing Techniques. 245 colour slides taken from 1973-1982 in the Maningrida area, NT. (MEEHAN_JONES.9.CS).

Sound recordings:

The Wangkamaya Pilbara Aboriginal Language Centre, in conjunction with CAAMA, produced a CD in 2005 entitled 'Nyangumarta massacre songline.' (PR_00155).

In 2009, Peter Kabaila recorded approximately two and a half hours' worth of interviews about missionary work at the Bomaderry Aboriginal Children's Home. (KABAILA_P04).

In 1994, Loreen Brehaut deposited approximately 6 hours' worth of recordings of Kurrama stories, culture, language, history, songs from the Karratha, WA area. (BREHAUT_L01).

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