AIATSIS
AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

WHAT'S NEW IN NATIVE TITLE

AUGUST 2016

1. Case Summaries

Margarula v Northern Territory of Australia [2016] FCA 1018

24 August 2016, Extinguishment Hearing, Federal Court of Australia, Northern Territory, Mansfield J

This matter concerned the extent to which the native title rights of the Mirarr people had been extinguished over the area of the Jabiru Township and its immediate surrounds (the Jabiru land), located inside Kakadu National Park in central northern Australia. The respondents were the Northern Territory Government, the Jabiru Town Development (JTD) Authority, the Commonwealth, the Director of National Parks and Wildlife and the Energy Resources of Australia Ltd. The parties to the proceeding agreed that the Mirarr people hold native title rights and interests over the Jabiru area; however it was for the Court to determine the effect of various Crown acts on those native title rights and interests.

The parties agreed that some acts were not inconsistent with non-exclusive native title rights and interests. These were the grant of pastoral leases and grazing licences, the 1972 declaration of a wildlife sanctuary over land in the southern part of Jabiru, and the grant of licences to the JTD Authority. Furthermore, Mansfield J found that the proclamation of Kakadu National Park in 1979 and its vesting in the Director of National Parks and Wildlife was not inconsistent with the exercise of non-

exclusive native title rights. However, the extent of extinguishment resulting from a number of other acts was more contentious, including the grant of an Occupation (Development) Licence (ODL) in July 1965 to Mudginberri Station Ltd (Mudginberri), the Commonwealth acquisition of territory upon Northern Territory self-government in July 1978, a 40 year lease granted to the JTD Authority in June 1981, subsequent sub-leases granted by the JTD Authority in July 1981, and the construction of various works in the Township.

The Occupation (Development) Licence

The ODL granted Mudginberri the right to occupy the land for the purpose of taking and shooting buffaloes, the production of meat and hides from the carcasses of those buffaloes, and for any other purposes approved by the Administrator of the Territory. The respondents contended that the grant of the ODL was wholly inconsistent with the continued existence of non-exclusive native title rights, and therefore extinguished those rights at common law. As extinguishment was under common law, they argued that it was not capable of being recognised and protected under s 223(1)(c) of the *Native Title Act 1993* (Cth) (NTA). Mansfield J rejected the contention that all occupation licences necessarily conferred rights of exclusive possession. His Honour found that the ODL granted a qualified right to exclude persons from the licensed area where that was required for the licensed activities, but did not authorise the licensee to exclude any person from being on the land. There was therefore no entitlement to exclude any Aboriginal person from exercising native title rights under the common law. His Honour considered the applicability of the *Validation (Native Title) Act 1999* (NT) (VNTA) and NTA. Under s 9H of the VNTA, any previous exclusive possession act attributable to the Territory extinguishes any native title over that land. However, his Honour found that the ODL was not a previous exclusive possession act as defined by s 23B(2) of the NTA as the ODL was not a 'lease' within the s 242 definition in the NTA. His Honour therefore held that the grant of the ODL did not extinguish non-exclusive native title rights.

Commonwealth acquisition upon self-government

Regarding the commencement of self-government, Mansfield J considered the notice published in the gazette on 29 June 1978 pursuant to s 70 of the *Northern Territory (Self-Government) Act 1978* (Cth) (SGA). The gazetted notice declared that upon the commencement of self-government, the Commonwealth would acquire (or retain) the land that was to become Kakadu National Park, which included the Jabiru land. This notice was published two days before the commencement of the self-government of the Northern Territory on 1 July 1978. The Respondents contended that upon this acquisition the Commonwealth obtained an estate in fee simple, and that this was inconsistent with the continued existence of non-exclusive native title. Mansfield J found that authority supported the applicant's contention that the use of the words 'fee simple' in the gazettal notice did not necessarily convey the grant of that type of interest. Instead, his Honour followed Gummow J's reasoning in

Newcrest Mining (WA) Ltd v Commonwealth [1997] HCA 38 at [627], to find that the bare radical title to the Jabiru land held by the Commonwealth prior to 1 July 1978 was retained after the commencement of self-government due to the publication of the gazettal notice, which 'held back' that land from the operation of s 69 of the SGA. His Honour held that the gazettal notice should be construed as conferring radical title only, that s 70 of the SGA was not intended to effect existing rights and interests, and that it was not necessary for the Commonwealth by the gazettal notice to acquire an estate in fee simple over the entire future Kakadu National Park in order to establish the Jabiru Township.

Jabiru Town Development Authority leases

Mansfield J considered the extent of extinguishment by the lease granted to the JTD Authority by the Director of National Parks and Wildlife in June 1981. While all the parties agreed that the grant of the lease did not extinguish the non-exclusive native title rights at common law, the Northern Territory Government and the Director contended that it extinguished those rights under the NTA. They contended that the grant was a 'community purposes lease' and was therefore a previous exclusive possession act under s 23B(2)(c)(vi) of the NTA. Mansfield J found that the grant was not a 'community purposes lease', as town leases do not provide a common benefit but merely enable a community to be established, which can then be subleased for purposes that may or may not be identifiable with community purposes. His Honour found that the lease fell within s 23B(9C) of the NTA and was therefore not a previous exclusive possession act for the purposes of s 23B of the NTA, and not inconsistent with the continued exercise of non-exclusive native title rights and interests.

In considering the extent of extinguishment resulting from the sub-leases granted by the JTD Authority to other entities, his Honour accepted the Applicant's submission that the JTD Authority only had the power to grant a sub-lease subject to native title, since those rights were not extinguished by the township lease, and therefore under common law native title rights were not extinguished. However, his Honour held that the grant of sub-leases to non-Crown entities were previous exclusive possession acts within the definition in s 23B(2)(c) of the NTA. The effect of this was that, as the acts were attributable to the Territory Government under s 239 of the NTA, pursuant to ss 9G and 9M of the VNTA, non-exclusive native title rights were extinguished at the time each grant was made. However, Mansfield J found that the sub-leases to the Crown did not extinguish non-exclusive native title as they were not previous exclusive possession acts pursuant to s 23B(9C) of the NTA. As these acts were Category D past or intermediate period acts, the non-extinguishment principle applies as per ss 8 and 9E of the VNTA. His Honour found that non-exclusive native title rights were not extinguished over land subject to the Crown sub-leases, but are ineffective until the sub-leases ends.

Construction of public works

Finally, regarding the construction of works undertaken to build the Township of Jabiru, Mansfield J considered whether the works were 'public works' under the NTA. A number of the works were agreed upon between the parties to be public works including roads, bores and major earthworks, and it was accepted that these extinguished native title rights. However, the Applicant contended that a number of buildings and structures were not fixtures as there was no intention of permanence, and were therefore not 'public works' under s 253 of the NTA. Mansfield J accepted that in determining whether an item was a fixture, the terms of the lease under which it was affixed could be examined to determine whether the intention was that the item was affixed for the better enjoyment of that item and not the land. However after considering the clauses of the Township lease, his Honour found that the relevant objects were intended to be for the better enjoyment of the land, and were therefore fixtures and 'public works' within s 253. Mansfield J concluded that, with the exception of five lots explained at [398], most of the public works extinguished native title as they were previous exclusion possession acts.

Griffiths v Northern Territory of Australia (No 3) [2016] FCA 900

24 August 2016, Compensation Application, Federal Court of Australia, Northern Territory, Mansfield J

In this matter, Mansfield J determined the quantum of compensation payable for the impairment or extinguishment of native title rights and interests over areas within the township of Timber Creek. The Ngaliwurru and Nungali people were recognised as holding non-exclusive native title rights over particular lots in Timber Creek in *Griffiths v Northern Territory* [2006] FCA 903, and upon appeal in *Griffiths v Northern Territory* [2007] FCAFC 178 they were found to hold exclusive native title in some lots under s 47B of the NTA. Following this, the Ngaliwurru and Nungali people lodged a claim for compensation under ss 50(2) and 61 of the NTA. In *Griffiths v Northern Territory* [2014] FCA 256, Mansfield J ruled on the liability of the acts and identified the extinguishing acts for which compensation was payable, leaving the consideration of issues regarding the appropriate amount of compensation to be determined at a later date. In this judgement, Mansfield J ordered that the Northern Territory Government pay the applicants $3,300,661 in compensation, comprising of $512,400 to account for the economic value of the extinguished native title rights, $1,488,261 interest on the sum of $512,400, and $1,300,000 for solatium. The respondents to the application were the Northern Territory Government and the Commonwealth.

Compensation was claimed for acts attributable to the Territory which wholly or partially extinguished or impaired or suspended native title, since the commencement of the *Racial Discrimination Act* 1975 (Cth) on 31 October 1975.

The claim was in respect of 56 acts, a further three acts for which the application for compensation was dismissed in *Griffiths v Northern Territory* [2014] FCA 256, in the event that the dismissal of those acts under that judgement is later reversed or varied, and three invalid future acts. The applicant sought compensation on 'just terms' under s 51(1) of the NTA for economic loss, non-economic/intangible loss and pre-judgement interest. The Court found compensation was payable for the acts and invalid future acts, but did not consider the application in relation to the acts subject to the dismissed application.

Mansfield J noted that no particular framework exists under the NTA for the determination of the compensation payable on just terms. In arriving at a compensation amount, his Honour ruled on four main issues which were contentious in determining the appropriate amount of compensation: the time at which the valuation of the extinguishment of native title rights and interest should be assessed; the value which should be ascribed to the native title rights and interests which have been extinguished; how the pre-judgement interest should be assessed; and the manner and extent to which traditional attachment to the land should be reflected in the compensation award.

The date of assessment

Mansfield J considered whether compensation should be assessed at the date of each of the acts effecting the extinguishment or at the date of the validation of that act of extinguishment. Mansfield J found that validation of the past acts occurred on 10 March 1994 when the *Validation (Native Title) Act* (NT) ('VNTA') commenced operation. However, as the VNTA expressly provides that each act to which it applies is taken always to have been valid; it is the date of the act itself at which compensation is to be assessed. However, his Honour noted at [173] that this 'does not preclude the desirability of stepping back at the end of the process…to determine whether, in the circumstances, and having regard to the interest awarded the "just terms" requirement of s 51(1) of the NTA has been satisfied.'

The value of native title rights and interests

In considering what value could be attributed to native title rights and interests, Mansfield J took s 51A of the NTA as the appropriate starting point. Section 51A of the NTA sets the upper limit on the amount of compensation payable at the value of a freehold estate. In considering the wording of s 51(1), which outlines the entitlement to compensation on just terms for 'any loss, diminution, impairment or other effect of the act on their native title rights and interests', Mansfield J found that exclusive native title should be valued at the same as freehold title, and considered that the inalienable and non-transferable character of exclusive native title does not necessarily mean its value is less than freehold. However, he found that if exclusive native title was equivalent to the value of freehold title, non-exclusive native title rights must be less than the market value of that freehold title. In considering how much less this should be, his Honour noted that it is not appropriate to treat non-

exclusive native title rights as valued in the same way as if those rights were held by a non-indigenous person and expressly rejected the Territory's approach of valuing the native title rights in conventional economic terms. His Honour valued non-exclusive native rights at 80% of the freehold value. His Honour acknowledged at [233] that this was an intuitive decision which reflects a 'focus on the entitlement to just compensation for the impairment of those particular native title rights and interests which existed immediately prior to the determination acts' and does not include an allowance for cultural or ceremonial significance of the land.

The interest component

It was accepted that interest was payable on the value of extinguished native title rights and interests to reflect the time between when the entitlement to compensation arose and the date of judgment. Mansfield J considered, in the absence of any guidance in the NTA, whether that interest should be calculated on a simple basis, a compound basis at superannuation rates, or a compound basis at the risk free rate. Mansfield J found that it should be assessed at the simple rate. In finding this, his Honour considered what actions the native title holders would have taken with the funds if they had been compensated at the date of the act. His Honour noted that compound interest could not simply be given because a longer time period was involved. He reasoned that the Court could award compound interest to give adequate compensation if satisfied that the applicants would have applied the funds received for compensation, if they had been received at the time of the compensable acts, as capital in a business or trade and that it would have been successful to a significant degree. However, his Honour was not convinced this was so. In arriving at this conclusion his Honour relied upon contemporary evidence of the applicant's commercial management which revealed that funds were generally distributed to individuals and families, and held little suggestion that they invested those funds or that those funds were available or proposed to be used for such purposes. His Honour was therefore not convinced that had the applicants received compensation at the time of the compensable acts, they would have used that money to invest and accumulate interest, or that they would have undertaken a commercial activity which would have been profitable to the same degree.

Reflection of traditional attachment to land in the compensation award

The applicant sought an award in globo for the loss sustained and disadvantages experienced by the native title holders due to the impairment and extinguishment of their native title. Mansfield J awarded $1.3 million under this heading, noting that an important aspect of native title rights and interests was the spiritual, cultural and social connection with the land.

In arriving at this figure, Mansfield J considered the non-economic effect the compensable acts had upon pre-existing native title. His Honour held it was relevant to consider the adverse effects the compensable acts had both generally in the area and specifically in the lots under consideration, however restricted the assessment to

compensation for the 'hurt feeling' caused and not a general sense of loss from a loss of access to country and the inability to exercise native title rights on country. Mansfield J further noted that as the evidence revealed that the effect of the acts had not dissipated over time, the compensation should also be assessed for an extensive time into the future.

Mansfield J accepted that there is no mathematical calculation to arrive at an appropriate sum of compensation. His Honour focused on what had caused particular distress to the Applicants due to the compensable acts - specifically the construction along the path of the dingo Dreaming; the general way compensable acts effected native title rights and interests; and the general way in which the geographic diminution of native title rights had affected the spiritual and cultural connection to land and from this the sense of failed responsibility to look after that land.

Barambah on behalf of the Turrbal People v State of Queensland [2016] FCA 894

2 August 2016, Application for Extension of Time to Appeal, Federal Court of Australia, Queensland, Jagot J

This matter concerned an application for an extension of time to appeal against orders made dismissing an application of native title. These orders were made by Jessup J on 27 January and 16 March 2015 in *Sandy on behalf of the Yugara People v State of Queensland (No 2)* [2015] FCA 15 and *Sandy on behalf of the Yugara People v State of Queensland (No 3)* [2015] FCA 210. In these cases, both the Turrbal people and the Yugara people separately and unsuccessfully sought a determination of native title over land covering Brisbane and surrounding area. The Turrbal people's application for an extension of time was not opposed by the respondents, the State of Queensland, but it was opposed by the Yugara people who had filed an appeal within time on 28 July 2015. Although the Turrbal people filed their application eight months after the expiry of the appeal period, Jagot J granted their application for the extension of time.

Her Honour noted that had the Turrbal people been the only party seeking to challenge the previous orders, she may have not granted them leave. However, as there are competing native title claims to the same area of land and the appeal of the Yugara people affects the asserted interests of the Turrbal people, the interests of justice demand that the Turrbal people can also appeal the previous decision.

Her Honour ordered however that the Turrbal people should ensure that their fresh evidence is filed and served by no later than 29 August 2016 and that the notice of appeal sets out what the Turrbal people have agreed are the issues they wish to raise.

Lake Torrens Overlap Proceedings (No 3) [2016] FCA 899

9 August 2016, Overlapping Applications for Native Title Determination, Federal Court of Australia, South Australia, Mansfield J

In this matter, identically overlapping applications were submitted on behalf of the Kokatha people, the Adnyamathanha people and the Barngarla people for a determination of native title over the lands and waters of Lake Torrens in the mid-north of South Australia. The main respondent was the State of South Australia, and the only other active parties were two related mining companies, Kelaray Pty Ltd who only made limited written closing submissions, and Straights Exploration (Australia) Pty Ltd who notified the Court that it wished to cease to be a party to the proceedings. Mansfield J dismissed all three applications.

Background

Mansfield J outlined the long histories of the applications, which are also described in part in the *Croft on behalf of the Barngarla Native Title Claim Group v State of South Australia* [2015] FCA 9 decision. The previous claims were more extensive and date back to 1998. They involved overlapping claims, negotiations, mediation and previous determinations over adjacent land to Lake Torrens.

The current proceeding began on 18 June 2009 with the lodgement of the Kokatha Uwankara Claim by the Kokatha people over Lake Torrens and an area to its west, but it was recognised that the named applicants included members who were also Adnyamathanha and Barngarla people. The Adnyamathanha people filed their claim over Lake Torrens in November 2012. In April 2013, the Court divided the Kokatha Uwankara Claim into Part A (the west area) and Part B (Lake Torrens). Part A was resolved separately by the consent determination in *Kokatha Part A* as it did not give rise to overlapping claims. The determination in *Adnyamathanha No 1* recognised the Adnyamathanha people as the holders of native title over areas to the east of Lake Torrens, while the determination in *Barngarla No 2* recognised the Barngarla people as the holders of native title in areas south of Lake Torrens. These previous determinations were relevant as all three applicants relied on those findings in establishing their claim for native title in this proceeding.

Orders were then made in December 2014 (as reviewed in February 2015) for Part B of the Kokatha application and the Adnyamathanha application to be heard together. In June 2015, the Barngarla people filed a claim over Lake Torrens, and in July 2015 the order to join applications was extended to include the Barngarla Application.

Competing applications

There is some interrelation between the applicant groups. The Kokatha people are members of the wider Western Desert society, while the Adnyamathanha people and Barngarla people are members of the wider Lakes Group society. Furthermore, three of the apical ancestors in the Barngarla application are also named as apical

ancestors in the Kokatha application. Each applicant, however, sought a favourable determination to the exclusion of the others. It was also submitted, and Mansfield J agreed, that the Court could not find that there are joint or co-existing rights held by some differently defined group over Lake Torrens. His Honour stated that the Court could find in favour of one or more of the applicants over a part or parts of Lake Torrens, but could not create a fourth group. The evidence presented by one claim group was therefore inevitably inconsistent with the claims of the competing applicants.

However, after hearing the evidence presented, the Adnyamathanha people and the Barngarla people in their final submissions proposed that they together, as one native title claim group, have shared common rights in a 'shared area' in the middle third of Lake Torrens. While Mansfield J accepted that s 225 of the NTA contemplates that the relevant native title may be held as 'common' or 'group' rights by more than one group, he found that the evidence did not support a finding of any transitional zone with co-existing rights and interests.

Reasoning

Mansfield J reviewed the evidence presented by each of the three applicants in order to determine the existence of a continued connection to the lake in accordance with their traditional laws and customs since sovereignty, as required by s 223(1)(b) of the NTA. In considering the evidence presented, his Honour was not persuaded that the archaeological and linguistic evidence supported any one of the claims over the others. Furthermore, the ethnographic material did not support any of the claims until the late 1980s and therefore could not support continuation from sovereignty. His Honour was cautious as to the weight to be attributed to the lay evidence given the degree of inter-relationship and shared knowledge between the groups. His Honour also noted that the evidence and submissions had to be considered in accordance with the determination in *Kokatha Part A* and could only place weight on evidence that was consistent with that determination.

Mansfield J ultimately found at [771]-[774] that:

- The Kokatha people did not occupy or possess the claim area according to their traditional laws and customs at sovereignty
- The Adnyamathanha (Kuyani) people may have been associated with part of the claim area at the time of sovereignty, but found no sufficient evidence to conclude that there is a continuing and contemporary connection in accordance with their traditional rights and customs
- The Barngarla people may have had a connection to the southern part of the claim area at sovereignty, but found no sufficient evidence to support a continuing connection to the present time in accordance with their traditional laws and customs

- While each of the applicant groups have contemporary spiritual connection to parts of Lake Torrens, Mansfield J declined to prioritise one set of beliefs over the others and could not support any one of the competing claims.

Rrumburriya Borroloola Claim Group v Northern Territory of Australia (No 2) [2016] FCA 908

11 August 2016, Orders Recognising Native Title, Federal Court of Australia, Northern Territory, Mansfield J

In this matter, Mansfield J gave orders recognising the Rrumburriya Borroloola claim group as the holders of native title in the town of Borroloola in the north-east of the Northern Territory. This matter is a continuation from the *Rrumburriya Borroloola Claim Group v Northern Territory of Australia* [2016] FCA 776decision, where Mansfield J found that the Rrumburriya Borroloola people have an unrestricted right to access and take resources from the claim area, but requested that the parties to the proceeding prepare a determination regarding extinguishment. The respondents were the Northern Territory Government and the Commonwealth. This order recognises the claim group as the holders of native title rights and interests in the terms of the consensus of the parties. In relation to the exclusive areas, the native title rights and interests are the rights of possession, occupation, use and enjoyment. In relation to the non-exclusive areas, the native title rights and interests are the rights to access, remain on and use the areas; access and take for any purpose the resources of the areas; and the right to protect places, areas and things of traditional significance on the areas.

An Aboriginal corporation is yet to be nominated as the prescribed body corporate.

Helicopter Tjungarrayi on behalf of the Ngurra Kayanta People v State of Western Australia [2016] FCA 910

10 August 2016, Consent Determination, Western Australia, Barker J

In this case, Barker J recognised the native title rights and interests of the Ngurra Kayanta people in relation to Part A of the claim area. Proceedings relating to Part B are yet to be determined.

On 21 December 2012, and as amended on 5 May 2015, the Ngurra Kayanta filed a native title application claiming 19511.72 square kilometres of land in the Shire of East Pilbara and the Shire of Halls Creek in the Great Sandy Desert of Western Australia. In June 2015, the Ngurra Kayanta filed a second application claiming the same area of land, but seeking the benefit of s 47B of the NTA whereby any previous extinguishment of native title rights and interests may be disregarded, allowing for a determination of exclusive native title rights and interests. The

determination area was split into Part A and Part B in June 2016 after an issue arose regarding the application of s 47B to areas subject to particular exploration permits. Part A covers land not including the area under the exploration permits, and is the subject of this consent determination, while Part B covers the rest of the claimed area. The parties to the application were Helicopter Tjungarrayi on behalf of the Ngurra Kayanta People, the State of Western Australia and Central Desert Native Title Services Ltd, with the Commonwealth of Australia intervening.

Barker J held that the Ngurra Kayanta people possess exclusive rights to possession, occupation, use and enjoyment of the determination area, and the non-exclusive right to take, use and enjoy the water in any watercourse, wetland or underground watercourse in the determination area. Barker J noted that the native title rights and interests have no effect in relation to other interests to the extent of any inconsistency, but otherwise the other interests co-exist with the native title rights and interests without extinguishing them.

The determination will take effect upon the nomination of a prescribed body corporate within 12 months.

2. Legislation

Victoria

Crown Land Legislation Amendment Bill 2016

Status: This Bill passed the Legislative Assembly on 18 August 2016 and was read for a second time in the Legislative Council on 1 September 2016.

Stated purpose: The Bill provides for amendments to the *Conservation, Forests and Lands Act 1987*, the *Crown Land (Reserves) Act 1978*, the *Land Act 1958* and the *Land Conservation (Vehicle Control) Act 1972* in relation to regulation-making powers and other matters, with the aim to create more effective and efficient management of areas of Crown land.

Native title implications: The Bill provides for more efficient enforcement of offences on Crown land. Higher penalties will be introduced for a range of offences, including driving off road, polluting, or damaging or destroying vegetation, natural features or native fauna. The offences will be standardised across Crown land legislation. Fees can also be set to use the land in a reserve authorised by permit.

For further information please see the Explanatory Memorandum or the Second Reading Speech from the Legislative Council.

National Parks and Victorian Environmental Assessment Council Acts Amendment Bill 2016

Status: This Bill passed the Legislative Assembly on 23 June 2016, passed the Legislative Council on 16 August 2016 and received assent on 23 August 2016.

Stated purpose: The Bill amends the *National Parks Act 1975* in relation to the Greater Bendigo National Park and provides for the addition of approximately 245 hectares to the park. The Bill also amends the *Victorian Environmental Assessment Council Act 2001* to broaden the advisory role of the Victorian Environmental Assessment Council (VEAC) and allow for the government to amend a response of the government to VEAC recommendations.

Native title implications: This Bill will assist in allowing Aboriginal title over the Greater Bendigo National Park to be granted to the Dja Dja Wurrung Clans Aboriginal Corporation, on behalf of the Dja Dja Wurrung traditional owner settlement group. The settlement agreement commenced in 2013 and this Bill is necessary to give effect to this aspect of the agreement. The Bill will address ambiguity in the park boundary, as well as provide for the addition of two parcels of land with high conservation value.

The amendments to the VEAC Act aim to broaden the advisory role of VEAC. The Bill recognises that VEAC (the former Land Conservation Council and the former Environment Conservation Council) is not well suited to provide advice or carry out technical assessments on small scale areas of land, and seeks to address this by establishing an alternative, more flexible process allowing VEAC to provide advice or assess an area that might not require an investigation under the current provisions. The current consultation and transparency processes will remain. The advice and assessments of VEAC are influential in how particular areas of public land are used.

For further information please see the Explanatory Memorandum or the Second Reading Speech from the Legislative Council.

Traditional Owner Settlement Amendment Bill 2016

Status: This Bill passed the Legislative Assembly on 30 August 2016 and was read for a second time in the Legislative Council on 31 August 2016.

Stated purpose: The Bill seeks to amend the *Traditional Owner Settlement Act 2010* (Vic) to further provide for grants of Aboriginal title under land agreements, revise the operation of land use activity agreements (LUAAs) and provide for compliance with those agreements, and to revise the operation of natural resource agreements. It also includes amendments to the following Acts to provide for agreements about natural resources with traditional owners: the *Crown Land (Reserves) Act 1978*, the *Fisheries Act 1995*, the *Flora and Fauna Guarantee Act 1988*, *the Forests Act 1958*, the *Land Act 1958*, the *National Parks Act 1975*, the

Prevention of Cruelty to Animals Act 1986, the *Water Act 1989* and the *Wildlife Act 1975*.

Native title implications: The Bill primarily affects grants of Aboriginal title, LUAAs and natural resource agreements.

The amendments are required to allow for grants to be made over parcels of land in the Greater Bendigo National Park which are depth-limited for the purpose of enabling the possibility of underground mining to occur. Section 19(5) currently only allows for grants of an estate in fee simple over depth-limited land. The amendments enable the State to fulfil its commitment in the 2013 Dja Dja Wurrung Recognition and Settlement Agreement to grant Aboriginal title over this area to the Dja Dja Wurrung Clans Aboriginal Corporation. This Bill also ensures that the granting of Aboriginal title does not affect any statutory authorities, contracts or agreements that existed prior to the grant, and clarifies that community benefits may be payable in relation to a grant of Crown land.

In relation to LUAAs, the amendments will enhance the Victorian and Civil Administrative Tribunal (VCAT)'s jurisdiction to resolve disputes and enforce compliance. Applications to VCAT can be made either by a traditional owner group or a responsible person for a determination that: a party to a LUAA has not complied with all of its requirements; a determination of the correct calculation of reasonable costs of negotiation; or a determination of the correct classification of a land use activity, although once a classification has been agreed upon in a LUAA, VCAT cannot change it.

The Bill will also help facilitate the exercise of traditional owner rights to access and use of natural resources by providing for access and use of natural resources to be authorised directly by a natural resource agreement. The Bill also allows for representatives of the parties to make decisions in relation to natural resource agreements, helping to increase flexibility in managing particular resources depending upon local circumstances. Natural resource agreements will also be extended to land owned by traditional owner groups, rather than just public land, in order to reduce the need to consistently seek permission from relevant authorities to undertake activities on their own land.

For further information please see the Explanatory Memorandum or the Second Reading Speech from the Legislative Council.

3. Native Title Determinations

In August 2016, the NNTT website listed 2 native title determinations.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC/ PBC
Town of Borroloola	Rrumburriya Borroloola Claim Group v Northern Territory of Australia (No 2) [2016] FCA 908	11/08/2016	NT	Native title exists in parts of the determination area	Consent	Claimant	Waiting on PBC
Ngurra Kayanta	Helicopter Tjungarrayi on behalf of the Ngurra Kayanta People v State of Western Australia [2016] FCA 910	10/08/2016	WA	Native title exists in the entire determination area	Consent	Claimant	Not registered

4. Registered Native Title Bodies Corporate & Prescribed Bodies Corporate

The Native Title Research Unit within AIATSIS maintains a RNTBC summary document which provides details about RNTBCs and PBCs in each state/territory including the RNTBC name, RNTBC type (agent or trustee) and relevant native title determination information. The statistics for RNTBCs as of 31 August 2016 can be found in the table below.

Information on RNTBCs and PBCs including training and support, news and events, research and publications and external links can be found at nativetitle.org.au. For a detailed summary of individual RNTBCs and PBCs see PBC Profiles.

Additional information about RNTBCs and PBCs can be accessed through hyperlinks to corporation information on the Office of the Registrar of Indigenous Corporations (ORIC) website; case law on the Austlii website; and native title determination information on the NNTT and ATNS websites.

Table 1: National Registered Native Title Bodies Corporate (RNTBCs) Statistics (31 August 2016)

State/Territory	RNTBCs	No. of successful (& conditional) claimant determinations for which RNTBC to be advised
Australian Capital Territory	0	0
New South Wales	6	0
Northern Territory	22	9
Queensland	75	9
South Australia	15	1
Tasmania	0	0
Victoria	4	0
Western Australia	36	2
NATIONAL TOTAL	**158**	**21**

Note some RNTBCs relate to more than one native title determination and some determinations result in more than one RNTBC. Where a RNTBC operates for more than one determination it is only counted once, as it is one organisation.

Source: http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx and Registered Determinations of Native Title and RNTBCs as at 31 August 2016.

5. Indigenous Land Use Agreements

In August 2016, 11 ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
31/08/2016	Barada Barna People/Killarney ILUA	QI2016/010	Area Agreement	Qld	Pastoral, Access
31/08/2016	Barada Barna People/Logan Creek and Cherwell ILUA	QI22016/011	Area Agreement	Qld	Pastoral, Access
31/08/2016	Barada Barna People/Oben Park (aka Harrybrandt West) ILUA	QI2016/012	Area Agreement	Qld	Pastoral, Access
30/08/2016	Barada Barna and Ergon Energy ILUA	QI2016/008	Area Agreement	Qld	Energy, Infrastructure

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
30/08/2016	Widi People of the Nebo Estate #2, Barada Barna and Ergon Energy Shared Country ILUA	QI2016/009	Area Agreement	Qld	Energy, Infrastructure
30/08/2016	Barada Barna People, Widi People and Local Government ILUA	QI2016/014	Area Agreement	Qld	Government, Development
29/08/2016	Barada Barna People and Local Government ILUA	QI2016/007	Area Agreement	Qld	Government, Development
29/08/2016	Pormpuraaw Township Community Development ILUA	QI2016/004	Area Agreement	Qld	Community
26/08/2016	Dipperu National Park ILUA	QI2016/013	Area Agreement	Qld	Government
16/08/2016	Ergon Energy and Darumbal People ILUA	QI2016/006	Area Agreement	Qld	Access, Energy
12/08/2016	Gunaikurnai Land and Waters Aboriginal Corporation, Peter D Howson and Thomas A Howson and State of Victoria ILUA	VI2016/001	Body Corporate	Vic	Extinguishment

For more information about ILUAs, see the NNTT website and the ATNS Database.

6. Future Acts Determinations

In August 2016, 8 Future Acts Determinations were handed down.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
30/08/2016	Raymond William Ashwin (dec) & Others on behalf of Wutha (WC1999/010) and Montezuma Mining Company Ltd and State of Western Australia	WO2105/1013	WA	Objection - Dismissed	In July, the State wrote to all parties advising that Montezuma had asked it to excise from the proposed licence area the portion overlapped by the two registered native title claims, which amounted to 2% of that area. The remaining area is subject to the decision of the Federal Court in *CG v Western Australia (No 2)*, in which the Court determined that native title does not exist in relation to the land and waters concerned. The State granted the licence in August, excluding the area 'affected by Native Title'. Member Shurven dismissed the objection, holding that the Tribunal does not have jurisdiction to conduct an inquiry into an objection application once the licence has been granted.
29/08/2016	Barbara Sturt and Others on behalf of Jaru (WC2012/003) and State of Western Australia and Tremjones Pty Ltd	WO2015/0752, WO2015/0753, WO2015/0754	WA	Objection - Expedited procedure applies	Member Shurven held that the licence area does not correspond with the area referred to in the evidence as being a place where community and social activities are carried out, and furthermore, the proposed licence activities are low impact in nature. Mr Tremlett of the grantee party describes himself as a Bunuba man, who has lived in the Jaru area his whole life, now with his wife, a Jaru woman, and their children. Mr Tremlett stated that he considers himself to be bound by Jaru law, and filed a statement signed by the five members of the Jaru claim group with authority to speak for the country subject to the grants, stating that they give Mr Tremlett permission to explore in those areas, and that there are no sites of significance in those areas.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
25/08/2016	Raymond William Ashwin (dec) & Others on behalf of Wutha (WC1999/010) and State of Western Australia and Evanton Ross Harris	WO2016/0063; WO2016/0064; WO2016/0065	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the Wutha claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.
11/08/2016	Raymond William Ashwin (dec) & Others on behalf of Wutha (WC1999/010) and State of Western Australia and Blue Thunder Resources Pty Ltd	WO2015/0842	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the Wutha claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.
03/08/2016	Walalakoo Aboriginal Corporation (WCD2014/003) and Karajarri Traditional Lands Association AC (WCD2002/001) and State of Western Australia and Boadicea Resources Ltd	WO2015/0441, WO2015/0445	WA	Objection - Expedited procedure applies	Member Shurven found that the information provided to support a finding under s 237(a) that the licence was likely to interfere directly with the carrying on of the community or social activities of the Nyikina Mangala and Karajarri people was too general and did not explain how the licence would interfere. Member Shurven accepted there were sites of importance in the licence area, but concluded that the evidence was again too general to conclude that the sites were more than of ordinary significance under s 237(b). Finally, under s 237(c) Member Shurven found, and the native title parties did not argue, that the licence is not likely to involve, or create rights whose exercise is likely to involve, major disturbance to the land or waters concerned.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
02/08/2016	Parna Ngururrpa AC RNTBC (WCD 2007/004) and Backreef Oil Ltd/Net Oil Pty Ltd/Northern Oilfield Services Pty Ltd and State of Western Australia	WF2016/0004, WF2016/0005, WF2016/0006	WA	Future Act - Dismissed	Member Shurven found that the Tribunal is not entitled to deal with the applications under s 148(a) of the NTA. The three exploration licence applications which had been the subject of the proceedings had been refused by the Department of Mines and Petroleum, and therefore there was no basis upon which the inquiry could proceed.
01/08/2016	Raymond William Ashwin (dec) & Others on behalf of Wutha (WC1999/010) and State of Western Australia and Bradley Paul Vanmaris	WO2015/1014	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the Wutha claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.
01/08/2016	Raymond William Ashwin (dec) & Others on behalf of Wutha (WC1999/010) and State of Western Australia and Mathew Gordon Vanmaris	WO2015/1015	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the Wutha claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.

7. Publications

Central Land Council

Community Development News

The Summer 2016 edition of CLC's Community Development News is available for download**.**

Land Rights News

The August 2016 edition of *Land Rights News Central Australia* is available for download.

Kimberley Land Council

Newsletter

The September 2016 edition of the KLC *Newsletter* is available for download.

South Australian Native Title Services

Aboriginal Way

The Winter 2016 issue of SANTS' *Aboriginal Way* is available for download.

8. Training and Professional Development Opportunities

AIATSIS

Aboriginal Studies Press

Entries for the 2017 Stanner Award close at 5pm (EST) Tuesday 31 January 2017.

Sponsored by AIATSIS, the biennial award is open to all aspiring Indigenous authors of academic works. The author of the winning submission will receive $5000 in prize money, mentoring and editorial support to turn their manuscript into a publication, and publication by the award-winning publishing arm of AIATSIS, Aboriginal Studies Press.

For more information, visit the AIATSIS website.

Australian Aboriginal Studies Journal

Australian Aboriginal Studies (AAS) Journal is inviting papers for coming issues. AAS is a quality multidisciplinary journal that exemplifies the vision where the world's Indigenous knowledge and cultures are recognised, respected and valued. Send your manuscript to the Editor by emailing aasjournal@aiatsis.gov.au.

For more information, visit the journal page of the AIATSIS website.

Department of Prime Minister and Cabinet

New Aboriginals Benefit Account funding round

Under a new Aboriginals Benefit Account (ABA) funding round, Indigenous organisations in the Northern Territory are being invited to apply for funding or projects that provided lasting benefits for Aboriginal people living and working in Northern Territory communities.

The Aboriginals Benefit Account was established under the *Aboriginal Land Rights (Northern Territory) Act* 1976. The account is funded by payments from the Commonwealth equivalent to the value of royalties paid by mining interests on Aboriginal land in the Northern Territory.

Applications under this funding round will open on 23 August and close on 20 September 2016 at 12pm Central Standard Time.

For more information, visit the Department of the Prime Minister and Cabinet website.

Indigenous Remote Archival Fellowship

Indigenous Remote Archival Fellowship 2016-17

A partnership of the Indigenous Remote Communications Association, the National Film and Sound Archive of Australia (NFSA) and AIATSIS, the fellowship is open to Aboriginal and Torres Strait Islander organisations in remote Australia who are developing strategies and structures to archive and preserve cultural heritage materials, particularly in audiovisual formats. Representatives of the successful organisation will travel to Canberra to spend three days at the NFSA and AIATSIS, and take part in a workshop organised in Alice Springs and/or their home community.

To be eligible to apply, candidates must:

- hold a remote audio-visual Aboriginal and Torres Strait Islander collection that is recognised by IRCA, NFSA and AIATSIS;
- be able to nominate workers to travel to and stay in Canberra for three days;
- be able to participate in workshops provided in Alice Springs or in community; and
- be willing to further promote the program in ongoing marketing campaigns.

Applications are close on 16 September 2016. More information, including the application form, is available on the the Indigenous Remote Communications Association's website.

ORIC

ORIC provides a range of training for Aboriginal and Torres Strait Islander corporations about the *Corporations (Aboriginal and Torres Strait Islander) Act* 2006 (CATSI Act), the corporation's rule book and other aspects of good corporate governance.

For further information on training courses and dates, visit the ORIC website.

9. Events

Australian Anthropological Society

Australian Anthropological Society Conference 2016: Anthropocene Transitions

The 2016 conference of the Australian Anthropological Society (AAS) will be hosted by the Department of Anthropology at The University of Sydney in partnership with the AAS.

Date: 12-15 December 2016

Location: University of Sydney, New South Wales

For further information, including the conference program, visit the conference website.

Ngā Pae o te Māramatanga

International Indigenous Research Conference 2016

The 7th biennial Indigenous Research Conference will be hosted by Ngā Pae o te Māramatanga (NPM). The conference will be structured around NPM's key research themes:

- Whai Rawa - Prosperous Indigenous Economies
- Te Tai Ao - Healthy Natural Environments
- Mauri Ora - Indigenous Human Flourishing
- Mahi Auaha - Creative Indigenous Innovation
- Te Reo me Ngā Tikanga Māori - Thriving Indigenous Languages and Cultures

Date: 15-18 November 2016

Location: University of Auckland, New Zealand

Registrations close 31 October. For more information, visit the conference website.

International Indigenous Research Conference 2016 - Pre-conference workshops and events

NPM is hosting three pre-conference workshops:

- Indigenous Data - Indigenous Sovereignty Workshop
- Kai mārika ("Absolutely Food"): Indigenous Food Sovereignty Workshop
- Indigenous Early Career & Post-Graduate Workshop

For more information, visit the conference website.

Date: 14 November 2016

Location: University of Auckland, New Zealand

The Native Title Research Unit produces monthly publications to keep you informed on the latest developments in native title throughout Australia. You can subscribe to NTRU publications online, follow @AIATSIS on Twitter or 'Like' AIATSIS on Facebook.