AIATSIS
AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

WHAT'S NEW IN NATIVE TITLE

December 2015

1. Case Summaries

Wise on behalf of the Kurungal Native Title Claim v State of Western Australia [2015] FCA 1329

1 December 2015, Consent Determination, Federal Court of Australia, Broome, Western Australia, Gilmour J

In this matter, Gilmour J recognised the native title rights and interests of the Kurungal People in relation to land and waters covering approximately 887 square kilometres south-east of Fitzroy Crossing in the Kimberley, Western Australia. The area is within the Christmas Creek Pastoral Lease. The claim was first filed in October 1997 and amended twice, most recently on 31 January 2012. The respondent parties to the application were the State of Western Australia, the Shires of Derby/West Kimberley, Halls Creek, Klopper Holdings, and Telstra Corporation.

The non-exclusive native title rights and interests recognised include rights to access and move freely through and within the area; to live; camp; conduct cultural activities; maintain and protect sites of cultural significance; hunt, fish and gather and take natural resources and light fires for domestic and non-commercial communal purposes within and from the area.

Gilmour J noted that there was an issue in the description of the native title holders as there was an inconsistency between the description in the original Application Form and the Schedule 5 description. Four reasons were given to explain this discrepancy. Firstly, Form 1 included two categories of claimants – the senior generation of claimants in 1997 and deceased claim group ancestors. The description required amendment because members of the senior generation were now deceased and so the categories were amalgamated. The name 'Putu Putu' needed to be removed as there was no information about that ancestor nor did any Applicant identify as being descended from that ancestor. Schedule 5 also includes additional names to allow for listed ancestors to be taken back a further generation. Lastly, Schedule 5 corrected typographic errors and omissions. Gilmour J accepted the Schedule 5 description.

The Court granted the native title holders twelve months from the date of the determination to nominate a prescribed body corporate, with the determination to take effect on the day of the nomination.

Banjima People v State of Western Australia (No 2) **[2015] FCAFC 171**

4 December 2015, Appeal from the Federal Court of Australia, Adelaide, South Australia via video-link to Perth, Western Australia, Mansfield, Kenny, Rares, Jagot and Mortimer JJ

In this matter, the State of Western Australia sought to have the Full Federal Court reconsider its reasons for judgement in *Banjima People v State of Western Australia* (2015) [2015] FCAFC 84 (*Banjima FC*). The Full Court had ordered that the parties file an amended determination of native title reflecting the judgement recognising the exclusive native title rights and interests of the Banjima People. This further appeal was made in respect of the Full Court's rejection of the State's grounds of appeal 1(c) and 4, in coming to their earlier decision to reaffirm the determination of native title. The application was dismissed. Grounds 1(c) and 4 were as follows:

Ground 1(c)

The State argued that the primary judge erred in making a determination of exclusive possession native title rights and interests as the claimants had not established that their traditional laws and customs were enforced against Europeans, and were therefore not rights of exclusive possession enforceable 'as against the whole world'. In response to the State's argument on appeal, which focussed in particular on the right to control access to their land, the Banjima people argued that it was the existence of the right to exclude, not the exercise of the right, which was critical.

The Full Court held that there was sufficient evidence to establish that members of the claim group and other Indigenous peoples observed the traditional laws and customs of the claim group, but the Banjima people had no capacity to enforce their

laws and customs against Europeans. The latter point was not considered to be adverse to the claim, as Europeans stood outside the relevant Indigenous belief system (citing, in support, *Griffiths v Northern Territory of Australia* [2007] FCAFC 178 at [127] (*Griffiths*).

In bringing the application, the State contended that it had not and could not anticipate that the Full Court would hold that the efficacy of the custom for the exclusion of Europeans would be found irrelevant to the question whether the right exists to exclude Europeans. It also argued that the Full Court had overlooked the fundamental tenet that as a determination can only reflect rights founded in traditional laws and customs and cannot create rights, the determination cannot be sustained because it grants rights of exclusive possession enforceable 'as against the whole world'. The Full Court rejected this argument, stating that the State's submission was inconsistent with *Griffiths*, and failed to recognise that the determination of native title must give effect to traditional laws and custom immediately before sovereignty, when the 'whole world' was constituted by Indigenous peoples. It followed that the State's submission failed to recognise that the mere fact that Europeans had no regard for a traditional custom, in a context where native title rights were not recognised and could not be enforced as against Europeans post-sovereignty, did not necessarily say anything about the Banjima people's continued observance of the traditional law and custom.

Ground 4

Ground 4 of the State's submissions on appeal related to three parcels of unallocated Crown land over parts of which two valid exploration licences were operating over at the time the application for a determination of native title was filed in the Court. The claimants had made a s 47B of the NTA application over those areas of land, which if successful, would operate to disregard any extinguishment of native title rights and interests on the vacant crown land. The Full Court had held that the licences did not fall within the exclusionary criteria contained within s 47B, which would displace the section's application if met.

The State contended on appeal that the primary judge erred in failing to find that the licences fell within s 47B(1)(b)(ii) of the NTA so that all native title was extinguished over the three areas of unallocated crown land within the claimed area. The Full Court confirmed the decision of the primary judge in line with the reasoning in *Northern Territory v Alyawarr* [2005] FCAFC 135 (*Alyawarr*) at [187]. It was held in that case that the leases in question did not constitute 'permissions' or 'authorities' to use the land for a 'particular' or 'public' purpose. The State's argument that the provisions did not mandate a requirement for any use to be made of the land or waters to which it applied was also rejected in line with that authority.

The Full Court ruled that the State was attempting to reargue an issue that it addressed in argument on appeal. The Full Court further ruled that the State's argument that the two operative phrases of s 47B(1)(b)(ii) 'to be used' and 'for a

particular purpose' require separate consideration was a new argument, which was not permitted to be put, and in any case, should be rejected.

The Full Court held that nothing in the State's submissions in support of its interlocutory application indicated any proper reason to re-consider the court's conclusions and the application was dismissed.

Coulthard v State of South Australia [2015] FCA 1379

8 December 2015, Consent Determination and Extinguishment, Federal Court of Australia, Adelaide, South Australia, Mansfield J

In this decision, Mansfield J recognised the native title rights and interests of the Adnyamathanha people in relation to lands and waters to the east of Lake Frome in the vicinity of the Flinders Rangers in South Australia. The list of respondent parties was extensive (see Schedule 6), and included the State of South Australia. Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC was nominated to be the prescribed body corporate for the determination area.

The non-exclusive native title rights and interests recognised include rights to access and move freely through and within the area; to live; camp; conduct cultural activities; maintain and protect sites of cultural significance; hunt, fish and gather and take natural resources and light fires for domestic and non-commercial communal purposes within and from the area. Native title was held not to exist in relation to areas covered by public works, minerals, petroleum, or natural reservoirs.

Mansfield J recognised that the Adnyamathanha people had entered a Memorandum of Understanding (MOU) with the Malyangapa people. This agreement provides that the Malyangapa will withdraw a native title claim that partially overlaps with the determination area. Further, the Adnyamathanha people recognise that the Malyangapa people have traditional rights and interests in relation to the overlap area. In their post-determination dealings, the Adnyamathanha people will ensure the participation of two suitably chosen Malyangapa people and that where negotiations result in benefits, those benefits will be shared equally. The MOU also acknowledges a reverse situation in relation to a native title application of the Malyangapa people.

Mansfield J made comments about the role of the State in the native title process. His honour noted that there was a difficult balance which the State needed to find between protecting the community's interests and its role in the native title system. His Honour also drew upon North J's comments in *Lovett on behalf of the Gunditjmara People v State of Victoria* [2007] FCA 474, noting that one reason for the often inordinate time taken to resolve cases is the over demanding nature of the investigation conducted by State parties. Mansfield J continued that states can make legitimate inferences without the need for strict proof or direct evidence. Those parties can focus on contemporary expressions of traditional laws and customs and

pay less regard to laws and customs that may have ceased, inferring from this that contemporary expressions are sourced in earlier laws and customs. His Honour recognised that this inference can be made regardless of inevitable adaptation and evolution of the laws and customs of a society.

Lastly, Mansfield J noted that in relation to 'connection', the relevant consideration is the content of the traditional laws and customs, the nature and extent of the connection with land required under those laws and customs, and the relationship between the laws and customs and rights or interests in land.

Coulthard v State of South Australia [2015] FCA 1380

8 December 2015, Consent Determination and Extinguishment, Federal Court of Australia, Adelaide, South Australia, Mansfield J

In this decision, Mansfield J recognised the native title rights and interests of the Adnyamathanha people in relation to lands and water in an area called Yappala to the north of Hawker in South Australia, including Hookina and sections of Barndioota. The claim was first filed on 18 May 2010 and amended on 2 December 2010. The respondent parties include the State of South Australia and South Australian Native Title Services. Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC was appointed as the prescribed body corporate for the area.

The Court found that the Adnyamathanha people hold exclusive rights to possession, occupation, use and enjoyment of the area to the exclusion of all others in relation to those areas set out in Schedule 1 of the determination.

In relation to those areas listed in Schedule 1A to the determination, the Court recognised non-exclusive native title rights and interests including rights to access and move freely through and within the area; to live; camp; light fires for domestic purposes; engage and participate in cultural activities; maintain and protect sites of cultural significance; hunt, fish, gather and use natural resources within the area.

Native title was held not to exist in relation to those areas covered by public works, minerals, petroleum, or natural reservoirs, or certain parcels of land in Barndioota.

In a previous decision, *Adnyamathanha People No 3 Native Title Claim v State of South Australia* [2014] FCA 101, the court held that s 47A of the *Native Title Act 1993* (Cth) applied to the perpetual leases and freehold title held by the Viliwarinha Yura Aboriginal Corporation so that any prior extinguishment is disregarded. Exclusive native title was able to be recognised over much of the area due to the application of ss 47A or 47B of the Act.

Watson on behalf of the Nyikina Mangala People v State of Western Australia (No 7) **[2015] FCA 1404**

9 December 2015, Review of Taxation Costs, Federal Court of Australia, Perth, Western Australia, Barker J

In this matter, Barker J dismissed the appeal brought by Oil Basins for a reduction or permanent stay of the costs order, and refused to disallow certain travel, and flights and accommodation expenses. The respondents to the claim were the State of Western Australia and Oil Basins.

In February 2014, Gilmour J ordered that the costs of the Nyikina Mangala People's native title determination application were to be paid by Oil Basins on an indemnity basis. The costs orders were then confirmed on appeal. Two questions relating to costs arose in this case:

1. Is Oil Basins liable to indemnify the claimants in respect of any costs?
2. Should the travel allowances, and flights and accommodation expenses be disallowed?

Question One

This question relates to the application of s 85A of the *Native Title Act 1993* (Cth), which deals with the costs of a proceeding. The primary argument made by Oil Basins was that because the claimants had no liability to pay their lawyer for costs incurred, and further did not pay costs, there was nothing to indemnify. The claimants relied on *Far West Coast Native Title Claim v State of South Australia (No 8)* [2014] FCA 635 (*Far West Coast No. 8*) in support of the proposition that the claimants were entitled to claim costs even though they had no legal liability to pay costs to their legal representative. Barker J accepted Mansfield J's reasoning.

Mansfield J held in *Far West Coast No.8* that Native Title Representative Bodies (NTRB) incur costs in providing legal assistance to claimants, and though the claimants may not expect to be liable to pay the NTRB, the relationship is such that there is an underlying understanding that such a liability may exist. His Honour later noted that if an NTRB is unable to seek a costs order when successful, no costs can be awarded regardless of how a respondent party conducts its case, whereas if an NTRB is unsuccessful, that party is left open to an adverse costs order. Mansfield J said this outcome is clearly not what s 85A contemplates. For these reasons, Barker J rejected Oil Basins' application on this point.

Question Two

Oil Basins challenged the bill of costs in relation to two types of costs. Firstly, Oil Basins challenged 7 travel allowance items totalling $2,184.50, contending that remittance advices had been provided where invoices or receipts were required. The remittance advices did not reveal what the claim was for. However, Barker J

determined that it was sufficiently clear from the affidavit of Ms Cole that the payments made were travel allowance payments.

Secondly, Oil Basins challenged 5 items in respect of flights and accommodation totalling $2,905.54, of which $2,641.41 was allowed by the registrar. Oil Basins submitted that Ms Cole unnecessarily flew to a directions hearing and the hearing of an interlocutory application where she could have attended via telephone. Barker J ruled that the registrar's exercise of discretion on these expenses was not 'manifestly wrong.' His Honour dismissed these objections.

State of Western Australia v Willis on behalf of the Pilki People **[2015] FCAFC 186**

16 December 2015, Appeal from the Federal Court, Perth, Western Australia, Dowsett, Jagot and Barker JJ

This matter concerned an appeal to the Full Court of the Federal Court, lodged by the State of Western Australia (the State) on appeal from a ruling of the Federal Court reaffirming a native title determination recognising the exclusive native title rights and interests of the Pilki people. The determination included the right to take and use resources from the determination area for any purpose. The State appealed to the Full Court, contending that the Pilki people had not established the right to take and use resources for commercial purposes. All three judges found in favour of the Pilki people, though each wrote a judgement based on different lines of reasoning.

The native title determination was in relation to land in the Western Desert of Western Australia, between the Nullarbor Plain and the Great Victoria Desert surrounding Jubilee Lake. The north west of the determination area borders the Neale Junction Nature Reserve and the north of that area adjoins the Ngaanyatjarra native title determination area. The south east of the determination area borders the Great Victoria Desert Nature Reserve and the balance of the eastern side of the application area borders the Spinifex native title determination area.

The State lodged the appeal on six interrelated grounds related to the type and strength of evidence under consideration and the application of *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; [2002] HCA 58 (*Yorta Yorta)* in characterising s 223 of the NTA. The state summarised in their submissions as follows:

…contrary to *Yorta Yorta*, his Honour:

(a) failed to consider the particular content of the laws and customs which existed at sovereignty because his Honour relied upon evidence of contemporary claimants as to belief of ownership of the land and ruled that evidence of activities was not required to prove acknowledgment and observance of laws and customs; and

(b) by doing so, failed to consider the relationship between the laws and customs now acknowledged and observed, and those that were acknowledged and observed before sovereignty [(Grounds 1, 2, 5 and 6)].

…the [primary judge]

(a) erred in concluding that expert evidence as to trading activity in areas surrounding and including the claim area was evidence of a right to take for commercial purposes (Ground 3); and

(b) erred in concluding that the expert evidence supported a finding that the Pilki People's ancestors had engaged in extensive and ancient trading activities (Reasons at [123]) (Ground 4).

The State had made a number of admissions in response to the pleadings filed by the Pilki people, including that the claimants are members of the relevant society and observe the traditional laws and customs of that society, and have a connection with the determination area by virtue of that observance; that those laws and customs are normative and traditional; that the Pilki people share beliefs in the Tjukurrpa; and that the Pilki people possess rights to take and use the fauna and flora from the determination area for the purpose of living and surviving on that area only. The State denied that the Pilki people have the right to take and use the flora or fauna for commercial purposes.

The Pilki people maintained that they possess rights under the traditional laws and customs to take and use the resources of the claim area for any purpose. Four claim members gave evidence in support of their case: Mr Walker, Mr Hogan, Ms Kennedy and Mr Sinclair. Dr Cane, an anthropologist, was also called by the claimants to give evidence.

Dowsett J

Dowsett J characterised the issue to be decided as a question of whether traditional law and custom conferred on the claim group the right to take resources from the claim area for commercial purposes.

His Honour considered that the evidence of the Pilki people was at best equivocal, and that of Dr Cane was subject to the caveat that it 'generally did not relate directly to the claim area or the relationship of the claim group to it'. His Honour however accepted that the evidence established that the claim group is entitled to access and take resources from the claim area, and that resources are limited within that area. Dowsett J accepted the evidence of Dr Cane that there is a long history of trading in the Western Desert, that major trade routes pass by, but not through the claim area, and that there is a reliable source of water at the Pilki soak that was likely used by those travelling along the trade routes. His Honour was unable to accept on the evidence that the claim group's ancestors, prior to first contact, took resources from the claim area for any purpose, including commercial purposes.

Dowsett J nonetheless agreed with the primary judge and Jagot J that it was not necessary for the claimants to prove that resources were taken for commercial purposes. His Honour considered that the passage at [80] in *Yorta Yorta* contemplates proof of the content of traditional laws and customs by reference to events subsequent to first contact, but does not require evidence of the exercise of the right in question in every circumstance. Dowsett J agreed that the relevant evidence might take different forms. His Honour considered that the question will always be whether the evidence satisfies the court, on the balance of probabilities, that a claimed right or interest is recognised by traditional law and custom and has not been abandoned. The question on appeal to the Full Court then became whether the primary judge correctly inferred that the group possessed the claimed right, in the absence of direct evidence of pre-sovereignty and subsequent usage.

Dowsett J rejected the State's submission that the right to take resources should be accepted in relation to non-commercial purposes only. His Honour considered that no basis for such a distinction existed in the claimant's evidence or that of the State. The claim group members' evidence established the claim group's right to take resources without any limitation, and the absence of evidence of trading was more likely attributable to the lack of resources than to any absence of a right to take for that purpose.

Jagot J

Jagot J considered that the primary judge had correctly identified the remaining issue to be resolved between the parties as 'the nature and description of the right of the claim group to access and take resources of the application area'.

The State's Argument

The State argued that the primary judge based his conclusions solely on the evidence of the members of the claim group, which the State contended amounted to a 'belief' that the area 'belonged' to them. It was argued that such reasoning was contrary to *Yorta Yorta* at [56], which requires evidence establishing the content of traditional laws and customs and that the content has normative effect, such effect being demonstrated by things done on or in relation to the land. The State considered that the primary judge reasoned that a 'mere assertion' of ownership in absence of an inquiry into the content of the traditional laws and customs that existed at sovereignty and the particular rights held under those laws and customs was sufficient to establish the right claimed. It was argued that to do so also undermined the concept of native title as a 'bundle of rights' established in *Western Australia v Ward* (2002) 213 CLR 1; [2002] HCA 28 (*Ward*) at [82] and [95]. This meant that the primary judge had failed to find, as required, that the traditional laws and customs of the Pilki people at sovereignty conferred a right to take resources for any purpose and that such right had continued substantially uninterrupted since sovereignty.

Jagot J identified six difficulties with the State's submissions:

1. Her Honour rejected the characterisation of the evidence of the lay witnesses as mere assertion that traditional laws and customs entitle them to do everything on, in or under the land. Her Honour held that such a characterisation took the evidence out of the context of the overall hearing and, in particular, the admissions which the State had made and which formed the foundation for the way in which the matter proceeded before the primary judge. Her Honour held that within that context, the primary judge's reasoning was in line with *Yorta Yorta* as cited. Jagot J commented that if the evidence supports a positive finding that the right was never exercised before sovereignty the right should nevertheless be found to exist, but rather that evidence of the exercise of the right is not an essential pre-condition to the finding of the right.

   Her Honour considered that the primary judge had held, in line with *Yorta Yorta* at [84], that it was 'not necessary as a matter of logic to prove that activity in conformity with traditional laws and customs has taken place in order to establish that a right exists. In many cases, proof of activities undertaken pursuant to laws or customs will assist in proving the existence of the right. But evidence of the activity is not necessary'. Furthermore, Jagot J considered that the primary judge in referring to 'traditional laws and customs' meant that there had been proved to exist laws and customs, of the required normative effect, which united the relevant group pre-sovereignty and had continued to do so. It was open for the primary judge to do so, given that those facts were not in dispute by virtue of the State's admissions

2. Jagot J did not accept that the claimant evidence was to be understood in isolation from the expert evidence of Dr Cane, nor that had the primary judge based his reasoning solely on the evidence of the claimants. The primary judge stated that the issue was to be resolved as a matter of evidence, meaning all of the evidence.

3. Jagot J considered that the primary judge expressly found that the evidence established that the claimants had, at sovereignty, a right to take resources from their land for any purpose, and that right is continuing.

4. Her Honour rejected the submission that there was no evidence to support the finding of a right to take resources for any purpose. Jagot J considered that both the claimant and expert evidence established the right claimed, and that the State's reliance on the evidence to support the contrary proposition was misplaced, and in the case of the expert evidence, was based on a selective reading of the evidence given.

5. Her Honour rejected the argument that the primary judge's reasoning was not inclusive of Dr Cane's evidence regarding hardwood in the area, and that that evidence was therefore immaterial. Jagot J considered this to be a narrow

reading of the reasons, given that evidence was quoted in his Honour's reasons.

6. Jagot J considered that the State's appeal submissions drew an arbitrary distinction between the use of resources for domestic, communal, spiritual, ceremonial and exchange purposes on hand and commercial purposes on the other. Such a characterisation was not supported by the evidence, nor had the State established why the evidence supported the contention that the evidence supported the use of resources for all purposes with the exception of commercial purposes.

For those reasons, Jagot J dismissed the State's appeal.

Barker J

Barker J framed the issues in appeal to be whether the judge erred in finding that:

1. the evidence of the four Pilki witnesses, even without evidence of trading activity, established the claimed right; and
2. in any event, the evidence of Dr Cane, and also that of the Pilki witnesses, including of trading activity established the claimed right.

Question 1

Barker J held that it was not open to the primary judge to conclude, as his Honour had, that the evidence given by the four Pilki witnesses was enough, in the absence of further evidence of trading activity, to establish the right to take and use resources for any purpose, as claimed. Barker J considered the test to be met to be: 'it is necessary…for the claimants to show that the right contended for was possessed both at sovereignty and, according to the test laid down in *Yorta Yorta*, today under traditional laws and customs'. His Honour noted that in the ordinary course, it is expected that claimants would lead evidence of the exercise of such a right during the period between sovereignty and the present (activity evidence) to ensure that the court is satisfied that the right claimed was possessed at sovereignty, and continued to be so, generation by generation. Barker J noted that it is one thing to assert a right, and another to support that assertion with corroborating evidence. Ultimately, the question of activity evidence will depend on the nature and quality – relevance and probative value – of the evidence led in each particular case.

In relation to the evidence of the four Pilki witnesses, the primary judge had found that each of them had given evidence that they owned the land and were entitled to take and use the resources without limitation. Barker J considered that the evidence given by Dr Cane that the term 'ownership is confusing and is better framed in the context of "rights" in country and resources', the dicta of Olney J in *Yarmirr v Northern Territory (No 2)* [1998] FCA 771 (*Yarmirr*) to the effect that the term 'ownership' adds nothing to the understanding of the rights claimed without reference to the incidents that attach to them, and the statements of the plurality judges in *Ward* around the need to go beyond statements of 'possession' or 'occupation' when

determining specific rights and interests possessed under traditional laws and customs, need to be taken into account when evaluating the weight of evidence. Barker J held that in light of that authority, statements of 'ownership' do not of themselves support the determination of a right to take resources for any purpose. His Honour concluded that further evidence is necessary to establish that the right is possessed.

Barker J held that the relevant evidence of the four Pilki witnesses constituted evidence of a 'right to control access to and use of resources by others under traditional laws and customs, but not to take for any purpose resources in the claim area'. His Honour concluded that while activity evidence is not necessary in every case to the prove possession of a right, in the particular circumstances of this case, more evidence beyond that of the Pilki witnesses was required to establish the right contended for.

Question 2

Barker J ruled that in light of the evidence given by Dr Cane, it was open to the primary judge to conclude that at sovereignty, the Pilki people customarily used resources for subsistence and ceremonial purposes, as well as for other purposes that can be characterised as commercial in nature.

Barker J considered that the activity evidence of the four Pilki witnesses, including that regarding the sale of necklaces made from seeds, artefacts, baskets, claps sticks, and the shooting and selling of rabbits by younger members of the claim group, pointed to a belief by the claimants of a right to use the resources of their land as they wish, and was relevant to the question of continued possession of the right to take and use resources for any purpose.

His Honour considered that it was open to the primary judge to rely on the evidence of the exercise of the right to take for any purpose resources in the claim area provided by Dr Cane in describing the trading activities of claimants in more recent times, as well as the evidence of the Pilki witnesses to find, as his Honour did, that the activities were not of a different nature to those engaged in at sovereignty and, given the nature of Pilki country and the limited resources within it, could not be said to be insubstantial.

Barker J noted in relation to the distinction made between commercial and other purposes in the State's submissions that such a characterisation is too narrow, and care must be taken, as the Court in *Yorta Yorta* and *Ward* said, not to conflate indigenous rights concepts with those that fit the lexicon of the common lawyer. His Honour preferred to characterise the question as whether the Pilki people 'were entitled, as of right, opportunistically to use the resources of their country (subject to any traditional proscriptions) for any purpose'.

Yandruwandha/Yawarrawarrka Native Title Claim and the State of South Australia & Ors

16 December 2015, Consent Determination, Federal Court, In the vicinity of the Township of Innaminka, South Australia, Australia, Mansfield J

In this matter, Mansfield J recognised the native title rights and interests of the Yandruwandha and Yawarrawarrka people in relation to parts of the determination area, being land and waters in the vicinity of the intersection between the state borders of South Australia, Queensland and New South Wales. The Yandruwandha Yawarrawarrka Traditional Land Owners (Aboriginal Corporation) was nominated to manage the land on behalf of the native title holders.

The non-exclusive rights recognised include rights to, in accordance with the traditional laws and customs of the Yandruwandha and Yawarrawarrka people, access and live on the determination area, to fish, hunt, gather and use the natural resources of the area and to conduct and engage in cultural activities on the determination area. The rights are to be exercised for personal, domestic and communal use only.

The State, the native title holders and the producers, as defined in the *Cooper Basin (Ratification Act) 1975* (SA), agreed to execute an Indigenous Land Use Agreement (the Yandruwandha Yawarrawarrka Native Title Claim Settlement ILUA) to the effect that native title is extinguished over those areas as agreed.

The full judgement was not available at the date of publishing.

Wurrunmurra on behalf of the Bunuba People v State of Western Australia **[2015] FCA 1480**

22 December 2015, Consent Determination, Federal Court, Perth, Western Australia, Barker J

In this matter, Barker J recognised the native title rights and interests of the Bunuba People in relation to land and waters spanning the vicinity of Fitzroy Crossing in the Kimberley region of Western Australia. This application (Bunuba Part B) represents Part B of WAD 6133 of 1998 (Bunuba Part A) and includes:

- a portion of Brooking Springs Pastoral Lease N050174 (formerly 3114/573, Crown Lease 865/1967)
- a portion of Reserve 31107, Lot 340 on Deposited Plan 52596 (Windjana Gorge National Park)
- portions of Lot 341 on Deposited Plan 52596 (formerly part of Reserve 17206 for the purpose of Stock Route and Pastoral Lease 702/98 abutting Reserve 31107) and
- a portion of Pastoral Lease N050221 (previously Fossil Downs Pastoral Lease 3114/1248).

The determination states that native title does not exist over a portion of Windjana Gorge National Park, which is a vested reserve.

Bunuba Part B is a combination of twelve applications lodged with the National Native Title Tribunal between 1996 and 1998, and consolidated by orders of the Court on 17 August 1999. It covers the remaining portions of land that were excluded from the Part A determination of Bunuba Part A, *Wurrunmurra v State of Western Australia* [2012] FCA 1399. The respondent parties to Bunuba Part B are the State of Western Australia and Kenneth Andrew Vivian (as Executor for Estate of Jillian Mary Jenyns) of Brooking Springs Station.

A further two native title applications were determined in favour of the Bunuba People on this occasion: WAD 94 of 2012 (Bunuba #2) and WAD 95 of 2013 (Bunuba #3). It was held in all three determinations that the Bunuba Dawangarri Aboriginal Corporation RNTBC shall hold the native title in trust for the Bunuba People.

Mr Vivian of Brooking Springs Station agreed to the terms of the Determination on the basis of having reached agreement with the Bunuba People in relation to those portions of the Brooking Springs pastoral lease that are located within the area subject to this determination. That agreement will be executed and an application will be made for it to be registered as an Indigenous Land Use Agreement (ILUA) as a prescribed body corporate agreement pursuant to s 24BG of the *Native Title Act 1993* (Cth).

The non-exclusive rights and interests recognised include the right to access and move freely through and within each part of the area and the right to live being to enter and remain on, camp and erect shelters and other structures for those purposes, as well as rights to hunt, fish, take flora and fauna and light fires for personal, domestic, cultural and non-commercial communal purposes and engage in cultural activities on the determination area.

Brooking on behalf of the Bunuba People (Bunuba #2) v State of Western Australia **[2015] FCA 1481**

22 December 2015, Consent Determination, Federal Court, Perth, Western Australia, Barker J

In this matter, Barker J recognised the native title rights and interests of the Bunuba People in relation to land and waters spanning the vicinity of Fitzroy Crossing in the Kimberley region of Western Australia, with the exception of the area covered by the Warlangurru 2 native title application, which was filed on 21 December 2015. A further two native title applications were determined in favour of the Bunuba People on this occasion: Part B of WAD 6133 of 1998 (Bunuba Part B) and WAD 95 of 2013 (Bunuba #3). It was held in all three determinations that the Bunuba Dawangarri

Aboriginal Corporation RNTBC shall hold the native title in trust for the Bunuba People.

Bunuba #2 was filed on 10 April 2012 over an area of approximately 9759 square kilometres of land and waters surrounding Bunuba Part A (*Wurrunmurra v State of Western Australia* [2012] FCA 1399). The respondent parties are the State of Western Australia, the Shire of Derby/West Kimberley, Oil Basins Limited, Bullurea Pastoral Company, Jubilee Downs Pastoral Company, Callum Hugh MacLachlan, Jock Hugh MacLachlan, Napier Corporation and Kenneth Andrew Vivian (as Executor for Estate of Jillian Mary Jenyns). The entirety of the area claimed on Bunuba #2 was to be determined, but was prevented from being so due to the filing of a Form 1 Native Title Application on behalf of the Warlangurru People, which overlaps part of Bunuba #2 in the south of the claim area. The remaining unaffected area of the Bunuba #2 claim area was subject to this determination.

It was recognised that the Bunuba People hold exclusive rights of possession, occupation, use and enjoyment over the area to the exclusion of all others, except in relation to flowing and underground waters. In relation to flowing and underground waters, the right to use and enjoy that resource was recognised, including the right to hunt, fish, take and use resources for personal, domestic, cultural or non-commercial communal purposes.

Aiken on behalf of the Bunuba People (Bunuba #3) v State of Western Australia [2015] FCA 1482

22 December 2015, Consent Determination, Federal Court, Perth, Western Australia, Barker J

In this matter, Barker J recognised the rights and interests of the Bunuba People in relation to land and waters spanning the vicinity of Fitzroy Crossing in the Kimberley region of Western Australia. Bunuba #3 was filed on 5 April 2013, over the portions of Lot 341 on Deposited Plan 52596 already claimed in Bunuba Part B (Part B of WAD 6133 of 1998) for the purpose of seeking the benefit of s 47B of the *Native Title Act 1993* (Cth) to the effect that any prior extinguishment of any native title rights and interests could be disregarded allowing for a determination of exclusive native title rights and interests. The respondent parties were the State of Western Australia and the Shire of Derby/West Kimberley.

A further two native title applications were determined in favour of the Bunuba People on this occasion: Part B of WAD 6133 of 1998 (Bunuba Part B) and WAD 94 of 2012 (Bunuba #2). It was held in all three determinations that the Bunuba Dawangarri Aboriginal Corporation shall hold the native title in trust for the Bunuba People.

It was recognised that the Bunuba People hold exclusive rights of possession, occupation, use and enjoyment to those areas to the exclusion of all others, except

in relation to flowing and underground waters. In relation to flowing and underground waters, the right to use and enjoy that resource were recognised, including the right to hunt, fish, take and use resources for personal, domestic, cultural or non-commercial communal purposes.

Chubby on behalf of the Puutu Kunti Kurrama and Pinikura People v State of Western Australia (No 2) [2015] FCA 1505

24 December 2015, Joinder Application, Federal Court, Perth, Western Australia, Barker J

This matter concerned an application for costs filed by the applicants of a native title claim in respect of a joinder application. On 19 August 2015, Ms Joan Ashburton and Ms Sandra Hayes (the joinder applicants), members of the claim group on behalf of which the native title claim had been brought, applied to be joined as respondents to that claim. Barker J dismissed the application for joinder on 27 August 2015 (*Chubby on behalf of the Puutu Kunti Kurrama and Pinikura People v State of Western Australia* [2015] FCA 964). The applicant then applied for costs. Barker J ordered that the joinder applicants pay the costs of the applicants.

S 85 of the Native Title Act 1993 (Cth) (NTA) gives the Court the discretion to order costs against a party where their conduct of the proceedings has been unreasonable. The applicant noted in their submissions that s 85(s) does not apply to the joinder applicants if read literally, as interlocutory applicants are not parties, but argued that in the circumstances, the principles generally applicable to that provision generally should be applied to exercise of the costs discretion contained in s 85(1).

The applicant submitted that the fact that the interlocutory applicant was represented by a representative Aboriginal/Torres Strait Islander body does not preclude an award of costs. See *Far West Coast Native Title Claim v State of South Australia (No 8)* [2014] FCA 635; *Watson on behalf of the Nyikina Mangala People v State of Western Australia (No 7)* [2015] FCA 1404.

The applicant's argument in favour of the award of costs against the joinder applicants included the fact that the application was brought shortly before the scheduled consent determination of the native title claim, that the application was brought despite clear authority that the circumstances in which members of a claim group will be joined as respondent parties are rare, meaning the application lacked merit, and that it was unreasonable for the joinder applicants to applicants to use the Court process to seek to agitate their views when they had had the opportunity to agitate those views as part of the extensive claim group authorisation processes leading up to the proposed consent determination.

In response, the joinder applicants argued that the application was sincerely and genuinely made for the purpose of seeking to ensure that the terms of the then

proposed consent determination properly reflected the traditional laws and customs of the Kurrama and Pinikura people. They considered that the consent determination ought to provide for a Kurrama prescribed body corporate over Kurrama land, rather than the proposed approach seeking to have Kurrama land controlled by the land committee. Furthermore, it was contended that the terms of the consent determination is a matter on which reasonable minds may differ and must be tailored to the relevant traditional laws and customs, as suggested by Beaumont and Von Doussa JJ in *Western Australia v Ward and Others* [2000] FCA 191; (2000) 99 FCR 316 at [205].

His Honour held that the conduct of the joinder applicants in bringing their application at the eleventh hour before the proposed consent determination in this proceeding, should be seen as an unreasonable course of conduct that justifies an award under s 85A(1) of costs to the applicant for responding to the joinder application. Barker J considered that the issues raised by the joinder applicants had been resolved well before the joinder application was made, and further that the applicant had performed the duties required of it, meaning the joinder application lacked merit. His Honour considered that the strong views held by the joinder applicants about the consent determination were not to the point, given the decision making processes that had occurred prior to the decision to consent to the proposed determination.

Raymond William Ashwin (dec) & Ors on behalf of the Wutha People v Meridian 120 Mining Pty Ltd [2015] NNTTA 56

1 December 2015, Inquiry into Expedited Procedure Application, National Native Title Tribunal, Brisbane, Queensland, Mr J McNamara

In this matter, the National Native Title Tribunal (the Tribunal) dismissed an objection against the proposed grant of an exploration licence attracting an expedited procedure to Meridian 120 Mining. The Wutha native title claim overlaps the licence area by 45 per cent.

On 20 May 2015, the Government of Western Australia (the State) gave notice of its intention to grant an exploration licence to Meridian 120 Mining without requiring them or the State to negotiate with the Wutha people. The Wutha people lodged an objection on 21 May 2015, and the respondent advised on 6 October 2015 that they wanted the matter to proceed to an inquiry. Both parties were directed to provide contentions and evidence by 17 November 2015. No contentions were received from the Wutha people, and no response was received to the State's request to dismiss the application. The Tribunal ruled that the Wutha people had been given sufficient opportunity to comply with the directions and that it would be unfair to prejudice the other parties with further delays.

Raymond William Ashwin (dec) & Ors on behalf of the Wutha People v Colin Robert Neve **[2015] NNTTA 57**

1 December 2015, Inquiry into Expedited Procedure Application, National Native Title Tribunal, Brisbane, Queensland, Mr J McNamara

In this matter, the National Native Title Tribunal (the Tribunal) dismissed an objection against the proposed grant of a prospecting licence attracting an expedited procedure to Mr Colin Robert Neve. The Wutha native title claim wholly overlaps the licence.

In May 2015, the Government of Western Australia gave notice of its intention to grant two prospecting licenses to Mr Neve without requiring him or the State to negotiate with the Wutha People. The Wutha People lodged an objection on 21 May 2015 and Mr Neve subsequently advised that he wanted the matter to proceed to an inquiry. Both parties were directed to provide contentions and evidence by 17 November 2015. No contentions or evidence was produced and no responses to the State's request to dismiss the matter were received. The Tribunal ruled that the Wutha People had been given sufficient opportunity to comply with the directions and that it would be unfair to prejudice the other parties with further delays.

Barrick (Plutonic) Pty Limited v Miriam Atkins and Others on behalf of Gingirana and Others **[2015] NNTTA 58**

4 December 2015, Inquiry into a Future Act Determination Application, National Native Title Tribunal, Brisbane, Queensland, Mr JR McNamara

In this matter, the National Native Title Tribunal (the Tribunal) determined that the granting of a mining lease to Barrick (Plutonic) may be done. The lease is located 194 kilometres south of Mount Newman in the Shire of Meekatharra in mid-west Western Australia. The land and waters over which the lease was granted is subject to the Gingirana registered native title claim.

In September 2010, the State of Western Australia gave notice of its intention to grant a mining lease to Barrick (Plutonic). The parties entered into negotiations, and at a meeting in March 2015, the Gingirana People decided to enter into an agreement giving their consent to the grant of its lease. However, due to the logistical and financial difficulties associated with obtaining the signatures of the registered native title claimants, the native title claimants were unable to give effect to the consent through execution of a tripartite agreement or State Deed.

The Tribunal noted that it would take into account any agreement reached between the parties in making its determination. To ensure the Tribunal made a determination that was in line with the wishes of the parties, the Tribunal directed the parties to confer and file a statement of agreed facts. These agreed facts included that the parties had negotiated in good faith, that the parties agreed to make no further

submissions, and that they consent to a determination that the grant of the mining lease may be done. Taking this statement of agreed facts into account, the Tribunal ruled the grant of the mining lease to Barrick (Plutonic) may be done.

Dampier (Plutonic) Pty Ltd v Miriam Atkins and Others on behalf of Gingirana and Others **[2015] NNTTA 59**

4 December 2015, Inquiry into a Future Act Determination Application, National Native Title Tribunal, Brisbane, Queensland, Mr JR McNamara

In this matter, the National Native Title Tribunal (the Tribunal) determined that the granting of two mining leases to Dampier (Plutonic) may be done. The leases are located approximately 144 kilometres north of Wiluna in the Shire in Meekatharra in mid-west Western Australia. The land over which the lease was granted is subject to the registered native title claims of the Gingirana People and the Yugunga-Nya People.

In September 2007, the State of Western Australia gave notice of its intention to grant two mining leases to Plutonic Operations, which have now been transferred to Dampier (Plutonic). Following negotiations, the Yugunga-Nya People gave their consent to both leases through a tripartite Deed for Grant of Mining Tenement on 8 July 2013. The Gingirana People also entered into negotiations, and at a meeting in March 2015, the Gingirana People decided to enter an agreement giving their consent to the grant of the leases. However, due to the logistical and financial difficulties associated with obtaining the signatures of the registered native title claimants, the native title claimants were unable to give effect to the consent through execution of a tripartite agreement or State Deed.

The Tribunal noted that it would take into account any agreement reached between the parties in making its determination. To ensure the Tribunal made a determination that was in line with the wishes of the parties, the Tribunal directed the parties to confer and file a statement of agreed facts. These agreed facts included that the parties had negotiated in good faith, and that the parties agree to make no further submissions. Further, that they consent to a determination that the grant of the mining lease may be done, and that the Yugunga-Nya People had agreed via Tripartite Agreement to the leases. Taking into account the consent of the Yunguna-Nya People and the statement of agreed facts, the Tribunal determined that the granting of the mining leases may be done.

Raymond William Ashwin (dec) & Ors on behalf of Wutha v The Kop Ventures Pty Ltd **[2015] NNTTA 60**

10 December 2015, Inquiry into Expedited Procedure Application, National Native Title Tribunal, Brisbane, Queensland, Mr JR McNamara

In this matter, the National Native Title Tribunal (the Tribunal) dismissed an objection against the proposed grant of a prospecting licence attracting an expedited procedure to The Kop Ventures. The Wutha native title claim wholly overlaps the licence.

In June 2015, the State of Western Australia gave notice of its intention to grant a prospecting license to The Kop Ventures without requiring The Kop Ventures or the State to negotiate with the Wutha People.

The Wutha People lodged an objection on 11 June 2015 and The Kop Ventures subsequently advised that they wanted the matter to proceed to an inquiry. Both parties were directed to provide contentions and evidence by 1 December 2015. No contentions or evidence were produced, and no responses to the State's request to dismiss the matter were received. The Tribunal ruled that the Wutha People had been given sufficient opportunity to comply with the directions and that it would be unfair to prejudice other parties with further delays.

Western Desert Lands Aboriginal Corporation on behalf of its members v Peter Andrew Wiltshire and Another **[2015] NNTTA 61**

14 December 2015, Inquiry into Expedited Procedure Application, National Native Title Tribunal, Brisbane, Queensland, Mr JR McNamara

In this matter, the National Native Title Tribunal (the Tribunal) dismissed an objection against the proposed grant of an exploration licence attracting an expedited procedure to Mr Peter Wiltshire. Native title determination area WCD2002/002 wholly overlaps the licence.

In April 2015, the State of Western Australia gave notice of its intention to grant an exploration license to Mr Peter Wiltshire without requiring him or the State to negotiate with the Western Desert Lands Aboriginal Corporation.

The Western Desert Lands Aboriginal Corporation lodged an objection on 25 June 2015 and Mr Wiltshire subsequently advised that he wanted the matter to proceed to an inquiry. Both parties were directed to provide contentions and evidence by 24 November 2015. No contentions or evidence were produced and no responses to the State's request to dismiss the matter were received from the Western Desert Lands Aboriginal Corporation. The Tribunal ruled that the Western Desert Lands Aboriginal Corporation had been given sufficient opportunity to comply with the directions and that it would be unfair to prejudice other parties with further delays.

Western Desert Lands Aboriginal Corporation on behalf of its members v John Williams **[2015] NNTTA 62**

18 December 2015, Inquiry into Expedited Procedure Application, National Native Title Tribunal, Brisbane, Queensland, Mr JR McNamara

In this matter, the National Native Title Tribunal (the Tribunal) dismissed an objection against the proposed grant of an exploration licence P45/2929 attracting an expedited procedure to Mr John Williams. Native title determination area WCD2002/002 wholly overlaps the licence.

In December 2014, the State of Western Australia gave notice of its intention to grant an exploration license to Mr John Williams without requiring him or the State to negotiate with the Western Desert Lands Aboriginal Corporation.

The Western Desert Lands Aboriginal Corporation lodged an objection on 2 February 2015 and Mr Williams subsequently advised that he wanted the matter to proceed to an inquiry. Both parties were directed to provide contentions and evidence by 11 November 2015. No contentions or evidence was produced, and no response to the State's request to dismiss the matter was received from the Western Desert Lands Aboriginal Corporation. The Tribunal ruled that the Western Desert Lands Aboriginal Corporation had been given sufficient opportunity to comply with the directions and that it would be unfair to prejudice other parties with further delays.

Widi Mob v Dene Thomas Solomon & Glenn Frederick Solomon and Another **[2015] NNTTA 63**

21 December 2015, Inquiry into a Future Act Determination Application, National Native Title Tribunal, Brisbane, Queensland, Mr JR McNamara

In this matter, the National Native Title Tribunal (the Tribunal) determined that the granting of mining lease 70/1323 to Dene Thomas Solomon & Glenn Frederick Solomon may be done. The lease is approximately 1.34 square kilometres in size and is located approximately 47 kilometres south easterly of Morawa, Western Australia. The native title claim of the Widi Mob (WC1997/072) wholly overlaps the area of the proposed lease.

In October 2015, a representative of the native title claimants made an application seeking a future act determination that mining lease 70/1323 may be granted. The parties agreed that the act may be done, but were unable to execute a s 31(1)(b) *Native Title Act* (Cth) agreement to that affect due to issues with one named applicant signing documents.

The Tribunal was satisfied that the *Native Title Act 1993* (Cth) s 39 criteria (which sets out the criteria to be met before the Tribunal makes a determination) had been met and that all parties agreed to the granting of the lease.

Walalakoo Aboriginal Corporation RNTBC v 142 East Pty Ltd and Another [2015] NNTTA 64

24 December 2015, Inquiry into an Expedited Procedure Objection Application, National Native Title Tribunal, Perth, Western Australia, Ms H Shurven

This inquiry involved an objection by Walalakoo Aboriginal Corporation to a statement made by the State of Western Australia (the State) that the grant of exploration licence E04/2355 attracted the expedited procedure. The statement was included in a notification of their intent to grant the licence to 142 East Pty Ltd. The Walalakoo Aboriginal Corporation is the registered native title body corporate that holds native title in trust for the Nyikina Mangala people, pursuant to the Federal Court determination of native title made in May 2014. The licence area comprises 17,583 hectares, located 67 kilometres south of Derby in the Derby-West Kimberly Shire, and wholly falls within the determination area. 86 per cent of the licence overlaps the Mt Anderson Pastoral lease, which the Nyikina Mangala hold exclusive possession native title over. Native title is extinguished over approximately 1 per cent of the licence, and non-exclusive native title is held over the remaining 13 per cent of the licence, which is mainly comprised of the Fitzroy Crossing to Nobby's Well stock route and a water and stopping place. The National Native Title Tribunal (the Tribunal) ruled that the expedited procedure did not apply to the grant of the licence.

In response to contentions filed by the Nyikina Mangala people, 142 East Pty Ltd requested of the State that parts of the licence area be excised in an attempt to reduce the impact of their activities on areas of significance to the Nyikina Mangala people. The area to be excised includes Balginjirr Community and areas to the north west and south west of that community, the Fitzroy River Catchment area, Lower Liveringa Pool; and part of some sites registered with the Department of Aboriginal Affairs (DAA) pursuant to the *Aboriginal Heritage Act 1972* (WA).

In coming to its decision, the Tribunal considered whether the proposed activities would interfere directly with the community or social activities or areas or sites of particular significance to the Nyikina Mangala, and whether the exploration would involve major disturbance to any land or waters.

It was held that the majority of community and social activities are undertaken within the area to be excised, and there was insufficient evidence to suggest that the activities conducted within the remainder of the licence would not be interfered with in a substantial way. The Tribunal considered that the remaining area of the licence was an area of particular significance to the Nyikina Mangala, as it contained the majority of Balginjirr ridge. The ridge includes a DAA listed site with a restricted

boundary, which means it is not readily identifiable by persons other than the native title holders, and the area could not be avoided by the grantee party. The ridge also includes burial sites of significance to the Nyikina Mangala. The Tribunal concluded on this basis that there was a real risk that 142 East activities across the areas available for grant under the licence would pose a real chance of physical interference with sites and areas of particular significance to the Nyikina Mangala.

The Tribunal was satisfied that the existing state regulatory regime is sufficient to limit any disturbance to land and waters subject to the grant due to 142 East Pty Ltd's willingness to enter in to an agreement with the same terms as an WA Regional Standard Heritage Agreement (RSHA), and its stated intent to comply with the relevant regulatory regimes. Furthermore, the State indicated that it would impose an RSHA condition on the grant of the licence.

Due to the presence of sites and areas of particular significance exist on the licence that would likely be interfered with by exploration activities, the Tribunal held that the grant of licence E04/2355 was not an act attracting the expedited procedure, and the grant of the licence is subject to the standard negotiation process mandated by the NTA.

2. Legislation

Commonwealth

Water Amendment (Review Implementation and Other Measure) Bill 2015

Status: The bill was first introduced on 3 December 205 and the second reading speech occurred on the same day.

Stated purpose: The purpose of this bill is to implement the Government's response to the *Report of the Independent Review of the Water Act 2007.* The bill also makes a number of minor or technical amendments unrelated to the Water Act Review.

Native title implications: The bill includes provisions relating to the monitoring and evaluating of impacts of the Basin Plan and to reduce the regulatory burden. Operations of the Commonwealth Environmental Water Holder are also addressed, including that it must publish details of all water it sells and the purpose for which the proceeds are used.

This bill mandates that at least two Indigenous persons must be members of the Basin Community Committee. The bill also introduces the requirement to have regard to the social, spiritual and cultural matters relevant to Indigenous people in relation to the water resources in the preparation of a water resource plan. To facilitate this, Indigenous matters relevant to Basin water resources are added as a field in which an Authority member may have a high level of expertise. The bill also includes as one the Murray-Darling Basin Authority's functions to engage the Indigenous community on the use and management of Basin water resources.

For further information, please see the Explanatory Memorandum and the Second Reading Speech.

Queensland

North Stradbroke Island Protection and Sustainability and Other Acts Amendment Bill 2015

Status: This bill was introduced to parliament on 3 December 2015.

Stated purpose: The main objective of the bill is to effectively repeal the amendments made by the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* in order to substantially phase out sand mining by 2019.

Native title implications: Access needs to be retained for some time by mine site operators to carry out rehabilitation of the area. This access could be to land which is subject to native title thus native title rights and interests could be affected. If entry to the land interferes with native title interests, the holder of the authorisation to access could be liable for compensation to the native title holders. The explanatory notes state 'if compensation must be paid to a freehold owner, then the native title holders will have equivalent rights to compensation.'

The bill also provides that Aboriginal cultural heritage and environmental values need to be considered in determining the location of all new disturbance areas and mineral extraction areas. Amendments to the bills also prevent changes to the mine area where that change would significantly increase impacts on significant Aboriginal areas, Aboriginal objects, or evidence of Aboriginal occupation of an area.

For further information, see the Explanatory Notes.

South Australia

Resource Operations Ombudsman Bill 2015

Status: This bill was introduced to the Legislative Council on 2 December 2015.

Stated purpose: The purpose of this bill is the creation of a Resource Operations Ombudsman.

Native title implications: The independent ombudsman would have three roles – complaints handling, an advisory role, and to ensure compliance. The powers of the ombudsman would be to investigate, review, and monitor compliance in relation to general mining, fracking, gas and petroleum exploration. The ombudsman would become a resource for native title groups to seek advice from and to complain to where relevant issues arise.

For further information please see the Second Reading Speech.

3. Native Title Determinations

In December 2015, the NNTT website listed 8 native title determinations.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC/ PBC
Bunuba Part B	Wurrunmurra on behalf of the Bunuba People v State of Western Australia	22/12/2015	WA	Native title exists in parts of the determination area	Consent	Claimant	Bunuba Dawangarri Aboriginal Corporation RNTBC
Bunuba # 2	Brooking on behalf of the Bunuba People (Bunuba #2) v State of Western Australia	22/12/2015	WA	Native title exists in parts of the determination area	Consent	Claimant	Not Registered
Bunuba # 3	Aiken on behalf of the Bunuba People (Bunuba #3) v State of Western Australia	22/12/2015	WA	Native title exists in the entire determination area	Consent	Claimant	Bunuba Dawangarri Aboriginal Corporation RNTBC
Ngarluma People	Samson on behalf of the Ngarluma People v State of Western Australia	21/12/2018	WA	Native title exists in parts of the determination area	Consent	Claimant	Ngarluma Aboriginal Corporation RNTBC
Yandruwandha/ Yawarrawarrka Native Title Claim	Yandruwandha/ Yawarrawarrka Native Title Claim and The State of South Australia & ors (Yandruwandha/ Yawarrawarrka)	16/12/2015	SA	Native title exists in parts of the determination area	Consent	Claimant	Yandruwandha Yawarrawarrka Traditional Land Owners (Aboriginal Corporation)
Adnyamathanha No. 1	Coulthard v State of South Australia	08/12/2015	SA	Native title exists in parts of the determination area	Consent	Claimant	Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC
Adnyamathanha People Native Title Claim No. 3	Coulthard v State of South Australia	08/12/2015	SA	Native title exists in parts of the determination area	Consent	Claimant	Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC/ PBC
Kurungal	Wise on behalf of the Kurungal Native Title Claim v State of Western Australia	01/12/2015	WA	Native title exists in parts of the 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 21 December 2015 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 (21 December 2015)

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	19	39
Queensland	70	5
South Australia	15	0
Tasmania	0	0
Victoria	4	0
Western Australia	34	3
NATIONAL TOTAL	**148**	**47**

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 21 December 2015.

5. Indigenous Land Use Agreements

In December 2015, 5 ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
18/12/2015	Djungan Small Scale Miners ILUA	QI2015/040	Area Agreement	QLD	Small mining
18/12/2015	Munga-Thirri National Park Protected Areas ILUA	QI2015/078	Body Corporate	QLD	Terms of Access, Access
03/12/2015	Erub Torres Strait Social Housing ILUA	QI2015/083	Body Corporate	QLD	Community Living Area
01/12/2015	Warraber (No 2) Torres Strait Social Housing ILUA	QI2015/084	Body Corporate	QLD	Residential, Community Living Area

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
01/12/2015	Mabuiag (No 2) Torres Strait Social Housing ILUA	QI2015/080	Body Corporate	QLD	Community Living Area, Infrastructure

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

6. Future Acts Determinations

In December 2015, 9 Future Acts Determinations were handed down.

Determination date	Parties	Tribunal file no.	State or Territory	Decision/ Determination
24/12/2015	Walalakoo Aboriginal Corporation RNTBC (WCD2014/003) (native title party) - and - The State of Western Australia (Government party) - and - 142 East Pty Ltd (grantee party)	WO2014/0828	WA	Objection - Expedited Procedure Does Not Apply
21/12/2015	Widi Mob (WC1997/072) (native title party) - and – Dene Thomas Solomon & Glenn Frederick Solomon (grantee party) - and - The State of Western Australia (Government party)	WF2015/0025	WA	Future Act - May be done
18/12/2015	Western Desert Lands Aboriginal Corporation (WCD2002/002) (native title party) -and- The State of Western Australia (Government party) -and- John Williams (grantee party)	WF02015/0127	WA	Objection - Dismissed
14/12/2015	Western Desert Lands Aboriginal Corporation on behalf of its members (native title party) -and- The State of Western Australia (Government party) -and- Peter Andrew Wiltshire (grantee party)	WO2015/0556	WA	Objection - Dismissed
10/12/2015	Raymond William Ashwin (dec) & Ors on behalf of Wutha (native title party) -and- The State of Western Australia (Government party) -and- The Kop Ventures Pty Ltd (grantee party)	WO2015/0523	WA	Objection - Dismissed

Determination date	Parties	Tribunal file no.	State or Territory	Decision/ Determination
04/12/2015	Barrick (Plutonic) Pty Limited (grantee party) - and - Miriam Atkins, Slim Williams, Stan Hill, Grace Ellery, Timmy Patterson, Darryl Jones and Robert Hill on behalf of Gingirana (WC2006/002) (native title party) - and - The State of Western Australia (Government party)	WF2015/0022	WA	Future Act - May be done
04/12/2015	Dampier (Plutonic) Pty Ltd (grantee party) - and - Miriam Atkins, Slim Williams, Stan Hill, Grace Ellery, Timmy Patterson, Darryl Jones and Robert Hill on behalf of Gingirana (WC2006/002) (first native title party) - and - Evelyn Gilla, Rex Shay, William Shay, Leonie Gentle, Russell Little, Audrey Shar and Troy Little on behalf of the Yugunga-Nya People (WC1999/046) (second native title party) - and - The State of Western Australia (Government party)	WF2015/0023, WF2015/0024	WA	Future Act - May be done
01/12/2015	Raymond William Ashwin (dec) & Ors on behalf of the Wutha People (native title party) -and- The State of Western Australia (Government party) -and- Meridian 120 Mining Pty Ltd (grantee party)	WO2015/0467	WA	Objection - Dismissed
01/12/2015	Raymond William Ashwin (dec) & Ors on behalf of the Wutha People (native title party) -and- The State of Western Australia (Government party) -and- Colin Robert Neve (grantee party)	WO2015/0473, WO2015/0474	WA	Objection - Dismissed

7. Native Title in the News

The Native Title Research Unit with AIATSIS publishes the Native Title in the News which contains summaries of newspaper articles and media releases relevant to the native title sector.

8. Related Publications

Publications

Anthropological Society of South Australia

2015 Journal - Norman B. Tindale's Research Legacy and the Cultural Heritage of Indigenous Australians

The 2015 edition of the Journal of the Anthropological Society of South Australia is now available. This special edition focuses on Norman Tindale's research.

For further information, please visit the ASSA website

Central Desert Native Title Services

A Review of the 2015 Australian Anthropological Society's Annual Conference and Pre-Conference Assembly

A review of the Australian Anthropological Society's Annual Conference and Native Title Pre-Conference Assembly is now available on the website. The review is written by Sean Calderwood and Heather Lynes of Central Desert Native Title Services.

For further information, please visit the CDNTS website

North Queensland Land Council

Your Way Forward For Native Title - Message Stick

North Queensland Land Council's quarterly newsletter is available featuring a story on the Ngrragoonda Aboriginal Corporation.

For further information, please visit the NQLC website

Kimberley Land Council

Kimberley Land Council Newsletter

The December edition of the Kimberley Land Council's quarterly newsletter is now available. Details of the Kurungal Native Title determination are featured in this issue.

For further information, please visit the KLC website

Queensland South Native Title Services

Message Tree – December 2015

The QSNTS Message Tree newsletter is now available. The newsletter includes a summary of QSNTS work for 2015.

For further information, please visit the QSNTS website

Yamatji Marlpa Aboriginal Corporation

Celebrating 20 Years of YMAC – Looking after Country: Our Mother, Our Provider and Keeper

The Yamatji Marlpa Aboriginal Corporation has released their *Celebrating 20 Years of YMAC – Looking after Country: Our Mother, Our Provider and Keeper*. It is now available for download.

For further information, please visit the YMAC website

Media Releases, News Broadcasts and Podcasts

Australian Human Rights Commission

Commissioner Gooda launches Social Justice and Native Title Report

Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda has launched the 2015 Social Justice and Native Title Report. The need for reform of the native title system is discussed through several government processes announced or completed in the report.

For further information, please visit the AHRC website

Cape York Land Council

Traditional owners locked in bitter stoush over Cape York mining royalty deal

Ankamuthi Traditional owners from Cape York Peninsula are in disagreement over a multi-million dollar mining deal involving royalty payments. Ankamuthi man Larry Woosup allegedly struck a deal with the bauxite mining company Gulf Alumina back in 2013, however 75 Ankamuthi people have voiced their concerns stating that they 'were not aware of the deal, nor did they benefit from it.'

For further information, please visit the CYLC website

Cape York Alliance makes humiliating retreat at Federal Court

Federal Court Justice Andrew Greenwood has allowed Larry Woosup, who is representing Cape York Alliance, to withdraw his application that is 'purported to represent 154 Cape York people' opposing the One Claim in Cape York Peninsula. As one of the most exciting native title claims lodged in the Federal Court, "One Claim" will provide Cape York Traditional Owners with exclusive rights over what happens on their country.

For further information, please visit the CYLC website

False claims offend people of Cape York communities

Richie Ah Mat the Chairman of the Cape York Land Council writes that he stands with the 500 or more Cape York Land people who authorised the "One Claim". He says accusations that the Cape York Land Council is not representing Traditional Owners appropriately are insulting to the 'good work of our staff, key stakeholders as well as the 17 members of the CYLC Board.'

For further information, please visit the CYLC website

Kimberley land Council

Kurungal landowners celebrate legal recognition of their land after almost two decades

After an 18 year legal challenge, the Kurungal people have had the native title of their traditional land determined. More than 100 gathered at Ngumpan on 1 December 2015 for the on-country ceremony and greeted the announcement with cheers and emotion. After almost two decades, the determination was handed down by Justice Gilmore, who agreed the Kurungal people have been waiting too long for a resolution.

For further information, please visit the KLC website

Northern land Council

NLC welcomes new Deputy Chair

At a Full Council meeting held recently at Gulkula in north east Arnhem Land Wayne Wauchope was elected to become the new Deputy Chair of the Northern Land Council. Mr Waucoupe said that 'the position of Deputy Chair provides me the opportunity to support the Chairman and to represent Traditional Owners and the Aboriginal community; we work for the people that's why we've been elected.'

For further information, please visit the NLC website

Prime Minister of Australia

The Hon Malcolm Turnbull MP

On the 7th December 2015 Prime Minister Malcolm Turnbull announced the establishment of the Referendum Council on constitutional recognition of Aboriginal and Torres Strait Islander peoples. The Referendum Council has been set up to advise on progress towards an Indigenous referendum in the Australian Constitution.

For further information, please visit the Prime Minister's website

Yamatji Marlpa Aboriginal Corporation

Ngarluma people's Native Title recognised

On the 21 December 2015 the Ngarluma celebrated the recognition of their native title in a Federal Court hearing. An area of land which is approximately 21.5 square kilometres covering the towns of Wickham, Point Samson and Karatha were included. Simon Hawkins, CEO of the Yamatji Marlpa Aboriginal Corporation said 'after seven years, the towns of Wickham, Point Samson, and Karratha have been recognised as Ngarluma Country, something the Ngarluma people have always known.'

For further information, please see the YMAC website

9. Training and Professional Development Opportunities

AIATSIS

Australian Aboriginal Studies

Australian Aboriginal Studies (AAS) 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

The Aurora Project

See the Aurora Project: 2015/16 Program Calendar for information on training and personal development for staff of native title representative bodies, native title service providers, RNTBCs and PBCs.

National Museum of Australia

Encounters Indigenous Scholarships

The National Museum of Australia and Prince's Charities Australia are hosting an intensive three month scholarship program in 2016. This program will enable the successful six Indigenous cultural workers from around the country to spend time at the National Museum of Australia, Canberra, and also The Prince's School of Traditional Arts, London, with additional visits to the British Museum, Oxford and Cambridge universities and the University of London.

For more information, visit the National Museum of Australia 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, visit the ORIC website

10. Events

University of Tasmania and the Australian National University

Indigenous Peoples & Saltwater/ Freshwater Governance for a Sustainable Future

The University of Tasmania and the Australian National University are convening a workshop to discuss the environmental governance of marine and freshwater areas by and from the perspective of Indigenous peoples.

Date: 11-12 February 2016

Location: University of Tasmania, Hobart

For further information, please contact Professor Benjamin Richardson, B.J.Richardson@utas.edu.au, or Lauren Butterly, lauren.butterly@anu.edu.au

History Council of NSW

Aboriginal History Prize 2016 – Call for Submissions

The inaugural History Council of NSW's Aboriginal History Prize will be awarded in 2016. The purpose of this award is to encourage students and early career historians to write Australian Aboriginal history from original sources.

Date: Deadline for Nominations is 31 March

Location: History Council of NSW

For further information, please contact admin@historycouncilnsw.org.au

InASA: International Australian Studies Association

Call for Paper – Indigenous Intervention into 'Indigenous Narrative'

The Institute of American Indian Arts in the Indigenous Liberal Studies Department is convening an interdisciplinary conference exploring the notion of 'Indigenous Narrative', focusing on ideas related to Indigenous experiences of narrative in culture, literature, philosophy, history, politics, economics, film, television, art, music, social theory and business.

Date: 31 March - 2 April, 2016

Location: The Institute of American Indian Arts, Indigenous Liberal Arts Department, Sante Fe, USA

For further information, please contact swall@iaia.edu.

Children's Healthcare Australasia and National Rural Health Alliance

Caring for Country Kids Conference

Children's Healthcare Australasia (CHA) and the National Rural Health Alliance (NRHA) are joining forces to host a national Conference on quality healthcare for children and young people living in rural, regional and remote communities across Australia.

Date: 17-19 April 2016

Location: Alice Springs Convention Centre, NT

For further information, visit the Caring for Country Kids website

NAISA 2016

2016 Annual Meeting

The University of Hawaii, the National Indigenous Research and Knowledges Network (NIRAKN), Queensland University and RMIT will host the Native American and Indigenous Studies Association Annual meeting in Honolulu, Hawaii in May 2016.

Date: 18-21 May 2016

Location: University of Hawaii, Honolulu

For further information, visit the NAISA website

AIATSIS National Native Title Conference 2016

Strong culture, strong country, strong future

The National Native Title Conference 2016 will be co-convened by AIATSIS and the Northern Land Council (NLC), hosted by the Larrakia people, in Darwin, NT.

The conference seeks to highlight the challenges and opportunities of native title in the broader context of Indigenous people's aspirations for their lands, waters and their communities. The conference aims to promote public debate, build networks, foster knowledge sharing between native title holders and other parties. It is the leading annual event for professional development for NTRB/NTSP staff, government bodies, native title practitioners and academics.

Proposals for papers, panels, dialogue forums and Indigenous Talking Circles are invited for consideration by the conference convenors.

Date: 1-3 June 2016

Location: Darwin Convention Centre, NT

For further information, visit the AIATSIS website

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 @NTRU_AIATSIS on Twitter or 'Like' NTRU on Facebook.