

WHAT'S NEW IN NATIVE TITLE

FEBRUARY 2015

1. Case Summaries.....	1
2. Legislation	3
3. Native Title Determinations	3
4. Registered Native Title Bodies Corporate & Prescribed Bodies Corporate	4
5. Indigenous Land Use Agreements	4
6. Future Acts Determinations	5
7. Native Title in the News	6
8. Related Publications	6
9. Training and Professional Development Opportunities.....	7
10. Events.....	8

1. Case Summaries

[Foster v Northern Territory of Australia \[2015\] FCA 38](#)

6 February 2015, Application for Native Title, Federal Court of Australia – Adelaide, SA (via video link to Darwin, NT)

Mansfield J

In this matter, the Court heard an application for native title by the Kamu people for an area of land included in the Malak Malak Aboriginal Land Trust situated in the vicinity of Nauiyu (Daly River).

Mansfield J dismissed the claim.

The respondents to the claim were:

- the Northern Territory of Australia;
- Biddy Yingguny;
- Malak Malak Aboriginal Land Trust;
- Albert Myoung; and
- Telstra Corporation Ltd.

History of the application

The Kamu claim was first filed in 1998, the claim has a long history which was recited by Mansfield J. The important features of this history are:

- The claim was never registered by the National Native Title Registrar under the [Native Title Act 1993 \(Cth\)](#), because according to the NNTT it did not comply with [ss 190C\(2\)](#) or [190C\(4\)](#) NTA.

- However, the claim was referred to the National Native Title Tribunal for mediation. No successful mediation took place.
- The mediation of the claim in the National Native Title Tribunal ceased on 6 May 2009, and the Court proceeded to make orders, from time to time, to secure from the applicant her proposals for progressing the claim.
- This involved attendances for directions on 20 occasions with no meaningful progress achieved.
- During the last directions hearing on 3 December 2014, the Court had adjourned the application to 17 January 2015 and directed the applicant to file and serve evidence she proposed to rely upon. At that time, the Court noted that it would consider whether it should simply dismiss the claim of its own motion, depending on the content of the evidence filed or if no evidence was filed.
- No evidence was subsequently filed.

The law

Mansfield J, at [13], considered whether the proceeding could be dismissed under:

- [s 84D\(4\)](#) or [s 190F\(6\)](#) of the [Native Title Act 1993 \(Cth\)](#) (NTA); or
- [s 31A\(2\)](#) of the [Federal Court of Australia Act 1976 \(Cth\)](#) (FCA Act).

His Honour at [14] considered that [s 84D\(4\)](#) would not be appropriate to dismiss the claim because no evidentiary material had been provided. Mansfield J chose to instead rely on [s 190F\(6\)](#), which ‘applies when an application for the determination of native title has been made, but not registered’. This was satisfied by the claim’s history and the fact that it had been many years since the claim for registration was not accepted.

Mansfield J at [15] also considered that the claim could be dismissed under [s 31A\(2\)](#) of the FCA Act which applied where there was “no reasonable prospect of successfully prosecuting the proceeding”.

Reasoning

Mansfield J provided the following reasons for dismissing the claim, at [17]:

1. **The length of the claim and prospect of succeeding.** His Honour considered the history of the claim demonstrated there was no reasonable prospect of the applicant successfully prosecuting the claim.
2. **The interests of justice.** His Honour listed 3 matters in favour of dismissing the claim in the interests of justice:
 - a. ***The applicant and Kamu people could not secure any meaningful rights which are recognised at common law.*** The claim area is the same area that was granted to the Malak Malak Aboriginal Land Trust under the [Aboriginal Land Rights \(Northern Territory\) Act 1976 \(Cth\)](#) (ALR Act), giving them rights equivalent to freehold rights over the relevant area. These rights are more extensive than the rights sought by the applicant and the Kamu people.
 - b. ***The status of “traditional Aboriginal owners” of the claim area is already shared by a wider group which includes the Kamu people.*** His Honour noted the “serious issue” of whether the Kamu people could be recognised as traditional owners in the face of the determination under the ALR Act. His Honour considered that the real concern of the applicant on behalf of the Kamu people appeared to be that their interests as part of the Malak Malak Aboriginal Land Trust were not adequately recognised.
 - c. ***There is no real benefit to be gained by the applicant or the Kamu people if the claim succeeded.*** The applicant had failed to give a real and meaningful response to how the application if persecuted successfully, would provide a real benefit to the applicant, or to the claim group of which she is the representative.

At [18], Mansfield J added that the respondents were entitled to have the claim brought to an end in the interests of justice given that it was “in suspended animation indefinitely”.

In outlining his reasoning at [17], Mansfield J also noted that his dismissal of the claim did not represent the negative finding that the applicant and the Kamu people are not the persons who should be recognised as holders of native title over the claim area under the NTA.

2. Legislation

Commonwealth

[Aboriginal and Torres Strait Islander Peoples Recognition \(Sunset Extension\) Bill 2015](#)

The Bill was introduced in the House of Representatives on 25 February 2015, and passed both Houses on 5 March 2015.

Stated purpose: This Bill amends the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* to extend the Act's operation by three years to 28 March 2018.

To access the explanatory memorandum click [here](#).

For first reading click [here](#).

For second reading speeches click [here](#).

[The Environment Legislation Amendment Act 2015](#)

The Bill passed both Houses on 23 February 2015 and was assented on 5 March 2015.

Stated purpose: The *Environment legislation Amendment Bill 2013* amends various sections of the *Environment Protection and Biodiversity Conservation Act 1999* and the *Great Barrier Reef Marine Park Act 1975* to provide additional protection for turtles and dugongs under both Acts.

The Bill does not limit any absolute rights. In particular, the Bill does not discriminate on the grounds of race. It does not affect the rights of traditional peoples to harvest dugong and turtles for the purposes of domestic, non-commercial communal needs preserved by section 211 of the *Native Title Act 1993* (Cth). For example, through exceptions to the offence provisions which apply to actions taken in accordance with traditional use of marine resources agreements made under the GBRMP Act.

To see the text of the bill as it passed both Houses click [here](#)

For the revised explanatory memoranda click [here](#)

Western Australia

[Aquatic Resources Management Bill 2015](#)

This Bill was introduced in the Legislative Assembly on 24 February 2015 and received its first and second readings on that date.

Stated purpose: The purpose of this bill is to provide an Act for the ecologically sustainable development and management of the State's aquatic resources and the development of strategies and plans for the conservation of aquatic resources and the protection of aquatic ecosystems, and the development and management of aquaculture.

Clause 6, of the explanatory memoranda provides that '[a]n Aboriginal person is not required to hold an authorisation to take aquatic organisms if the organisms are taken for the purposes of the person or the person's family and not for a commercial purpose.'

The bill's explanatory memoranda clarify that:

- clause 6 applies to all Aboriginal persons whether or not they hold native title; and
- with the exception of the requirement to hold a licence when undertaking certain fishing activities, the rules of general application throughout the community such as bag limits, size limits and closed seasons apply to non-native title holders

The explanatory memorandum also provide that '[t]he clause is identical in effect to that of [section 6](#) of the [Fish Resources Management Act 1994](#) (WA).'

It follows Clause 131 of the bill also regulates the licensing of

- (a) persons undertaking commercial fishing;
- (b) ***Aboriginal bodies corporate undertaking commercial fishing, but a licence granted or renewed under this provision cannot be transferred despite any other provision of this Act;***

To access the explanatory memorandum click [here](#).

To access the Bill click [here](#)

3. Native Title Determinations

In February 2015, the [NNTT Website](#) listed no native title determinations.

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 16 February 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.

National Registered Native Title Bodies Corporate (RNTBCs) Statistics (16 February 2015)

State/Territory	RNTBCs	No. of Successful (& conditional) claimant determinations for which RNTBC to be advised
Australian Capital Territory	0	0
New South Wales	4	0
Northern Territory	19	49
Queensland	67	3
South Australia	14	0
Tasmania	0	0
Victoria	4	0
Western Australia	31	3
NATIONAL TOTAL	139	55

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 16 February 2015.

5. Indigenous Land Use Agreements

In February 2015, 4 ILUA was registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
27/02/2015	Gundungurra Area Agreement	NI2014/001	Area Agreement	NSW	Native Title Settlement, Consultation protocol
25/02/2015	Juru People and Kookaburra Terrace ILUA	QI2014/086	Body Corporate	QLD	Extinguishment
25/02/2015	Aurukun Bauxite Development ILUA	QI2014/087	Body Corporate	QLD	Mining, Infrastructure
13/02/2015	Ewamian – Alexander Parcel ILUA	QI2014/073	Area Agreement	QLD	Pastoral, Access

For more information about ILUAs, see the [NNTT Website](#) and the [ATNS Database](#).

6. Future Acts Determinations

In February 2015, 5 Future Acts Determinations were handed down.

Determination date	Parties	Tribunal File No	State or Territory	Decision/Determination
16/02/2015	Leedham Papertalk and Others on behalf of Mullewa Wadjari (WC1996/093) (native title party) - and - The State of Western Australia (Government party) - and - West Coast Geoscience Pty Ltd (grantee party)	WO2013/1283	WA	Objection – Expedited Procedure Applies
05/02/2015	Tarlka Matuwa Piarku Aboriginal Corporation RNTBC (native title party) - and - FMG Resources Pty Ltd (grantee party) - and - The State of Western Australia (Government party)	WO2013/0878	WA	Objection – Expedited Procedure Applies
05/02/2015	Billy Atkins and Others on behalf of Gingirana (WC2006/002) (native title party) - and - FMG Resources Pty Ltd (grantee party) - and - The State of Western Australia (Government party)	WO2013/1357	WA	Objection – Expedited Procedure Applies
05/02/2015	Tarlka Matuwa Piarku Aboriginal Corporation RNTBC (native title party) - and - FMG Pilbara Pty Ltd (grantee party) - and - The State of Western Australia (Government party)	WO2013/1103 WO2013/1104	WA	Objection – Expedited Procedure Applies AND Objection – Expedited Procedure Does Not Apply

04/02/2015	Mungarlu Ngurrarankatja Rirraunkaja (Aboriginal Corporation) RNTBC (first native title party) - and - Billy Atkins and Others on behalf of Gingirana (WC2006/002) (second native title party) - and - Tarlka Matuwa Piarku Aboriginal Corporation RNTBC (third native title party) - and - FMG Pilbara Pty Ltd (grantee party) - and - The State of Western Australia (Government party)	WO2013/1099 WO2013/1100 WO2013/1101 WO2013/1101 WO2013/1102 WO2013/1107 WO2013/1108 WO2013/1109	WA	Objection – Expedited Procedure Does Not Apply
------------	--	--	----	--

7. Native Title in the News

The [Native Title Research Unit](#) within AIATSIS publishes [Native Title in the News](#) which contains summaries of newspaper articles and media releases relevant to the native title sector.

8. Related Publications

CASSE

CASSE Aboriginal Australian Relations Program Newsletter

The third issue of CASSE's Aboriginal Australian Relations Program Newsletter is now available.

For further information, visit the [CASSE website](#)

The Australian Journal of Anthropology

Does native title merely provide an entitlement to be native? Indigenes, identities, and applied anthropological practice

This paper by David F. Martin, is directed to two immediate purposes which lie beyond anthropology as practiced within academia: to contribute to the ongoing dialogue within the discipline on applied anthropological engagement in and with the Australian native title and Indigenous development arenas; and secondly, to add to our conversations with Indigenous people themselves on what it means to be Indigenous in contemporary Australia.

For further information, visit the [TAJA](#) website.

Media Releases, News Broadcasts and Podcasts

Australian Anthropological Society

Proposed changes to Aboriginal heritage a missed opportunity to close the gap: The Australian Anthropological Society raises concerns about proposed reform agenda – 17 February 2015

The Australian Anthropological Society has written to WA Minister for Aboriginal Affairs raising concerns about proposed amendments to the *WA Aboriginal Heritage Act (1972)*. If the amendments are successful, these reforms will profoundly impact the protection of Aboriginal heritage places in Western Australia.

For further information, please contact pammcgrath@bigpond.com

Friends of Australian Rock Art Inc

FARA AGM and Think Tank – 11 February 2015

The FARA AGM will be held on Saturday 21 March at 1.30pm at Robin Chapple's office – 41 Havelock St, West Perth.

For further information, visit the [FARA](#) website

Minister for Indigenous Affairs

Expert Group Appointed to Indigenous Land Inquiry – 20 February 2015

Minister for Indigenous Affairs, Nigel Scullion, has invited an Expert Indigenous Working Group to guide the Council of Australian Governments (COAG) investigation into Indigenous land administration and use. The Minister said the group will work with the Commonwealth, state and territory governments on the investigation and ensure that policy directions and proposals are developed with the involvement of Indigenous stakeholders.

For further information, visit the [Minister for Indigenous Affairs](#) website

National Press Club of Australia

Joe Morrison – It comes with the Territory: Staring Down Old Threats – Eyeing New Opportunities – 11 February 2015

The CEO of the Northern Land Council, Joe Morrison, talks about the challenges and opportunities facing indigenous communities in the Northern Territory and the absolute value of the provisions of the Aboriginal Land Rights (Northern Territory) Act 1976 in shaping that future.

For further information, visit the [Press Club](#) website

Reconciliation Australia

Continued efforts required to Close the Gap – 11 February 2015

Reconciliation Australia CEO Justin Mohamed has called on the Federal Government to increase efforts towards reducing inequalities between Aboriginal and Torres Strait Islander peoples and other Australians following the release of the Prime Minister's Closing the Gap report.

For further information, visit the [Reconciliation Australia](#) website

9. Training and Professional Development Opportunities

The Aurora Project

[See the Aurora Project: 2015 Program Calendar](#) for information on training and personal development for staff of native title representative bodies, native title service providers, RNTBCs and PBCs.

The Aurora Project

Mineral Law NTRB Scholarship Program

Aurora is hoping in 2015 to once again offer two scholarships to undertake a Masters of Mining Law and Policy at the University of Dundee in Scotland. The scholarships have been renamed the Mineral Law NTRB Scholarships (formerly known as the Australian Government Rio Tinto NTRB Scholarships) and will be open to lawyers who are currently working or interested in working in the NTRB system.

Further information can be found on the [Aurora website](#).

Australian National University

Key Issues in Native Title Anthropology Course

During the 2015 Autumn Session, the ANU School of Archaeology and Anthropology is offering *Key Issues in Native Title Anthropology (ANTH8055)*, an accredited postgraduate course on native title anthropology. The course will be delivered as an intensive over five days from 13-17 April 2015 at the ANU in Canberra.

For further information please contact Nic Peterson – Nicolas.peterson@anu.edu.au

James Cook University

Masterclass in Native Title for Anthropologists

James Cook University is holding an 8 day Masterclass in Native Title for Anthropologists from 22-29 June 2015, supported by the Australian Government Attorney General's Department.

Held at JCU's campus in Cairns and facilitated by The Cairns Institute, this Masterclass could be your springboard to a meaningful career in the important world of Native Title. Generous scholarship grants, including full fee waivers, food and accommodation for the full 8 days will be available to eligible early career Anthropologists on application but places are strictly limited.

To pre-register your interest please contact mark.franks@jcu.edu.au

Journal of the Anthropological Society of South Australia

The *Journal of the Anthropological Society of South Australia* is inviting expressions of interest for its December 2015 edition on the following topic: 'Norman B. Tindale and the Cultural Heritage of Indigenous Australians: Contributions and Complexities Concerning His Research Legacy'. Contributions from people having worked with Tindale's collections are welcomed.

For further information please amy.roberts@flinders.edu.au

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

Kimberley Foundation Australia

50,000 years of Aboriginal people in the Southern Kimberley

The Kimberley Foundation Australia's annual public lecture will be delivered by Professor Jane Balme.

Date: 26 March 2015

Location: Manning Clarke lecture Theatre 2, Union Court, ANU

To RSVP, please visit www.trybooking.com/GUYF

Annual Conference of Swedish Anthropological Association (SANT) 2015)

DO THE RIGHT THING! Anthropology and Morality

A conference about anthropology and morality which will discuss moral and morally-based ethnography, moral practices and moral discourses and moral dimensions of anthropological practice. Deadline for panels and papers: Sunday 18 January 2015.

Date: 17-19 April 2015

Location: Lund University

For further information please email Tova Höjdestrand – tova.hojdestrand@soc.lu.se

The Anthropological Society of South Australia

2015 Norman Tindale Memorial Lecture

The Anthropological Society of South Australia's 2015 Norman Tindale Memorial Lecture will be delivered by Withrop Professor Jane Lydon. The title of the lecture is 'Real Photos': Transforming Colonial Archives.

Date and Time: 24 April 2015, 6 – 8pm

Location: Flinders in the City, Room 1, 182 Victoria Square

To RSVP, please contact amy.roberts@flinders.edu.au

National Native Title Conference 2015

Leadership, legacy and opportunity

In 2015 the National Native Title Conference will be co-convened by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and the Cape York Land Council (CYLC) on the traditional lands of the Kuku Yalanji people, the traditional owners of Port Douglas region. If you would like to submit a proposal to present at the National Native Title Conference 2015, please complete our ['Call for Papers' form](#) with an abstract and biography.

Date: 16-18 June 2015

Location: Sheraton Mirage, Port Douglas, QLD

Further information can be found on the [AIATSIS website](#)

SIEF 12th Congress

Utopias, Realities, Heritages. Ethnographies for the 21st century

The International Society for Ethnology and Folklore is calling for papers for the 12th Congress to be held in Croatia in June 2015.

Date: 21-25 June 2015

Location: Zagreb, Croatia

Further information can be found on the [SIEF website](#)

NIRAKN

Traditional Knowledges Conference

This conference will create a culturally safe space for discourse on First Nations Australians Ways of Knowing and Ways of Doing.

Date: 25-26 June 2015

Location: Brisbane Convention Centre, Queensland

Further information can be found on the [NIRAKN website](#)

Eleventh Conference on Hunting and Gathering Societies

Refocusing Hunter-Gatherer Studies

The Eleventh Conference on Hunting and Gathering Societies will be held in Vienna, Austria. The conference will be a joint effort by four among the major anthropological institutions in town – the World Museum Vienna, the Institute for Social Anthropology of the Austrian Academy of Sciences, the Department of Social and Cultural Anthropology at the University of Vienna, and the Anthropological Society Vienna. Call for papers close on 20 February 2015.

Date: 7-11 September 2015

Location: Vienna, Austria

Further information can be found on the [CHAGS11 website](#)

Secretariat of National Aboriginal and Islander Child Care (SNAICC)

6th SNAICC National Conference

The SNAICC Conference is a place for delegates to discuss the challenges and share knowledges and experience in raising happy, healthy and confident children in communities.

Date: 15-17 September 2015

Location: Perth, Western Australia

For further information, visit the [Conference Website](#)

2015 Indigenous Men's and Indigenous Women's Conferences

The Indigenous Men's and Indigenous Women's conferences provide platforms for Indigenous Men and Women to celebrate their achievements in life within their home, family, community and workplace.

Date: 28-30 September 2015

Location: Darwin, Northern Territory

Further information can be found on the [Indigenous conferences](#) website

Puliima

Call for Presenters at Puliima National Indigenous Language & Technology Forum 2015

Proposals for presenting at Puliima 2015 are now being called. Your primary audience is Aboriginal and Torres Strait Islander language workers, staff of language programs and Indigenous Linguists. In particular, the organisers are looking for presentations that create enthusiasm, share exciting new ideas, provide practical transfer of skills and empowerment, enlighten the audience and create awareness. Puliima would like to provide as many hands-on workshops as possible to our delegates. It is in their best interest to not only hear about what is available to them, but experience it as well.

Date: 14-15 October 2015

Location: William Angliss Institute Conference Centre, Melbourne

Further information can be found on the [Puliima website](#).

2015 Board of Directors Conferences

The National Indigenous Board of Directors conference focuses on the challenging dynamics of being a member of the Board of Directors of a community organisation or corporation.

Date: 19-21 October 2015

Location: Mercure, Gold Coast Resort, Queensland

Further information can be found on the [Indigenous conferences](#) website

AAS 2015 Conference

Moral Horizons

The Australian Anthropological Society's conference theme is an invitation for ethnographic research and anthropological theorisations that can contribute, critically or otherwise, to widen and multiply those moral horizons. Call for panels open on 23 March and the call for papers open on 4 May.

Date: 1-4 December 2015

Location: University of Melbourne

For further information please email Catherine Gressier – catherine.gressier@unimelb.edu.au



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.

