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AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

WHAT'S NEW IN NATIVE TITLE

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1. Case Summaries – June

Barkandji Traditional Owners #8 v Attorney-General of New South Wales [2015] FCA 604

16 June 2015, Consent Determination, Federal Court of Australia – Broken Hill, NSW, Jagot J

In this decision, Jagot J recognised the native title rights and interests of the Barkandji and Malyangapa People in relation to an area covering approximately 128,482 square kilometres in New South Wales. The determination area comprised of both exclusive possession and non-exclusive possession native title.

The claim was first filed on 8 October 1997. The respondent parties included the state of New South Wales, the Broken Hill City Council, Wentworth Shire Council and companies such as Telstra Corporation Limited.

The nature and extent of the native title rights and interests in relation to the exclusive areas comprise the right of possession, occupation, use and enjoyment to the exclusion of all others.

The Barkandji and Malyangapa People's non-exclusive native title rights and interests include the right to:

a) enter, travel over and remain on the areas

b) take and use the natural resources (other than water of the areas)

c) take and use the water for personal, domestic and communal purposes (including cultural purposes and for watering native animals, cattle and other stock, and watering gardens not exceeding 2 hectares), but not extending to right to control the use and flow of the water in any rivers or lakes which flow through or past or are situated within the land of two or more occupiers

d) camp and for that purpose to erect temporary shelters and temporary structures within the areas

e) light fires for domestic purposes, but not for the clearing of vegetation

f) engage in cultural activities on the land, to conduct ceremonies, to hold meetings, and to participate in cultural practices relating to birth and death including burials on the land the subject of the non-exclusive areas

g) have access to, to maintain and to protect from physical harm sites and places of importance in the non-exclusive areas which are of significance to the Barkandji and Malyangapa People under their traditional laws and customs

h) to teach the physical, cultural and spiritual attributes of places and areas of importance on or in the non-exclusive areas

i) hunt

j) fish and

k) be accompanied on the non-exclusive areas by persons who, though not native title holders, are:

   i. spouses, partners or parents of native title holders, together with their children and grandchildren

   ii. people whose presence is required under traditional laws and customs for the performance of cultural activities, practices or ceremonies

   iii. people requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.

In her judgment, Jagot J emphasised that the NTA encourages the reaching of determinations through the mutual consent of all interested parties, rather than through contested litigation. In reaching the agreement the parties referred to 36 lay affidavits and numerous anthropological, historical and genealogical reports, as well as a linguistic report.

The Court was satisfied that it should make the orders agreed to by the parties. The native title is to be held in trust by the Barkandji Native Title Group Aboriginal Corporation, as the prescribed body corporate.

Lampton on behalf of the Juru People v State of Queensland [2015] FCA 609

22 June 2015, Consent Determination, Federal Court of Australia, Brisbane, Queensland, Rares J

In this decision, the Court recognised the native title rights and interests of the Juru people over about 200 individual, scattered small lots of land in and around the townships of Bowen, Merinda and Home Hill. It also included certain other parcels of rural land and waters over which a determination had been made in 2014 in *Lampton on behalf of the Juru People v State of Queensland* [2014] FCA 736 (see AIATSIS case summary in the July 2014 edition of What's New in Native Title).

This decision marked the third occasion on which the Court has made a consent determination of the Juru people's native title rights and interests over land and waters. These scattered parcels of land and waters, in combination with the land and waters of the previous two consent determinations will allow the Juru people to exercise their native title rights and interests over them.

The respondent parties included the state of Queensland, the Commonwealth, the Whitsunday Regional Council, Burdekin Shire Council, a number of companies such as Telstra Corporation Limited and Hancock Coal Infrastructure Pty Ltd, as well as several persons operating commercial fishing businesses.

The nature and extent of the native title rights and interests, other than in relation to water, are the rights to possession, occupation, use and enjoyment of the area to the exclusion of all others.

The nature and extent of native title rights and interests in relation to water are the non-exclusive rights to the following for personal, domestic and non-commercial communal purposes:

a) Hunt, fish and gather from the water of the area

b) Take and use the natural resources of the water in the area and

c) Take and use the water of the area.

There was significant evidence of continuous Aboriginal presence in the areas under consideration. In his judgement, Rares J noted that additional anthropological evidence was provided by the applicant including the testimony of eight lay witnesses, a historical report and a second anthropology report. The State also

supplemented the case with additional tenure research. The evidence suggested that the Juru people first came into contact with Europeans in 1859 when they encountered a ship while canoeing around the Port Denison harbour, now known as Bowen. The Juru people passed on their laws and customs to the next generation either orally, or through their observance and instruction through interactions with other Juru and Birri Gubba people. His Honour declared at [23] that he was satisfied it was appropriate to grant the determination on the basis of his earlier findings in the 2014 decision as well as the additional material provided on the ancestral history of the Juru people and their continuing connection to the claim area.

The Court determined that the native title rights and interests are to be held on trust by the Kyburra Munda Yalga Aboriginal Corporation, as the prescribed body corporate. Justice Rares also noted that this decision was a milestone because it marked the finalisation of the Juru people's claim and gave them certainty about the entire area of land and waters over which they could exercise their native title rights and interests.

In addition, the determination recognises four ILUAs: two registered in 2014 including agreements between the Juru people and Ergon Energy, as well as the local government, and two registered in 2012 with respect to the Hancock Alpha Coal Project and the Abbot Point State Development Area.

McKellar on behalf of the Budjiti People v State of Queensland [2015] FCA 601

23 June 2015, Consent Determination, Federal Court of Australia – Currawinya Woolshed, Queensland, Mansfield J

In this decision, the Court recognised the native title rights and interests of the Budjiti people to land and waters covering approximately 16,730 square metres centred in the Paroo River extending from the Queensland/New South Wales border and Dynevor lakes in the north, Bindengolly to the west and Moonjaree Waterhole to the east. The determination also encompasses the towns of Eulo and Hungerford.

The claim was initially lodged on 20 February 2007, and has been amended to reflect the final decision of the Budjiti people about their claim.

The nature and extent of non-exclusive native title rights and interests in relation to the land and water include the right to:

a) access, be present on, move about on and travel over the area

b) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters

c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes

d) take, use, share and exchange Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes

e) take and use the Water of the area for personal, domestic and non-commercial communal purposes

f) conduct ceremonies and hold meetings on the area

g) be buried and bury native title holders within the area

h) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm

i) teach on the area the physical and spiritual attributes of the area

j) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation and

k) be accompanied onto the area by certain non-native title holders, being:

   i. spouses and other immediate family members of native title holders, pursuant to the exercise of traditional laws and customs and
   ii. people required under the traditional laws acknowledged and traditional customs observed by the native title holders for the performance of, or participation in ceremonies.

The Budjiti people are the biological descendants of Jessie Brooks, Gypsy Brooks and Lizzie Brooks, with membership contingent on recognition by the Budjiti people. Justice Mansfield noted that contemporary claimants may also refer to themselves as the Paroo River people. Justice Mansfield made reference to evidence of Aboriginal people living around the Paroo River and Currawinya Lakes area at least 14,000 years ago.

The evidence described by Mansfield J pointed towards a society at the time of sovereignty with a body of traditional laws and customs, passed from generation to generation to the present day. This evidence included occupation sites, camping places, ceremonial grounds and tool manufacture sites. For example, these camping sites were selected for their closeness to food and resources including access to the creek where pigweed, a source of vitamin C, is located. The Court heard oral evidence that children would be taken onto country from a young age, learning to gather a wide variety of bush foods and to fish. This oral evidence was consistent with an analysis of material from archaeological sites in the application area where

there was evidence of a diet including fish and shellfish. The practice of utilising the waterways and lakes continues to the present day.

The Court also noted that the Budjiti peoples fulfil their responsibilities of caring for the land by visiting and maintaining a number of sites. They also engage with Councils and Government agencies to ensure cultural sites are protected. This effort includes teaching the younger generation the significance of the different places.

The Court determined that the native title is to be held on trust by the Budjiti Aboriginal Corporation, as the prescribed body corporate. Additionally, the determination recognises 17 ILUAs.

Yaegl People #1 v Attorney General of New South Wales [2015] FCA 647

25 June 2015, Consent Determination, Federal Court of Australia, Yamba, New South Wales, Jagot J

In this decision, the Court recognised the native title rights and interests of the Yaegl people over land and waters including the estuaries of the Clarence River from Harwood, to the mouth of the river at Yamba on the north coast of New South Wales. The Yaegl people comprise all the descendants of five named apical ancestors, in addition to persons adopted into or included in the families of those who identify as and are accepted as Yaegl people.

The Yaegl people first sought recognition of their native title rights and interests in November 1996, making this claim the oldest native title matter in the Federal Court of Australia ('Yaegl #1'). This case also resolved the land based claims filed in 2011 ('Yaegl #2'). Justice Jagot compared the Yaegl #1 proceeding to the comparatively swift manner in which a large portion of the Yaegl #2 proceeding was resolved. She also emphasised the plethora of evidence provided through proceedings, with 39 witness affidavits and statements, seven anthropological reports, two historical reports, various genealogical reports and evidence heard on country.

The non-exclusive native title rights and interests in relation to the land and water include the right to:

a) enter, travel over and remain on a non-permanent basis

b) live on the land, to camp, to erect shelters, and to move about the land in the but not extending to permanently occupy or possess the land

c) engage in cultural activities, to conduct ceremonies, to hold meetings, and to participate in cultural practices relating to birth and death

d) hunt

e) fish

f) take and use the water for personal, domestic and communal purposes (including cultural purposes) but not extending to a right to control the use and flow of the water in any rivers or lakes which flow through or past or are situated within the land of two or more occupiers

g) gather and use the natural resources including food, medicinal plants, timber, stone, charcoal, ochre and resin as well as materials for fabricating tools and hunting implements and making artwork and musical instruments

h) light fires for domestic purposes, but not for the clearance of vegetation

i) share, offer and exchange traditional resources derived from the determination area

j) have access to, maintain and protect from physical harm, sites and places of importance which are of significance to Yaegl People under their traditional laws and customs

k) teach the physical, cultural and spiritual attributes of places and areas of importance on or in the determination area and

l) to be accompanied by persons who, though not native title holders, are:

   i. spouses, partners or parents of native title holders, together with their children and grandchildren

   ii. people whose presence is required under traditional laws and customs for the performance of cultural activities, practices or ceremonies and

   iii. people requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.

The Court also determined that the native title is to be held on trust by the Yaegl Traditional Owners Aboriginal Corporation, as the prescribed body corporate.

Wallace on behalf of the Boonthamurra People v State of Queensland **[2015] FCA 600**

25 June 2015, Consent Determination, Federal Court of Australia – Eromanga, Queensland, Mansfield J

In this decision, Mansfield J recognised the native title rights and interests of the Boonthamurra People in relation to an area surrounding the town of Eromanga in the south western region of Queensland. The claim area is bordered on the west by

Cooper Creek, on the north by the Cheviot Ranges, on the east by the Grey Range, and to the south, the headwaters of the Wilson River.

In making the determination, Mansfield J noted that there had initially been overlapping claims but that these had been resolved by the Queensland South Native Title Services convening the Western Region Land Summit in 2005.The current claim was filed on 2 November 2006. The respondent parties included the state of Queensland, the Quilpie Shire Council, Barcoo Shire Council and a number of mining entities and individual pastoralists.

The non-exclusive native title rights and interests in relation to the land and water include rights to:

a) access, be present on, move about on and travel over the area

b) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters

c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes

d) take, use, share and exchange natural resources from the land and waters of the area for personal, domestic and non-commercial communal purposes

e) take and use the Water of the area for personal, domestic and non-commercial communal purposes

f) conduct smoking ceremonies and dance on the area

g) hold meetings on the area

h) teach on the area the physical and spiritual attributes of the area

i) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm

j) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation and
be accompanied onto the area by certain non-Boonthamurra people, being:

   i. immediate family of the native title holders, pursuant to the exercise of traditional laws acknowledged and customs observed by the native title holders and

   ii. people required under the traditional laws acknowledged and customs observed by the native title holders for the performance of, or participation in, ceremonies and dance.

Justice Mansfield outlined the history of the claim area including the sighting of Aboriginal people in the area by search parties sent to locate the Burke and Wills expedition. His Honour detailed the establishment of European stations on the land and inclusion of Boonthamurra people as an integral component of the station workforce. This continued presence of the Boonthamurra people in their traditional country made it possible to maintain important aspects of traditional law and custom.

In addition to the presence of Boonthamurra ancestors residing and working on the area during the station era, members continue today to access and camp on the land as a necessary part of acknowledging and observing laws and customs. Strong relationships with the spirits of ancestors residing in the area are manifested through addressing spirits for protection as well as the practice of site avoidance. Relying upon affidavit evidence, Mansfield J also made reference to the mutual recognition of neighbouring groups that trespass on Boonthamurra country is a wrongful act and legitimate evidence of the claimant group's title.

The Boonthamurra people are recognised via a 'bloodline' connection with rights to speak for and to make decisions about country. Justice Mansfield noted that language has not been retained with any fluency, although some of the claimants speak a few words and sentences.

The Court determined that the native title is to be held on trust by the Boonthamurra Native Title Aboriginal Corporation, as the prescribed body corporate. The Determination does exclude an area that is to be the subject of a post-determination ILUA between the applicant and the State intended to resolve any remaining native title claims. There are 25 additional ILUAs related to the determination.

Banjima People v State of Western Australia **[2015] FCAFC 84**

12 June 2015, Appeal against certain aspects of native title determinations, Full Federal Court of Australia – Adelaide, SA (heard in Perth) Mansfield, Kenny, Rares, Jagot and Mortimer JJ

In this matter, the Full Federal Court heard appeals, brought by both the State of Western Australia (the State) and by the Banjima People, against aspects of the decisions in:

- Banjima People v State of Western Australia (No 2) [2013] FCA 868 (Banjima 2)
- Banjima People v State of Western Australia (No 3) [2014] FCA 201 (Banjima 3) (see the AIATSIS case summary in the March 2014 edition of What's New in Native Title).

These cases related to the recognition of the Banjima People's native title rights and interests over land and waters in the East Pilbara region of Western Australia, in the Hamersley Range and the vicinity of what is today known as Karijini National Park. The appeal considers some important aspects of the Banjima People's proof of connection to the claim area specifically related to the ability to exclude others and the interrelationship this has with exclave possession native title rights and interests.

Appeal by Western Australia

The State appealed on several grounds, all of which the Full Federal Court rejected.

Ground 1

Ground 1 had several aspects. In pursuing this aspect of its appeal, the State set out that:

- Native title has its origin in and is given content by the traditional laws acknowledged and traditional customs observed by the relevant society and
- "Acknowledgment" and "observance" means the practice of law and custom.

This proposition was non-contentious. However, the State submitted that the custom of expecting others to seek permission to be or do things on Banjima country was not about the exercise of a customary right of excluding anyone, but rather a custom of protecting those who enter Banjima country from spirits or dangerous places. The State argued that this was not sufficient to establish a native title right of exclusive possession.

The State relied on *Griffiths v Northern Territory of Australia* [2007] FCAFC 178 (*Griffiths*) as authority that:

> evidence of granting/obtaining permission to avoid the country's pitfalls can found exclusive possession if the custom carries an 'ability ... to effectively exclude people not of their community'.

The State argued that the Banjima People did not have the ability to effectively exclude others. Furthermore, The State submitted that the primary judge had focussed on the maintenance of connection by the Banjima People over the whole claim area as sufficient to establish exclusive possession and that this:

> … erroneously substituted connection for acknowledgment and observance of traditional laws and customs, contrary to *Yorta Yorta.*

The Full Federal Court did not agree with the State's interpretation of the primary judge's findings. Nor did the Full Federal Court agree with the State's interpretation of *Griffiths* or, in the alternative, the State's contention that *Griffiths* had been wrongly applied.

In rejecting the State's appeal, their Honours said:

- at [18] that the primary judge found not only an expectation held by the Banjima People that others would seek permission to enter, but also a "need" for them to do so
- at [17] that 'protecting others' was one important reason found by the primary judge for the custom. However, his Honour also identified that the custom existed to ensure that 'sacred or religious sites created in the Dreaming were not violated'
- at [20] that the primary judge found that the Banjima People had exerted their right to exclude others in situations where their custom was not observed
- at [22] the primary judge referred to evidence of seeking Banjima permission as "ample" and "strong", and not "minimal" as the State contended and, with respect to the State's focus on the Banjima People's ability to enforce their laws and customs against Europeans, their Honours referred to *Griffiths*, at [21], stating:

  > "...traditional law and custom, so far as it bore upon relationships with persons outside the relevant community at the time of sovereignty, would have been framed by reference to relations with indigenous people". In other words, it is the Banjima People and other indigenous people that matter, not people who stand outside the relevant frame of reference.

The Full Federal Court then discussed the State's erroneous assumption that a traditional law or custom in which permission is needed from traditional owners for others to enter their country (being others within the universe of traditional laws and customs) cannot be recognised by the common law as a right of exclusive possession. Their Honours set out, at [27]-[34] that such an assumption is inconsistent with the reasoning in *Griffiths* and stated, at [38]

> The primary judge expressly found that under Banjima traditional law and custom, there was a need to obtain Banjima permission to enter Banjima country. The necessary corollary of this finding is that, by the system of traditional laws and interests acknowledged and observed by the Banjima People and relevant others, the Banjima People controlled access to Banjima country.

The State also appealed the primary judgment on the basis that the Yindjibarndi People held traditional rights over part of the claim area (in particular, Mulga Downs, a station covering a substantial part of the area north of the northern escarpment of the Hammersley Range). The State described this area as a 'transitional or border area' of the claim area and argued that it could not attract exclusive rights and interests.

The Full Federal Court discussed that Yindjibarndi interests may have been traditionally expressed in or around the disputed northern boundary area but that the primary judge found no evidence that would allow such a finding and that 'expressing an interest' did not equate to native title rights and interests. Their Honours found the State's focus 'inappropriately narrow' (at [50]) particularly as the Yindjibarndi had subsequently made a claim which did not include any part of the Banjima claim are). Consequently, as there was no person who could presently assert the existence of continued shared rights in any part of Banjima country, their exclusive rights and interests remain and were capable of being asserted against the world.

Ground 3

The State also argued that the primary judge's conclusions about this area were against the weight of the evidence. The State sought to rely upon ethnographical evidence which other anthropologists and ultimately the trial judge determined were of 'limited usefulness'. The Full Federal Court discussed in detail the substantial evidence heard by the primary judge, at [57]-[77], and the failure by the State to come to grips with the circumstances that allowed the primary judge a greater advantage over the Full Federal Court to weigh the evidence.

Their Honours rejected this ground of appeal on the basis that the rule in *Fox v Percy* (2003) 214 CLR 118 could not be satisfied. This rule requires, before appellate intervention could be justified, that the State establish

> such error in circumstances such as the present by pointing to some finding contrary to "incontrovertible facts or uncontested testimony", "glaringly improbable" or "contrary to compelling inferences"

Ground 4

The State appealed against the primary judge's application of s 47B of the *Native Title Act* 1993 (Cth) (the NTA) to find that the grant of two exploration licences under the *Mining Act* 1978 (WA) had not extinguished native title over three areas of unallocated Crown land.

How does s 47B NTA Operate

Section 47B NTA provides that any extinguishment by the creation of a prior interest over an area must be disregarded if:

- one or more members of the native title claim group occupy the area and
  - the area is not covered by interests such as a freehold estate, a lease, a reservation or
  - the area is not subject to legislation providing that the area is to be used for a public purpose or for a particular purpose.

The primary judge had considered, amongst many parcels of land, seven particular parcels of land. His Honour found insufficient evidence of occupation by Banjima People over four of the parcels, however his Honour determined that native title had not been extinguished on the three parcels of land based primarily on the evidence of a man who was living in the area and hunting around the community.

Although the State conceded at trial that this evidence was sufficient to demonstrate occupation, the State argued that the granting of the exploration licences over the three parcels of land had extinguished native title on the basis that the areas had been allocated for public or particular purposes, pursuant to s 47B(1)(b)(ii) NTA.

The Full Federal Court set out the rules of statutory construction and various leading cases in native title, to highlight that the proper construction of s 47B NTA should be, having regard to the Preamble of the NTA, that its purpose is beneficial and that any qualification on its application should be read narrowly. Their Honours rejected the State's arguments, finding at [110] that Parliament did not intend

> that the use of only a small fraction of a very large parcel of land or waters under a permission or authority were sufficient to extinguish native title over the whole parcel.

Furthermore, their Honours applied *Western Australia v Brown* (2014) 306 ALR 168 *(WA v Brown)*; and found that the Banjima People could have exercised their native title rights anywhere on the three parcels of land without any breach of any right that had been granted to the licensees. On this reasoning, the Court also rejected this ground of appeal.

Appeal by the Banjima People

Ground 1

The Banjima People unsuccessfully appealed against that the primary judge's application of s 47B NTA in determining that the Banjima People were not in occupation of 18 parcels of unallocated Crown land.

The primary judge's decision was challenged generally on the basis that the areas in question are mostly along or adjacent to the ridge lines of the Hamersley Range and the Banjima People argued their occupation of these areas should have been found based on the evidence of the Banjima People using the various nearby gorges to pass through the Hamersley Range.

The Full Federal Court rejected this general proposition, as well as rejecting the challenge on the basis that his Honour erred by:

- requiring evidence of particular activities at particular times instead of considering the use of the area as a whole

- requiring evidence of occupation of entire parcels and was, therefore, dealing with the State's parcel numbers instead of considering the use of the area as a whole
- allowing the inaccessibility of the terrain in the Hamersley Range to weigh against a finding of occupation, rather than considering the rugged nature of the terrain as evidence that the Banjima People used the gorges for hunting and fishing and that rituals associated with the gorges and prohibitions on access should have meant there could be a finding of occupation of the Range generally and
- Requiring evidence in respect to each parcel to a degree of particularity beyond that which was required in *Moses v State of Western Australia* [2007] FCAFC 78 and, therefore, misconstrued that case.

The Court noted that the evidence presented before the primary judge was too vague and imprecise to satisfy the judge that there had been an assertion of being established over the particular areas.

Ground 3

The Banjima People submitted that his Honour erred by concluding that the creation of two reserves extinguished native title. The Full Federal Court noted that his Honour had considered the application of the leading cases of *WA v Brown* and *Griffiths*, which stand for the proposition that the exercise of native title rights may well have been prevented while the reserves and the buildings remained, but upon cancellation of the reserves or the earlier removal of the buildings, non-exclusive native title rights and interests remained unaffected.

The State contended that the construction of each building was a public work which extinguished native title. However, the Full Federal Court did not agree because there was no evidence of an agreement with the State for the construction of buildings. Therefore, the Court allowed Ground 3 of the Banjima People's appeal.

Corunna v South West Aboriginal Land and Sea Council (No 2) **[2015] FCA 630**

24 June 2015, Costs Order, Federal Court of Australia – Perth, Barker J

In this matter, the Court made an order for costs against the respondent Mr Corunna, on behalf of the South West Aboriginal Land and Sea Council (SWALSC). The case follows *Corunna v South West Aboriginal Land and Sea Council* [2015] FCA 491 (see AIATSIS case summary in the May 2015 edition of What's New in Native Title). In that matter, Barker J summarily dismissed Mr Coruna's application that he be

entitled to separately authorise an ILUA which overlapped with the Noongar claim over Perth and the South West region (the South West Settlement), on the ground that it had no reasonable prospect of success, as provided under s 31A(2) of the *Federal Court of Australia Act 1976* (Cth) (FCA).

SWALSC and the State of Western Australia (the State) were respondents in both matters, but the State made no application for costs.

Questions before the Court

In making the cost order, Barker J identified the following two key issues:

1. whether s 85A of the *Native Title Act 1993* (Cth) (NTA) applied to the proceeding to affect the exercise of the Court's usual discretion as to costs and, if so, whether Mr Corunna would be ordered to pay costs under s43 FCA Act and
2. if s 85A did not apply, whether SWALSC was entitled to the costs order it was seeking.

Question 1

Section 43(2) FCA provides a discretionary power on the Court to award costs 'except as provided by any other act'.

Section 85A NTA provides for each party to a native title proceeding to bear his or her own costs and, therefore, Barker J found it to be a provision that affects the exercise of the costs discretion.

The issue then turned upon whether the proceeding commenced by Mr Corunna was a type of "proceeding" to which s 85A referred. Subject to s 80 NTA, which deals with the Operation of Part IV NTA, his Honour noted at [10] that

> … a "proceeding" for the purposes of s 85A will be one which can be characterised as a proceeding *in relation to applications filed in the Federal Court that relate to native title.*

Barker J focussed on the expressions 'in relation to' and 'that relate to' native title, which led his Honour to consider the overlapping and competing nature of ss 61, 69 and 13 NTA. His Honour also discussed the differing approaches to the application of s 85A in *The Lardil Peoples v State of Queensland* [2001] FCA 414 *(Lardil),* and *Cheedy v Western Australia (No 2)* [2011] FCAFC 163*.*

Barker J, using *Lardil* as authority, set out that a 'proceeding' for the purposes of s 85A NTA is a proceeding confined to matters arising within the Court's exclusive jurisdiction, conferred by s 81 NTA. Barker J distinguished this from proceedings within the jurisdiction conferred in relation to matters arising 'under' the act.

Mr Corunna argued that, as a member of an unregistered native title claim group, he was entitled under the NTA to separately authorise the relevant ILUA. Barker J found that this did not invoke the Court's exclusive jurisdiction to hear the claim and, therefore s 85A NTA did not apply.

Question 2

His Honour then turned to the question of whether SWALSC was entitled to a costs order against Mr Corunna by application of s 43 FCA.

Barker J discussed *Murray v Registrar of the National Native Title Tribunal* [2003] FCAFC 220 and *Northern Territory of Australia v Doepel (No 2)* [2004] FCA 46 to emphasise that the Court should have regard to all the relevant circumstances when using its discretion to award costs. In rejecting the argument that Mr Corunna's proceeding was one in which 'a "public interest" element should guide the exercise of costs discretion', his Honour took into consideration

- Mr Corunna did not bring the proceeding as a representative action but in his own name and
- the competing public interest being served under the SWALC claim.

Additionally, his Honour set out at [65] that Mr Corunna had brought speculative proceedings at an advanced stage of the ILUA registration process, rather than objecting later in his Claim Group's registration process under the NTA. Furthermore, Barker J found at [66] that Mr Corunna's application had not helped to clarify the law. In these circumstances, Barker J ordered Mr Corunna to pay SWALSC's costs.

Hill on behalf of the Yirendali People Core Country Claim v State of Queensland (No 3) [2015] FCA 777

29 June 2015, Order to Participate in Mediation, Federal Court of Australia – Brisbane, Queensland, Logan J

In this matter, Logan J ordered that the Yirendali people and the State of Queensland attend, participate and act in good faith and reasonably and genuinely in a mediation of non-native title outcomes, and would need to have regard to local government, mining and pastoralists interests. Justice Logan reserved the prospect of extending the mediation to include local government, mining and pastoralist interests. The Yirendali people filed their claim in 2006 for an area of land based around Hughenden and covering land within the Charters Towers regional, Flinders Shire and Richmond Shire local government areas. The history of the claim is available at Hill on behalf of the Yirendali People Core *Country Claim v State of*

Queensland (includes Corrigendum dated 10 April 2015) [2015] FCA 300 (see the AIATSIS case summary in the March 2015 edition of What's New in Native Title).

The Yirendali people had admitted they were unable to adduce evidence of a connection. Justice Logan noted at [22] that if that was the only question to be resolved, continuing the proceeding would be an abuse of process. However, given there were wider issues to be determined than just the denial of the existence of native title rights and interests, namely the pleading of the pastoralists that there is no native title at all in respect of the claim area either by absence of connection or extinguishment, or both, there was no abuse. The Court held it would be inappropriate to proceed to trial given the objects of the NTA, the willingness of all parties to pursue mediation and at [14] 'the recollection that, in many cases, an absence of connection can be referrable to events of history which would not be repeated today, when different views are abroad in relation to relations between the original inhabitants of this land and those who have come afterwards.'

Hale on behalf of the Bunuba #2 Native Title Claim Group v State of Western Australia **[2015] FCA 560**

5 June 2015, Referral of questions of law from National Native Title Tribunal, Federal Court of Australia – Perth, WA, Barker J

In this matter, the Court heard a referral for two questions of law from the National Native Title Tribunal (The Tribunal). The Tribunal was conducting an inquiry in relation to an expedited procedure application made by the applicant under s 32(3) of the *Native Title Act 1993* (Cth) (NTA). Pursuant to s 145 NTA, the Tribunal referred to the Court, two questions of law related to matters set out in the special case.

The respondents to the claim were:

- The State of Western Australia
- Mings Mining Resources Pty Ltd (Mings)

Mings applied for an exploration licence over an area (***Eo4/2327***) which overlapped the Bunuba #2 registered native title claim by an area of 3.48 hectares. The balance of the proposed tenement overlapped an area subject to the native title determination made in *Wurrurmurra v State of Western Australia* [2012] FCA 1399 held by the Bunuba Dawangarri Aboriginal Corporation RNTBC (BDAC).

The State gave notice of the act to grant Eo4/2327 to the Bunuba #2 claim group (the objector) and to BDAC in September 2013. This included a statement that the State considered the act as an act attracting the expedited procedure pursuant to s

29(7) NTA. In December 2013, the objector lodged an objection under s 32(3) NTA with the Tribunal against the expedited procedure statement.

In June 2014, the Tribunal made directions for an inquiry into the objector's objection application. In August 2014, Mings advised that it intended to request Bunuba #2's registered claim area be excised from the proposed exploration area. This proposal would have meant that the exploration area only overlapped the area of BDAC's native title determination. The parties then agreed for the Tribunal to refer questions of law to the Court pursuant to s 145 NTA.

Questions before the Court

The questions referred to the Court were:

1. Is the proposed grant of Eo4/2327 subject to the excision, an act to which s 29 notice applies?
2. If "yes", is the scope of the inquiry into the expedited procedure objection concerned with the area of:
    a) The grant of Eo4/2327 being the proposed act in the s 29 notice?
    b) The grant of Eo4/2327, subject to the excision of the Bunuba #2 claim area? Or
    c) The Bunuba #2 claim overlap area?

Question 1

The respondents submitted that this question turned upon the Tribunal's jurisdiction to carry out an inquiry into the expedited procedure application under ss 75 and 139(b) NTA. This was conditioned by the State's compliance with s 29 NTA. The objector agreed in its submissions. Barker J therefore concluded that the answer to Question 1 must be yes.

The issue however was that the State's proposed act to grant the exploration area did not include the proposed excision of the Bunuba #2 claim area. As a result, the excision was proposed after the Tribunal had commenced its inquiry into the objection application. This complicated the jurisdictional scope of the Tribunal's inquiry which formed the basis for Question 2.

Question 2

Question 2 turned upon the text and operation of the expedited procedure provisions of the NTA. His Honour therefore embarked upon a process of statutory construction of these provisions. His honour agreed with the parties that the right to negotiate governed by s 25 NTA applied to the proposed mining exploration grant. This required the State to give notice of the proposed act in accordance with s 29 NTA, which the State had duly done. As the Bunuba #2 claim group had objected to this notice, the expedited procedure under s 32(4) NTA applied, requiring the Tribunal to "determine whether the act is an act attracting the expedited procedure."

Barker J then turned to the scope of the Tribunal's inquiry. His Honour observed that ss 139 and 75 NTA provide that the Tribunal conduct an inquiry into the "expedited procedure objection application". As the claim group's objection was not limited to the Bunuba#2 claim overlap area, his Honour was of the view that the inquiry could not be limited to this area, therefore (c) was not the right answer.

His Honour emphasized that the Tribunal must have regard to the criteria stated in s 237 NTA as an evidentiary issue in determining whether a registered native title claim will be affected in relevant ways by the act. His Honour noted that the objection was not confined to lands and waters of the Bunuba #2 native title claim but concerned all the country on the map which included the exploration area. Therefore, his Honour was of the view that the scope of the inquiry concerned the area of the grant of E04/2327 being the proposed act specified in the s 29 notice. Accordingly, the answer to question 2 was (a).

Budby on behalf of the Barada Barna People v State of Queensland (No 4) **[2015] FCA 629**

9 June 2015, Application for Joinder, Federal Court of Australia – Brisbane, QL, Dowsett J

In this matter, the Court heard an application for joinder as a respondent by Anthony Mark Henry to the Barada Barna Proceeding. The parties to the Barada Barna Proceeding are:

- Les Budby and Cecil Brown Jnr on behalf of behalf of the Barada Barna People (Applicant)
- State of Queensland and other named parties (Respondent)

This decision relates to the case of *Budby on behalf of the Barada Barna People v State of Queensland (No 3)* [2014] FCA 607. The Barada Barna People lodged an application for the recognition of native title rights and interests in 2008 over 16, 440 square kilometres west of Rockhampton.

Dowsett J ordered that:

1. Anthony Mark Henry be joined as a respondent subject to the following:
    a. that Mr Henry not pursue any Cross-Claim
    b. that Mr Henry file and serve a defence within 48 hours
    c. that Mr Henry file and serve an undertaking to be bound by any agreement between the parties regarding the extinguishing effect of native title rights
2. the Barada Barna Applicant file a response in writing to the parties (not including Mr Henry) concerning issues of tenure for which agreement as to extinguishment has been sought
3. the State of Queensland circulate to the parties (not including Mr Henry) a further draft of the statement of facts agreed concerning extinguishment
4. the parties (not including Mr Henry) provide any final comments in respect of the draft statement of agreed facts before 17 June 2015
5. the State of Queensland is to file any statement of agreed facts reached pursuant to s 87 of the *Native Title Act 1993* (Cth) before 24 June 2015.

Dowsett J acknowledged at [2] that Mr Henry's significant delay in applying to join the proceedings at so late a stage would normally be disqualifying. His Honour considered the Applicant's submission that they would be prejudiced by the joinder as it would make negotiations more difficult. His Honour however concluded that this was a result not of late joinder but of joinder itself.

Dowsett J considered the proposition that if Mr Henry were joined and successful in the proceedings, there would be no Native Title Determination. His honour was of the view that if this were the case, it would be due to his having a valid ground for opposing the determination and not from any prejudice flowing from seeking a late joinder.

His Honour determined that allowing Mr Henry's claims to be ventilated was the best way for resolving difficult questions within the litigation. However this was on condition that he does not file a cross-claim and that he files a defence immediately to address the Wide People's overlapping claim.

Doctor on behalf of the Bigambul People v State of Queensland (No 3) [2015] FCA 581

11 June 2015, Order to amend native title determination application, Federal Court of Australia – Brisbane, Reeves J

In this matter, Reeves J heard and gave three orders sought by the Applicant, the Bigambul People. The applications sought were the latest in a series of interlocutory applications directed at the composition of the Bigambul Native Title Claim Group. This case followed earlier applications which were considered in *Doctor on behalf of the Bigambul People v State of Queensland (No 2)* [2013] FCA 746 (Bigambul No 2)

In this matter, Reeves J considered an application the Bigambul People and made the following orders:

1. a grant of leave to further amend the description of the Bigambul claim group in an application filed on 8 May 2014
2. an order allowing three members of the existing Bigambul Applicant to be replaced and
3. an order for leave to further amend the Bigambul application filed 8 May 2014 to exclude certain areas from the claim area.

Order 1

Reeves J provided the following reasons for granting leave to amend the description of the Bigambul claim group:

- fair notice was given of the business to be dealt with at the meeting and was served in clear terms so that a member of the Bigambul claim group would have been able to make an informed decision (using the test from *Weribone on behalf of the Mandandanji People v State of Queensland* [2013] FCA 255 at [41])
- the notice was widely circulated as it was published in a newspaper and periodical which have wide regional circulation. The number of people attending supported this conclusion
- the information provided at the meetings was sufficiently detailed and comprehensive.

Order 2

Reeves J provided the following reasons for making the order for the new application:

- his Honour did not accept the submissions by QSNTS that the notice for the meetings, that decided on the replacement of the three members of the Bigambul Applicant, was defective
- his Honour found no evidence that any member of the Bigambul claim group was unaware that this item of business was to be considered at the meetings
- the item was passed at the second meeting by 87 votes to 47.

Order 3

His Honour provided the following reasons for giving the order for leave to amend the application to exclude certain areas from the claim area:

- none of the parties who sought to be heard on these applications opposed the making of the order
- the notice for the meetings clearly identified the relevant areas to be excluded as an item of business
- two resolutions relating to the matter were passed with a full majority vote which further evidenced the requirements for fair notice being met.

2. Case Summaries – July

Ward v State of Western Australia (No 3) [2015] FCA 658

1 July 2015, Compensation Claim, Federal Court of Australia – Perth, WA
Barker J

In this matter, the Court heard an application for a determination of compensation under the *Native Title Act 1993* (Cth) ('NTA') by the traditional owners of the Gibson Desert Nature Reserve. When the proceeding commenced in 2012, the compensation claim was founded on the allegation that, at material times immediately prior to the creation of the Gibson Desert Nature Reserve in 1977, the claimants had exclusive possession native title to the claim area. This included the native title right to control use of and access to the whole of the claim area.

In April 2014, the State of Western Australia filed an amended defence in the proceeding. The defence alleged that as a result of the grant of an oil licence over a prospecting area in 1921 or alternatively by later grants of exploration permits, at least the native title right to control use of an access to the entire claim area was extinguished. This would mean that for the purposes of the compensation claim, any native title was of a non-exclusive nature.

Questions before the Court

The Court ordered the following questions to be determined:

1. Was Oil Licence OPA 26H (The 1921 licence) validly granted?
2. If the answer to question 1 is yes, did the grant of that oil licence extinguish any native title right to control use of and access to the whole of the claim area?

3. If the answer to question 1 or 2 is no, did the grants of permits to explore areas of PE 146H, PE 147H and PE 161H extinguish any native title right to control use and access to the whole of the claim area?

Question 1

Barker J considered the evidence provided by the State to support its contention that the oil licence was granted validly under the relevant legislation in 1921. His honour was satisfied that the variety of documents including maps, microfilm and letters allowed him to infer that the oil licence was formally issued and that therefore the answer to question 1 was “yes”.

Question 2

The claimant’s submission characterised the oil licence as a transitory and limited right to enter the land to prospect, operating to temporarily ‘regulate’ the right to control access. Their argument relied on the recent High Court decision in *Akiba v Commonwealth of Australia* (2013) 250 CLR 209 (*Akiba*) for the principle that the NTA contemplates that an act may interfere with the enjoyment or exercise of native title, without extinguishing those rights and interests.

On the other hand, the State and Commonwealth likened the case to *Western Australia v Brown* [2014] HCA 8 (*Brown*) which affirmed the principles of extinguishment set out in *Western Australia v Ward* [2002] HCA 8 (*Ward*). This endorsed the inconsistency of rights test which states;

“Two rights are inconsistent or they are not. If they are inconsistent, there will be extinguishment to the extent of the inconsistency; if they are not, there will not be extinguishment.”

In *Brown,* the High Court emphasised that the question of inconsistency was an objective inquiry requiring a comparison between the two sets of rights (citing *Wik* at 185-86).

Barker J considered the relevant jurisprudence; in particular his Honour examined the various approaches of the bench in the High Court’s decision in *Queensland v Congoo* [2015] HCA 17. His Honour ultimately favoured application of the inconsistency of rights test as set out in *Ward* and *Brown*. At [178] his Honour decided that the rights granted to the licensee by the oil license were no different from the grants of the pastoral leases considered in *Ward*. They did not create exclusive possession rights in the licensee, but at the very least they did extinguish the exclusive native title right to control the use of and access to the subject area.

At [181] his Honour then rejected the claimant’s reliance *Akiba* to argue that the oil licence merely regulated the native title rights in question. This was because as the

Akiba applied more relevantly to the native title right to take resources and not to control access to land and its operation with the state fishing legislation. In this case, the oil licence gave the licensee the right to do certain things which were plainly inconsistent with the native title holders' pre-existing right to control all outsiders.

Therefore his Honour declared at [200] that the answer to question 2 was 'yes'.

The Court ordered that:

1. Question 1 is answered "yes"
1. Question 2 is answered "yes"
2. It is, in the circumstances, unnecessary to answer Question 3.

Accordingly, his Honour declared that the claimants' remaining (non-exclusive) native title rights were validly extinguished by the vesting of the Gibson Desert Nature Reserve. They would therefore be entitled to compensation under s 45 of the NTA.

MT (deceased) v State of Western Australia (No 2) [2015] FCA 697

8 July 2015, Order to strike out proceeding, Federal Court of Australia – Perth, Western Australia, Barker J

In this case, the Court granted an order to strike out the proceeding under s 61(1) of the *Native Title Act 1993* (Cth) (NTA). In the present case it was claimed that the wider group did not authorise the particular group nominated to bring the claim application. Alternatively, the Court held that the proceeding could be dismissed either pursuant to r 26.01(1)(c)or r 5.23(1)(b) of the *Federal Court Rules 2011* (Cth). Justice Barker had previously dismissed an earlier application in *MT (deceased) v State of Western Australia* [2013] FCA 1302 but had warned that should the case continue to languish and fail to progress, the status of the case may be reconsidered.

The claim was first conceived in 1996, and subsequently amended in 1999 to include 10 named applicants of the Djabera Djabera People, five of whom are now deceased. An anthropological report commissioned by the Court and released in 2003 found that the land area subject to the claim was actually traditionally associated with Jabirr Jabirr people, Nyulnyul people and Nimanbur people. However, at [54] Barker J held that the full complement of the people included did not collectively authorise the named applicants to bring the claim. The group currently identified as claimants are not traditional owners and therefore the named claimant group is incapable of being recognised under the NTA as the native title holders.

Similarly, the current form of the application was held to be untenable. Justice Barker accepted the reasons of the Kimberley Land Council, one of the respondents, that the composition of the claimant group was flawed and was not accurately representative, and following the amendment of boundaries in 2012, that some of the named applicants' land was no longer included.

Effectively no advancement of the proceeding had occurred in the 10 years since an anthropological report on the identification, name and description of people was completed. Additionally, the applicant failed to comply with a Court order to progress the matter by filing and serving a statement of issues, facts and contentions within time.

TJ v State of Western Australia **[2015] FCA 818**

21 July 2015, Application to replace claimant, Federal Court of Australia – Perth, WA, Rares J

In this case, the Court dismissed an application to replace the current applicant with seven other individuals (referred to as the Adams applicant in the judgment). The current applicant is seeking recognition of an exclusive right of the Yindjibarndi people to control access to areas of their traditional land and waters that include, the Solomon mine, operated by the Fortescue Metals Group. These claims of exclusive rights and interests are opposed by both the Western Australian State government and Fortescue.

The Adams applicant claimed it was authorised to control access through a secret ballot held on 23 June 2015. This ballot also authorised and directed a resolution that the group consent to a determination similar to that made by the Full Federal Court in *Moses v Western Australia* (2007) 160 FCR 148 (which recognised a differently constituted, but related claim group of Yindjibarndi people with only non-exclusive native title rights and interests in neighbouring land and waters). Accepting this resolution would have had ramifications for the current litigation and would have amounted to an instruction to the replacement applicant to abandon the claim for exclusive possession and to consent to a determination that the group possessed only non-exclusive native title rights and interests.

Questions before the Court

The Court sought to resolve three questions:

1. Did the procedure that the new applicant used to organise the voting on 23 June comply with the process requirements under s 251B of the *Native Title Act 1993* (Cth) (NTA)?

2. Was notice of the meeting issued sufficient, and did it enable persons to judge whether to attend and vote, or whether to leave the matter to be determined by the majority who did attend?
3. Had the new applicant established that the Court should exercise its discretion under s 66B(2) of the NTA to make an order to replace the current applicant?

The Adams applicant's submission argued that that there was no requirement under the NTA that there be a meeting, that voting occur in any particular form or any particular process be used to confer an authorisation, the notice provided was not deficient and that it was not relevant for the claim group to know of the role that Fortescue had played in organising and paying for aspects of the 'meeting'. Other issues raised were that the meeting was held on a Tuesday, rather than the normal Saturday. In the past, community meeting resolutions were always explained in English as well as in Yindjibarndi language. Nor were travel allowances or sitting fees paid as was previously done.

Question 1

Justice Rares held there were two substantial flaws in the process followed by the Adams applicant and that it therefore failed to comply with the legislative process requirements: firstly, the notice and resolutions provided failed to identify the persons who comprised 'Yindjibarndi #1 native title claim group' with precision; and secondly, that 450 known members of the 870 member claim group were not sent a copy of the notice although the proposed new applicant had addresses for about 170 additional people. This number of 170 was greater than any majority for any resolution. The remaining 450 people would have had to rely upon word of mouth or seeing an advertisement for notice.

Question 2

Justice Rares held that the notice provided was capable of misleading those to whom it was addressed as it had not included the full resolutions proposed, was long and written in complex English and the consequences for the current claim were misunderstood even by those elders promoting the process.

In practice, there was no meeting, as the notice purported. Instead there was in Rares J words at [93] an opportunity for people to say something, limited in location to Roebourne, and was 'chance to do so without any obligation for others to meet or discuss with them the proposed or alternative courses of action open to the group to make before taking any decisions.' The notice process was therefore invalid.

Question 3

Justice Rares declined to exercise his discretion to replace the claim applicant due to the above reasons, but also because he was not satisfied that the process and its results were fairly representative of either the claim group or its informed consent. Additionally, there was an identifiable correlation between those who voted 'Yes' in Roebourne and the use of $400 grocery vouchers provided by Wirlu-Murra Yindjibarndi Aboriginal Corporation following word of mouth that supporters could collect a voucher once they had voted. These actions had the appearance of rewarding members who voted, and excluding those who may have opposed the resolutions.

Raymond William Ashwin (dec) & Ors on behalf of Wutha v Mathew Gordon Vanmaris **[2015] NNTTA 24**

1 July 2015, An Inquiry into an Expedited Procedure Objection Application, National Native Title Tribunal – Perth, WA, H Shurven, Member

In this matter, the National Native Title Tribunal ('the Tribunal') dismissed an objection lodged by the Wutha people to the intended grant of a prospecting licence. On 14 January 2015, the state of Western Australia gave notice under s 29 of the *Native Title Act 1933* (Cth) (' NTA') of its intention to grant a prospecting licence to Mathew Gordon Vanmaris without Mr Vanmaris negotiating with the Wutha people. The Wutha native title claim overlaps the licence by 72.16 per cent.

The matter was dismissed because Wutha people failed to provide the statement of contentions, documentary evidence and witness statements within time. The Tribunal held that it would be unfair to prejudice the other parties with further delays, and that it was required to proceed as expeditiously as possible when conducted this type of inquiry.

Peggy Patrick and Others on behalf of Yurriyangem Taam v WA Mining Resources Pty Ltd and Another **[2015] NNTTA 25**

10 July 2015, An Inquiry into an Expedited Procedure Objection Application, National Native Title Tribunal- Perth, WA, H Shurven, Member

In this matter, the National Native Title Tribunal ('the Tribunal') determined that the proposed grant of an exploration licence was an 'act attracting the expedited procedure' under s 237(b) of the *Native Title Act 1993* (Cth) ('NTA'). The licence covers an area of approximately 70 square kilometres and is situated entirely within

the boundaries of the north eastern portion of the Yurriyangem Taam native title claim.

The Yurriyangem Taam argued that the proposed licence, and the activities that would be conducted under its authority, would directly interfere with the social or community activities carried on in the area, and that it is also likely to interfere with areas or sites of particular significance.

The Tribunal accepted that evidence of social or community activities presented by the Yurriyangem Taam people through an affidavit of one of its members, Mr Johnny Echo, could be construed broadly. For example, Mr Echo taught his children about hunting while visiting licence area and while there was no evidence of other members of the claim group using the licence area for this purpose, the Tribunal accepted at [20]that the activity had 'the broader social function of passing on the traditional knowledge of the claim group'. The Tribunal went on to hold that given the limited extent to which the licence is used for the community or social activities and the previous use of the area for mineral exploration there was not considered to be a real risk that the grant of the licence will substantially interfere with the community or social activities of the native title holders.

Additionally, the Tribunal held that there were no sites of particular significance to the Yurriyangem Taam. While the Tribunal acknowledge the site was clearly significant to Mr Echo personally, the evidence did not explain why the area was of particular significance in accordance with the traditions of native title holders, nor did it differentiate or compare the area from the other sites within the claim.

Rusa Resources (Australia) Pty Ltd v Sharon Crowe and Others on behalf of Gnulli **[2015] NNTTA 26**

16 July 2015, An Inquiry into a Future Act Determination Application, National Native Title Tribunal – Brisbane, Queensland, JR McNamara, Member

In this matter, the National Native Title Tribunal ('the Tribunal') was not satisfied that Rusa Resources had negotiated in 'good faith', the manner required by s 31(1)(b) of the *Native Title Act 1993* (Cth). As a result, the Tribunal was not empowered to deal with the application and the application was dismissed.

Rusa had applied for a petroleum exploration permit over an extensive area of 7, 500 square kilometres mainly located in the Shire of Carnarvon. Rusa applied for the Tribunal to make a determination about the grant of the permit. The Gnulli people contended that Rusa have not negotiated in good faith and therefore that the Tribunal must not make a determination.

The Tribunal observed at [6] that negotiation in good faith is not defined in the NTA but that helpful guidelines such as 'what a reasonable person would do in the circumstances' and that it 'requires the parties to act with honesty of intention and sincerity'.

Questions before the Tribunal

The Tribunal then considered a number of issues in determining whether or not Rusa negotiated in good faith with Gnulli:

1. Were Rusa's responses to Gnulli's request for information sufficient, relevant and timely?
2. Was Rusa's financial offer reasonable and realistic?
3. Did Rusa adopt a rigid, 'take it or leave it' approach to the financial offer once it was made?
4. Did Mr Lane (Rusa's representative)have authority to negotiate on behalf of Rusa?
5. Was Rusa's position on funding the negotiations reasonable?
6. Did Rusa behave reasonably regarding the provision of draft agreements?
7. Did Rusa shift positions on the terms of an agreement?
8. Did Rusa have reasonable expectations about the length, cost and complexity of negotiations?
9. Did Rusa allocate the financial and technical resources to meaningfully engage in the negotiations?
10. Did Rusa act reasonably when they applied to the Tribunal for a determination?

Question One

The Tribunal emphasised at [13] that regard would be had to the resources available to each party, particularly the constraints affecting Gnulli, their representative body YMAC, as well as the financial and operational pressures on Rusa. They also discussed Rusa's failure to disclose its financial position and how its limited financial capacity was not disclosed to Gnulli until almost a year after negotiations had started. The Tribunal believed that this may have led Gnulli to believe the type of arrangements they sought could be met by Rusa, and had led to Gnulli expending resources they may not otherwise have. Overall, the Tribunal held at [25] that it was not satisfied that the delay in providing the information of itself constituted a lack of good faith on the part of Rusa.

Question Two

The Tribunal noted at [32] that neither party was completely transparent about how they arrived at their compensation offer and counteroffer. While the offer from Rusa was low, it was not considered at [33] to be 'so unreasonable or unrealistic that it could not be regarded as a genuine offer'.

Question Three

The Tribunal held at [41] that while Rusa revised its initial compensation offer, it was conditional on the negotiation being fast-tracked by using a previous agreement as a template. Gnulli was disadvantaged as a result; couching the offer in this manner risked good faith and bordered on being rigid and non-negotiable.

Question Four

The Tribunal held at [42] that Mr Lane acted within the limits on which Rusa was prepared to negotiate the terms of compensation and other financial benefits.

Question Five

While it acknowledged that Gnulli had made significant concessions on the funding of negotiation meetings, the Tribunal concluded at [51] that Rusa's position on funding, of itself, was not evidence of unreasonable behaviour amounting to a lack of good faith.

Question Six

Rusa's representative Mr Lane claimed that he had 'misread or misunderstood' the request for him to provide a draft agreement, but the Tribunal stated at [57] that it believed this was 'improbable'. The Tribunal again emphasised that the 'fast-track' conditional form of negotiation included in the draft agreement eventually provided risked good faith.

Question Seven

The Tribunal held at [63] that Rusa had shifted its position on the heritage protocol and that this had two effects: firstly, it frustrated the progress of negotiations and secondly, it resulted in the parties having little time to devote to the other aspects of the agreement.

Question Eight

The evidence presented to the Tribunal showed that Rusa was motivated by costs and a view negotiation would be "simple" because the work program was "conventional". The Tribunal noted at [69] that Rusa had underestimated the

complexity of negotiations and stated that it should have been clear that an “off the shelf” agreement would not be suitable and that their approach needed to change.

Question Nine

The Tribunal found at [72] that if Rusa was unprepared or not able to allocate the appropriate resources to progress the agreement, it should have allowed further time for Gnulli to use theirs.

Question Ten

The Tribunal stated at [73] that an application can be made at any time, and cannot be relied upon to establish a lack of faith. Ultimately, it was concluded that Rusa’s decision to apply for a determination was not reasonable because evidence showed that Gnulli accommodated Rusa at each of their working group meetings, negotiated over the agreed heritage protocol in a timely manner, was transparent about instructions given and their decision making process. In addition, Rusa delayed the provision of a draft agreement and when it was provided seven months later it was not in a suitable form.

Keith Narrier and Others on behalf of Tjiwarl v Dubois Group Pty Ltd and Another **[2015] NNTTA 27**

17 July 2015, An Inquiry into an Expedited Procedure Objection Application, National Native Title Tribunal – Perth, WA, H Shurven

In this matter, the National Native Title Tribunal (‘the Tribunal’) addressed an objection lodged by the Tjiwarl people to the intended grant of two prospecting licences to the Dubois Group, holding that the first licence of approximately 6 square kilometres attracted the expedited process but the second licence of 48 square kilometres did not. The Tjiwarl claim wholly overlaps both licenses.

After considering the evidence, the Tribunal held that community or social activities are carried on within the area of the licences will not be likely to be directly or substantially interfered with by the grant of the licenses. Sufficient evidence to support a finding that the Booylgoo Range was an area or site of particular significance was not provided in relation to the first licence. However, in relation to the second licence, the area west of the Range could be distinguished from the whole Range by the existence of watja, bush potato, and was therefore held to be of particular significance. There was also evidence in relation to the second grant that the site will be interfered with by the activities of Dubois. There was no evidence of

The Tribunal also emphasised at [41] that while previous decisions established that sites made by the Tjukurrpa can be characterised as sites of particular significance, this does not apply automatically to all Tjukurrpa sites and specific evidence must be provided about, for example, the nature of the sites and their cultural complexity.

Raymond William Ashwin (dec) and Others on behalf of Wutha v Joseph Paul Legendre **[2015] NNTA 28**

22 July 2015, An Inquiry into an Expedited Procedure Objection Application, National Native Title Tribunal – Perth, WA, H Shurven, Member

In this matter, the National Native Title Tribunal ('the Tribunal') dismissed a similar objection lodged by the Wutha people to the intended grant of a prospecting licence as in the above matter of 1 July 2015. On 14 January 2015, the state of Western Australia gave notice under s 29 of the *Native Title Act 1993* (Cth) ('NTA') of its intention to grant three prospecting licences to Joseph Paul Legendre without Mr Legendre negotiating with the Wutha people. The Wutha native title claim overlaps the licences by 100 per cent.

The matter was dismissed because Wutha people failed to respond to the State's requests to dismiss the objection, no requests for extensions were made, nor any reason provided for noncompliance. The Tribunal held that it would be unfair to prejudice the other parties with further delays.

Gooniyandi Aboriginal Corporation Trustee Body Corporate v Meridian (Lennard Shelf Project) Pty Ltd and Another **[2015] NNTTA 29**

23 July 2015, An Inquiry into an Expedited Procedure Objection Application, National Native Title Tribunal – Perth, WA, H Shurven, Member

In this matter, the National Native Title Tribunal ('the Tribunal') determined that the intended grant of an exploration licence in the Gooinynadi Native Title claim area was not an area that attracted the expedited procedure under s 237 of the *Native Title Act 1993* (Cth) ('NTA'). As a result, Meridian must negotiate and attempt to come to an agreement with the Gooinyandi people prior to the grant.

The proposed exploration licence is approximately 19 square kilometres in size and is completely within the registered claim of the Gooinyandi people. The State asserted that the grant could be made without negotiations with the Gooinyandi people through an expedited procedure clause in the public advertisement of the proposed grant. The native title party lodged an expedited procedure objection,

claiming that there is a high probability that the granting of the proposed licence will interfere directly with the social or community activities carried on in the area by the Gooinyandi community (s 237(a) NTA); and that it is likely to interfere with a number of sites of particular significance to the Gooinyandi people (s 237(b)). The Tribunal's determination that the licence is not likely to involve, or create rights whose exercise is likely to involve, major disturbance to the land or waters concerned, was uncontentious (s 237(c)).

After considering the evidence presented, the Tribunal held that the grant of the exploration licence was likely to substantially and directly interfere with the Gooniyandi people's community or social activities. The Tribunal accepted evidence that the area is used frequently for particular activities by the Gooniyandi people including hunting, the gathering of medicine which is difficult to find outside the limestone hill area in the licence, fishing and camping overnight along the river and conducting ceremony as there is an important men's ceremonial ground located within the exploration licence that is still used.

In addition, the Tribunal found that it was likely that the proposed activities of Meridian are likely to interfere with areas or sites of particular significance to the Gooniyandi. These sites included old and new ceremony grounds and burial sites in the north of the licence. While the Tribunal noted the positive intentions of Meridian in relation to consultation with the Gooniyandi people, there is no agreement in place or evidence as to how consultation would occur, particularly in relation to the sites of particular significance.

3. Legislation

Commonwealth

Aboriginal Land Rights (Northern Territory) Amendment Bill 2015

Status: The bill was introduced in the House of Representatives and read a first time on 24 June 2015, the second reading was moved on the same day.

Stated purpose: This bill is for an Act to amend the *Aboriginal Land Rights (Northern Territory) Act 1976* to allow the Executive Director of Township Leasing, on behalf of the Commonwealth, to hold a sublease over Aboriginal land.

The bill has been instigated to resolve inconsistent and uncertain tenure arrangements in the community of Mutitjulu located on Aboriginal Land in the Northern Territory.

Native title implications: The bill makes provision for the executive director of Township Leasing to transfer the sublease of Aboriginal land to an Aboriginal and

Torres Strait Islander Corporation, and for that corporation to transfer the sublease back to the Executive Director of Township Leasing. The bill allows for the Minister for Indigenous Affairs to direct that funds from the Aboriginals Benefit Account be paid to an Aboriginal and Torres Strait Islander corporation for the purpose of acquiring and administering that sublease.

The bill supports Aboriginal and Torres Strait Islander corporations and provides certainty of tenure in Mutitjulu. This will allow the community of Mutitjulu to take advantage of the unique economic development opportunities offered by its location in close proximity to two of Australia's most visited World Heritage sites, Uluru and Kata Tjuta.

The bill also schedules two parcels of land in the Wickham River area and in the Simpson Desert to enable the land to be granted as Aboriginal land.

For further information please see the First Reading, the Second Reading

New South Wales

Fisheries Management Amendment (Recreational Fishing) Bill 2015

Status: This bill is currently being considered in the Legislative Council, the notice of motion was on 27 May 2015.

Stated purpose: The bill is an Act to amend the *Fisheries Management Act 1994* to make further provision with respect to the management and regulation of recreational fishing and to establish a Recreational Fishing Authority.

Native title implications: The bill will establish an Aboriginal fishing trust fund to provide a transparent accounting mechanism for any incoming funds and expenditure associated with enhancing Aboriginal fishing.

At present, permits issued under section 37 of the Act, which include permits for Aboriginal cultural fishing purposes, can only be issued to an individual, but they can authorise others in addition. The proposed amendments expand the existing permit provisions by enabling the Minister to make an order authorising groups of people to undertake activities that are otherwise unlawful.

Section 37(9) provides that the Minister is not to grant an approval for Aboriginal cultural fishing if it would be inconsistent with native title rights and interests under an approved native title determination under the *Native Title Act 1993*.

Additionally, subject to future policy developed in consultation with relevant advisory groups, the bill provides for the reissuing of forfeited or surrendered shares that

could, for example, be used to enhance Aboriginal participation in the commercial fishing industry.

Note: This is a Private Member's Bill.

For further information please see the Public Consultation and Exposure Drafts and the summary papers related to the bill

Petroleum (Onshore) Amendment (Prohibit Coal Seam Gas) Bill 2015

Status: The bill is currently in the Legislative Council and was read for a second time on 28 May 2015.

Stated purpose: An Act to amend the Petroleum (Onshore) Act 1991 to prohibit prospecting for, or the mining of, coal seam gas in New South Wales and to reintroduce the public interest as a ground for certain decisions relating to petroleum titles

Native title implications: Registered native title claimants may have rights to negotiate in regards to mining and exploration related activities, including "low impact" exploration as provided for under the *NSW Mining Act 1992.* Additionally, Local Aboriginal Land Councils (LALCs) may have invested interests in the proposed amendments. The New South Wales Aboriginal Land Council (NSWALC) for example, expressed concern in November 2014 that six of its petroleum exploration applications had been cancelled. It argued that cancelling petroleum exploration applications detracted from delivering economic opportunities to Aboriginal people to benefit from the resources of their traditional lands. A subsequent amendment passed through State Parliament gave the NSWALC the first right to re-apply if it falls within the new approved zones for gas activities. The newly proposed amendments may prohibit future prospecting activities of land councils such as the NSWALC.

Note: This is a Private Member's Bill.

For further information please see the First Reading and the Second Reading

Wilderness and National Parks and Wildlife Legislation Amendment (Management) Bill 2015

Status: The bill was initially introduced into the Legislative Council; notice of motion was delivered on 27 May 2015.

Stated Purpose: The bill will amend the *Wilderness Act 1987* and the *National Parks and Wildlife Act 1974* with respect to the management of wilderness areas.

Native Title Implications: Currently the *National Parks and Wildlife Act* provides for the conservation of objects, places and features that are of significance to Aboriginal people. The Act makes it an offence to harm or desecrate an Aboriginal object or place. S71BI ensures that native title rights and interests in relation to approved determinations of native tile on Aboriginal land under the *National Parks and Wildlife Act* must also be preserved. This complements s23B(9A) of the *Native Title Act* which ensures that native title is not extinguished by the creation of national parks or other environmental protection areas.

Currently s10(2A) of the *Wilderness Act 1987* provides that the Minister must not enter into a wilderness protection agreement relating to land owned by a Local Aboriginal Land Council unless the NSWALC has consented in writing to the agreement. Native title holders should be aware of any amendments to this act in respect of these provisions.

Note: This is a Private Member's Bill

Queensland

Planning and Development (Planning Court) Bill 2015

Status: This bill was referred to the Committee and read for a first time on 4 of June 2015.

Stated Purpose: The purpose of the bill is to provide a separate piece of legislation to govern the composition, jurisdiction and powers of the Planning and Environment Court.

Native title implications: The Planning and Environment Court may hear matters relating to environmental, fisheries and heritage protection. The bill retains the existing flexibility for the Planning and Environmental Court to remit a matter within the jurisdiction of the Developmental Tribunal to a Tribunal. The bill also continues the opportunity for parties to a proceeding to participate in Alternative Dispute Resolution (ADR) processes allowing more efficient and beneficial outcomes to the community, including potential traditional owners.

Section 65(c) requires the Minister to make rules for the development assessment process, including the effect on the development process of the assessment manager taking action under the *Native Title Act 1993* (Cth), part 2, division 3.

This bill may also raise issues regarding the future act process of the NTA. Section 24AA of the NTA makes it clear that any act affecting native title must go through the

future act process which may carry obligations of negotiation and consultation. Statutory planning schemes such as this bill should meet the definition of an act affecting native title under s 227 NTA and therefore a 'future act' under s 233 NTA as they are considered to be legislative instruments.[1] This however may be subject to various exceptions such as where a planning proposal has been allocated to an ILUA process. Indeed, s 24AA(3) NTA provides that a future act will be valid if the parties to an ILUA consent to it being done.

Note: This is a Private Member's Bill

For further information please see the First Reading and the Explanatory Memoranda

Planning and Development (Planning for Prosperity) Bill 2015

Status: This Bill was referred to the Committee and read for a first time on the 4th of June 2015.

Stated Purpose: The bill's purpose is to provide an efficient, effective, transparent, integrated and accountable system for planning and development assessment which balances economic growth, environmental protection and community wellbeing.

Native title implications: The bill removes provisions from the original Planning and Development bill 2014 that allow for development applications to be accepted by the assessment manager without the owner's consent. This means that a person is not able to put in a development application over a piece of land unless they have the owner's consent. The bill defines "owner" as a "person who is entitled to receive rent for the premises or who be entitled to receive rent for the premises if the premises were let to a tenant at a rent". This definition does not appear to extend to native title holders without leasing provisions in place. The bill may therefore have the potential to impact on native title rights and interests where traditional owners have the right to restrict access to their country.

Note: This is a Private Member's Bill

For further information please see the First Reading and the Explanatory Memoranda

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[1] Tran, T, Strelein, LM, Weir, JK, Stacey, C & Dwyer, A, *Native title and climate change. Changes to country and culture, changes to climate: Strengthening institutions for Indigenous resilience and adaptation,* National Climate Change Adaptation Research Facility, Gold Coast, 2013

4. Native Title Determinations

In June and July 2015, the NNTT website listed 6 native title determinations.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC/ PBC
Yaegl People #1	Yaegl People #1 v Attorney-General of New South Wales	25/06/2015	NSW	Native title exists in parts of the determination area	Consent	Claimant	Yaegl Traditional Owners Aboriginal Corporation
Yaegl People #2	Yaegl People #2 v Attorney-General of New South Wales	25/06/2015	NSW	Native title exists in parts of the determination area	Consent	Claimant	Yaegl Traditional Owners Aboriginal Corporation
Boonthamurra People	Wallace on behalf of the Boonthamurra People v State of Queensland	25/06/2015	QLD	Native title exists in the entire determination area	Consent	Claimant	N/A
Budjiti People	McKellar on behalf of the Budjiti People v State of Queensland	23/06/2015	QLD	Native title exists in the entire determination area	Consent	Claimant	N/A
Juru People (Part B)	Lampton on behalf of the Juru People v State of Queensland	22/06/2015	QLD	Native title exists in the entire determination area	Consent	Claimant	Kyburra Munda Yalga Aboriginal Corporation RNTBC
Barkandji Traditional Owners #8 (Part A)	Barkandji Traditional Owners #8 v Attorney-General of New South Wales	16/06/2015	NSW	Native title exists in parts of the determination area	Consent	Claimant	Barkandji Native Title Group Aboriginal Corporation

5. 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 14 May 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 (14 May 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	69	3
South Australia	14	0
Victoria	4	0
Western Australia	32	2
NATIONAL TOTAL	**142**	**54**

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 14 May 2015.

6. Indigenous Land Use Agreements

In June and July 2015, 4 ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
24/06/2015	Yawuru Ungani Project ILUA	WI2015/002	Body Corporate	WA	Petroleum, Commercial, Energy, Tenure resolution
19/06/2015	Wik Timber Project ILUA	QI2015/004	Body Corporate	QLD	Access, Commercial
19/06/2015	Saibai Island Flood Works ILUA	QI2015/005	Body Corporate	QLD	Government, Infrastructure
15/06/2015	Nyikina Mangala Ungani Project Infrastructure ILUA	WI2015/001	Body Corporate	WA	Pipeline, Access, Petroleum/Gas

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

7. Future Acts Determinations

In June and July 2015, 8 Future Acts Determinations were handed down.

Determination date	Parties	Tribunal file no.	State or Territory	Decision/ Determination
23/07/2015	Gooniyandi Aboriginal Corporation Trustee Body Corporate (WCD2013/003) (native title party) - and - The State of Western Australia (Government party) - and - Meridian (Lennard Shelf Project) Pty Ltd (grantee party)	WO2014/0001	WA	Objection - Expedited Procedure Does Not Apply
21/07/2015	Raymond William Ashwin (dec) and Others on behalf of Wutha (WC1999/010) (native title party) -and- The State of Western Australia (Government party) -and- Joseph Paul Legendre (grantee party)	WO2015/0090 WO2015/0091 WO2015/0092	WA	Objection - Dismissed

Determination date	Parties	Tribunal file no.	State or Territory	Decision/ Determination
17/07/2015	Keith Narrier and Others on behalf of Tjiwarl (WC2011/007) (native title party) - and – The State of Western Australia (Government party) - and - Dubois Group Pty Ltd (grantee party)	WO2014/0581 WO2014/0582	WA	Objection – Expedited Procedure Applies AND Objection – Expedited Procedure Does Not Apply
16/07/2015	Rusa Resources (Australia) Pty Ltd (grantee party) - and - Sharon Crowe and Others on behalf of Gnulli (WC1997/028) (native title party) - and - The State of Western Australia (Government party)	WF2015/0003	WA	Future Act - NIGF Not Satisfied - Tribunal does not have jurisdiction
10/07/2015	Peggy Patrick and others on behalf of Yurriyangem Taam (WC2010/013) (native title party) - and - WA Mining Resources Pty Ltd (grantee party) - and - The State of Western Australia (Government party)	WO2014/0499	WA	Objection – Expedited Procedure Applies
01/07/2015	Raymond William Ashwin (dec) & Ors on behalf of Wutha (WC1999/010) (native title party) -and- The State of Western Australia (Government party) -and- Mathew Gordon Vanmaris (grantee party)	WO2015/0096	WA	Objection - Dismissed
15/06/2015	AL (name withheld) and Ors on behalf of Badimia (native title party) - and - State of Western Australia (Government party) - and – Grantee parties as listed in the attached schedule (grantee parties)	WO2014/0733 WO2014/0734 WO2014/0852 WO2014/0878 WO2014/0891 WO2014/0892 WO2015/0080 WO2015/0081 WO2015/0230 WO2015/0235 WO2015/0236 WO2015/0237 WO2015/0274	WA	Objection – Dismissed

Determination date	Parties	Tribunal file no.	State or Territory	Decision/ Determination
02/06/2015	Western Desert Lands Aboriginal Corporation (native title party) - and - The State of Western Australia (Government party) - and - Rachlan Holdings Pty Ltd (grantee party)	WO2014/0800	WA	Objection – Dismissed

8. Native Title in the News

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

9. Related Publications

Publications

CASSE Aboriginal Australian Relations Program

CASSE Aboriginal Australian Relations Program Newsletter July 2015

The July edition of the CASSE Aboriginal Australian Relations Program Newsletter is now available.

For further information, please visit the CASSE website

Central Land Council

Ranger Program Development Strategy

The Central Land Council report on the Ranger Program is now available.

For further information, please visit the CLC website

Goldfields Land and Sea Council

GLSC News

The July 2015 edition of GLSC News is now available.

For further information, please visit the GLSC website

Government of Western Australia – Department of the Premier and Cabinet

The South West Native Title Settlement Newsletter

The July 2015 edition of the South West Native Title Settlement Newsletter is now available.

For further information, please visit the DPC website

Kimberley Land Council

Kimberley Land Council Newsletter

The July 2015 edition of the Kimberley Land Council Newsletter is now available.

For further information, please visit the KLC website

Linkedin – Greg McIntrye

Native Title Developments 2015

This essay by Greg McIntrye, discusses the most important native title and heritage cases and developments from the past year. It focuses on a recent case on the Aboriginal Heritage Act (Robinson v Fielding); and recent cases on extinguishment of native title (Western v Brown and Queensland v Congoo).

For further information, please visit Greg's Linkedin website

Northern Land Council

Land Rights News – Northern Edition

The July 2015 edition of Land Rights News – Northern edition is now available.

For further information, please visit the NLC website

University of Western Australia

Anthropological Forum

Volume 25, Issue 25 of Anthropological Forum is now available.

For further information, please visit the Taylor and Francis website

Why Warriors

Why Warriors News June 2015

The June 2015 edition of Why Warriors News is now available.

For further information, please visit the Why Warriors website

Yamatji Marlpa Aboriginal Corporation

YMAC news

The June 2015 edition of YMAC news is now available.

For further information, please visit the YMAC website

Media Releases, News Broadcasts and Podcasts

Australian Human Rights Commission

Commission welcomes progress on constitutional recognition

Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner has welcomed the Final Report of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples. “The options set out in this report will help guide our discussions at the upcoming bipartisan summit on constitutional recognition,” Commissioner Gooda said.

For further information, please visit the Australian Human Rights Commission website

Australian Law Reform Commission

ALRC recommendations for reform of the Native Title Act

The ALRC report, *Connection to Country: Review of the Native Title Act 1993 (Cth)* (ALRC Report 126), has been released. This Report marks the first major review of ‘connection’ in native title claims since the introduction of the *Native Title Act*. The Report also examines authorisation of persons bringing native title claims and joinder of parties, and includes 30 recommendations for reform.

For further information, please visit the ALRC website

Carpentaria Land Council Aboriginal Corporation

CLCAC Chairperson – Thomas Wilson (Native Title Conference 2015)

CLCAC Chairperson Thomas Wilson’s speech from the Welcome Reception of the Native Title Conference 2015.

For further information, please visit the CLCAC website

Central Land Council

Northern development on our own terms

Francis Jupurrurla Kelly the chair of the Central Land Council has told the National Native Title Conference that Aboriginal people in Central Australia use income from land use agreements to drive empowerment and positive change in their communities. “We’re not waiting for government to do things for us, we’re getting on with developing our communities ourselves,” Mr Kelly said. “That’s self-determination.”

For further information, please visit the CLC website

House of Representatives

Seeking Pearls of Wisdom – Northern Australia Committee returns to Broome

Parliament’s Northern Australia Committee will be investigating opportunities to expand the aquaculture industry in Northern Australia as part of the inquiry to examine ways to develop the region.

For further information, please visit the House of Representatives website

Kimberley Land Council

Nyikina Mangala Rangers capture cranky croc

The Nyikina Mangala Rangers have captured and relocated a 3.2m male crocodile after it had become a threat to public safety. It had reportedly been lunging at locals and displaying aggressive behaviour to those threatening its territory at the popular Minnie Bridge camping and fishing area along the Fitzroy River near Willare – about 160km north of Broome.

For further information, please visit the KLC website

New conservation areas declared across Eighty Mile Beach

Karajarri Traditional Owners and the State Government have signed an Indigenous Land Use Agreement to jointly manage five conservation areas including a marine park across 80 Mile Beach. The Agreement declaring the four new and one existing conservation zones was signed on June 4 by Karajarri Traditional Lands Association and covers marine, coastal sand dunes, salt flats and inland desert areas.

For further information, please visit the KLC website

Bardi ranger swims with whale shark for research

Bardi Jawi Ranger Dwayne George was invited by scientists from the CSIRO to assist them tag whale sharks for research after being impressed by his turtle tagging techniques back in his home waters on the Dampier Peninsula. The four-day marine

science expedition across Exmouth and the Ningaloo Reef was extremely successful with researchers tagging seven whale sharks, 33 green turtles and five reef sharks.

For further information, please visit the KLC website

Staying connected: Ngurrara women host cultural camp

The Ngurrara Women Rangers hosted a two-day Indigenous women's cultural camp to strengthen the bond between young women and elders and foster the sharing of traditional knowledge. Cultural connectedness, knowledge sharing and health and wellbeing were the focus of the meeting held in the remote Great Sandy Desert.

For further information, please visit the KLC website

Bindunbur native title trial

For the first time in more than 10 years the KLC is preparing to resolve native title through litigation with the Bindunbur claim set for trial in the Federal Court in September. The Bindunbur native title claim takes in Nyul Nyul, Jabirr Jabirr and Nimanburru country and is part of a regional trial that will resolve native title questions for the people of the middle Dampier Peninsula.

For further information, please visit the KLC website

Minister for Indigenous Affairs – Senator the Hon Nigel Scullion

AIATSIS Native Title conference

Senator the Hon Nigel Scullion's speech at the Native Title Conference 2015.

For further information, please visit the Minister for Indigenous Affairs website

Minister for Trade and Investment – The Hon Andrew Robb AO MP

Our North, Our Future: A Vision for Developing North Australia

The Government has released its White Paper on Developing Northern Australia: Our North, Our Future. This is Australia's first White Paper on developing Northern Australia and is an essential part of our plan for a strong, prosperous economy and a safe, secure Australia.

For further information, please visit the Minister for Trade and Investment website

NAILSMA

Ricky Archer promotes the importance of youth involvement & succession planning at National Native Title Conference

The National Native Title Conference in Port Douglas, Ricky Archer presented on the 'Dangerous Ideas' Panel. The session included five prominent Australians spending five minutes each pitching a challenging, controversial or ground-breaking concept to

conference participants. In his presentation Ricky urged the audience to investigate methods which would provide opportunities for greater youth involvement and succession planning within the native title context. One such suggestion was to promote mandatory 'Youth Positions' on Prescribed Body Corporate Boards, while another idea focussed on youth being the key driver in economic development initiatives on their respective land.

For further information, please visit the NAILSMA website

National Native Title Tribunal

Guide to Future Act Decisions updated

The National Native Title Tribunal's Guide to Future Act Decisions has been updated. The Guide is updated regularly and provides a handy reference source on the development of future act case law.

For further information, please visit the NNTT website

National Title Services Victoria

Taungurung People Congratulated on the Commencement of Their Native Title Negotiations

At a traditional ceremony held at the Cathedral Ranges State Park, the Taungurung People gathered with representatives from the State Government to celebrate the commencement of the alternative settlement negotiations. The ceremony marks the first time the Victorian Government and a Traditional Owner group have worked together exclusively for a native title settlement outside of the court process.

For further information, please visit the NTSV website

Native Title Services Victoria Becomes Victoria's First Aboriginal Organisation to Register a Reconciliation Action Plan

Native Title Services Victoria became Victoria's first Aboriginal organisation to register a Reconciliation Action Plan (RAP). Aunty Di Kerr, NTSV Chairperson, said: 'As an Aboriginal organisation our commitment to having a Reconciliation Action Plan demonstrates our belief that reconciliation is a two-way process. It may seem strange that an organisation that is already dedicated to redressing the effects of dispossession and forging new partnerships between Traditional Owners and the State government would commit to a RAP. However, the RAP process encouraged us to reflect on our achievements and consider ways we can be more inclusive of the wider Australian community in our work. I hope other Aboriginal organisations will be inspired to follow our lead.'

For further information, please visit the NTSV website

North Queensland Land Council

Commonwealth announces $20 million funding for the native title sector

At last week's Native Title Conference Minister for Indigenous Affairs, the Honourable Nigel Scullion announced that as part of the Government's election commitment on Developing Northern Australia, they will be providing an additional $20 million to better support native title holders to effectively engage with potential investors.

For further information, please visit the NQLC website

Northern Land Council

NLC cautiously welcomes White Paper

The Northern Land Council has cautiously welcomed the White Paper on Developing Northern Australia, released by the Federal Government. NLC CEO, Joe Morrison said "It's a matter of immediate comfort that the White Paper does not attack the basic integrity of the Aboriginal Land Rights Act."

For further information, please visit the NLC website

TO aspirations ruined after mine closures

The Northern Land Council says the collapse of two iron ore mines in its region has ruined the aspirations of Aboriginal Traditional Owners, and affected communities who were expecting jobs and economic development to flow from the operations.

For further information, please visit the NLC website

Resilient Communities and Sustainable Prosperity – Northern Indigenous Development

NLC CEO Joe Morrison's speech at the Developing Northern Australia Conference.

For further information, please visit the NLC website

Racial protection is essential

NLC CEO Joe Morrison with other Aboriginal and Torres Strait Islander people from around the country, have spent this past weekend attending a seminar on constitutional recognition organised by the National Congress of Australia's First Peo-ples – a prelude to a meeting of Indigenous leaders called by Prime Minister Tony Abbott.

For further information, please visit the NLC website

NSWALC

NSWALC remembers Land Rights Legend Kevin Cook

The Land Rights network is mourning the loss of a true Land Rights Legend, Kevin Cook. Kevin, also fondly known as "Cookie", was a giant in the Land Rights movement. He was a fighter in the struggle for Land Rights and a leader for the NSW Aboriginal Land Council (NSWALC) as its first elected Chairperson.

For further information, please visit the NSWALC website

Prime Minister of Australia – the Hon Tony Abbott MP

Indigenous recognition

The Prime Minister and the Leader of the Opposition are committed to holding a recognition referendum. They have sat down with Australia's Aboriginal and Torres Strait Islander leaders to consider the path ahead.

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

Yamatji Marlpa Aboriginal Corporation

Nyangumarta Highway is open for business!

The Nyangumarta Highway (formally known as the Kidson Track) in Western Australia's Pilbara region is one of the longest privately owned roads in Australia. It stretches over 600km from 80 Mile Beach to the Canning Stock Route and ends boundary between the Nyangumarta and Martu native title lands. Nyangumarta Warrarn Aboriginal Corporation (NWAC) has this year partnered with Four Wheel Drive Australia to provide and administer a permit system for the Nyangumarta Highway.

For further information, please visit the YMAC website

Banjima people successful against State's appeal

The Banjima people are once again celebrating after the Federal Court dismissed the State's appeal over part of their Native Title determination.

For further information, please visit the YMAC website

Nyangumarta Warrarn IPA dedication

Today marks a significant day for the Nyangumarta People with the dedication ceremony of their Indigenous Protected Area (IPA) which covers around 28,420 km^2. An IPA is an area of land and/or sea over which Indigenous Traditional Owners have entered into a voluntary agreement with the Australian government for the purposes of promoting biodiversity and cultural resource conservation.

For further information, please visit the YMAC website

10. 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. Early submissions will be given preference in the case of review and publication process.

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

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.

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

11. Events

Eleventh Conference on Hunting and Gathering Societies

Refocusing Hunter-Gather 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.

Date: 7-11 September 2015

Location: Vienna, Austria

For further information, visit 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

For further information, visit the Indigenous Conferences website

Puliima

Puliima National Indigenous Language and Technology Forum 2015

Puliima National Indigenous Language and Technology Forum is a biennial event aimed at bringing people together from all over Australia to explore pioneering project ideas, exciting products and equipment that can be used in community based Indigenous languages projects.

Date: 14-15 October 2015

Location: William Angliss Institute Conference Centre, Melbourne

For further information, visit the Puliima website

National Centre for Indigenous Studies

NCIS Graduate Research Retreat

The National Centre for Indigenous Studies will be hosting its sixth research retreat for Higher Degree by Research (HDR) scholars.

Date: 15-16 October 2015

Location: Burringiri Aboriginal and Torres Strait Islander Culture Centre, Yarramundi Reach, 245 Lady Denman Drive, Canberra

For further information, visit the NCIS 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

For further information, visit 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 contact catherine.gressier@unimelb.edu.au

University of Tasmania and Australian National University Workshop

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. Presentation proposals are due by 1 July 2015.

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

NAISA 2016

2016 Annual Meeting

The University of Hawai'i, 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, Hawai'i in May 2016.

Date: 18-21 May 2016

Location: University of Hawai'i, Honolulu

For further information, visit the NAISA 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.