AIATSIS
AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

WHAT'S NEW IN NATIVE TITLE

May 2015

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1. Case Summaries

13 May 2015, Native Title Rights and Military Orders, High Court of Australia, French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ

Queensland v Congoo [2015] HCA 17

In this matter, the High Court dismissed the Queensland Government's appeal to a Full Federal Court decision.

Background

In September 2001, the Bar-Barrum People sought a determination of native title over an area of land in the Atherton Tableland.

During World War II, the Commonwealth had taken possession of some of that area, by authority of Military Orders made under the *National Security Act 1939* (Cth) (the NSA. The Commonwealth used the area as an artillery range and a live-fire manoeuvre range and relinquished the land in August 1945.

In August 2013, Logan J referred a Special Case to the Full Court of the Federal Court, asking:

1. whether Military Orders made under the NSA was an acquisition of property of the Bar-Barrum People otherwise than on just terms contrary to s 51(xxxi) of the Constitution
2. if yes, whether the Regulations underpinning the Military Orders constitute “past acts” under the *Native Title Act 1993* (Cth) (the NTA) and, if so, whether those past acts were validated under the NTA and
3. whether making the Military Orders extinguished native title rights and, if not, whether being in occupation pursuant to the Military Orders, extinguished native title rights and interests.

The Full Federal Court by majority (North and Jagot JJ, Logan J dissenting) returned the following answers to these three questions:

1. no
2. unnecessary to answer
3. (a) no

   (b) no

The State of Queensland appealed to the High Court against the Full Federal Court’s decision on both parts of question three.

Split Decision in the High Court

The decision in the High Court was split. French CJ and Keane J (joint judgment) and Gageler J concluded that the occupation did not extinguish native title and Hayne, Kiefel and Bell JJ (in separate judgments) held that it had.

Section 23 of the *Judiciary Act 1903* (Cth) provides that, where the Full Court is equally divided in opinion, the decision of the previous Court being appealed, in this case the Full Federal Court, shall be affirmed.

Reasoning

French CJ and Keane J reasoned that:

- in enacting the NSA, Parliament intended to interfere as little as possible with individual rights and interests
- the NSA was made to operate for only six months after the end of the war
- although the acquisition of any land under the NSA would be of an exclusive nature, Parliament had distinguished the taking of temporary possession or control of land from the acquisition of some permanent estate or interest in land
- the NSA empowered the taking of physical possession, which their Honours reasoned was a statutory power distinct from the property rights that would have flowed from the conferral of a “right of exclusive possession” and

- the NSA's compensation scheme assumed the continuation of the underlying rights of the owner or occupier.

Their Honours stated, at [17], that:

> The exercise of the powers conferred by [the NSA] may be said to have overridden pre-existing rights, but that overriding operation, while potentially affecting their enjoyment and exercise, did not involve their extinguishment.

French CJ and Keane J set out, at [37], that the clear and plain intention to extinguish native title rights and interests cannot be satisfied '*merely by the identification of restrictions or controls placed on the use of the land by statute or executive act done pursuant to statutory authority*' and that the '*control regime which has a limiting purpose … cannot be said to be inconsistent with the subsistence of native title rights and interests*.'

Gageler J agreed with French CJ and Keane J that the appeal should be dismissed. His Honour referred to Brennan J's statement in Mabo, referenced in *Western Australia v The Commonwealth* (1995) 183 CLR 373 at 439, that

> [a] clear and plain intention to extinguish native title is not revealed by a law which merely regulates the enjoyment of native title or which creates a regime of control that is consistent with the continued enjoyment of native title.

His Honour found nothing in the NSA regime inconsistent with the continued existence of native title rights (or of any other rights).

Hayne J found that the taking of possession of land under the NSA was the taking of exclusive possession and an act that extinguishes native title.

His Honour looked to the issue of extinguishment stating, at [57], that:

> The determinative question in either kind of case is whether the rights granted or asserted are inconsistent with native title rights and interests over the land.

His Honour referred to the decision in *Fejo v Northern Territory* (1998) 195 CLR 96 and that a grant in fee simple is inconsistent with and, therefore, extinguishes native title '*and is not revived if the land is later held again by the Crown*.' His Honour also reiterated the majority's statement in *Western Australia v Ward (2002)* 213 CLR 1 per Gleeson CJ, Gaudron, Gummow and Hayne JJ at [91], that

> "[t]wo 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." And "[a]bsent *particular* statutory provision to the contrary, questions of *suspension* of one set of rights in favour of another do not arise." (emphasis added).

Hayne J's reasoning at [65] included an assumption that '*competent legislation could validly suspend the exercise of native title rights and interests.'* However, his Honour doubted that legislation could achieve that result '*except by express and detailed provisions to that desired effect*.' His Honour did not consider that result to have been achieved with the NSA.

Hayne J held that the appeal by Queensland should be allowed on the basis that the Commonwealth asserted rights, under the NSA, that were inconsistent with the Bar-Barrum People's native title rights and interests and, therefore, extinguished those native title rights and interests.

Kiefel J discussed a range of cases including *Mabo*, *Western Australia v Ward*, *Wik* and *Fejo*, to set out that extinguishment of native title occurs where the rights granted are inconsistent with the native title rights and interests. Her Honour stated, at [93], that '*the test of inconsistency is admittedly strict'* and, at [94], that '*[e]xtinguishment does not depend on the inconsistency between the rights enduring permanently or even for a particular period*.'

Her Honour stated, at [107], that '*the Commonwealth took to itself a right of exclusive possession.*'

Although accepting that the Military Orders were made under extraordinary war time powers and were limited in their duration, Kiefel J concluded, at [126], that '*[t]hese features do not affect the test of inconsistency of rights which previous decisions of this Court apply as the criterion of extinguishment.*'

Bell J did not accept that the Bar-Barrum People's native title rights and interests survived the making of the Military Orders. Her Honour also applied an 'inconsistency of incidents test', reasoning at [130] that '*[i]f continuation of the native title rights is logically inconsistent with the rights conferred or assumed by sovereign act, native title is extinguished*.'

Furthermore, at [131], Bell J stated that

> [n]ative title rights do not "spring forth again" when land that has been the subject of a freehold or leasehold estate comes to be held again by the Crown. Such is the vulnerability of native title that the grant of a lease for a term of short duration will extinguish it as effectively as the grant of an estate in fee simple.

Her Honour distinguished *Western Australia v Brown* [2014] HCA 8 on the basis that the rights in the mineral leases in that case allowed Western Australia and third parties access to the land, whereas the Military Orders in this case provided for exclusive possession.

13 May 2015, leave to amend a compensation application, Federal Court of Australia- Adelaide, SA, (heard in Darwin) Mansfield J

Griffiths v Northern Territory of Australia (No 2) [2015] FCA 443

In this matter, the Court granted leave to two applicants on behalf of the Ngaliwurru and Nungali Peoples, to amend a Compensation Application.

This matter follows the Court's judgment of 19 March 2014 in *Griffiths v Northern Territory* [2014] FCA 256 which considered issues of liability and determined that matters as to compensation would be reserved for further consideration.

The respondent in this matter was the Northern Territory of Australia. The Attorney-General of the Commonwealth was joined as an Intervenor.

Issues to be considered

Mansfield J set out the following issues as the considerations for this matter:

1. whether final orders should be made reflecting the judgment on the issues of liability
2. how to address the issue of liability in respect of one of the extinguishing acts for which compensation is claimed and which was not addressed in the judgment
3. how to address the issue of liability in respect of three invalid future acts in respect of which 'leave in principle' was given to amend the application and
4. procedural directions to progress the hearing of the compensation claim.

Order of the Court

Issue 1 Mansfield J considered the *Federal Court Rules 2011* (Cth) intersect with this matter to make it appropriate to not make Final Orders. His Honour instead made a final 'Draft Order' as part of this decision that could become a Final Order without further debate in the future.

Issue 2 The extinguishing act in question was the grant of a Crown Lease. Although the applicant sought the application of the non-extinguishment principle, Mansfield J accepted at [15] that the act was to be treated as extinguishing non-exclusive native title. Therefore, his Honour found that the native title holders are entitled under s 23J of the *Native Title Act 1993*(Cth) (the NTA) to compensation for extinguishment of their native title.

Issue 3 Mansfield J noted at [16] that leave had been granted to amend the compensation application. The claimed amendment in relation to the three acts

involves an action in the nature of damages for trespass. His Honour stated at [17] that he was '*satisfied that the Court has jurisdiction to entertain that claim.*'

Issue 4 These were procedural matters that the parties had largely agreed upon.

15 May 2015, striking out of Application, Federal Court of Australia, Melbourne, Victoria, North J

Galway on Behalf of Wamba Wamba, Barapa Barapa and Wadi Wadi Peoples v State of Victoria [2015] FCA 497

In this matter, the Court struck out a native title application brought by the Wamba Wamba, Barapa Barapa and Wadi Wadi Peoples on the basis that the application had been on foot for 15 years with no meaningful progress.

North J noted that the application faced the challenge that it was brought by three groups, necessitating both internal organisation within each group, which had proved a difficult task for the Court.

His Honour explained the decision to strike out the application was based on:

- Mr Murray[1] conceding that the three groups cannot, in the present circumstances, move the application forward together in an efficient way
- a letter addressed to the Court by the Native Title Services Victoria (NTSV) on 8 May 2015, setting out that NTSV had offered to fund a group meeting, arrangements had been difficult to finalise and assisting the group is not part of its 2015-16 operational plan.

North J explained that the groups would still be able to file further applications, or exert rights which they may have under Victoria's cultural heritage legislation or the traditional owners' settlement legislation.

In his concluding remarks, North J noted the strength, rationality and courtesy of Mr Murray's advocacy, stating that '*[m]any passionate advocates appear before the Court, in native title and other matters, but rarely do they present their position with such aplomb and success*.'

[1] one of the applicants who appeared in person at the proceedings.

20 May 2015, Authorisation and Indigenous Land Use Agreements – Statutory Scheme, Federal Court of Australia – Perth, WA, Barker J

Corunna v South West Aboriginal Land and Sea Council [2015] FCA 491

This matter relates to the single Noongar claim over Perth and the South West region (the South West Settlement) where the South West Aboriginal Land and Sea Council (SWALSC) and the State of Western Australia (WA) have reached in principle agreement. The terms of this agreement include that all those Noongar people who hold or may hold native title in the relevant area must surrender native title rights and interests in return for benefits provided by WA valued at approximately $1.3 billion.

The South West Settlement is to be implemented through a series of Indigenous land use agreements (ILUAs) over six distinct regions. These ILUAs will validate the surrender of native title rights and interests and the doing of future acts in the areas covered by the ILUAs.

Operation of the Statutory Scheme

Registration of the ILUAs will operate as a contract among the named parties and bind all other people who hold native title in the areas covered by the ILUAs.

The Native Title Registrar will decide whether or not to register the ILUAs under s 24CJ of the *Native Title Act 1993 (Cth)* (NTA). The Native Title Registrar's decision is impacted by certification and SWALSC, as a representative body, has a certification function under s 203BE of the NTA.

Any person claiming to hold native title in relation to the ILUA area may, under s 24CI of the NTA, object to the registration of the ILUA on the grounds that SWALSC did not satisfy the requirements of s 203BE(5)(a) and (b) of the NTA. Those provisions state that:

> A representative body must not certify an application for registration of an ILUA unless it is of the opinion that:
>
> - all reasonable efforts have been made to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the ILUA have been identified and
> - all the persons so identified have authorised the making of the agreement.

Application under s 24CI NTA

An unregistered claim for native title of which Mr Corunna is one of the named applicants partially overlaps four of the six ILUA areas.

Mr Corunna sought that both himself and the claim group of the unregistered overlapping claim are a party to the four ILUA areas and, therefore, have the right to authorise any proposed ILUAs affecting the claim area. Alternatively, Mr Corunna sought that the overlapping claim group is entitled to participate in a separate authorisation process with regard to the four ILUAs.

Decision

Barker J dismissed Mr Corunna's application 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).

Barker J reviewed ss 24CB to 24CE of the NTA and concluded that, as the overlapping claim was not registered, the application before the court was premature or hypothetical. His Honour stated, at [62] that:

> if, in due course, SWALSC applies for the registration of the relevant ILUAs in this case, and Mr Corunna wishes to object to the registration, then he may do so and, at least, may object that he, having been identified as a person who holds or may hold native title in relation to land or waters in the area covered by the ILUAs (as he has been been so identified by the materials currently before the Court), has not authorised the making of the agreement.

SWALSC also sought costs against Mr Corunna and the Court ordered that it provide written notice within two days of this intention.

25 May 2015, power of court to make a negative determination, Federal Court of Australia- Perth, WA, Barker J

CG (Deceased) on behalf of the Badimia People v State of Western Australia (No 2) [2015] FCA 507

In this matter, the Court found the Badimia people did not have native title rights and interests in the land and waters of the claim area.

This proceeding follows the Court's decision in *CG (Deceased) on behalf of the Badimia People v State of Western Australia [2015] FCA 204* (see the AIATSIS case summary in the March 2015 edition of What's New in Native Title), where the Court was unable to find, despite the evidence of connection relied on by the claimants, that the claimants were connected to the claim area by traditional laws and customs as required by the *Native Title Act 1993* (Cth) (NTA).

Orders sought by parties

The State of Western Australia sought orders that the Court should make a negative determination that native title does not exist in the claim *CG (Deceased)& Ors on behalf of the Badimia People v State of Western Australia& Ors*, WAD 6123 of 1998 (***Badimia claim*****).**

The State also asked for the dismissal of the claim *in Ollie George & Ors v State of Western Australia & Ors,* WAD 100 of 2012 (***Badimia #2 claim*****).**

The claimants submitted that the Court did not have the power to make a negative determination in the Badimia claim.

Issues Before the Court

The issues to be considered by the Court were:

- whether the Court has the power to make a determination that native title does not exist, in the circumstances of this proceeding and
- if the power exists, whether such a determination should be made.

Reasoning

Barker J affirmed Jessup J's decision in *Sandy on behalf of the Yugara People v State of Queensland (No 3)* [2015] FCA 210 (see the AIATSIS case summary in the March 2015 edition of What's New in Native Title) where his Honour rejected Queensland South Native Title Services' submission that the Court could only make a negative determination in circumstances where a non-claimant application had been filed. In that matter, Jessup J confirmed that the Court has the power to make a negative determination in respect of a claimant application which had been unsuccessful following a contested hearing.

Barker J would not accept that s 225 NTA should be construed in a manner that limits the power of the Court to make a determination of one sort or the other. His Honour observed at [47] that he was satisfied that s 225 NTA confers on the Court power to make a negative order that native title does not exist.

The State in this matter advanced many arguments supporting a determination that native title does not exist. These included a submission regarding the requirements for finality of litigation, reflected in s 22 of the *Federal Court Act (1976).* Barker J referred to the State's submission at [65]:

> …that to merely dismiss the Badimia application would fall short of giving effect to this principle of finality. It says a dismissal would leave uncertain, insofar as the public record is concerned, the question of whether or not native title exists in the claim area, notwithstanding the fact that, as a matter of

> fact and evidence, that question has been resolved before the Court, and would invite or at least leave open precisely the kind of "multiplicity of proceedings" which s 22 of the FCA Act provides should be avoided.'

Although Barker J noted the claimants' argument that a determination that native title does not exist may be considered to have serious consequences for the current and future descendants of those persons, who the Court found to be Badimia people or have traditionally been associated with the claim area at sovereignty, his Honour observed on the evidence and procedure there has been a full and complete trial of relevant connection issues in the area the subject of claim.

Barker J went on to explain at [80]

> The trial was conducted following the lodgement of a considered claimant application by the claimants. No other indigenous persons sought to challenge the claimants' alleged interests. The native title claim group was identified and formulated by the claimants having regard to their indigenous knowledge and with the assistance of the relevant native title representative body. The matter proceeded to trial with the advice and representation of experienced solicitors and counsel. An experienced anthropologist was called on behalf of the claimants at trial.

And observed at [82]

> All of the difficulties identified by the Court and summarised above, as to why the present claim failed, would remain. In particular, the Court's finding that the relevant contemporary laws and customs identified in the evidence, including by claimant witnesses who were descendants of ancestors identified by the Court as Badimia people, were not traditional, in the *Yorta Yorta* sense, and that the claimants had failed to show that there had been acknowledgment of and adherence to traditional laws and customs by each generation of Badimia people since sovereignty, would be fatal to any reformulated claim that can be imagined.

His Honour went on to find at [85] there should be a negative determination in respect of the Badimia claim.

25 May 2015, application to remove details of Indigenous Land Use Agreement from Register Of Indigenous Land Use Agreements, Federal Court of Australia- Brisbane, Queensland, Collier, Gilmour and McKerracher JJ

Johnson v Registrar, Federal Court of Australia [2015] FCAFC 66

In this matter, the Full Federal Court affirmed the decision of a primary Judge to dismiss an application to review a decision of a Registrar of the Court. The decision in question was the refusal to file an originating application.

History of the application

- the appellant (Mr Johnson) is an elder of the Wulgurukaba people, who as noted at [2] has a deep and abiding sense of connection with Magnetic Island, located approximately 9 kilometres from the coast of north Queensland
- at an earlier unspecified time, the Wulgurukaba people filed two applications for determination of native title on Magnetic Island. In 2004, the Wulgurukaba people also entered negotiations as to the terms of an ILUA with the State of Queensland
- in 2013, Mr Johnson filed an application seeking an order under s 199C of the *Native Title Act 1993(Cth)* directing the Native Title Registrar to remove the details of the ILUA from the Register on the basis that both Mr Johnson and the Wulgurukaba people entered the ILUA under duress.

Grounds of Appeal

Mr Johnson appealed the primary judgment on the following grounds:

1. the primary judge took an irrelevant consideration into account in the exercise of a power (that the respondents would appeal if his Honour decided otherwise) and
2. there was no evidence or other material to justify the making of the decision (his Honour expressed the view that World War II had altered Native Title on Magnetic Island).

Decision

The Full Federal Court dismissed the appeal.

Ground 1 The appellant had informed the Court that he was not pursuing ground 1.

Ground 2 Their Honours explained at [16] that they did not accept the submission of the appellant ‘that the primary judge had based his decision on matters relating to the existence or otherwise of native title.’ The Court observed at [17] that

> … his Honour did not, during the course of the hearing, purport to express any conclusions concerning the existence of native title in Magnetic Island, and more importantly that his Honour simply noted during the course of an exchange with Mr Paterson that the prospect of extinguishment of native title because of military use of land was "theoretical" in light of the then-pending decision of the High Court in *Congoo*. None of this material in any way gives credence to ground 2 of the notice of appeal before us. No error on the part of the primary Judge has been established. Ground 2 fails.

Their Honours found that Mr Johnson had failed to raise either fraud or undue influence as a ground before the primary Judge. Therefore, it was not open to Mr Johnson to now seek to resurrect those claims.

The Court noted at [20] that

> An *Anshun* estoppel arises where the matter relied upon in the subsequent proceeding could and should have been raised in the first proceeding on the basis that it was so relevant to the subject matter of the first action that it would have been unreasonable not to have relied on it: *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589 at 602-3 per Gibbs CJ, Mason and Aickin JJ. This doctrine is founded upon a matter of public policy that a party should not be troubled twice in the same matter: *Murphy v Abi-Saab* (1995) 37 NSWLR 280 at 286 per Gleeson CJ. The primary Judge, in effect, so concluded.

26 May 2015, whether documents subject to particular restrictions, Federal Court of Australia – Adelaide, SA, Mansfield J

Lake Torrens Overlap Proceedings [2015] FCA 519

This matter was a decision about whether certain documents would be subject to restrictions. Mansfield J decided that the documents in question would be made available for inspection by the parties to the proceeding, subject to accommodating cultural considerations.

This issue occurred in relation to two competing applications for recognition of native title over Lake Torrens. The applicants were the Kokatha People (native title holders over land to the west of Lake Torrens) and the Adnyamathanha People (native title holders over land to the east of Lake Torrens).

The respondents in this matter were the State of South Australia, two mining companies and other respondents who did not play any active part in the current proceeding

Background

In December 2014 and February 2015, the Court ordered the filing and service of the historical, anthropological and other expert reports held by each of the parties to the proceeding, and by South Australia Native Title Service (SANTS). Where there was an objection to any of the document so listed being examined, the order required the relevant party to give a notice of that objection.

Claim of Confidentiality

Two documents were subject to a claim of confidentiality by SANTS. These were:

1. the Cane Report (a report from July 2008 on Aboriginal associations with an area between Lake Torrens and Lake Gairdner) and
2. the Habner Report (a confidential report to the Kokatha Native Title Claim on aspects of the overlap between the Kokatha and the Barngarla Native Title Claims, produced in February 2006 for the purposes of mediation).

The State also indicated that, whilst it was willing to release for inspection further documents, four of those other documents in the list substantially refer to the Cane Report or the Habner Report and would, therefore, be treated as confidential on the same basis.

SANTS' contentions included:

- that both reports are the property of SANTS, and that only SANTS has the authority to permit the inspection of those two reports
- that the Cane Report and the Habner Report were produced for the furtherance of settlement negotiations and were, therefore:
    - excluded from being adduced as evidence under s 131 of the *Evidence Act 1995* (Cth) and
    - privileged and immune from discovery by application of the common law.
- the Cane Report was immune from discovery because it was legally privileged material, created for the dominant purpose of providing legal advice
- both reports were produced for aiding court ordered mediation of other matters and were done so on a "without prejudice basis" and, as the Cane Report was made available to the State in this context, it could not be used for any other purpose than those particular negotiations and
- the Habner Report was protected from discovery and/or inspection because it was subject to "without prejudice" privilege, having been commissioned by SANTS for the purposes of assisting settlement negotiations, while performing its facilitation and assistance function under s 203BF of the *Native Title Act 1993* (Cth) (NTA). SANTS does not however claim that the privilege rests with it.

Considerations/Decision

The Court's considerations were varied and included a discussion of SANTS' functions, which include its function to support dispute resolution between competing claimants under the NTA. Mansfield J noted, at [25], that no provisions in the NTA dictate the status of information assembled by SANTS, and that it was a matter to be determined in the particular circumstances, and on the particular facts. His Honour did not regard the Cane Report or the Habner Report to be subject to some sort of separate confidentiality entitlement because of the role that SANTS took in their preparation. Mansfield J explains at [46] that this is because the reports were provided to the State, the Commonwealth and apparently the Kuyani people, and therefore whatever terms that may have been imposed upon the usage of that material, it was not being claimed in the current proceeding that there was some condition restricting the State and/or the Commonwealth, and/or any other person who received the material from using it for the purpose of this proceeding.

As to the argument of client legal privilege, Mansfield J was of the opinion that the privilege was waived when the Cane Report was made available to each of the overlapping claim groups and their representatives.

With regard to the Habner Report, Mansfield J did not consider that it was a document that was protected from inspection, noting at [50]

> In my view, there are no circumstances shown as to why the Habner Report, being in the possession of the State, should not now be both discoverable (as it has been) and inspected by the other parties to the Lake Torrens Overlap Proceeding.

His Honour recognised that the foundation for privilege was found in public policy that parties should be encouraged, as far as possible, to settle their disputes without resort litigation, and should be discouraged by the concern that anything said in the course of negotiations may be used to their detriment in the course of proceedings.

However, Mansfield J was of the view that both the Habner Report and the Cane Report, were not shown to have in to existence, nor to have been provided under any express or tacit arrangement that – at the conclusion of negotiations – they should not be available for use to the benefit (or detriment) of one or other parties if the matter were not resolved by negotiation.

Consequently, his Honour found at [60] that the Habner Report is not protected from inspection by "without prejudice" privilege.

And concluded at [71]

> In my view, those matters point strongly in favour of the Court directing (subject to the conditions referred to) that the Habner Report and the Cane Report, and

consequently the other reports which allude to the contents of the Cane Report, should be available for inspection.

2. Legislation

Commonwealth

Water Amendment Bill 2015

Status: The Bill was introduced and read a first time on 28 May 2015, the second reading and debate was adjourned on the same day.

Stated Purpose: The Bill amends the *Water Act 2007* to provide for a 1,500 gigalitre limit on surface water purchases, and for the purpose of allowing more flexibility with efficiency measures**.**

In general terms, *The Water Amendment Bill* 2015 (the Bill) will amend the *Water Act* 2007 to impose a statutory limit of 1500 gigalitres on Commonwealth purchases of surface water across the Murray-Darling Basin. (**Water Act 2007**)

The Bill also amends the Murray-Darling Basin Plan 2012 (the Basin Plan) to provide increased flexibility in the recovery of 450 gigalitres of water through efficiency measures funded under the Water for the Environment Special Account. (**Basin Plan 2012)**

Native title implication/s: Clause 12 in the Explanatory Memorandum states that the Bill will address the concerns of rural and irrigation communities regarding the potential socio-economic impacts of Commonwealth environmental purchases by placing a limit on the amount of surface water that can be purchased by the Commonwealth in 'bridging the gap' to the sustainable diversion Limits set out in the Basin Plans. "Rural and Irrigation communities can include traditional owners or native title holders along the Murray basin.

Note: this is a Government Bill, introduced by the Parliamentary Secretary to the Minister for the Environment.

For further information please see the First Reading, the Second Reading and the Explanatory Memoranda.

Tasmania

Crown Lands Amendment Bill 2015

Status: The Bill was introduced and read a first time in the House of Assembly on 22 April 2015. It was read a second time and considered in detail by the House of Assembly on 27 May 2015

Stated purpose: The purpose of this Bill is to amend the *Crown Lands Act* 1976 by consolidation and homogenising the powers to lease and licence real property assets under the management and control of Portfolio Minister.

Native Title Implication/s: This Bill removes the distinction between 'residential portfolio land' and 'other portfolio land', thus enabling portfolio Ministers to lease or license any Crown land within their respective portfolios without the limitations currently imposed in respect of residential land. The Bill enable Portfolio Ministers to lease or licence all 'portfolio land' under their Departments' management to any person and on such terms and conditions as Portfolio Ministers consider appropriate. It is relevant for native title holders to be aware of the changes.

Note: This is a Government Bill.

For further information please see the text of the Bill, and the Second Reading Speech.

Victoria

Planning and Environment Amendment (Recognising Objectors) Bill 2015

Status: The Bill was introduced and read for the first time on 26 May 2015, it was moved and the second reading presented on 27 May 2015.

Stated Purpose: The Bill amends the *Planning and Environment Act* 1987 to provide for the Victorian Civil and Administrative Tribunal and responsible authorities to have regard to the number of objectors to permit applications in considering whether a proposed use or development may have a significant social effect and for other purposes.

Native title implication/s: this bill inserts a new s 60(1B) in to the *Planning and Environment Act* 1987 to provide that, for the purposes of section 60(1)(f) of that Act, the responsible authority must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect.

For example, if a proposal requires a permit for development for **heritage reasons** but the objectors to the proposal are concerned about the operation of the proposed use (which does not require a permit under the planning scheme), it may not be appropriate for the decision maker to consider the number of objectors in that case.

However, if a proposal requires a permit for use, the impact of that use on the safety or amenity of the community is a matter required to be considered under the planning scheme, and a large number of objectors raise issues that point to a detrimental effect on the safety of the community at large, it may be appropriate to consider the number of objectors in that case.

This means the decision maker will not need to look at the number of objectors if the permit is required for heritage reasons.

Note: this is a Government Bill

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

Western Australia

Mining Legislation Amendment Bill 2015

Status: This Bill was introduced and read for the first time, and moved for second reading on 22 April 2015

Stated Purpose: This Bill is for an Act to amend the *Mining Act* 1978, *Mining Legislation Amendment Act* 2014, *Environmental Protection Act* 1986 and the *Mining Rehabilitation Fund Act* 2012 to consolidate and clarify the requirements on tenement holders relating to environmental management.

Native title implication/s: More specifically the Bill will insert a new Part in to the *Mining Act* to consolidate all environmental management provisions and separate them from the provision of the *Mining Act* that deal with the grant and administration of mining tenure. The Bill also contains miscellaneous amendments to other provisions of the *Mining Act.*

Section 12 states that the Minister can delegate any power or duty to an officer occupying a position within the Department. The proposed new section updates the drafting of the provision and extends the capacity to delegate statutory function to the Director General of Mines.

The Mining Regulations 1981 (WA) currently limits the authority to approve programs of work to persons who hold senior positions within the Department of Mines and Petroleum who are specified in the regulations.

It is important for native title holders to be aware that the authority to approve programs of work does not only rest on senior position within the DMP, but will include department officials who are properly authorised by the Director General.

Note: this is a Government Bill, introduced by the (Minister for Mines and Petroleum)

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

3. Native Title Determinations

In May 2015, the NNTT website listed 1 native title determination.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC/ PBC
Badimia People	CG (Deceased) on behalf of the Badimia People v State of Western Australia (No 2)	25/05/2015	WA	Native title does not exist	Litigated	Claimant	N/A

4. Registered Native Title Bodies Corporate & Prescribed Bodies Corporate

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

5. Indigenous Land Use Agreements

In May 2015, 10 ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
26/05/2015	Gangalidda People Finucane Island ILUA	QI2014/092	Area Agreement	QLD	Government, Native Title Settlement
26/05/2015	Gangalidda & Garawa People #2 and Burketown Land Exchange ILUA	QI2015/002	Area Agreement	QLD	Extinguishment, Native Title Settlement
19/05/2015	Birriah People and Res ILUA	QI2015/003	Area Agreement	QLD	Extinguishment
19/05/2015	Birriah People and Local Government ILUA	QI2014/090	Area Agreement	QLD	Government, Access

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
13/05/2015	Yindjibarndi People and RTIO Indigenous Land Use Agreement (Initial ILUA)	WI2014/005	Area Agreement	WA	Mining, Access, Communication, Community
06/05/2015	Gunggari People #3 and Ergon Energy Corporation ILUA	QI2014/081	Area Agreement	QLD	Infrastructure, Access, Communication, Energy
06/05/2015	Gunggari People #3 and Maranoa Regional Council ILUA	QI2014/082	Area Agreement	QLD	Infrastructure, Access, Communication, Energy
06/05/2015	Gunggari People #3/Drysdale Ponds ILUA	QI2014/083	Area Agreement	QLD	Pastoral, Access
06/05/2015	Gunggari People #3/Cedarvale ILUA	QI2014/084	Area Agreement	QLD	Pastoral, Access
05/05/2015	Olkola Land Transfer ILUA	QI2014/085	Area Agreement	QLD	Tenure resolution, Co-management

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

6. Future Acts Determinations

In May 2015, 2 Future Acts Determinations were handed down.

Determination date	Parties	Tribunal file no.	State or Territory	Decision/ Determination
21/05/2015	William Robert Richmond (grantee party) - and - Walalakoo Aboriginal Corporation RNTBC (WCD2014/003) (native title party) - and - The State of Western Australia (Government party)	WF2014/0009	WA	Future Act - Can be done subject to conditions
18/05/2015	Annie Milgin and Others on behalf of Nyikina Malgana (WC1999/025) (native title party) - and - The State of Western Australia (Government party) - and - Dempsey Minerals Ltd (grantee party)	WO2013/1197	WA	Objection - Expedited Procedure Does Not Apply

7. 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.

8. Related Publications

Publications

AIATSIS

Building Aboriginal and Torres Strait Islander Governance: Report of a Survey and Forum to Map Current and Future Research and Practical Resource Needs

On 29-30 July 2014, AIATSIS and AIGI co-convened the 'Indigenous Governance Development Forum' in Canberra. This report provides a synthesis of ideas, comments, issues and possibilities identified at the forum and the pre-forum survey.

For further information, please visit the AIATSIS website

Australian Policy Online

Statutory interpretation and native title extinguishment: expanding constructional choices

This article by Samantha Hepburn in the UNSW Law Journal examines the scope and application of the statutory construction assessment that underlies the consistency evaluation of native title rights.

For further information, please visit the APO website

Central Land Council

Council News

The May edition of the Council News is now available.

For further information, please visit the CLC website

Community Development News

The winter edition of the Community Development News is now available.

For further information, please visit the CLC website

Why Warriors

Why Warriors Newsletter

The May edition of the Why Warriors Newsletter is now available.

For further information, please visit the Why Warriors website

Media Releases, News Broadcasts and Podcasts

Attorney-General for Australia – Minister for the Arts

Appointments to Indigenous Repatriation Committee

The Australian Government has appointed six members to the Advisory Committee for Indigenous Repatriation which provides guidance to the Australian Government on issues relating to international and domestic repatriation of Indigenous ancestral remains.

For further information, please visit the Attorney-General website

Australian Human Rights Commission

Indigenous leaders tackle barriers to property rights

The Indigenous Leaders Roundtable, convened by Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda and Human Rights Commissioner, Tim Wilson, and held in Broome, will explore the challenges and opportunities of property rights after native title.

For further information, please visit the Human Rights Commission website

Indigenous leaders seek to enable economic development on native title land

Participants of the Indigenous Leaders Roundtable have called on Government to work with them on pursuing economic development on native title land and commit resources to this process. The Indigenous Leaders determined that the Australian Human Rights Commission should lead and facilitate ongoing dialogue on these issues. “Many participants of the roundtable voiced their disappointment in what the native title system has delivered in the past twenty years,” Commissioner Gooda said.

For further information, please visit the Human Rights Commission website

Central Land Council and Northern Land Council

Budget delivers uncertainty and blackmail to NT outstations – Joint Media Release CLC - NLC

The Central Land Council and Northern Land Council have come together to say the Commonwealth must scrap plans to hand over permanent responsibility for municipal and essential services for outstations to the dysfunctional and welfare dependent NT Government.

For further information, please visit the CLC website

Kimberley Land Council

Creating jobs in remote communities: how we're doing it

Kimberley Aboriginal people have been using their cultural knowledge, expert land management skills and native title rights to create jobs and business opportunities in remote communities. Although contrary to popular opinion, the choice to live on country can and does provide a sustainable and rewarding livelihood.

For further information, please visit the KLC website

State Government community closure reforms all PR and no substance

KLC Chair Anthony Watson has said that State Government reforms to address community closures are more about appeasing public outrage than improving the lives of Aboriginal people living in WA.

For further information, please visit the KLC website

Ranger program future jobs expansion

The Kimberley Land Council has joined 14 other Indigenous regions of land and sea managers from across Australia to call on the Federal Government to support the plan for the expansion of the world leading ranger and Indigenous Protected Area programs. The plan calls for further investment in the federal budget to expand Indigenous land management programs because they are succeeding where many other programs have failed.

For further information, please visit the KLC website

Nyikina Mangala Rangers catch rogue croc

The KLC-facilitated Nyikina Mangala Rangers recently caught a 3.6m rogue and aggressive crocodile at Telegraph Pool on the Fitzroy River. The rangers worked with the Department of Parks and Wildlife to catch the crocodile in a timely manner, as the crocodile was aggressive and threatening public safety. The Nyikina Mangala Rangers will continue to look for crocodiles along the Fitzroy River and will look to

redeploy traps in the near future, after reports of a larger croc lurking around the Minnie Bridge area.

For further information, please visit the KLC website

North Queensland Land Council

Bar Barrum High Court Win

The High Court has ruled in the matter of QLD v Congoo that a World War Two military order over land in Queensland's Atherton Tablelands did not extinguish native title for the Indigenous people of the area.

For further information, please visit the NQLC website

Northern Land Council

Congratulations to the Yanyuwa on a historic day

The NLC Chairman Samuel Bush-Blanasi congratulates the Yanyuwa peoples at the land hand back ceremony.

For further information, please visit the NLC website

Reconciliation Australia

The Government must strengthen sustainable funding models for Aboriginal and Torres Strait Islander peoples

Reconciliation Australia acknowledges that there will be no additional funding cuts to the Indigenous Affairs portfolio in this year's Federal Budget. CEO of Reconciliation Australia, Mr Justin Mohamed, said, "the announcements that no further savings will be made at the expense of Indigenous Affairs, as well as the reinstatement of funding for legal services, is a positive indication that the government is listening to Aboriginal and Torres Strait Islander peoples."

For further information, please visit the Reconciliation Australia website

9. Training and Professional Development Opportunities

The Aurora Project

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

Journal of the Anthropological Society of South Australia

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

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

ORIC

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

For further information on training courses, visit the ORIC website

10. Events

National Centre for Indigenous Studies

Introduction to repatriation: principles, practice and policies

This intensive five-day program is a professional development short course will be hosted by Ngarrindjeri Traditional Owners. Participants will travel to Camp Coorong on Sunday 5 July and depart on Saturday 11 July.

Date: 6-10 July 2015

Location: Camp Coorong, near Meningie, South Australia

For further information, visit the NCIS website

Muru-D

Pathway to Digital Workshop

Muru-D is hosting a two-day workshop for Indigenous Australians to look into what entrepreneurship is and explore the lean startup methodology as a way to turn a great digital startup idea into reality.

Date: 25-26 July 2015

Location: Coder Factory, Redfern, Sydney

For further information, visit the Muru-D website

Native Title Services Victoria

Alternative Dispute Resolutions in Indigenous Communities

This conference will explore the application of Alternative Dispute Resolution in the Indigenous sector. Eminent Indigenous speakers from the fields of native title, criminal justice and family law will present on issues facing their communities alongside leading non-Indigenous academics and mediators.

Date: 27-28 July 2015

Location: Melbourne University, Victoria

For further information, visit the NTSV website

ANU Anthropology Seminar Series

Against Native Title: destruction and creation in the Australian outback

The ANU Anthropology Seminar Series will feature a presentation by Eve Vincent, Macquarie University with the title Against Native Title: destruction and creation in the Australian outback.

Date: 9:30-11:15am, 29 July 2015

Location: Coombs Building, Room 5019, ANU

For further information please contact Alan Rumsey, alan.rumsey@anu.edu.au

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

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

Date: 14-15 October 2015

Location: William Angliss Institute Conference Centre, Melbourne

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: Mecure, 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.