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AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

WHAT'S NEW IN NATIVE TITLE

May 2017

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1. Case Summaries

McGlade v Native Title Registrar (No 2) [2017] FCAFC 84

29 May 2017, Costs Application, Federal Court of Australia, Western Australia, North, Barker and Mortimer JJ

In this matter, North, Barker and Mortimer JJ ordered the State of Western Australia and the South West Aboriginal Land and Sea Council (SWALSC) to pay the respective costs of the applicants in relation to the *McGlade v Native Title Registrar* litigation (WAD137/2016, WAD138/2016, WAD139/2016, WAD140/2016).

The applicants submitted that the usual rule that costs follow the event should apply as they were successful at trial, and s 85A of the *Native Title Act 1993* (Cth) (NTA) did not apply to the proceedings. That provision alters the usual rule concerning costs for proceedings commenced in the Federal Court relating to native title. It provides that, unless the Court otherwise orders, each party to a proceeding must bear their own costs. The Court accepted that the proceedings are not directly covered by s 85A of the NTA, as they were applications made in the High Court for writs of prohibition, as well as for declaratory relief.

SWALSC contended that the significant body of Noongar persons who supported its position on the South West Settlement Indigenous Land Use Agreements (ILUAs), and the public importance of the interpretation of the ILUA provisions, supported the finding that there should be no costs order. The Court held that despite the considerable public

importance in the interpretation of the ILUA provisions of the NTA, the applicants 'nonetheless took steps to obtain legal advice, commence proceedings in the High Court relying on the terms of s 75(v) of the *Constitution* and s 39B of the *Judiciary Act*, and but for their determination in bringing and maintaining the proceedings, would not have been able to vindicate the rights and interests they asserted' at [13].

The Court agreed with the submission made by the State that the applicant in each of the four proceedings should not have the benefit of individual costs orders. Their Honours held that acknowledging that costs of preparation may be different in each proceeding, and having regard to the differing factual backgrounds, some allowance needs to be made for some separate costs in each proceeding, although modified to reflect that the four proceedings were heard together. The Court held that there should be one costs order covering all four proceedings, broken up as needs be to reflect any distinct costs incurred in preparation.

The Court ordered the parties to file a minute of proposed costs orders that reflect the judgement.

Helicopter Tjungarrayi on behalf of the Ngurra Kayanta People v State of Western Australia (No 2) [2017] FCA 587

29 May 2017, Determination of Separate Questions, Federal Court of Australia, Western Australia, Barker J

In this matter, Barker J considered two separate questions in relation to s 47B applications made on behalf of the Ngurra Kyanta people. The applicant's argued that the prior extinguishment of native title rights and interests in the native title claim area by two petroleum exploration permits should be disregarded under s 47B of the *Native Title Act 1993* (Cth) (NTA). The respondent parties were Central Desert Native Title Services, the State of Western Australia, and the Commonwealth of Australia as intervener.

The first question for determination concerned the Western Australia Government's submission that the two permits, granted under the *Petroleum and Geothermal Energy Resources Act 1967* (WA) (PGER Act), constitute 'leases' for the purposes of s 47B(1)(b)(i) of the NTA, and therefore s 47B does not apply to the application.

The second question was in relation to the argument put by the Commonwealth that notwithstanding the decision of the Full Federal Court in *Banjima People v Western Australia* [2015] FCAFC 84 (*Banjima FC*), the exploration permits are not covered by s 47B(1)(b)(ii) because the areas in question are 'to be used for a particular purpose'.

Question 1

Barker J followed the decision in *Narrier v State of Western Australia* [2016] FCA 1519 in relation to an exploration licence granted under the *Mining Act 1978* (WA). In that matter, Mortimer J held that the licence did not fall within the meaning of 'lease' in s 47B(1)(b)(i) of the NTA. Her Honour rejected the State's argument that if a 'licence' falls within the

definition of ‘lease’ in s 242(2) of the NTA then a licence to ‘mine’, as defined in s 253, must include an exploration licence, satisfying the exclusion in s 47B(1)(b)(i). Her Honour considered that such a construction distorts the exclusion in s 47B(1)(b)(i), and does not give effect to the text of s 242(2) of the NTA which includes a general definition of ‘lease’ for the purpose of the NTA.

Barker J held that the licences or authorities in question must, as provided for by s 245 of the NTA, license or authorise the use of land or waters ‘solely or primarily for mining’, and it is not open, in that context, to conclude that mining means exploration.

His Honour considered that any ambiguity in the legislative text should be resolved in favour of the result that s 47B is to apply, unless it is clear that the Parliament has excluded the operation of the provision. Barker J found that the exploration permits in question do not constitute mining leases in the manner described in the NTA and do not constitute ‘leases’ for the purposes of s47B(1)(b)(i). Consequently he found that s47B applied to the application.

Question 2

The Commonwealth contended that the two exploration permits should be distinguished from those found by the Full Court in *Banjima FC* not to be covered by s 47B(1)(b)(ii) and that they should be considered to comprise a permission or authority whereby the claim area ‘is to be used ... for a particular purpose’.

The Commonwealth submitted that the relevant intention to use the land for a particular purpose is demonstrated if the permits require the use of the area for the particular purpose of petroleum exploration. The Commonwealth argued that the minimum exploration activities required to be undertaken on the land within the permit area within the specified timeframe set out in the PGER Act, satisfy that requirement. To the contrary, Barker J held that the applicant was correct in submitting that the exploration permits are indistinguishable from the exploration licences under the *Mining Act* that were considered in *Banjima FC* and *Banjima People v State of Western Australia (No 2)* [2015] FCAFC 171 (*Banjima FC2*) to be covered by s 47B.

His Honour found that the permits do not either limit the purposes for which the area could be used, or require that it be used for a particular purpose. The permits did not require that any part of the claim area be explored or used for the purposes of exploration when the claimant application was made, as discussed in *Banjima FC* at [107]-[108]. There was also no obligation on the permit holders to do any of the things listed in the conditions in the area with which the s 47B application was made.

The applicant contended that the condition in cl 1(2) of the exploration permits, that the permit holder shall not commence any works or petroleum exploration operations except with the written approval of the Minister, means that it cannot be said that land ‘is to be used’ under the permits. The Commonwealth considered that position is inconsistent with the statutory scheme under the PGER Act, and with the terms of the permits, read as a whole. His Honour agreed with the applicant’s construction, holding that any use would be under the Ministerial approval, not the permits. It follows that the conditions requiring

Ministerial approval do not fall within s 90(1) of the PGER Act, which specifies that any specified works are to be carried out within six months.

Barker J also found that the exploration permits do not affect or preclude other uses of the claim area. This was evidenced by, for example, that the PGER Act and the *Mining Act* are not mutually exclusive; tenements under each may be granted in relation to the same land. The land in question is unallocated Crown land and may be dealt with under the *Land Administration Act 1997* (WA) (LAA), notwithstanding the exploration permits.

His Honour found persuasive the applicant's submission that the concept of 'purpose' employed in s 47B(1)(b)(ii), in defining that Crown land under claim is not to be treated as 'Vacant Crown land' if the land 'is to be used' under an instrument, conveys the state of affairs discussed in *Western Australia v Ward* [2002] HCA 29 at [217]-[242] as to when Crown land is applied to a purpose or use and no other. The grant of an exploration permit over Crown land under the PGER Act, where the land is available for disposition and use under the LAA, is not an act by which the Crown has bound itself to some particular purpose. The land is vacant Crown land or, in the language of the LAA (s 4(1)), unallocated Crown land.

His Honour held that after consideration of the statutory and endorsed conditions of the permits, petroleum exploration is not a particular purpose within s 47B(1)(b)(ii)). Barker J ruled that the exploration permits did not constitute permissions or authorities falling within s 47B(b)(ii) and s 47B applied to the application as a result.

Quayle v State of South Australia [2017] FCA 552

22 May 2017, Application to Join Respondent, Federal Court of Australia, South Australia, White J

In this matter, White J refused an interlocutory application by the Adnyamathanha People to be joined as a respondent party to the native title claim brought on behalf of the Malyankapa People. His Honour ordered that Ms Janet Coulthard of that group be joined instead. The claim was filed in September 2015 over an area in the northeast of South Australia.

The Adnyamathanha people assert that they have traditional rights and interests in the Malyankapa claim area that coexist with the native title rights and interests claimed by the Malyankapa. Those rights and interests were recognised by the Malyankapa in a Memorandum of Understanding (MOU) agreed with the Adnyamathanha people in April 2015. His Honour accepted that the Adnyamathanha people do have an interest in the claim area.

The Malyankapa people resisted the joinder, submitting that the interests of the Adnyamathanha people were not affected as required by the joinder provision contained in s 84 of the *Native Title Act (1993)* (Cth), because the Malyankapa had, by the MOU, accepted the responsibility of protecting the interests of the Adnyamathanha and there was no reason to suppose that they would not honour that commitment. To the contrary, his

Honour considered that the native title rights and interests claimed by the Malyankapa People may affect the exercise of the rights claimed by the Adnyamathanha people, including the right to access and move about the claim area, the right to regulate access to and use of the claim area by other Aboriginal people in accordance with traditional laws and customs, the right to hunt on the claim area, and the right to speak about the claim area among other Aboriginal people who seek access to, or use of, the lands and waters in accordance with traditional laws and customs. The Adnyamathanha people and the Malyankapa people have claims which will correspond in some respects but which may conflict in other respects, which his Honour considered to count against a conclusion that the interests of the Adnyamathanha people will be adequately represented by the Malyankapa people.

White J held that it was possible that a determination may be made that does not take account of the rights claimed by the Adnyamathanha people, and that the MOU does not bind the State or the other respondent parties. His Honour held that the Adnyamathanha people have an interest in the MOU being recognised and being made part of a separate order on the Malyankapa claim pursuant to s 87A(5) of the NTA.

While the criteria in s 84 of the NTA was satisfied, White J held that the joinder application was inappropriate as the 'Adnyamathanha People' is the name of a collective people; it is not a legal entity and does not have any legal personality. The applicant submitted that any orders arising from the matter could be enforced against the Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC (ATLA) which is the prescribed body corporate for the Adnyamathanha No. 3 determination area. His Honour rejected this submission, holding that an order could not be enforced against ATLA as it is not a party to the proceedings, nor could it become one – see Cheinmora v State of Western Australia [2013] FCA 727; *Sumner v State of South Australia* [2014] FCA 534 at [14]). White J held that any order of the Court against the Adnyamathanha People would be incapable of direct enforcement.

The applicants amended their application to allow for Ms Janet Coulthard to be joined as the respondent paiatsis*4

arty instead. Neither the Malyankapa people nor the state opposed the applicant's changes. White J found that Ms Coulthard was an Adnyamathanha person and her interests were affected by the Malyankapa application, and so accordingly found it appropriate for her to be joined as a respondent party.

Dann v Yamera [2017] FCA 513

15 May 2017, Application for Judicial Review, Federal Court of Australia, Western Australia, Barker J

In this matter, Barker J set aside the National Native Title Tribunal's (NNTT) decision to accept the Warlangurru #2 native title application for registration. The decision concerned the application of s 190C(3) of the *Native Title Act 1993* (Cth) (NTA) where two overlapping

claimant applications were made in respect of land and waters in the vicinity of Fitzroy Crossing in the Kimberley Region of Western Australia. The first in time application was the Bunuba People's, referred to as the Bunuba #2 application. The second application was that of the Warlangurru People, referred to as the Warlangurru #2 application, part of which overlapped the Bunuba # 2 claim area.

It is a strict requirement pursuant to s 190C(3) of the NTA that an application over the same area covered by an earlier application cannot be entered on to the Register of Native Title Claims where any person included in the claim group for the later application is a member of the claim group on the earlier registered application. The applicant sought judicial review of the decision of the Registrar's delegate on that basis.

The delegate found that Grace Muilligan was not a member of the Bunuba #2 claim group on the basis that any association she has with the claim area is of a historical nature only, and as Ms Mulligan does not identify as a Bunuba person, one of the of criteria of membership to the Bunuba # 2 claim group was not met. The delegate also relied on Schedule O to the claim application which states that there are no common members with any previous overlapping applications, which included the Bunuba # 2 claim.

The criteria for membership of the Bunuba claim group is as follows:

a) The descendants of the following ancestors: Mubu; Jaranggu; Jurrguna; Frank Edgar(Pilot); Limirruwa; Nindiligal; Dawanjina; Ganggula; Mangalanyi; Yambanana; Minyjinyji; Balylburru; Gijalamili; Jingirriban; Guburrmiya; Bundu; Ginyjiwul; Limadji;
b) The individuals, and their descendants, who have been or are being adopted or Marurr (people who are raised, grown up, embraced and acknowledged as a Bunuba person) by members of the Bunuba native title claim group, or by their predecessors, in accordance with the traditional laws and customs of the Bunuba people; and
c) Aboriginal persons who:
    (i) self-identify as Bunuba; and,
    (ii) are recognised by other members of the Bunuba native title claim group as Bunuba under traditional law and custom.

The applicants sought to review the delegate's decision on three grounds, all of which rely on the ground of legal unreasonableness.

Ground 1

The applicants argued that the Registrar improperly exercised his power under s 190A of the NTA by deciding to accept the Warlangurru #2 application for registration because it was an exercise of power so unreasonable that no reasonable person could have so exercised the power. The applicants argued that there was material available to support a conclusion that Ms Mulligan was a member of the Bunuba #2 claim group, specifically the detailed and express statement in a 2015 presentation by the Kimberley Land Council, the native title representative body for the Bunuba and Warlangurru #2 applications, that she was a member of the Bunuba group. They also considered it relevant that Ms Mulligan had not verified that she was or was not a member of the Bunuba #2 claim group and the

Warlangurru #2 claim group's anthropologist had not reviewed the Bunuba Connection Report Genealogies.

Ground 2

The applicants submitted that there was no evidence or other material to justify the decision of the Registrar to accept the Warlangurru #2 application for registration. The applicant considered that in determining whether the Registrar was satisfied that there was no common claim group member, it appears that the Registrar went about this task by, instead, being satisfied that it had not been established that Grace Mulligan was a Bunuba #2 claim group member. They argued that the Registrar was put on notice by the submissions of the Warlangurru #2 applicants that Grace Mulligan and the applicants' anthropologist had not reviewed the Bunuba Connection Report Genealogies and in those circumstances ought reasonably to have made inquiries of the representative body and the applicant in order to obtain evidence that Grace Mulligan was not a Bunuba #2 claim group member.

Ground 3

The applicants submitted that the delegate misconstrued the Bunuba #2 claim group description by considering the three criteria to be cumulative and all in need of satisfaction for a person to be a member of the group. On the applicant's construction, the criteria are independent as it makes no sense that to be a Bunuba #2 claim group member a person has to be a descendant of an apical ancestor *and* be adopted by members of the application group *and* be an Aboriginal person that self-identifies and is recognised by members of the claim group as Bunuba.

The Warlangurru #2 claim applicants submitted that it was reasonable for the Registrar to conclude that self-identification as a Bunuba person is a necessary prerequisite for membership of the claim group for the Bunuba #2 application. The use of conjunctive 'and' between sub-paras (b) and (c) and between sub-paras (c)(i) and (c)(ii) is indicative of an intention that the criteria of self-identification and recognition are cumulative criteria, with either descent or adoption, necessary to satisfy the requirements of membership of the Bunuba #2 claim group.

In reviewing the decision of the NNTT, Barker J found that Grace Mulligan, listed as a member of the Warlangurru #2 claim group, was also a descendant of one of the apical ancestors identified in the Bunuba #2 application. The Court considered that at the time of the decision was made by the NNTT, the fact that Grace Mulligan did not self-identify as Bunuba was irrelevant to the question of the membership of the Bunuba people. From the material before the delegate Grace Mulligan appeared to be a descendant of the Bunuba named ancestors through her father Mick Michael, and the delegate fully appreciated and accepted that fact.

His Honour considered the issue to be a question of a person who has technically become a member of one prior registered claim group through descent, on her father's side, who is also a claimant by in what they consider to be Warlangurru country, including in the overlap area, through their mother's side, in the second in time application group. Barker J stated

that: ‘This conundrum is not easily resolved. It is perhaps a classic example of how current statutory law relating to native title application registration does not always easily engage with traditional law and custom’ at [81].

His Honour considered the group’s intended construction of the membership criteria to mean that paragraph (c) of the Bunuba claim group description is an additional category of membership, meant to ensure that not only are the descendants of the ancestors listed in paragraph (a) and other persons adopted into the Bunuba group to be part of the claim group as provided for in paragraph (b), but also that other ‘Aboriginal persons’ who identify as Bunuba and who are recognised by other members of the Bunuba native title claim group as Bunuba under traditional law and custom should be included.

Barker J held that the Registrar’s delegate misconstrued the Bunuba membership criteria and, in doing so, made a decision that was not open to her and was therefore legally unreasonable on the basis that no reasonable decision maker could have made it. His Honour ordered that the decision of the delegate to accept the Warlangurru #2 application for registration be set aside and the entry of the Warlangurru #2 application be removed from the Register of Native Title Claims.

Bulabul on behalf of the Kewulyi, Gunduburun and Barnubarnu Groups v Northern Territory of Australia **[2017] FCA 461**

5 May 2017, Application to Strike Out Proceedings, Federal Court of Australia, Northern Territory, White J

In this matter, White J held that 11 native title applications, all at least 13 years old, be dismissed for lack of prosecution with reasonable diligence. The respondent parties included the Northern Territory and Commonwealth governments and the Consolidated Pastoral Company Pty Ltd. The claims were ‘polygon’ claims, meaning they were made following notifications under s 29 of the *Native Title Act 1993* (Cth) (NTA) and the areas to which they related conform to the irregular boundaries of mining tenures granted or proposed to be granted pursuant to the *Mining Act 1980* (NT) or the *Petroleum Act 1984* (NT).

In March 2008, Reeves ordered that the Northern Territory pastoral claims be heard in 10 groupings. In September 2009, the Court was given a program which contemplated all claims being finalised by 2014. In May 2014, a planning day was held and a revised plan adopted due to a lack of progress. At that planning day, the NLC agreed to identify those claims in which the applicants would not suffer any prejudice if they were discontinued, and to discontinue them. That process did not result in the discontinuance of any claims.

In April 2016, the Court referred groups 3, 7, 11 and 12, and the Town of Weddell and Middle Arm claims to case management by a Registrar of the NNTT. The Court ordered the Northern Land Council (NLC) to file and serve an affidavit in respect of each group and the two towns stating reasons which would support the matters remaining current and setting a timetable out for their disposition. The NLC only contemplated some steps in relation to the

applications comprising group 3 and did not provide any steps for the remaining claims. As such the Court made orders to hear from the applicants as to why the applications should not be dismissed for want of prosecution with due diligence.

The Court conducts a callover every six months of all the native title proceedings filed by the NLC in the Northern Territory Registry. At several of the callovers, the Court expressed its concern about the lack of prosecution of the claims and warned the parties of its possible intervention. The Court noted that to date, the applicants have done very little to prosecute the claims and it appeared that there was no prospect of them doing so. In those circumstances, the Court can act on its own motion pursuant to rr 1.40 and 5.23 of the *Federal Court Rules 2011* (Cth) to dismiss the applications by reason of the failure of the applicants to prosecute their claims with reasonable diligence.

The principal argument put forward by the NLC, on behalf of the applicants, was that while current, the applications provided the claimants with standing to negotiate with respect to future acts pursuant to Subdivision P of Division 3 of Part 2 of the NTA. The NLC further emphasised that part of the policy of the NTA is to vest in registered claimants the right to negotiate in respect of future acts and that the course of negotiated of agreements can be protracted. As such the NLC said it would be inappropriate for the court to dismiss these matters in which there are current future act negotiations or in which there is some prospect of negotiations occurring in the future.

Barker J held that it was inappropriate for applications which are not being prosecuted with reasonable diligence to remain on foot because of the possibility that at some time, some future act may be proposed in relation to the claim area. He held that the court is more concerned in situations where the evidence discloses that the dismissal of the application, would or is likely to, have some practical effect on the claimants. On that basis, his Honour considered that the dismissal of the Roper Valley North, Mary River West and Ban Ban Springs applications would cause practical detriment to the claimants' ILUA and future act negotiations. Barker J was not satisfied that the dismissal of the remaining matters would cause sufficient practical prejudice to the applicants to warrant the court refraining from dismissing the applications.

Barker J did not consider the NLC's submission that the lack of prosecution was due to the insufficient funds and resources available to the organisation persuasive. His Honour noted that while the Court has in a practical way taken account of the exigencies of the funding arrangements for the pursuit of claims for the determination of native title, it has not regarded funding difficulties as a decisive consideration: *Bennell v State of Western Australia* [2004] FCAFC 338 at [37]; *Kokatha Native Title Claim v State of South South Australia* [2006] FCA 838, at [10]; *Atkinson on behalf of the Mooka and Kalara United Families Claim v Minister for Lands for the State of New South Wales* [2010] FCA 1073 at [25], *Levinge v Queensland* [2012] FCA 1321; at [18]-[19] and *Agius v State of South Australia (No 4)* [2017] FCA 361 at [78], [80]. His Honour did not consider it appropriate to give weight to the difficulties of the NLC. Barker J considered that the matters had been on foot for a significant time, during which the NLC could have addressed those issues.

His Honour found that the claims had been on foot for a long time without any significant action taken to progress them, and it was improbable that the applications will ever be prosecuted because of the likelihood that they will be replaced with applications which correspond to the boundaries of the pastoral leases to which they relate. Barker J found that the programs for progressing the claims set by the Court had not been adhered to, and the applicants had made no attempt to meet the timeframes they themselves nominated. His Honour adjourned the Roper Valley North, Mary River West and Ban Ban Springs claims to the callover to be held on 20 October 2017, and dismissed the remaining applications.

Wikilyiri on behalf of the persons who are ngurraritja for Ananta (Umbeara), Kalka (Kulgera), Watju (Mount Cavenagh), Wapirrka (Victory Downs) and Warnukula (Mulga Park) v Northern Territory of Australia **[2017] FCA 446**

4 May 2017, Consent Determination, Federal Court of Australia, Northern Territory, Reeves J

In this matter, Reeves J recognised the native title rights and interests of the Ananta (Umbeara), Kalka (Kulgera), Watju (Mount Cavenagh), Wapirrka (Victory Downs) and Warnukula (Mulga Park) peoples in relation to 10,210 kilometres of land, situated approximately 215 km south of Alice Springs along the Northern Territory – South Australian border. The determination area is located on Yankunytjara and Matutjara country. The respondent parties are the Northern Territory Government, Colin Bruce Morton, Shane Alethea Niccole, Umbeara Holdings Pty Ltd, Ordiv Petroleum Pty Ltd, Santos Qnt Pty Ltd and Telstra Corporation Ltd.

The application was filed in May 2015. In March 2017, the parties filed executed consent orders, and the applicant and the Northern Territory filed a statement of agreed facts, joint submissions and the anthropological report of Dr Kwok. Reeves J made the orders requested in accordance with the agreement between the parties.

The non-exclusive rights recognised included rights to access and live on the land; hunt, gather and fish; take and use resources; light fires for domestic purposes (other than to clear vegetation); maintain and protect important sites and places and conduct cultural activities on the land.

The prescribed body corporate is the Yankunytjara Matutjara Aboriginal Corporation.

His Honour noted that periods of 15 years or more to reach a determination of native title are, regrettably, far from uncommon. Reeves J found it ‘very pleasing to be involved in this native title determination where, as the short history set out below demonstrates, the time taken to bring the proceeding to finalisation is less than two years’ at [1]. His Honour congratulated the parties for reaching agreement in such a remarkably short period of time, and expressed hope ‘in years to come, this time frame will come to be regarded as the standard, not as an extraordinary exception’ at [1].

2. Legislation

There were no current Bills before the Federal, state or territory parliaments, or relevant previous Bills that received Royal Assent or were passed or presented during the period 1-31 May 2017.

3. Determinations

In May 2017, the NNTT website listed 1 native title determination.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC/ PBC
Victory Downs Pastoral Lease	Wikilyiri on behalf of the persons who are ngurraritja for Ananta (Umbeara), Kalka (Kulgera), Watju (Mount Cavenagh), Wapirrka (Victory Downs) and Warnukula (Mulga Park) v Northern Territory	04/05/2017	NT	Native title exists in parts of the determination area	Consent	Claimant	Yankunytjara Matutjara Aboriginal Corporation

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 30 May 2017 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.

State/Territory	RNTBCs	No. of successful (& conditional) claimant determinations for which RNTBC to be advised
Australian Capital Territory	0	0
New South Wales	6	0
Northern Territory	26	3
Queensland	80	1
South Australia	15	1
Tasmania	0	0
Victoria	4	0
Western Australia	39	3
NATIONAL TOTAL	**170**	**8**

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 30 May 2017.

5. Indigenous Land Use Agreements

In May 2017, 11 ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
19/05/2017	BAC KSCS Indigenous Land Use Agreement	WI2017/007	Body Corporate	WA	Government, Co-management
16/05/2017	Jemena Northern Gas Pipeline Project ILUA	QI2017/002	Area Agreement	QLD	Pipeline, Gas
16/05/2017	Banuba Conservation Parks ILUA	WI2017/006	Body Corporate	WA	Co-Management, Government
08/05/2017	Kalkadoon and Jemena Northern Gas Pipeline Project ILUA	QI2016/058	Body Corporate	QLD	Pipeline, Access, Gas
05/05/2017	Port Curtis Coral Coast People and Local government ILUA	QI2016/045	Area Agreement	QLD	Access, Government

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
05/05/2017	Ngarlawangga and Bulloo Downs ILUA	WI2017/009	Body Corporate	WA	Pastoral, Access
05/05/2017	Ngarlawangga and Prairie Downs ILUA	WI2017/010	Body Corporate	WA	Pastoral, Access
05/05/2017	Ngarlawangga and Turee Creek ILUA	WI2017/011	Body Corporate	WA	Pastoral, Access
03/05/2017	Bigambul Protected Areas ILUA	QI2016/055	Area Agreement	QLD	Access, Terms of Access
03/05/2017	Bigambul People Revenue Sharing ILUA	QI2016/056	Area Agreement	QLD	Commercial, Mining
03/05/2017	Jervois Project ILUA	DI2016/003	Area Agreement	NT	Mining, Medium Mining

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

6. Future Acts Determinations

In May 2017, 13 Future Acts Determinations were handed down.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
31/05/2017	IS (name withheld for cultural reasons) & Others on behalf of Wajarri Yamatji and Omni Projects Pty Ltd and Western Australia	WO2016/0587	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.
25/05/2017	Kevin Allen and Others (Njamal) and Phillip John Nowland and Western Australia	WO2016/0392	WA	Objection - Expedited Procedure Applies	The native title party did not make submissions in relation to s 237(b) or (C). Member Shurven considered the grantee party's proposed activity, prospecting, was low impact and could coexist with the social and community activities of the native title party without direct or substantial interference.
25/05/2017	Kevin Allen and Others (Njamal) and Gary John McCutcheon and Western Australia	WO2016/0731	WA	Objection - Expedited Procedure Applies	The native title party did not submit evidence in relation to s 237(c), and Member Shurven found there was insufficient evidence to support a conclusion that the areas identified are of particular significance for the purposes of s 237(b). The grantee party intends to use the licence area for prospecting. Member Shurven held this to be a low impact activity. Member Shurven balanced the general and limited evidence of Njamal's community and social activities against the activities Mr McCutcheon proposes to undertake, and those he could undertake if he exercised the full suite of rights under s 66 of the Mining Act 1978 (WA), and concluded they are likely to be able to coexist without interference with Njamal's social or community activities on the licence.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
22/05/2017	Rona Charles and Others on behalf of Mount Jowlaenga Polygon #2 and Sheffield Resources Ltd and Western Australia	WF2016/0014	WA	Future Act - NIGF Satisfied - Tribunal has jurisdiction	Member McNamara found that Mount Jowlaenga and Sheffield Resources were at cross purposes and had different understandings of the negotiation terms and processes at times and that the relationship between the parties broke down as a result. In relation to the TO royalty payment negotiations, Member McNamara noted that there is no requirement for a grantee party to negotiate about payments of that kind and failure to reach agreement on such payments, in and of itself, does not indicate a lack of good faith negotiations. Member McNamara did not consider that the circumstances evidenced a failure on Sheffield's part to negotiate in good faith.
19/05/2017	Kevin Allen and Others (Njamal) and FMG Pilbara Pty Ltd and Western Australia	WO2015/1000 WO2015/1001 WO2016/0330	WA	Objection - Expedited Procedure Applies	Member Shurven found that the expedited procedure applies in relation to the grant of an exploration license to FMG Pilbara Pty Ltd which overlaps the Njamal registered native title claim. Member Shurven found that the grant of the license is not likely to interfere with the areas or sites of particular significance, create major disturbance to the land or waters or create interference with Njamal's community or social activities.
19/05/2017	Kevin Allen and Others (Njamal) and Oakover Gold Pty Ltd and Western Australia	WO2016/0204	WA	Objection - Expedited Procedure Applies	Member Shurven found that the expedited procedure applies in relation to the grant of an exploration licence to Oakover Gold Pty Ltd which overlaps with the Njamal registered native title claim. Member Shurven found that the grant of the license is not likely to interfere with the areas or sites of particular significance, create major disturbance to the land or waters or create interference with Njamal's community or social activities.
17/05/2017	Kevin Allen and Others (Njamal) and Haoma Mining NL and Western Australia	WO2015/1008 WO2015/1009	WA	Objection - Expedited Procedure Applies	Member Shurven found that the expedited procedure applies in relation to the grant of an exploration license to Haoma Mining NL which overlaps the Njamal registered native title claim. Member Shurven found that the grant of the license is not likely to interfere with the areas or sites of particular significance, create major disturbance to the land or waters or create interference with Njamal's community or social activities.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
16/05/2017	IS & Others on behalf of Wajarri Yamatji and Next Advancement Pty Ltd and Western Australia	WO2016/0580 WO2016/0581 WO2016/0582	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.
12/05/2017	Kevin Allen & Others (Njamal) and State Resources Pty Ltd and Western Australia	WO2016/0062	WA	Objection - Expedited Procedure Applies	Member Shurven found that the expedited procedure applies in relation to the grant of an exploration license to State Resources Pty Ltd which overlaps the Njamal registered native title claim. Member Shurven found that the grant of the license is not likely to interfere with the areas or sites of particular significance, create major disturbance to the land or waters or create interference with Njamal's community or social activities.
12/05/2017	Kevin Allen & Others on Behalf of the Njamal and Sheffield Resources Limited and Western Australia	WO2016/0511	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.
05/05/2017	Bunuba Dawangarri Aboriginal Corporation and Phosphate Australia Limited and Western Australia	WO2016/0024 WO2016/0036 WO2016/0121	WA	Objection – Expedited Procedure Applies AND Objection – Expedited Procedure Does Not Apply	Member Shurven found that the expedited procedure applies in relation to the grant of exploration license E04/2415. Member Shurven found that the grant is not likely to interfere with areas or sites of particular significance, create major disturbance to the land or waters or create interference with Bunuba people's community or social activities. Member Shurven found that the expedited procedure does not apply in relation to the grant of exploration licence EO4/2416. Member Shurven found that the area is of particular significance for the purposes of s 237(b) and Phosphate Australia's exploration activities would be sufficient to cause direct interference with this area.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
02/05/2017	IS (name withheld for cultural reasons) & Others on behalf of the Wajarii Yamathi and Cervantes Gold Pty Ltd and Western Australia	WO2016/0445	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.
02/05/2017	IS & Others on behalf of Wajarri Yamatji and KS Gold Pty Ltd and Western Australia	WO2016/0576	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.

7. Publications

Northern Land Council (NLC)

Land Rights News, Northern Edition

The April Edition of Land Rights News is now available.

To download, visit the NLC website.

South Australian Native Title Services (SANTS)

Aboriginal Way

The Autumn 2017 edition of Aboriginal Way is now available.

To download, please visit the SANTS website.

8. 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 email aasjournal@aiatsis.gov.au. For more information, visit the journal page of the AIATSIS website.

ORIC

ORIC provides a range of training and Aboriginal and Torres Strait Islander corporations about the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)*, the corporations rule book and other aspects of good corporate governance. For further information on training courses, visit the ORIC website.

The Cairns Institute – James Cook University

Native title workshop for Mid-Career Anthropologists

Facilitated by the Cairns Institute (JCU) and the Centre for Native Title Anthropology (ANU), this workshop aims to enhance the attendee's professional skills in the native title arena. The workshop will cover data management, communication strategies and writing skills, PBC management and governance, and developing skills for engaging with legal culture.

Generous scholarship grants, including fee waiver, food and accommodation for the 5 days are available to mid-career anthropologists on application. Places are strictly limited.

Date: 18-22 September 2017

Location: James Cook University, Cairns

For more information or to pre-register your interest, please e-mail Jannifer.gabriel@jcu.edu.au.

9. Events

National Film and Sound Archive

Mabo: Life of an Island Man, 1997

Join filmmaker Dr Trevor Graham and Eddie Mabo's daughter, Gail, as they discuss this documentary and the legacy of Mabo.

Date: 5 July 2017, 7:00 - 9:00pm

Location: National Film and Sound Archive, Arc Cinema

Bookings are essential - please visit the National Film and Sound Archive Website.

Centre for Social Impact, University of Western Australia

Social Impact Festival 2017

The Social Impact Festival is a platform for cutting-edge knowledge and ideas, for celebrating those initiatives creating positive social change in Australia and abroad, and for generating and sharing insights needed to address complex social problems.

A number of events on Friday 21 July are native title focused, including 'Indigenous Land and Economic Empowerment 25 Years After Mabo'; 'Optimising Native Title Asset Management Structures'; 'From Mabo to the Uluru Statement from the Heart Panel Discussion' and 'Destination Native Title: What is the price of the journey?'.

For more information and to register for events, please visit the festival website.

Date: 18-28 July 2017

Location: Various, Perth WA

Australian Anthropological Society (AAS), Association of Social Anthropologists (ASA) and Association of Anthropologists of Aotearo/New Zealand (ASAANZ)

AAS / ASA / ASAANZ Conference 2017 - Shifting Shapes

Three anthropology associations (AAS, ASA and ASAANZ) are collaborating to put on an international conference in December 2017, bringing together anthropologists

and members from across Australia, New Zealand, the UK and Commonwealth and beyond.

The call for papers closes 24 July 2017. For more information, please visit the conference website.

Date: 11-15 December 2017

Location: University of Adelaide