WHAT'S NEW IN NATIVE TITLE
APRIL 2013

1. Case Summaries 2
2. Indigenous Land Use Agreements 9
3. Native Title Determinations 10
4. Future Acts Determinations 10
5. Registered Native Title Bodies Corporate 12
6. Native Title in the News 12
7. Related Publications 13
8. Training and Professional Development Opportunities 14
9. Funding and Grant Opportunities 15
10. Events 15

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1. Case Summaries

[*Hunter v State of Western Australia* [2012] FCA 690]

25 May 2012, Consent determination, Federal Court of Australia – Anna Plains, WA
North J

In this matter, by consent, the Court gave a determination in favour of the Nyangumarta and Karajarri peoples for exclusive and non-exclusive native title rights and interests on a shared country covering approximately 1995 square kilometres pursuant to the *Native Title Act 1993* (Cth).

This matter included two applications for native title filed individually the native title parties. The respondents to both applications are the State of Western Australia, the Commonwealth of Australia, the Western Australian Fishing Industry Council (Inc), Anna Plains Cattle Co Pty Ltd, Mandora Pty Ltd and Telstra Corporation Pty Ltd.

The shared country is in the south west Kimberley region. It is located approximately half way between Bidyadanga and Sandfire. Most of the area falls within the Anna Plains pastoral lease.

Even though the parties in this matter agreed to the determination, the Court is required to ensure that the orders sought are within the power of the Court, and that it is appropriate to make such orders or determination (ss 87(1)(c), (1A) and (2) and 87A(4) of the NTA). Accordingly, the Court considered the evidence already provided in the matter, and found that that it established that the Karajarri people constituted a society bound together by laws and custom in relation to the land, and that the Karajarri people had retained their connection with the land through those laws and customs since sovereignty as required by *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; [2002] HCA 58.

Although, the Court did not hear evidence in relation to the determination made in respect of the Nyangumarta land, it accepted a detailed account of the basis upon which the state had been persuaded of the connection of the Nyangumarta people to the land such that they were entitled to a determination of native title. Accordingly, the Court found that the evidence provided a solid basis for the Court to be satisfied that the elements necessary to establish native title have been made out by the native title parties in relation to the shared country.

[*Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland* [2012] FCA 1039]

21 September 2012, Consent determination, Federal Court of Australia – Cairns, Qld
Dowsett J

In this matter, by consent, the Court made a native title determination in favour of the Mandingalbay Yidinji and the Gunggandji peoples pursuant to the *Native Title Act 1993* (Cth) (NTA). The Court determined that the native title parties hold exclusive and non-exclusive native title rights and interests in relation to the land, and non-exclusive native title rights and interests in relation to water.

This matter covers a native title application by two groups, the Mandingalbay Yidinji and the Gunggandji. The respondents to the application are the State of Queensland, the Yarrabah Aboriginal Shire Council, Black and White (Quick Service) Taxis Pty Ltd, Ergon Energy Corporation Limited, Andrew Miller and Adrian Clive Murray and a number of Yarrabah residents who hold or claim interests in discrete blocks pursuant to state legislation.

The claim area lies to the east of the Mandingalbay Yidinji land and to the south and west of the Gunggandji land. It includes both the eastern escarpment and the coastal plain. It stretches from a point near to the mouth of Trinity Inlet in the north, to Palmer Point in the south. It has an extensive coastline to the east.

Progress towards this determination was protracted. The Court noted that it involved the resolution of difficult questions of law relating to claims by blockholders to land pursuant to Queensland legislation. The Court also noted that a number of Indigenous land use agreements were negotiated in order to ensure the ongoing operation of infrastructure and other services to the Yarrabah community and the wider Cairns region.

In addition, the entire determination land is subject to the Yarrabah deed of grant in trust (‘DOGIT’) made pursuant to the Queensland land rights regime. The DOGIT provided that the land be held for the benefit of Aboriginal people only. As such, the Court found that it follows that for the purposes of determining the existence of native title, prior

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inconsistent interests should be disregarded pursuant to s 47A(3) and 238 of the NTA. Accordingly, the Court found that native title can be held, but subject to any prior interests.

Despite these complications, after considering evidence from the native title parties, including anthropological evidence, the parties were able to come to an agreement. The parties agreed that the native title parties had exercised unbroken native title rights and interests in relation to the determination land since before sovereignty. The parties also agreed that the nature and extent of the native title rights and interests in the claim area, other than in relation to water, are the rights to possession, occupation, use and enjoyment to the exclusion of all others in accordance with the requirements of s 87A NTA. Accordingly, the Court agreed with the parties, and gave a native title determination in favour of the native title parties.

Greenwool for and on behalf of the Kowanyama People v State of Queensland [2012] FCA 1377

5 December 2012, Consent determination, Federal Court of Australia – Kowanyama Qld
Dowsett J

In this matter, by consent, the Court gave a determination confirming the existence of native title held by the Kowanyama People pursuant to s 87A of the *Native Title Act 1993* (Cth) over land between the Coleman and Staaten Rivers on the western side of Cape York Peninsula in Queensland.

This determination was made in addition to a partial determination made by Greenwood J on 22 October 2009 over part of the land claimed in the Kowanyama People's original native title claim. In this matter, the parties agreed that both exclusive and non-exclusive native title exists over two further areas within the boundaries of the original claim.

The Court noted that it had no reason to doubt the appropriateness of the parties' consensual resolution of the matters previously in dispute, and that they have had the benefit of legal advice and substantial anthropological and other research. Accordingly, the Court made the consent determination as agreed by the parties.

Watson v State of Western Australia [2013] FCA 238

15 February 2013, Application for joinder of a respondent party, Federal Court of Australia – Perth, WA
Gilmore J

In this native title application, Oil Basins Limited filed an interlocutory application to be joined as a party to these proceedings. The application was opposed by the applicant, the Nyikina Mangala people, on the ground that, inter alia, the claim was set for trial to commence within 5 months and the late joinder of a company with an exploration permit only would cause significant prejudice to the Applicant.

The Court considered the requirements under s 84(5) NTA, and noted that the Court may at any time join any person as a party to the proceedings, if the Court is satisfied that the person's interests may be affected by a determination in the proceedings and it is in the interests of justice to do so.

The Court noted that a determination had recently been given permitting the future act of a grant of a petroleum exploration permit to Oil Basins Limited, which will affect the land and waters within the applicant's claim area.

Accordingly, the Court found that the future act gave rise to a sufficient interest for the purposes of s 84(5) NTA, and ordered that Oil Basins Limited be joined to the proceedings. The Court also noted that it was unlikely that the existing parties would be prejudiced by the joinder of Oil Basins Limited.

Violet Carr and Others on Behalf of the Wellington Valley Wiradjuri People v Premier of New South Wales [2013] FCA 200

11 March 2013, Summary dismissal/Authorisation of applicants, Federal Court of Australia – Sydney, NSW
Jagot J

In this matter, the Court ordered that the Wellington Valley Wiradjuri People's native title application be dismissed under s 84C of the *Native Title Act 1993* (Cth) (NTA) as the three applicants who filed the native title party's application, Violet Carr, Elizabeth Ferguson and Joyce William, were not authorised to do so pursuant to s 61 NTA.

In this matter, prior to the filing of the native title application, the native title party had an authorisation meeting and unanimously agreed on the names of all of their relevant ancestors for the purposes of the native title claim.

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This list is important as descendants of these ancestors will form part of the native title group and have a right to exercise the native title rights and interests confirmed by the Court. However, when the native title application was filed on 12 October 2009, one of the ancestor's names agreed to during the authorisation meeting was purposely omitted.

The dismissal application was filed by the North East Wiradjuri Co Ltd (New Co), a respondent to the native title proceedings, seeking orders that the native title party's application be dismissed on the basis that the three applicants were not authorised to file the native title application. NTSCORP and two other respondents, Diane Stewart and Dorothy Stewart, supported NEW Co's dismissal application. The native title party opposed the dismissal application.

The native title party claimed that the minutes taken and resolutions noted at the authorisation meeting regarding the list of ancestors did not accurately reflect the decision itself, and that the relevant name was mistakenly included in the resolution at the meeting. Hence, the native title party claimed that the only error was a mere technicality or oversight. The consequence, the argument goes, is simply that the manner in which the authorisation has been recorded does not 'reflect the actual decision of the meeting'.

The Court found that, at its highest, the native title party's case is not a mere matter of the recording of the decision. It is that the decision made was a different decision from that was intended to be made. The Court noted that it had not been directed to any authority supporting the notion that the unintended decision can be transformed into the intended decision.

Accordingly, the Court found that the native title party had an insufficient evidentiary foundation to infer that the meeting intended to authorise the applicants to file a claim on behalf of the group. As such, the Court held that the three applicants were not authorised to file the native title application on behalf of the native title party and, therefore, had failed to comply with s 61(2) NTA.

The Court also stated that in balancing the need for due prosecution of the application and the interests of justice, as required by s 84D NTA, it could not be satisfied that the meeting intended to authorise the three applicants to file a claim excluding the relevant ancestor. The Court found that, in fact, the only decision made at the meeting was to agree upon a list of ancestors, which included the omitted ancestor. As such, the Court held that the omission was not a mere technical deficiency in the authorisation of the three applicants, and dismissed the native title application. The Court also refused New Co's application for costs.

[*Johnson on behalf of the Tableland Yidinji People 3 v State of Queensland* [2013] FCA 280]()
26 March 2013, Consent determination, Federal Court of Australia – Cairns, Qld
Dowsett J

In this decision, the Court recognised the native title rights and interests of the Tableland Yidinji people in an area around the upper Barron River and its tributaries and Lake Tinaroo on the Atherton Tableland in North Queensland.

The claim area adjoins an area of native land and waters determined in late 2012. The current claim was filed in 2004. This claim was heard separately as it was discovered that the claim group could show exclusive possession over parts of the claim area. The respondent parties include Ergon Energy Corporation Ltd, the state of Queensland, the Cairns Regional Council and the Tablelands Regional Council, among others.

The determination recognises exclusive possession native title rights and interests in relation to 28ha of land. The Tableland Yidinji people have non-exclusive native title rights and interests in relation to approximately 6464ha of land and waters. The nature and extent of native title rights and interests in relation to this area are the non-exclusive rights to:

a) access, be present on, move about on and travel over the area;
b) camp, and for that purpose, build temporary shelters;
c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
d) take, use and share Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;
e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;

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f) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation;
g) conduct ceremonies on the area;
h) teach on the area the physical and spiritual attributes of the area;
i) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm; and
j) be buried and bury native title holders within the area.

In his judgement, Justice Dowsett made reference to an anthropological report which stated that the Indigenous people that identify as Yidinji comprise five separate groups, each claiming specific rights to speak for a portion of country that is traditionally part of the Yidinji language-culture complex. The report also shows that the claimant group trace their descent to four separate families who were known to have used, occupied and had the authority to speak for country in the claim area. Another connection report explains that while there are discreet clusters of families with demonstrable connections to discreet areas of country, a single society of Yidinji people hold a body of law and customs and rights and interests are distributed among the groups constituting that society.

Affidavit material was also provided attesting to the Yidinji people's continuing connection with the claim area since a time prior to 1788 as well as the nature of the traditional laws and customs passed down to the claim group. The Court was satisfied that it was evident that despite early dispossession, traditional laws and customs have survived and there is clear evidence that the Yidinji people continue to reside in and/or visit the area.

The claim area was not subject to any other claim or determination. The Court was satisfied of the parties' consensual resolution of the matters previously in dispute. All parties had the benefit of legal advice and substantial anthropological material. The proceedings were publicised in accordance with the Act. The Court was thus satisfied that it should make the orders agreed to by the parties.

The Court also gave orders that the Tableland Yidinji Aboriginal Corporation would exercise the functions of the Prescribed Body Corporate under the *Native Title Act 1993* (Cth).

French v Gray, Special Minister of State [2013] FCA 263

27 March 2013, Application for judicial review/Application for a Pre-Acquisition Declaration made by the respondent under s 22 of the *Lands Acquisition Act 1989* (Cth) to be declared invalid, Federal Court of Australia – Adelaide, SA

Besanko J

In this matter, the Court found that the crown pastoral lease held by Graham French located on the Eyre Peninsula could not be compulsorily acquired under the *Lands Acquisition Act 1989* (Cth) by the Commonwealth of Australia as the compulsory acquisition was not for a 'public purpose'. Therefore, the Court quashed the Pre-Acquisition Declaration issued by the Commonwealth Special Minister of State to the applicant, and ordered that no other action be taken in furtherance of it.

The applicant in this matter is the holder of a crown pastoral lease. The land which is the subject of the lease is known as 'Corunna'. The Eyre Highway traverses the subject land. The Barngarla Native Title Claim Group's registered native title claim also overlaps the subject land. The Commonwealth has a defence training area to the east of the subject land, known as the Cultana Training Area. The Commonwealth wished to expand the Cultana Training Area, and the proposed expansion covered part of the subject land.

The Commonwealth unsuccessfully attempted to negotiate a deal with the applicant to use the subject land for the proposed expansion of the Cultana Training Area. Therefore, the Commonwealth devised a strategy to compulsorily acquire the land. Namely, the Commonwealth planned to acquire the interests in subject land, and surrender the pastoral lease to the State of South Australia. The State of South Australia would then grant a pastoral lease for conservation purposes to the Barngarla Group and for the benefit of the Barngarla Group. The Commonwealth would then enter into an Indigenous Land Use Agreement (ILUA) with the Barngarla Group per the *Native Title Act 1993* (Cth) for the use of some of the land to expand the Cultana Training Area. This ILUA would be used as consideration/payment for the grant of the pastoral lease to the Barngarla Group, and in return, the Barngarla Group would agree to provide three things:

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1. Consent to some of the subject land being used for defence training purposes by the Commonwealth as an expansion to the existing Cultana Training Area
2. Consent to all acts to achieve this use, including the grant of one or more leases for defence purposes by the State of South Australia to the Commonwealth over the subject land, and
3. Agree to release and discharge the Commonwealth from all claims related to the impairment of their traditional rights and interests arising from this use or these acts, and not to take any action to challenge or delay this use or these acts.

Accordingly, the Commonwealth issued a Pre-Acquisition Declaration to the applicant, which commenced the process of the Commonwealth's compulsorily acquisition of the interests in the subject land pursuant to s 22 of the *Lands Acquisition Act 1989* (Cth). The Pre-Acquisition Declaration outlined two proposed public purposes for the acquisition: (1) for 'the conferral of interests in land on Aboriginal people (being people of a particular race)', and (2) 'an additional, separate public purpose of the acquisition is defence'.

The applicant sought a review under ss 5 and 6 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and s 39B of the *Judiciary Act 1903* (Cth) of the Commonwealth's decision to issue a Pre-Acquisition Declaration. The applicant claimed, among other things, that neither of the purposes stated in the Pre-Acquisition Declaration were public purposes as required by the Lands Acquisition Act.

Accordingly, the Court considered whether the reasons claimed by the Commonwealth were uses for public purposes. The Court found that the relevant proposed use of the subject land was not for defence as claimed, but instead for consideration/payment under the ILUA to the Barngarla Group. The Court found that the *Lands Acquisition Act 1989* (Cth) requires that use of land must be the physical use of land, and the use of land as consideration/payment under an agreement does not constitute a use for a public purpose. Accordingly, the Court ordered that the Pre-Acquisition Declaration issued by the Minister be quashed, and ordered that no other action be taken in furtherance of it.

Budby on behalf of the Barada Barna People v State of Queensland (No 2) **[2013] FCA 314**

10 April 2013, Application to discontinue claim on Court's own motion, Federal Court of Australia – Brisbane, Qld
Collier J

In this matter, the Court dismissed a native title application lodged by Mr Budby on behalf of the Barada Barna People for abuse of process under r 26.01(1)(d) of the Federal Court Rules 2011 (Cth). The application for dismissal was brought by respondents, the state of Queensland (the state), and the North Queensland Land Council (NQLC).

This particular native title application has a long and chequered history. A number of Indigenous respondents represented by the NQLC ('the Wiri respondents') contended that the current proceeding is the seventh incarnation of this claim, and that the matter has made little real progress since its registration. The claim subject to these proceedings was registered in 2009.

The native title party disputed that this matter is the seventh incarnation of this claim. However, they did not dispute that the apical ancestors named in the native title application were also named in earlier applications involving the Barada Barna, Kabalbara and Yetimarala claim groups, and that the geographical boundaries the subject of the claims are substantially the same.

The native title party caused significant delay throughout the proceedings and failed to comply with evidentiary timetables of how the current claim group was identified, including the changes from previous compositions of the earlier Barada Barna, Kabalbara and Yetimarala claim groups. The native title party failed to provide reasons for any differences in the composition of the earlier claim groups, including a genealogy of an apical ancestor (claimed to be Wiri by the Wiri respondents), and an explanation as to why that ancestor was identified as an apical ancestor in the Barada Barna clan. They had also obtained various anthological reports to support their application, without success.

Accordingly, NQLC and the state complained that the native title application claim group was improperly composed, and did not satisfy s 61 of the *Native Title Act 1993* (Cth). They also submitted that the native title party should be

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required to register a new claim, and not permitted to amend its current claim. Therefore, they sought for the current claim to be dismissed.

The native title party denied the complaints. They argued, among other things, that: (1) their present claim was properly formulated and authorised, (2) while they had not yet obtained all the necessary evidence for the purposes of successfully prosecuting their claim, the relevant evidence had been sought, (3) the registration of the claim implies that it is a credible one, and (4) they have reasonable prospects of successfully prosecuting their claim, and ought to be permitted to do so.

The Court rejected the native title party's submissions that it has reasonable prospects of successfully prosecuting its claim within the meaning of r 26.01(1)(a) of the Federal Court Rules 2011 (Cth). The Court found that the native title party has repeatedly briefed expert anthropologists in what may be an ultimately fruitless endeavour to identify fundamental anthropological information upon which the native title application can progress, namely the composition of the native title claim group and the proper boundaries of the native title application.

In addition, the Court could not be satisfied that the continued reformulation of the native title application is at an end, now or in the foreseeable future. The Court considered the apparent inability of the native title party to adduce evidence to support the claim in its current form, despite repeated attempts over a number of years, is a proper basis for the Court to conclude that the native title party lacks reasonable prospects of successfully prosecuting its claim, or that the registration of the native title claim is an indication that the claim is a sufficient reason not to dismiss the claim.

In addition, the Court found that it is not in the interests of justice to the respondents, or in accordance with the overarching purpose of civil litigation in this Court as prescribed by s 37M of the *Federal Court of Australia Act 1976* (Cth), to permit this proceeding to continue indefinitely while the native title party continues to attempt to construct its claim. Accordingly, the Court dismissed the claim for abuse of process pursuant to r 26.01(1)(d) of the Federal Court Rules 2011 (Cth).

Rita Augustine v State of Western Australia [2013] FCA 338

12 April 2013, Application to discontinue claim, Federal Court of Australia – Perth, WA
Gilmour J

This case concerns an application by the Goolarabooloo/Jabirr Jabirr (GJJ) native title claim group (the applicant) to discontinue their claim because of ongoing dispute between the Jabirr Jabirr members and the Goolarabooloo members of the claim group about who are the native title holders for the claim area.

The principal issue the Court considered was whether discontinuing the claim would cause prejudice to the other parties with an interest in the Browse LNG Precinct Project Agreement (PPA) and associated agreements between the state of Western Australia (the state), Woodside Energy Ltd (Woodside) and the GJJ applicant, for the development of the Browse LNG Precinct (the Browse Agreements).

Background

The GJJ claim is the result of the combination of two separate native title claims commenced in 1994 and 1995 and registered in 1999. Divisions within the group about who are the Aboriginal persons who hold the native title rights and interests in relation to the claim area have long existed but became more pronounced around the same time that James Price Point was identified as the preferred site for the Browse LNG Precinct. Disputes were particularly in relation to the manner in which the right to negotiate regarding the Browse LNG precinct should be exercised.

In 2009 the Kimberley Land Council (KLC) signed a Heads of Agreement, acting on its own behalf and on behalf of the GJJ applicant, with the state and Woodside. One of the then named applicants, Joseph Roe, commenced (ultimately unsuccessful) proceedings against KLC challenging its authority to represent the applicant. The other then named applicant, Cyril Shaw, apparently did not support these proceedings, causing the relationship between him and Joseph Roe to become unworkable. By 2010 Joseph Roe had lost influence and the majority of the claim group decided to pursue an agreement with the state and Woodside that would enable the Browse LNG Precinct to proceed and for members of the claim group and their community to receive the benefits provided for in the Browse Agreements. The Court made orders that the present named applicants replace Joseph Roe and Cyril Shaw.

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In 2010 the persons comprising the applicant as well as 3 others commenced the Jabirr Jabirr Determination Application (which remains on foot, albeit unregistered). In 2011, Joseph Roe and others on behalf of the Goolarabooloo Families commenced the Goolarabooloo Families Determination Application, which also did not meet registration requirements because of common membership with a registered claim over the same area. As with the Jabirr Jabirr claim, that application still remains on foot. This same group then applied to be joined as respondents to the GJJ claim with a view to having it dismissed. The KLC then wrote to Counsel for the Goolarabooloo Families suggesting the GJJ determination application be amended to remove the Goolarabooloo Families from the claim group description, so they could seek to register their own claim. Counsel for the Goolarabooloo Families responded proposing that the GJJ claim be discontinued so that fresh claims, notably the Jabirr Jabirr Determination Application and Goolarabooloo Families Determination Application, could satisfy registration. It was clear from this correspondence that their intention was to acquire the right to negotiate in relation to the proposed compulsory acquisition of their native title rights and interests.

In May 2012, the GJJ applicant sought leave to amend the GJJ application to remove Goolarabooloo (and other) apical ancestors from the claim group description, which the state and Woodside opposed on the grounds that this would essentially create a new claim group comprising the Jabirr Jabirr descendants. In response the KLC called a meeting of JJ descendants who passed a resolution to withdraw the amendment application and make a discontinuance application (June 2012 Discontinuance Application). On 14 June 2012, the state suspended all benefits that would be payable under the PPA on the basis that discontinuing the GJJ claim would enable members of the claim group to register new and separate claims and oppose the takings, the precinct notices and project rights, which it was alleged would constitute a breach of the PPA. On this same day, the June 2012 Discontinuance Application was dismissed by consent.

Owing to defects in the second notice of intention to take land (issued after the first such notice was declared by the WA Supreme Court to have been invalid), a new (third) notice of intention to take land was issued by the state on 5 December 2012 under s 29 *Native Title Act 1993* (Cth) (NTA). On 5 and 6 February 2013, the KLC convened a further meeting of the GJJ claim group during which a resolution was passed to do all things necessary to seek to discontinue the GJJ claim by no later than 10 April 2013. The relevance of this date is that it is within four months of the notification day for the (third) notice of intention to take land. A person who is, within 4 months of the notification day, a registered native title claimant in relation to the relevant area becomes a native title party: s 30(1) NTA.

<u>The submissions</u>

The applicant submitted that by reason of the ongoing dispute between the Jabirr Jabirr members and the Goolarabooloo members of the GJJ claim group about who are the native title holders for the GJJ claim area and the irreconcilable differences between the claims made in each of the GJJ, Jabirr Jabirr and Goolarabooloo Families determination applications, it is both clear that both groups wish to pursue separate native title applications and highly unlikely that the current application could progress towards a successful native title outcome.

The parties opposing the application to discontinue the claim – including the state and Woodside – submitted, broadly speaking, that to discontinue the claim before 18 April 2013 would result in adverse consequences for parties, including:

- Delay and adverse effect upon the proposed taking of interests in land within and for the purposes of the Browse LNG Precinct, which the GJJ claim group had already consented to in the PPA;
- The delivery of benefits to the GJJ claim group and Kimberley Indigenous people under the Browse Agreements would be put at risk;
- The PPA becomes untenable if there is no 'Native Title Party' to the agreement. It was also submitted that this would be a breach of the applicant's contractual obligations under the PPA.

The parties opposing the application submitted that if the claim was discontinued before 18 April 2013, new native title claims could potentially be registered. This would mean that the state and Woodside would have to negotiate with new claimants in relation to future acts under the NTA, specifically the intention to compulsorily acquire interests in the land, including any native title rights and interests. The state contended that this was the collateral

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purpose of the applicant, as it would resolve dispute within the GJJ claim group, which amounts to an abuse of process.

Consideration

The Court considered the leave to discontinue principles adopted by the court in a number of native title cases, giving careful consideration to whether it would prejudice the interests of the state and other parties. Justice Gilmour noted that the GJJ applicant entered into the Browse Agreements and Heads of Agreement with the authorisation of the entire claim group, despite the existence, for a number of years, of division within the claim group. The state and other parties were entitled to conduct themselves in reliance on those contractual warranties, specifically that the applicant would not object to the future act comprising the taking of land subject to native title rights and interests. His Honour said that seeking leave to discontinue the GJJ claim, with a view to putting members of the claim group in a position to oppose the takings, is arguably a breach of the PPA.

His Honour took into account the considerable public expense– in the order of $42 m, $16 m of which was recouped from Woodside – as well as the time of senior public officers arising from the state's engagement with procedural rights conferred on the applicant. $5m of benefits had already been provided to the GJJ claim group. Consideration was given to potential losses to the claim group, Aboriginal people in the Kimberley and the state's economy.

Although the Court had little doubt that the Goolarabooloo want to achieve a place at the negotiation table as a registered applicant to generally oppose the Browse LNG Precinct, Justice Gilmour rejected the general submission that this amounted to an abuse of process given it was not the only reason for seeking to discontinue the GJJ claim. His Honour said that an application may be discontinued, but in a way that does not cause prejudice to the state.

His Honour observed that internal intra-Indigenous divisions were not uncommon within a native title claim group and that the existence of a claim group is not based on the contemporary state of relations between members of the group; rather it is based on common or group rights and interests defined by the traditional law and customs. The Court noted that at no point was it asserted by the applicant that the claim group was not in fact a native title claim group as recognised under traditional law or custom.

Conclusion

The Court concluded that discontinuance before 18 April 2013 would cause significant injustice for the state, Woodside, the Indigenous people of the Kimberley and the GJJ claim group itself. The Court ordered that the applicant and respondent parties participate in mediation with a view to resolving outstanding issues under the Browse LNG PPA.

The Court noted that it was a real risk that the opportunity to secure Woodside as a proponent may be lost. Justice Gilmour noted media reports on 12 April 2013 (four days after this proceeding) confirming that Woodside had decided not to proceed with its involvement in the Browse LNG Precinct, however his Honour said this fact does not change the court's decision on the discontinuance.

2. Indigenous Land Use Agreements

The Native Title Research Unit within AIATSIS maintains an ILUA summary which provides hyperlinks to information on the National Native Title Tribunal (NNTT) and the Agreements, Treaties, and Negotiated Settlements (ATNS) websites.

In April 2013, **8** ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
23/4/2013	Badu Child Care Centre ILUA	Q12013/010	BCA	QLD	Development Government Communication
23/4/2013	Jangga People Protected Areas ILUA	QI2013/002	BCA	QLD	Tenure resolution
24/4/2013	RTIO and PKKP People ILUA	W12012/011	AA	WA	Mining

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Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
24/4/2013	Arrow Energy and Port Curtis Coral Coast People Arrow LNG Project ILUA	Q12012/092	AA	QLD	Petroleum/Gas
26/4/2013	Eastern Kuku Yalanji Aboriginal Land Dealing ILUA	Q12012/094	AA	QLD	Access Community living area Communication
26/4/2013	Gugu Badhun People and Local Government ILUA	Q12012/093	AA	QLD	Government Communication
26/4/2013	Moa Island Torres Strait Social Housing ILUA	Q12013/008	BCA	QLD	Community living area Infrastructure
26/4/2013	Second Katherine Regional Cultural ILUA	D12012/002	AA	NT	Community

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

3. Native Title Determinations

The Native Title Research Unit within AIATSIS maintains a determinations summary which provides hyperlinks to determination information on the Austlii, NNTT and ATNS websites.

In April 2013, **0** native title determinations were handed down.

4. Future Acts Determinations

The Native Title Research Unit within AIATSIS maintains summaries of Future Acts Determinations summary which provides hyperlinks to information on the National Native Title Tribunal (NNTT).

In April 2013, **15** Future Acts Determinations were handed down.

Determination date	Parties	NNTTA number	State or Territory	Decision/Determination
3/4/2013	Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and - Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 32 (3 April 2013)	WA	Objection - Dismissed
3/4/2013	Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and - Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 33 (3 April 2013)	WA	Objection - Dismissed
3/4/2013	Leedham Papertalk, Malcolm Papertalk, Douglas Comeagain, Robert Flanagan, Charles Collard, Charles Green, Jamie Joseph, Glenda Jackamarra, Karen Jones and Raymond Merritt on behalf of Mullewa Wadjari (WC1996/093) (native title party) - and - The State of Western Australia (Government party) - and - Douglas Eric Kennedy and Leonard Geoffrey Haworth (grantee party)	NNTTA 31 (3 April 2013)	WA	Objection - Expedited Procedure Applies

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Determination date	Parties	NNTTA number	State or Territory	Decision/Determination
4/4/2013	Raymond Ashwin & Ors on behalf of Wutha – (WC1999/010) (native title party) - and - The State of Western Australia (Government party) - and - West Coast Geoscience Pty Ltd (grantee party)	NTTA 34 (4 April 2013)	WA	Objection - Expedited Procedure Applies
5/4/2013	John Watson and Others on behalf of Nyikina Mangala (WC1996/093) (native title party) - and - The State of Western Australia (Government party) - and - Brockman Exploration Pty Ltd (grantee party)	NNTTA 35 (5 April 2013)	WA	Objection - Expedited Procedure Applies
5/4/2013	Limpet Giggles and Others on behalf of Gobawarrah Minduarra Yinhawanga (native title party) -and- The State of Western Australia (Government party) -and- Geological Resource Solutions Pty Ltd (grantee party)	NNTTA 36 (5 April 2013)	WA	Objection - Dismissed
10/4/2013	Leedham Papertalk and Others on behalf Mullewa Wadjari (WC96/93) (native title party) - and - The State of Western Australia (Government party) - and - State Resources Pty Ltd (grantee party)	NNTTA 37 (10 April 2013)	WA	Objection - Expedited Procedure Applies
15/4/2013	Scotty Birrell & Ors on behalf of Koongie-Elvire (native title parties) - and - State of Western Australia (Government party) - and – 3D Resources Ltd (grantee parties)	NNTTA 38 (15 April 2013)	WA	Objection - Dismissed
15/4/2013	Various Dismissal Dates (See schedule Determination for further detail) Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and – Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 39 (15 April 2013)	WA	Objection - Dismissed
17/4/2013	Raymond Ashwin and Others on behalf of Wutha People (WC1999/010) (native title party) - and - The State of Western Australia (Government party) - and - West Peak Iron Ltd (grantee party)	NNTTA 40 (17 April 2013)	WA	Objection - Expedited Procedure Applies
19/4/2013	Various Dismissal Dates (see Determination document for details) Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and - Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 43 (19 April 2013)	WA	Objection - Dismissed
19/4/2013	Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and - Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 42 (19 April 2013)	WA	Objection - Dismissed

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Determination date	Parties	NNTTA number	State or Territory	Decision/Determination
19/4/2013	Les Tullock & Ors on behalf of Tarlpa (WC07/3) (native title party) - and - The State of Western Australia (Government party) - and - Phosphate Australia Limited (grantee parties)	NNTTA 41 (19 April 2013)	WA	Objection - Dismissed
23/4/2013	The State of Western Australia (Applicant/Government party) - and - Arthur Dimer, Jean McKenzie, John Graham, Les Tucker, Wendy Lawrie, Clem Lawrie, Robert Lawrie and David Hirschausen on behalf of the WA Mirning People (WC2001/001) (native title party) - and - R A Higgins and T F Higgins (grantee party)	NNTTA 46 (23 April 2013)	WA	Consent determination: future act can be done
23/4/2013	Various Dismissal Dates (see Determination schedule for details) Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and - Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 45 (23 April 2013)	WA	Objection - Dismissed

5. Registered Native Title Bodies Corporate

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

Additional information about RNTBCs 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.

6. Native Title in the News

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

7. Related Publications

AIATSIS 2013 PBC Survey

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) invites all Prescribed Bodies Corporate (PBCs) to participate in a national survey aimed at compiling a comprehensive database regarding the capacities of PBCs throughout Australia. This database shall inform AIATSIS research and a submission to the Review of Native Title Organisations, being conducted by FaHCSIA in 2013. The survey will be open until **Friday 28 June 2013**. For more information, please see the NTRU website or contact Claire.Stacey@aiatsis.gov.au or Tasha.Lamb@aiatsis.gov.au. For more information regarding the FaHCSIA Review, please see the FaHCSIA website.

Working towards an Aboriginal and Torres Strait Islander wellbeing framework

Literature review of the interplay between education, employment, health and wellbeing for Aboriginal and Torres Strait Islander people in remote areas – 18 April 2013

The availability of suitable data specifically relevant to remote Aboriginal and Torres Strait Islander notions of health and wellbeing has been a significant obstacle to understanding and addressing related disadvantage in a meaningful way. This literature review for the CRC-REP Interplay between Health, Wellbeing, Education and Employment project explored existing wellbeing frameworks at global and local levels that are relevant to Aboriginal and Torres Strait

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Islander people in remote Australia. Available for download at the Cooperative Research Centre for Remote Economic Participation website.

Media Releases

National Native Title Tribunal
Tribunal welcomes new President, Ms Raelene Webb QC – 2 April 2013
The National Native Title Tribunal (NNTT) has welcomed Ms Raelene Webb QC as President. Ms Webb was sworn in as President by Chief Justice of Australia, the Hon Robert French AC, in Perth. President Webb will be based in the Tribunal's Principle Registry in Perth. See the NNTT Media Release for more details.

Northern Land Council
Northern Finniss River update – 5 April 2013
Traditional owners of part of the Finniss River have decided against entering into an agreement with the Northern Territory government for permit-free fishing and access to waters in the upper portion of the Finniss River. The Northern Land Council (NLC) and traditional owners are continuing to engage with the Northern Territory government in good-faith negotiations. See the NLC Media Release for more details.

Torres Strait Regional Authority
TSRA rangers to study Solomon Islands Marine Conservation – 17 April 2013
On 16 April 2013, members of the Torres Strait Regional Authority (TSRA) rangers program, led by Chairman Joseph Elu, departed Australia to visit the Arnavon Community Marine Conservation Area (ACMCA) in the Solomon Islands. The visit aims to study pathways for economic development and biodiversity management. ACMCA is a 157 square kilometre sanctuary with uninhabited islands, flourishing reefs as well as beaches home to thousands of hawksbill sea turtles. Mr Elu said that the area shares many similarities to the Torres Strait and the exchange will provide the opportunity to share regional approaches in using contemporary and traditional knowledge to better manage the environment and support sustainable livelihoods. See the TSRA Media Release for more details.

Central Land Council
Central Land Council welcomes new Chairman – 17 April 2013
Mr Maurie Ryan was elected Chairman of the Central Land Council (CLC) at the Council's meeting in Tennant Creek on 17 April 2013, replacing outgoing Chairman Mr Phillip Wilyuka. Mr Ryan is a former Deputy Chair and CLC Executive member. Mr Ryan started his term by declaring education as key priority: 'Education is extremely important. I am supportive of bilingual education. It opens up doors, it opened the door for me'. See the CLC Media Release for more details.

The Hon. Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities; Minister for the Arts
Creating a refuge along the famous Canning Stock Route – 23 April 2013
More than six million hectares of Western Australia's desert country has been declared an Indigenous Protected Area (IPA). The area belongs to the Birriliburu native title holders, the Martu People and will join an Australia-wide network of 54 IPAs. See the Media Release for more details.

Yamatji Marlpa Aboriginal Corporation
Yugunga-Nya people sign native title agreement with Ventnor Resources – 29 April 2013
The Yugunga-Nya people have signed an agreement with Ventnor Resources Limited (Ventnor) for the Thaduna/Green Dragon Copper Project over 640 hectares of their traditional land in Doolgunna, Western Australia. The agreement aims to deliver significant financial and social benefits for the Yugunga-Nya people while recognising the cultural and environmental significance of the area. See YMAC Media Release for more details.

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News and Podcasts

The World Today & Lateline

Woodside shelves controversial project – 12 April 2013

Woodside Petroleum has confirmed it will shelve its controversial $45 billion Browse LNG Precinct project at James Price Point, to the north of Broome. The announcement came as native title holders were considering their position on the agreement signed with Woodside over the development. Full story available at The World Today and Lateline.

ABC Sydney

Native title claims rejected on Paddy's Corner – 16 April 2013

Two unsuccessful native title claims lodged over The Paddy Corner Reserve located on the Thredbo River, have not been appealed. The management of the area has now been appointed to the Monaro Acclimations Society. Listen to full story at ABC Sydney.

GWN 7 News

Native title provides rental subsidy scheme in Broome – 18 April 2013

A rental subsidy scheme initiated by native title holders in Broome is providing affordable housing opportunities for residents. The 2010 native title determination provided a $56 million social benefits package from which the rental subsidy scheme is being provided. Already 17 Yawuru families have applied for subsidised rental agreements. Full story available at GWN 7 News.

Public Lecture presented by the Hon. Mark Dreyfus QC, MP – Attorney General

Australia's Native Title Legacy: Delivering Economic Independence to Indigenous Australians – 24 April 2013

Australia recently celebrated the twentieth anniversary of the High Court's Mabo decision and the subsequent introduction of the *Native Title Act 1993* (Cth). In his address at James Cook University, the Commonwealth Attorney-General, the Hon. Mark Dreyfus QC MP, focuses on the evolving needs of the native title system, and particularly the needs of native title holders after claims have been resolved and current Government initiatives to address these. Watch the full lecture at JCU website.

8. Training and Professional Development Opportunities

The Aurora Project

See the Aurora Project: 2013 Program Calendar for information on training and personal development for staff of native title representative bodies, native title service providers, and RNTBCs.

Indigenous Governance Toolkit

A new web-based Indigenous Governance Toolkit has been launched by Reconciliation Australia. The toolkit is aimed to help strengthen governance in Indigenous communities and organisations through knowledge sharing and providing practical tools and advice. The toolkit can be found at governance.reconciliation.org.au.

9. Funding and Grant Opportunities

Indigenous Land Corporation

The Indigenous Land Corporation (ILC) is pleased to announce that the 2013 call for land acquisition applications is now open. The ILC has two categories of land acquisition funding assistance: socio-economic development and cultural and/or environmental values. Organisations may know of a suitable property beforehand, or can apply without a property and identify one later, pending approval of their project. Applications for socio-economic development will be accepted on or before **28 June 2013**. For more information, please see the ILC website or call **1800 818 490.**

Berndt Foundation Research Foundation Grants

The Berndt Foundation was established after a sum of money was bequeathed to the University of Western Australia to promote anthropological research about Aboriginal Australia. The Foundation has allocated funds to support postgraduate research by any postgraduate student enrolled in anthropology and/or a cognate discipline at an

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Australian university who will contribute to anthropological research and Aboriginal Studies more broadly. Amounts of up to $8,000 will be awarded to applicants that help to (i) facilitate thesis research, (ii) meet criteria established through the Foundation's Postgraduate Research Grant Committee, and (iii) are judged by the Foundation's Postgraduate Research Grant Committee to warrant financial support. Applications are due on or by **31 August, 2013**. For more information see the Berndt Foundation website or download the Australia Postgraduate Research Grants Information Sheet – 2013.

10. Events

Puliima National Indigenous Language & Technology Forum 2013
Date: 28–29 August 2013
Location: William Angliss Institute Conference Centre Melbourne, Victoria
Registration: For registration information go to Puliima 2013 or contact the Puliima team on 02 4927 8222
Puliima National Indigenous Language & Technology Forum is a biennial event aimed at bringing together people from all over Australia to explore pioneering project ideas, exciting products and equipment that can be used in community based Indigenous language projects. The forum allows people to network with people who share a common ambition of preserving and celebrating the languages of your country. Speakers include community representatives from throughout Australia, New Zealand and North America as well as representatives from university language centres, research institutes and language development initiatives. For more information, see Puliima 2013 website.

Resource Economics 2013: Understanding mineral, oil and gas companies
Date: 6-7 June 2013 (following the AIATSIS National Native Title Conference)
Location: Alice Springs
Registration: To register in this program, you must currently be employed by an NTRB or NTSP. To register please see Aurora project website.
Resource Economics is a specialised program covering mining, oil and gas economics for NTRB staff involved in negotiations with resources companies. It will focus on understanding the economic and practical drivers of the resources sector, so that you are better able to position your arguments, and find points of leverage in negotiations.

A Symposium on Indigenous Peoples, Economic Empowerment and Agreements with Extractive Industries
Date: 25-26 June 2013
Location: Melbourne Law School, University of Melbourne
Registration: For registration information go to Symposium 2013 or contact Judy Longbottom on (03) 8344 9161
Extractive industries have reached into virtually every corner of the world. Over the past 10 years, the agreement, treaties and negotiated settlements project (ATNS) has been investigating the impact this expansion has on Indigenous societies. This Symposium celebrates 10 years of the ATNS Project, and provides a unique opportunity for Indigenous organisations, researchers and industry to gain access to the research outcomes of the Project and contribute to this growing body of knowledge.

CAEPR Seminar Series 2013
Date: Every Wednesday
Time: 12:30-2:00pm
Location: Australian National University, Haydon Allen G052
Enquiries: For more information, please see CAEPR Seminars 2013 of call Centre Administration on (02) 6125 0587

National Native Title Conference 2013: Shaping the Future
Date: 3–5 June 2013
Time: 9am-5pm each day
Location: Alice Springs Convention Centre, Alice Springs, Northern Territory
Registration: For registration information go to National Native Title Conference 2013 or contact Jennifer Jones on (02) 6261 4250 or Jennifer.Jones@aiatsis.gov.au

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In 2013 the Annual National Native Title Conference will be convened by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and the Central Land Council on the traditional lands of Lhere Artepe, the traditional owners of the Alice Springs area. Registrations are now open.

This year's conference theme 'Shaping the Future' is reflected in the following themes:

The *Native Title Act* 20 years on, where to from here? • Native title and social justice • Native title rights and recognition in an international context • Emerging issues in native title	**The Indigenous estate and development options** • Planning and investment priorities • Natural resource management • Culture and country
Indigenous governance • Getting the right cultural fit • Taking the long-term view, strategic planning • Building capacity	**Building a future** • Economic and community development • Keeping culture strong • Education and job

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