What's New – August 2012

1. Case Summaries

Kearns on behalf of the Gunggari People #2 v State of Queensland [2012] FCA 651

22 June 2012
Consent determination
Federal Court of Australia – Mitchell
Reeves J

In this matter, the Court recognised the Gunggari people's native title rights and interests over approximately 13,600 km² of lands and waters in the South Central region of Queensland.

The first Gunggari claim was lodged in 1996, and in 2001 the claim area was divided into Parts A and B. Part B was removed from that application in 2002, and the claim over Part A was dismissed in 2009 after the claimants made an Indigenous land use agreement (ILUA) with the State. The current application, dealing with Part B, was lodged in 2001 and was referred to mediation in 2003. The application was amended on four separate occasions, the most recent being on 15 December 2011.

The Court needs to be satisfied of certain matters before it can make a consent determination under s 87 of the *Native Title Act 1993* (NTA). In this case, the Court was satisfied that: at least three months had passed since the original notification of the claim; the agreement of the parties related to the whole proceedings; and the agreement had been reduced to writing and signed by all parties. The Court was satisfied the orders complied with s 94A NTA, which requires that the determination addresses all of the details set out in s 225 NTA.

Finally, citing *Nelson v Northern Territory of Australia* (2010) 190 FCR 344, the Court noted that the central issue under s 87 NTA is whether there is a free and informed agreement between the parties. Justice Reeves was satisfied of this on the basis that the parties reached an agreement after considering extensive anthropological material and all parties had the advantage of competent legal representation. After describing some of the anthropological evidence, Reeves J stated that the Gunggari people had provided sufficient evidence to establish a continuing connection to the determination area.

In his decision, Justice Reeves highlighted the protracted nature of the proceedings and his concern that, 'during that inordinately long period, some members of the Gunggari people have passed away. Those persons had detailed knowledge of their people's traditional laws and customs and their connection to the claimed land and waters.' In this respect, his Honour endorsed the observations of Rares J: 'Delays of the kind experienced in this litigation cannot be tolerated. Justice delayed is justice denied' (*Prior on behalf of the Juru (Cape Upstart) People v State OF Queensland & Ors (No 2)* [2011] FCA 818). His Honour noted that delays had been reduced in recent years, particularly since the 2009 amendments to the NTA and through priority listing of native title proceedings.

The native title rights and interests recognised in this consent determination include the non-exclusive rights to: access and move about the determination area; take (by hunting or gathering) natural resources for non-commercial purposes; conduct religious and spiritual activities and ceremonies; maintain places of significance under traditional laws and customs; to teach the physical and spiritual attributes of the land; and to light fires (not for hunting or clearing). Their rights in relation to the waters are the non-exclusive rights to hunt, fish, and gather from water for non-commercial purposes and to take and use the water for non-

commercial purposes. The determination identified some areas where native title has been wholly extinguished because of pastoral improvements such as homesteads, constructed watering points and stock yards.

The parties nominated the Gunggari Native Title Aboriginal Corporation to be the prescribed body corporate for the purpose of s 56(1) NTA. This determination is conditional upon the registration of a number of Indigenous land use agreements (ILUAs) with Ergon Energy Corporation Ltd and various pastoralists and other lessees.

***Hatfield on behalf of the Darumbal People v State of Queensland* [2012] FCA 796**

26 July 2012
Application to amend claim group description
Federal Court of Australia – Brisbane
Collier J

This judgment deals with issues arising from a change in the description of the Darumbal People's native title claim group, and the authorisation of a new applicant group. The claimants also sought orders to conduct two Darumbal claims lodged in 1998 and 1999 as one combined application.

Queensland South Native Title Services (QSNTS), which provides legal representation to the Darumbal claimants, commissioned anthropological research in relation to two native title claims by the Darumbal people. That research suggested that the description of the claim group in the original native title applications may not properly reflect the group of people who may have rights and interests in the area under traditional law and custom. On 2 June 2012, a meeting was held by members of the Darumbal claim group as described in the two original native title applications (the pre-amendment group). At that meeting, the pre-amendment group decided that the description of the claim group in the native title applications should be changed.

Later the same day, another meeting was held; this second meeting was attended by the group as described in the amended claim group description. This post-amendment group authorised a new applicant group to handle the conduct of the two Darumbal claims, under s 66B *Native Title Act 1993.* This claim group also decided to combine the two claims into a single claim.

The Court granted the Darumbal application to amend the claim group description and to replace the applicant group. In making this decision, the Court noted that the pre-amendment group had unanimously supported the amendment after having had the opportunity to consider the anthropological research, ask questions, and discuss the matter as a group. The Court also noted that QSNTS had discussed the matter with descendants of two apical ancestors who were removed from the claim group description as a result of the amendment. Descendants of one of those ancestors had attended the first meeting and voted in favour of the amendment. The order sought by the claimants in relation to combining the claims was also granted.

The claim group had also asked the Court to divide the amended claim area into two parts: Part A, which is claimed by Darumbal alone, and Part B, which is the subject of a shared country agreement with another group, Yetimarla. The Court, however, said it was appropriate to wait until the Yetimarla claim in that area had actually been filed, and so adjourned consideration of that issue until a later date.

***Handy v State of Victoria* [2012] FCA 837**

27 July 2012
Application to withdraw claim
Federal Court of Australia – Melbourne
North J

In this short judgment, North J allowed the claimants to withdraw their native title claim, which was first lodged in 1996. Native Title Services Victoria, the lawyers for the Robinvale Aboriginal Community claimants, told the Court that it had written to all of the respondent parties to inform them that they intended to withdraw the native title claim, and had said that if they did not receive a response they would take that as consent to the withdrawal. Most of those respondents were not active parties, and did not respond to the letter. The four active respondents to the application (State of Victoria, the Latji Latji people, Powercor and Telstra) expressly consented to the withdrawal of the Robinvale Aboriginal Community claim. Justice North made the order allowing the claimants to withdraw their claim.

***Hoolihan on behalf of the Gugu Badhun People #2 v State of Queensland* [2012] FCA 800**

1 August 2012
Consent determination
Federal Court of Australia – Greenvale
Logan J

In this matter, the Court made a determination that native title is held by the Gugu Badhun people in relation to an area of about 6,540 km² of lands and waters in the Upper Burdekin region of far north Queensland.

The Court was satisfied that the linguistically-defined Gugu Badhun people are descended from the community of Gugu Badhun speaking people who used and occupied the determination area prior to 1788. His Honour was further satisfied that while there had been some adaptation of laws and customs as a result of European settlement, the observance of those laws and customs has continued substantially uninterrupted.

Justice Logan cited the decision of *Nelson v Northern Territory of Australia* (2010) 190 FCR 344 in considering whether it was appropriate for the Court to make orders under s 87 of the *Native Title Act 1993* (NTA). This decision states that the critical question for the Court in a determination for native title by consent 'is whether the existence of a free and informed agreement is founded in fact, not whether the matters dealt with in the agreement, specifically the existence of native title, are founded in fact.' Ultimately, Logan J said it was appropriate to make the orders sought as the parties had reached agreement that the claim group in the connection material comprises the persons who hold the claimed native title rights and interests in the determination area. The Court found that all the requirements of s 87, s 94A, s 223, and s 225 NTA had been met.

Exclusive native title rights and interests, other than in relation to water, were recognised over an area described in Schedule 1 of the determination. The native rights and interests recognised over the area described in Schedule 2 include the non-exclusive rights to: access and move about the determination area; camp and live temporarily on the area; hunt, fish and gather from the water for non-commercial purposes; take and use natural resources and water for non-commercial purposes; conduct ceremonies; maintain places of significance under traditional laws and customs; teach the physical and spiritual attributes of the land; to light fires (not for hunting or clearing); and be buried and bury other native title holders within the area.

Schedule 6 lists other interests in the determination area that prevail over native title rights to the extent of any inconsistency. Other interests include those of the Queensland Government and various local councils under legislation specific to World Heritage, nature conversation, forestry, mineral resources, water, electricity, telecommunications and local government. Schedule 6 also includes the interests of numerous parties under Indigenous land use agreements authorised by the native title claim group. The determination also identifies the areas where native title has been wholly extinguished because of public works, pastoral leases and pastoral improvements such as homesteads, constructed watering points, air strips and stock yards.

The determination provides that native title is not to be held on trust. The parties nominated the Gugu Badhun Aboriginal Corporation to be the prescribed body corporate under s 57 NTA.

***Archer on behalf of the Djungan People #1 v State of Queensland* [2012] FCA 801**

2 August 2012
Consent determination
Federal Court of Australia – Dimbulah
Logan J

In this judgment, four determinations of native title were made in favour of the Djungan people over areas west and south-west of Mareeba in northern Queensland. The Djungan people lodged four claims over different areas in 1995, 1996, 1997 and 2001.

The determinations were made by consent, after agreement had been reached between the Djungan people and a range of other parties including the State of Queensland, Ergon Energy, Tablelands Regional Council, and the Australian Wildlife Conservancy.

Logan J considered previous cases dealing with consent determinations made under s 87 of the *Native Title Act 1993* (NTA), and identified the Court's task as to determine whether the parties have reached agreement freely and on an informed basis. His Honour observed that the Court is not required to make its own inquiry into the merits of the claim, though it may consider the evidence for the limited purpose of determining whether the State had acted rationally and in good faith. Logan J held that it was appropriate in the circumstances to make the consent determination, because (among other reasons) all parties had legal representation and the State had played an active role in the negotiations, acting on behalf of the general community, having had regard to the NTA requirements and having conducted a thorough assessment process.

Logan J emphasised that one of Parliament's primary intentions in passing the NTA was for native title claims to be resolved by agreement. Reflecting on the long time it had taken for these four claims to be resolved; his Honour said 'native title claims which linger unresolved on a court list are an affront to our system of justice.' He congratulated the parties and their legal representatives for their commendable willingness to co-operate, and drew particular attention to the State's role in providing leadership to other respondents and observing its own model litigant standards.

The rights and interests recognised by the determination included the right to exclusive possession of some areas, and in other areas the non-exclusive rights to access the land; to camp but not to live permanently; to hunt, fish and gather for personal, communal and domestic purposes; to take and use water for non-commercial purposes; to conduct ceremonies and maintain significant places, including protecting them from physical harm; to teach the attributes of the area; to light fires but not for hunting or clearing land; to bury and be buried.

***Grey v State of Western Australia* [2012] FCA 846**

9 August 2012
Application to withdraw claim
Federal Court of Australia – Perth
Gilmour J

In this matter, the Court granted the native title applicants leave to discontinue their native title claim filed on 20 June 2012.

The claim relates to an area including the site of the proposed Browse LNG Precinct north of Broome. According to the applicants' solicitor, the applicants' primary intention in filing the claim was to gain procedural protections under the *Native Title Act 1993* in relation to the State's proposal to compulsorily acquire the land. Those procedural protections only become available once a claim is accepted for registration by the Registrar of the National Native Title Tribunal, and it had become apparent that the claim could not be registered in its current form. The applicants therefore approached the Court to have their claim discontinued.

***BA (deceased) on behalf of the Kariyarra People v State of Western Australia* [2012] FCA 854**

14 August 2012
Submission for mediation to be referred to Court
Federal Court of Australia – Melbourne
North J

This judgment arose out of recent changes to the roles of the National Native Title Tribunal and the Federal Court in relation to the mediation of native title claims.

In May 2012 the Commonwealth Government announced that responsibility for mediation in native title claims would pass from the Tribunal to the Court, from 1 July 2012. At a directions hearing of the Kariyarra claim in May 2012, the Kariyarra claimants asked the Court to transfer mediation of their matter from the Tribunal to the Court. The Court said that it should not make that order until it had first asked the Tribunal to give its view. Shortly afterwards, the Tribunal member wrote to the Court saying that there were some issues that could be effectively dealt with if left in mediation at the Tribunal. The Court invited the claimants and other parties to make submissions in response to the Tribunal member's letter, and in their submissions the claimants supported the transfer of mediation to the Court. The Court referred the application to mediation by the Federal Court.

***Samardin on behalf of the Ilperrelhelam, Malarrarr, Nwerrarr, Meyt, Itnwerrengayt and Ampwertety Landholding Groups v Northern Territory of Australia* [2012] FCA 845**

15 August 2012
Consent determination
Federal Court of Australia – Alpurrurulum Community
Besanko J

This was a native title determination, made by consent, in favour of the Ilperrelhelam, Malarrarr, Nwerrarr, Meyt, Itnwerrengayt and Ampwertety Landholding Groups. The determination area covers the Lake Nash and Georgina Downs pastoral properties in the Northern Territory, near its border with Queensland.

Besanko J considered the principles that govern the Court's role in making consent determinations under s 87 *Native Title Act 1993* (NTA). His Honour noted the purpose of s 87 NTA was to encourage parties to resolve claims by agreement, and that it should be applied flexibly. The Court is not required to examine the factual basis of the agreement; instead, the primary focus is whether the agreement was freely made on an informed basis. This may require the Court to be satisfied that the government respondent has taken steps to confirm that there is a credible basis for the claim. Besanko J examined the process the Territory had gone through in assessing the evidence in support of the claim, and considered that the process had been sufficiently thorough. He noted that it is common ground between the parties that the members of the respective landholding groups have a traditional and continuing spiritual, physical and cultural connection to the claim area.

The native title rights and interests recognised in the determination are non-exclusive possession rights including the right to access the area; to live on the area (including camping and erecting shelters and other structure); hunting, fishing and gathering; taking and using the natural resources; to take and use natural waters (except for water captured by the pastoralists); to light fires (but not for clearing vegetation); to conduct ceremonies and other activities on the land; and to share or exchange natural resources obtained on or from the land and waters. An additional right recognised was the 'right to speak for and make decisions about the use and enjoyment of the land and waters by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the native title holders'. The determination identifies those areas where it was agreed that native title was extinguished because of pastoral improvements such as homesteads, airstrips, and stockyards; and public works, such as public roads, gravel pits, and pipelines.

Ilperrelhelam Aboriginal Corporation was nominated as the prescribed body corporate for the purposes of section 57(2) NTA.

***Landers v State of South Australia* [2012] FCA 888**

21 August 2012
Application for joinder as respondents
Federal Court of Australia – Adelaide
Mansfield J

In this decision, Mansfield J dismissed an application by Leslie J Harris Jnr, Leslie J Harris Snr and Wayne Harris on behalf of the Thayipithirringuda Yandruwandha, Pilatapa Yandruwandha people, to be joined as respondents to the Dieri No 2 native title claim.

The Harris' asserted that they represent another group with rights and interests in the area, and so wished to become parties in order to ask the Court to discontinue the Dieri No 2 claim or to order the Dieri claimants to negotiate with the Harris'. Mansfield J decided not to allow the Harris' to become parties to the Dieri claim, for three reasons. Firstly, the Harris' had not clearly shown that the area in which they claimed native title rights and interests actually overlapped with the Dieri claim area. Mansfield J had invited them to amend their application to describe more clearly the area in which they asserted rights and interests, but they chose not to. Secondly, Mansfield J did not consider that the Harris' had the proper status to join the proceedings. The overlapping claim they asserted was in an area they described as Pilatapa Yandruwandha land, but they acknowledged during submissions that they are not themselves Pilatapa people.

Thirdly, Mansfield J considered that the Harris' were seeking to become parties to the Dieri claim for the purpose of seeking a determination of native title. Previous cases had established that this is not a valid basis for being joined as a respondent to a native title claim. Instead, the proper course for people who believe they have native title rights and interests in an area covered by an existing claim, is to file their own native title claim under s 61 *Native Title Act 1993* (NTA). Further, the Harris' claimed to represent the Thayipithirringuda Yandruwandha, Pilatapa Yandruwandha people, but the only basis for individuals to claim to represent a native title claim group is through the normal authorisation procedures required by s 251B NTA. The Harris' had not fulfilled those requirements. Accordingly, Mansfield J dismissed the application for joinder.

2. Legislation

Native Title (Revocation of Recognition Instruments) Determination 2012

The Determination revokes 16 legislative instruments made under subsection 203AD(1) of the *Native Title Act 1993* as these instruments have been identified as being redundant. All of the 16 legislative instruments that have been revoked were superseded by new regulations or different funding arrangements and therefore had no ongoing effect. See the ComLaw website for more details.

3. Indigenous Land Use Agreements (ILUA)

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 August 2012, **6** ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
3/8/2012	Islanders Board of Industry and Services - Torres Strait Island Regional Council - Erubam Le Traditional Land and Sea Owners - ILUA	QI2012/053	BCA	QLD	Development Infrastructure
3/8/2012	Islanders Board of Industry and Services - Torres Strait Island Regional Council - Erubam Le Traditional Land and Sea Owners – ILUA	QI2012/053	BCA	QLD	Access Co-management Development Commercial Communication Community
10/8/2012	Cairns Regional Council - Mamu People ILUA	QI2012/044	AA	QLD	Government Infrastructure Community
13/8/2012	Kirrae Whurrong SEA Gas ILUA	VI2012/001	AA	VIC	Petroleum/Gas Pipeline
20/8/2012	Nyangumarta Karajarri and Mandora Station ILUA	WI2012/003	BCA	WA	Access Development Pastoral
20/8/2013	Nyangumarta Karajarri and Anna Plains Station ILUA	WI2012/004	BCA	WA	Pastoral

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

4. 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 July 2012, **7** native title determinations were handed down.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type
Pitta Pitta People	*Alpin & Ors on behalf of the Pitta Pitta People v State of Queensland* (unreported, FCA, 28 August 2012, Dowsett J)	28/8/2012	QLD	Native title exists in parts of the determination area	Consent determination (conditional)	Claimant
Lake Nash	*Samardin on behalf of the Ilperrelhelam, Malarrarr, Nwerrarr, Meyt, Itnwerrengayt and Ampwertety Landholding Groups v Northern Territory of Australia* [2012] FCA 845	15/8/2012	NT	Native title exists in parts of the determination area	Consent determination	Claimant
Djungan People #3	*Archer on behalf of the Djungan People #1 v State of Queensland* [2012] FCA 801	2/8/2012	QLD	Native title exists in the entire determination area	Consent determination	Claimant
Djungan People #4	*Archer on behalf of the Djungan People #1 v State of Queensland* [2012] FCA 801	2/8/2012	QLD	Native title exists in the entire determination area	Consent determination	Claimant
Djungan People #2	*Archer on behalf of the Djungan People #1 v State of Queensland* [2012] FCA 801	2/8/2012	QLD	Native title exists in the entire determination area	Consent determination	Claimant
Djungan People #1	*Archer on behalf the Djungan People #1 v State of Queensland* [2012] FCA 801	2/8/2012	QLD	Native title exists in the entire determination area	Consent determination	Claimant
Gugu Badhun People #2	*Hoolihan on behalf of the Gugu Badhun People #2 v State of Queensland* [2012] FCA 800	01/08/2012	QLD	Native title exists in parts of the determination area	Consent determination	Claimant

5. Registered Native Title Bodies Corporate (RNTBC)

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. Public Notices

The *Native Title Act 1993* (Cth) requires that native title parties and the public must be notified of:

- proposed grants of mining leases and claims;
- proposed grants of exploration tenements;
- proposed addition of excluded land in exploration permits;
- proposed grant of authority to prospect; and
- proposed mineral development licences.

The public notice must occur in both:

- a newspaper that circulates generally throughout the area to which the notification relates; and
- a relevant special interest publication that is published at least once a month, which:
  - caters mainly or exclusively for the interests of Aboriginal peoples or Torres Strait Islanders;and
  - is circulated in the geographical area of the proposed activities.

To access the most recent public notices visit the NNTT website or the Koori Mail website.

7. Native Title in the News

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

8. Native Title Publications

AIATSIS Publications

Bauman, T., Stacey, C. & Lauder, G., 'Joint management of protected areas in Australia: native title and other pathways towards a community of practice', Workshop report, AIATSIS Research Publications, August 2012

On 3–4 April 2012, the Northern Territory Department of Natural Resources, Environment, The Arts and Sport (NRETAS) and the Native Title Research Unit (NTRU) located within the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) convened a workshop of state, territory and Commonwealth government staff working in joint management and native title at the Alice Springs Desert Park. This workshop report provides state and territory jurisdictional overviews of joint management arrangements, as well as their respective challenges and successes. A range of alternative pathways to joint management are also discussed: Indigenous Protected Areas (IPAs) over multi-tenures and as whole-of-country planning tools; the emerging potential for joint management over marine areas; and international developments in the management of protected areas. The report further identifies a number of elements of what might constitute a national community of joint management practice, with the aim of providing cross-jurisdictional support for joint management practices. Available for download on NTRU website.

Rowse, T., *Rethinking social justice: from 'peoples' to 'populations'*, Aboriginal Studies Press, August 2012

In the early 1970s, Australian governments began to treat Aborigines and Torres Strait Islanders as 'peoples' with capacities for self-government. Forty years later, confidence in Indigenous self-determination has been eroded by accounts of Indigenous pathology, of misplaced policy optimism and persistent socio-economic 'gaps'. In this collection of new and revised essays, Tim Rowse accounts for this shift by arguing that Australian thinking about 'Indigenous' is a continuing, unresolvable tussle between the idea of 'peoples' and 'population'.

Other Publications

Gunn, B L., 'Self-Determination as the basis for reconciliation: Implementing the UN Declaration on the Rights of Indigenous Peoples', *Indigenous Law Bulletin*, Vol. 7, No. 30, May/June 2012: 22-25

In Canada, the initial relationship between the Crown and First Nations was a nation-to-nation one. However, this relationship quickly deteriorated. Between 1857 and 1985, the Colonial and Federal government passed various pieces of legislation with strong assimilation intentions. Past attempts to rectify the colonialist basis for the current Aboriginal-Crown relationship have largely failed. Most notably, this is due to the limited interpretation of section 35(1) of the Constitution by Canadian courts and the failed negotiations to flesh out the scope of self-government, as mandated by section 37.

Hammer, I., 'Alternative solutions: Indigenous human rights and the mining industry - experiences from Mexico and Australia', *Indigenous Law Bulletin*, Vol. 7, No. 30, May/June 2012: 26-29

What do Australia and Mexico have in common as far as Indigenous communities, mining and human rights are concerned? The answer can be characterised in terms of the mineral rich soils that have attracted many a transnational company to the shores of both countries, together with the vague controls and oft-cited conflicts between the major players in this field: the mining companies, the government and the community. Given the situation, where the neo-liberal paradigm compels governments to open their borders to international trade and commerce, the protection of less potent interests tend to become a minor concern. With this in mind, how can Indigenous communities exercise their rights? How can communities achieve emancipation through the law?

Kenny, A., 'The 'Society' at *Bora* ceremonies: A manifestation of a body of traditional law and custom in Aboriginal Australia relevant to native title case law', *Oceania*, Vol. 82, No. 2, July 2012: 129-151

Anthropologists working on native title cases in Australia are commonly asked to identify the Aboriginal 'society' that holds the body of laws and customs that confer land ownership rights on certain groups of people. In this paper I investigate how the early documentation of *bora* initiation ceremonies is relevant to understanding contemporary Aboriginal societies and the normative laws and customs that give rise to rights and interests in land. The vast ethnographic oeuvre of R.H. Mathews (1841-1918) includes detailed documentation of *bora* gatherings, which allows the reconstruction of the wider social reaches of people's networks in the lower Darling Downs of eastern Australia, and can in turn be understood as the 'society' so often sought in current native title case law. Available for download on Oceania Publications website.

Martin, F., 'An Indigenous economic development corporation: How does this compare to a charity?' Indigenous Law Bulletin, Vol. 7, No. 30, May/June 2012: 12-16.

This discussion paper is relevant to the Federal Government's recent announcement that native title payments will become exempt from income tax. Under these new arrangements, the investment income from native title payments will not be exempt and charities will therefore be a necessary structure to ensure maximum return on investment by Indigenous communities.

Williams, **R.A. Jnr**., ***Savage anxieties: The invention of western civilization*, Palgrave Macmillan, August 2012**

From one of the world's leading experts on Native American law and indigenous peoples' human rights comes an original intellectual history of the tribe and Western civilization that sheds new light on how we understand ourselves and our contemporary society. Throughout the centuries, conquest, war, and unspeakable acts of violence and dispossession have all been justified by citing civilization's opposition to these differences represented by the tribe. Robert Williams, award winning author, legal scholar, and member of the Lumbee Indian Tribe, proposes a wide-ranging reexamination of the history of the Western world, told from the perspective of civilization's war on tribalism as a way of life. Williams shows us how what we thought we knew about the rise of Western civilization over the tribe is in dire need of reappraisal.

Yamatji Marlpa Aboriginal Corporation (YMAC), 'Cultural advice for people working with Aboriginal communities in the Pilbara and Yamatji regions', 14 August 2012

YMAC has launched a Cultural Advice booklet for people working with Aboriginal people in the Midwest and Pilbara regions of WA. The booklet, produced with the advice and guidance of traditional owners, provides a short summary of cultural protocols to be considered when establishing professional relationships with the Aboriginal traditional owners of these areas. Available for download on YMAC website.

Walker BW, Porter DJ, and Marsh I., 'Fixing the hole in Australia's heartland: How Government needs to work in remote Australia', Desert Knowledge Australia, Alice Springs, September 2012

This report sets out the challenges of governance in remote Australia, advances a series of propositions and defining features of remote Australia and identifies ways to improve governance. One of the conclusions of the report is that native title bodies provide effectively a fourth tier of governance further adding to the complexity of governance arrangements in remote Australia. It is thus argued that native title bodies need to be involved in developing and shaping a new framework. Available for download on Desert Knowledge website.

Addresses:

Tim Wishart, QSNTS Principal Legal Officer, 'The multifaceted statutory responsibilities faced by representative body lawyers and what this could mean for you', LexisNexis 4th Annual Native Title Summit, 11 July 2012
PowerPoint available for download on the QSNTS website.

Kevin Smith, Queensland South Native Title Services (QSNTS) CEO, 'The role ADR plays in native title from an Indigenous service provider perspective', Queensland Law Society's Annual Alternative Dispute Resolution Conference, 18 July 2012
PowerPoint available for download on the QSNTS website.

Emeritus Professor Hal Wootten, Response to lecture delivered by Sir Gerard Brennan 'Lessons from a life in the law', Hal Wootten Lecture 2012, 23 August 2012
Available on the UNSW Website.

Media Releases

Central Land Council (CLC)

Native title recognised at Lake Nash and Georgina Downs – 17 August 2012

On 15 August 2012, the Federal Court of Australia sat at Alpurrurulam Community approximately 650 km north east of Alice Springs to recognise the rights and interests of native title holders of the Lake Nash and Georgina Downs pastoral leases. Lake Nash (Alpurrurulam) became a Community Living Area in 1991 which meant a small area of land was excised from the station to enable the traditional owners to live there. Many of the current claimants or their parents were born and lived on Lake Nash Station near the waterhole for most of their lives. CLC Director David Ross congratulated the native title holders and paid tribute to the many claimants who passed away during the process. See the CLC website for more details.

Yamatji Marlpa Aboriginal Corporation (YMAC)

Pilbara traditional owners sign major iron ore agreement – 18 August 2012
The Nyiyaparli people of the Pilbara region of WA have announced that they have entered into a major mining agreement with BHP Billiton Iron Ore (BHPBIO). The agreement covers all of BHPBIO's iron ore operations within the Nyiyaparli people's native title claim and offers substantial heritage protection, financial benefits, and non-financial benefits to the Nyiyaparli people. See the YMAC website for more details.

Audio News and Podcasts:

Centre for Aboriginal Economic Policy Research (CAEPR)

Alternative constructions of Indigenous identities in Australia's Native Title Act, and their implications for Indigenous people and those working with them – 15 August 2012

Presented by: David Martin
This presentation is directed in the first instance towards processes under the *Native Title Act 1993*, where seemingly alternative constructions of Indigenous identity are established in different sections of the Act. The first, which Dr Martin characterises as a 'traditionalist' and essentialised identity, must be established for the purposes of proving native title. Yet, arguably less prescriptive constructions of Indigenous identity are implicit in the agreement-making sections of the Act, specifically arising from its 'right to negotiate' and 'Indigenous land use agreements' provisions. Listen to this seminar on the CAEPR website.

ABC Rural

Pitta Pitta people awarded native title for Boulia land – 29 August 2012

The Pitta Pitta people were awarded native title rights to 30,000 square kilometres of land. The declaration means landholders will still have full use of their land, but traditional owners will also be free to travel through, hunt, fish and conduct traditional ceremonies on the land.Listen to this program on the ABC website.

Newslines Radio

Mabo 20 years on – August 2012

Talent: Bonita Mabo, Townsville, Qld; Gail Mabo, Townsville, Qld; Josephine Bourne, Expert Panel on Constitutional Recognition, Qld; Ben Gertz, Townsville, Qld; Adelina Romano, Townsville, Qld; Grant Paulson, Canberra, ACT. Listen to this program at indigenous.gov.au.

ABC News AM

Broome traditional owners set sights on Cable Beach– 5 September 2012

Traditional owners are in negotiations with the Shire of Broome over changes they want to impose following a 2010 native title settlement. The Yawuru people are considering asking for a ban on cars on Cable Beach. Listen to this program on the ABC website.

Video Bulletins and Slideshows

AIATSIS special seminar: Indigenous peoples property rights in the Inter-American Human Rights System: Hul'qumi'num Treaty Group v. Canada

AIATSIS, 27 July 2012
This seminar expands on the themes of indigenous rights, particularly property rights, in the context of indigenous human rights litigation. The Indigenous Peoples Law and Policy Program currently has 7 cases active before the Inter-American Court of Human Rights, the Inter-American Commission of Human Rights, the UN Committee on the Elimination of Racial Discrimination and the UN Human Rights Committee.
Watch the video.

Lake Nash and Georgina Downs native title consent determination

Central Land Council (CLC), 17 August 2012
Native title has been declared on two central Australian pastoral leases near the Queensland border.
Watch the slideshow.

A pioneering mining deal is a mixed blessing for the Njamal

Sydney Morning Herald, 25 August 2012
Doris Eaton, Njamal Elder, co-chairwoman for Yamatji Marlpa talks about the agreement between the Njamal People and Fortescue Metals Group.
Watch video.

Mabo 20th Anniversary Roundtable

ABC Big Ideas, published 27 August 2012
This is a roundtable discussion that took place around the time of the 20th anniversary of the High Court's Mabo decision. Participants include: former High Court judge Michael Kirby; Les Malezer, co-chair of the National Congress of Australia's First People; Kevin Smith, CEO of Queensland South Native Title Services, Graeme Neate, president of National Native Title Services; Jonathan Fulcher, a partner with legal firm Hopgood Ganim and Margaret Stephenson from the University of Queensland Law School. They all bring different perspectives to the significance of the Mabo decision at the time.
Watch, Listen or Download.

Native title stories: Diane Stewart

Yamatji Marlpa Aboriginal Corporation (YMAC), 31 August 2012
Diane Stewart is a Nyangumarta woman from the East Pilbara who loves spending time on country. Watch her video below to hear her stories about country, family and culture. This is the third in a series of interviews with the YMAC Committee and Board Members, in which they share their stories of country and culture. See previous interviews with Yamatji Directors Ben Roberts and Susan Oakley.
Watch video.

Newsletters:

- Queensland South Native Title Services (QSNTS), *Message Tree*, Volume 3, Issue 2: August 2012
- Office of the Registrar of Indigenous Corporations (ORIC), *ORIC Oracle: Why it's better under CATSI*, August 2012
- Central Land Council (CLC), *Land Rights News Central Australia (LRNCA)*, Volume 2, Number 2, August 2012

9. Training and Professional Development Opportunities

The Aurora Project

See the Aurora Project: 2012 Program Calendar for information on training and personal development for staff of native title representative bodies, native title service providers, and RNTBCs.

10. Events

ANU Anthropology Seminar Series: The Practice of Indigenous Rights in Central Australia: The Politics of Indigeneity during the Rise of Intolerance

Speaker: Sarah Holcombe
Date: 24 October 2012
Time: 9:30am
Location: Seminar room A, Coombs Building, Australian National University, Canberra

Native Title Anthropology Pre-conference Assembly

Date: 25 September 2012
Time: 12:30–5:00pm
Location: Abel Smith Lecture Theatre (Building 23), University of Queensland, Brisbane
Registration: Registration is essential and places are limited, so confirm your interest early. To register, or contribute a topic for discussion, please contact Nicolas Peterson at Nicolas.peterson@anu.edu.au or (02) 6125 4727.

The Centre for Native Title Anthropology (CNTA) at The Australian National University, in partnership with Native Title Research Unit, The University of Queensland and The University of Adelaide, is convening a pre-Australian Anthropological Society (AAS) conference meeting of anthropologists and other research practitioners who work in the area of native title and Aboriginal cultural heritage.

The purpose of this forum is to provide the opportunity for anthropologists and interested others to meet and discuss current issues of practice, theory and policy in the fields of native title anthropology and Aboriginal cultural heritage. This year's assembly will include a panel of experienced practitioners who will discuss elements of applied anthropological practice in the context of native title and resource extraction projects.

Australian Anthropological Society Conference 2012: Culture and Contest in a Material World

Date: 26-28 September 2012
Location: St. Lucia campus, University of Queensland (UQ), Brisbane, Queensland
Registration: For registration information go to http://www.uq.edu.au/aasconf2012/registration
Cost: ranges between $220 and $450 for full conference registration

The University of Queensland's Anthropology Program will be hosting the AAS Conference for 2012. The 2012 conference takes place in a global context of increasing awareness that lives are interconnected across the globe. The aim of this conference is to prompt discussion of both stable and contested social and cultural forms evident in the multitude of settings being researched in anthropology. This conference will also encourage contributions focused on materiality as well as work that foregrounds idealist approaches to cultural continuities and change.For more information about the 2012 AAS conference see the UQ website.

Seventh Annual National Indigenous Legal Conference
Pathways to Tomorrow: Innovations and Intersections in Law, Land and Justice

Date: 5-6 October 2012
Location: University of Notre Dame, Fremantle and University of Western Australia, Perth
Registration: Please click here to view the registration form.

Key conference themes:

- New approaches to justice
- Cultural and natural resource management

Topics Include:

- UN Declaration on the Rights of Indigenous Peoples
- Cultural heritage and native title (including the Noongar claim)
- The Kimberley Science and Conservation Strategy
- Criminal justice challenges and youth diversionary programs
- Stolen wages and contemporary credit issues
- Indigenous ecological knowledge
- Constitutional recognition and visions of the future
- Opportunities and careers in Indigenous law and policy