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AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES
NATIVE TITLE RESEARCH UNIT

WHAT'S NEW IN NATIVE TITLE
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1. Case Summaries

Brooks on behalf of the Mamu People v State of Queensland (No 2) [2013] FCA 557

1 March 2013, Application for joinder, Federal Court of Australia – Brisbane

Dowsett J

In this matter the Court considered an interlocutory application made by Dennis George Ah-Kee and Adrian Clive Murray (the Applicant) on behalf of the Wanyurr Majay People to be joined as respondents to the Mamu People's native title claim. The Wanyurr Majay People have a native title determination over land to the north of the claim area and thus the applicant sought to be joined as a party to protect their interests in a number of areas lying within the Mamu claim area.

The Court may join a person as a party to the proceedings under s 84(5) of the *Native Title Act 1993* (Cth) (NTA) if the Court is satisfied that the person's interests may be affected by a determination and it is in the interests of justice to do so. It was accepted by the Court that the Applicant had evidence that may be used to argue that native title exists over areas of land within the Mamu claim area and, therefore, the interests of the Wanyurr Majay People may be affected by a determination of native title over this area.

However, the Court went on to consider the Applicant's considerable delay of 6 years in making the application and whether it was in the interests of justice to accept the application. The Applicant had failed to notify the Court or the Mamu people of the possibility of an overlapping claim until late 2012. Further, the Applicant had not taken any steps to initiate a native title claim over the area of overlap.

The reasons provided for the delay in making an application and the failure to notify either the Court or the Mamu People of the overlapping interests were held to be unsatisfactory. As a result, the Court considered that the

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application by the Wanyurr Majay People would cause injustice to the Mamu People by further delaying the determination of their claim. The application was accordingly dismissed, meaning the Applicant was not joined as respondent to the Mamu People's native title claim.

Wyman on behalf of the Bidjara People v State of Queensland [2013] FCA 366

12 April 2013, Application for leave to appeal, Federal Court of Australia – Brisbane

Dowsett J

In this matter, the Court refused an application made on behalf of the Bidjara people (the Applicant) for leave to appeal six interlocutory orders made in relation to procedural matters.

The trial for determination of the Bidjara native title claim was set for 22 April 2013 after a number of scheduling difficulties. In the lead up to the trial, Justice Jagot refused the Applicant's application for an extension of time to file materials and made a number of directions which the Applicant sought leave to challenge.

The specific directions which the Applicant sought to challenge included: a refusal to accept certain evidence in the form of dance; orders giving effect to an agreement between the parties that evidence be provided in written form; the refusal to grant an extension of time to comply with an order concerning the filing of material; the way in which Justice Jagot had directed expert evidence to be given in Court; and the finding that a witness was not an expert qualified to give expert evidence.

Although these grounds of appeal were recognised as being of importance to the Applicant, the Court decided not to consider the merits of the appeal so close to the trial of the matter. In considering whether leave should be granted, the Court focused particularly upon the negative effects an interlocutory appeal would have upon the interests of the parties and use of Court resources.

The Court held that justice was better served by treating the issues raised by the Applicant as matters having arisen in the course of the trial, which would be more appropriately addressed in the form of an appeal following the final determination of the claim. The Court considered that an interlocutory appeal at this stage would have caused further disruption to the progress of the trial, already anticipated to be lengthy and costly. Accordingly, the application for leave to appeal was dismissed by the Court.

Jerrinja Local Aboriginal Land Council v Attorney General of the State of NSW [2013] FCA 562

31 May 2013, Non-Claimant Determination, Federal Court of Australia – Sydney

Jagot J

In this non-claimant application, the Jerrinja Local Aboriginal Council sought a declaration that native title rights and interests do not exist in relation to a lot of land to which it has legal title. The application was made in accordance with s 42(1) of the *Aboriginal Land Rights Act 1983* (NSW), which prevents an Aboriginal Land Council from dealing with land without first seeking a determination that native title does not exist in relation to the area.

The Jerrinja Local Aboriginal Council was authorised as a person holding a non-native title interest in the land to make an application for a native title determination under s 61(1) of the *Native Title Act 1993* (Cth). The Jerringa Traditional Owners Aboriginal Corporation objected to the non-claimant application and was therefore joined as a second respondent. An application for a determination of native title had previously been made by the second respondent over the same lot of land. This application was summarily dismissed on the basis that the application could not proceed in the form in which it had been filed.

It was accepted that the applicant was required to show evidence which proves on the balance of probabilities that native title does not exist in relation to the lot of land. Justice Jagot considered evidence from members of the Jerrinja People, which asserted that the Jerrinja People do not have a continuing connection to the lot under their traditional laws and customs. Particular weight was placed on the urban location of the lot.

Evidence was brought by the respondent to disprove this by establishing a continuing connection between the Jerrinja People and the determination area. Justice Jagot did not consider that this evidence was sufficient to

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outweigh the evidence of the applicant. As a result, a determination was made that no native title rights or interests exist in relation to the determination area.

Justice Jagot highlighted the potential for s 42(1) of the *Aboriginal Land Rights Act* to cause dispute among Indigenous communities, as evidenced in the facts of this case.

State of Western Australia v Ward [2013] FCAFC 54

31 May 2013, Leave to appeal, Full Court of Federal Court – Sydney

Allsop CJ, Marshall J and Mansfield J

This matter was an appeal to the full bench of the Federal Court in relation to the Federal Court's decision to dismiss an interlocutory order brought by the State of Western Australia (the State). The State had sought an order to strike out certain claims brought by Fred Ward and others on behalf of the traditional owners of the Gibson Desert Nature Reserve (the native title party). Ultimately, the Full Court revoked the leave to appeal this matter.

First instance proceedings

The native title party applied for compensation under s 61(1) of the *Native Title Act 1993* (Cth) (NTA). They claimed that the reservation and vesting of Reserve 34606 were separately valid category D past acts as permitted by s 19 of the NTA (a 'past act' is a dealing with traditional lands, before 1 July 1993 or 1 January 1994, that is inconsistent with the ongoing enjoyment of native title rights and interests). Alternatively, the vesting of the reserve was a previous exclusive possession act (a 'previous exclusive possession act' is a dealing with land which can diminish, impair or extinguish native title). Specifically, the native title party claimed that the relevant acts were:

1. the reservation of the land as Reserve 34606, for the purpose of the conservation of fauna and flora, under s 29 of the Land Act 1933 (WA) and
2. the vesting of Reserve 34606 in the Western Australian Wildlife Authority on 22 April 1977 for the reserve purpose under s 33 of the Land Act 1933 (WA).

The State accepted that the compensation for the reservation of Reserve 34606 was a point that was open for contention in the matter. However, the State claimed that the compensation sought in relation to the vesting of Reserve 34606 was inconsistent with the judgment of Western Australia v Ward [2002] HCA 28 (Ward) because the native title party treated the vesting as a category D past act or alternatively as a previous exclusive possession act under the NTA. The State therefore sought to strike out those claims that were contrary to Ward. The first instance court dismissed that motion, but permitted the State leave to appeal the decision.

The Appeal

The appellant judges noted that the primary judge dismissed the State's strike out application having regard to the following:

1. While there were serious impediments to a successful compensation application, because the relevant claims were inconsistent with Ward, little time would be spent on the issue
2. While the prospects of success in relation to the relevant claims were narrow, they were not 'fanciful'. The primary judge suggested that the issues raised were novel because the issue had not been previously raised, but added that such issues were 'potentially highly significant to the future administration of the Act' and
3. There is an advantage in hearing the evidence relevant to those claims at the trial, rather than later (if ultimately it were found that the claims were correctly made).

The State accepted that the first instance decision involved the exercise of judicial discretion. Therefore, to succeed on the appeal, the State needed to show that the discretion miscarried in a manner shown in House v The King (1936) 55 CLR 499 at 504-505. Further, as the appeal concerned a matter of practice and procedure, it was also necessary to show that the primary judgment will cause substantial injustice to the appellant per Adam P Brown Male Fashions Pty Ltd v Phillip Morris Inc (1981) 148 CLR at 177.

The Appellant Court noted that the State's contention suggests that the decision in Ward was so clear that the primary judge should have exercised his discretion differently. The Appellant Court disagreed with this proposition

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and agreed with the primary judge in his finding that there were particular circumstances, including the application of the Act to the entitlement to compensation for the extinguishment or diminution or impairment of native title rights, upon which there was no direct authority. Accordingly, the full bench found that the primary judge did not err in the exercise of his discretion in the circumstances to dismiss the motion.

The Appellant Court noted that it would not be fanciful for the native title party to pursue the relevant claims on the ground that there is a difference between the extinguishment of native title rights and interests and their preservation and suppression if the non-extinguishment principle applies. In addition, the full bench found that there was no real injustice to the State if the claims were to proceed. The Court agreed with the primary judge that it is desirable for all evidence to be adduced at the one hearing.

Accordingly, the State's leave to appeal granted by the primary judge was revoked.

[***State of Western Australia v Fazeldean on behalf of the Thalanyji People (No 2)*** **[2013] FCAFC 58**]

6 June 2013, Application for leave to appeal, Full Court of Federal Court – Perth

Allsop CJ, Marshall J and Mansfield J

In this matter, the State of Western Australia (the State) sought leave to appeal the primary judge's decision to reject the State's application for the dismissal of the native title party's (the respondents) application on the basis that it was an abuse of process. Ultimately, the Appellant Court made an order dismissing the State's application for leave to appeal.

Proceedings before the primary judge

The matter before the primary judge concerned a second application for a determination of native title on behalf of the respondents, the Thalanyji People. The respondent's made two applications for native title determinations: the first (Thalanyji No 1) was lodged with the National Native Title Tribunal in 1996, and the second (Thalanyji No 2) was lodged with the Federal Court on 6 May 2010.

Thalanyji No 1 was determined by consent before Justice North on 18 September 2008 (see Hayes on behalf of the Thalanyji People v State of Western Australia [2008] FCA 1487). The parties' consent resulted in Justice North ordering that native title exists in relation to some of the area covered by Thalanyji No 1, and dismissing the balance of the application covering the remaining areas.

Thalanyji No 2 sought a native title determination covering the land over which Justice North dismissed as the balance of the Thalanyji No 1. Accordingly, the State sought an order that the primary judge dismiss Thalanyji No 2 on the basis that it was an abuse of process, because the land covered in Thalanyji No 2 was finally dealt with in Thalanyji No 1.

The primary judge rejected the State's application because his Honour could not form the view that Justice North in Thalanyji No 1 made the consent determination on the basis that the claimant group had abandoned its claim to the relevant area. The primary judge noted that the position he had arrived at involved 'a difficult judgment call'. Critically, his Honour said:

> ..if the parties had come to a clear agreement that the terms of the consent determination, including the dismissal of the balance of the Thalanyji (No 1) claim, was intended to completely shut out the same claim group from ever proceeding with a subsequent claim in respect of the area excluded from the consent determination, then it should have been clearly spelled out. In my view, it was not.

Accordingly, the primary judge concluded that he did not consider that Thalanyji No 2 should be dismissed for abuse of process.

The appeal

The State submitted that the primary judge had mistaken the proper test in concluding that it could not be shown that the parties intended to abandon the claim over the land in question. The State argued that Justice North's order in Thalanyji No 1 provided for the final dismissal of the respondent's claim to native title over the balance of the land. In support of this position, the State noted that no reservation was made under the Federal Court Rules 1979

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(Cth) regarding the right of respondents to bring another claim. Accordingly, the State argued that Justice North's order put an end to the entitlement of the respondent to claim rights under the *Native Title Act 1993* (Cth) (NTA). Further, the respondent submitted that orders and rules should not be employed to create injustice.

The Appeal Court considered the authorities regarding the principle of res judicata (a legal doctrine that bars parties in a lawsuit from raising the same issues again once those issues are finally determined). For example, the Court noted that in Chamberlain v Deputy Commissioner of Taxation [1988] HCA 21; 164 CLR 502 at 508, Deane J, Toohey J and Gaudron J said:

> The fact that a judgment is entered by consent may on occasion make it hard to say what was necessarily decided by the judgment, especially where it is the defendant who wishes to bring action at a later date…But the principle of res judicata holds good in such a case.

The Appeal Court noted that if a party asserts that the other is precluded from asserting a claim by reason of the principle in res judicata, that party can opt to seek:

1. To have the proceedings dismissed as an abuse of process
2. An order for summary dismissal or
3. Plead the matter as a defence and have the issue disposed of finally, either as a separate question or after a full trial.

The first two procedural mechanisms are summary in character, preventing any hearing on the merits.

The Appeal Court found that in this matter there were a number of considerations that make it inappropriate to dismiss the proceedings in a summary fashion. Including, among other things:

1. That litigation under the NTA is not ordinarily private litigation. The Court noted that in native title litigation, the rights are of a communal nature based on the occupation and a physical and spiritual connection between the land and people. How that context affects the operation of principles such as res judicata in the context of the NTA is a large question, and is one of great importance and
2. The possible relationship between the strength of the evidence of the respondent's connection with the land and the position of the State in the litigation. The State is the polity whose residents make the claim of historical connection with land. If that connection evidence were strong, an issue might arise as to the content of the legal obligation of the State in how it approached a claim for res judicata, based on a procedural step that may have been a product of mistake or ignorance. The Court noted that the answer to this question might fashion the development of a rule of law qualifying the principle of res judicata in the context of this type of claim under the NTA.

The Appeal Court noted that it may be that, in the light of the submissions to Justice North in Thalanyji (No 1), that the proper construction of the order was such as to contemplate a reservation of finality of the matter. However, the Appeal Court found that if this is not the case, the deeper question of the kind mentioned in points 1 and 2 above may be further considered. Therefore, the Appeal Court held that these questions require the care of final, not summary, consideration and dismissed the States application for leave to appeal.

A.D. (deceased) on behalf of the Mirning People v State of Western Australia [2013] FCA 565

7 June 2013, Costs, Federal Court of Australia – Perth

Mckerracher J

This matter involves an application for costs brought by the Mirning Applicant native title group in relation to an interlocutory application brought by an individual member of the native title applicant group, Mr Robert Claude Lawrie. Mr Lawrie sought a declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) to appoint solicitors for the claim titled [A.D.] & Ors v State of Western Australia & Ors (Mirning) (WAD 6001/2001) (the claim), which was dismissed by consent. Ultimately, the Court ordered that Mr Lawrie pay the Mirning Applicant's costs of the interlocutory application.

By interlocutory application filed on 24 December 2012, Mr Lawrie sought a declaration that Campbell Law is appointed solicitors for the claim. Subsequently the Mirning Applicant and the Commonwealth filed affidavits and

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submissions opposing the application for a declaration. Several exchanges occurred and as a result Mr Lawrie accepted that his application should be dismissed by consent. The Court accordingly dismissed the application and permitted the parties to make submissions on costs.

The Mirning Applicant sought costs in relation to dealing with the Mr Lawrie's interlocutory application, to which Mr Lawrie objected. Mr Lawrie contended that the consent dismissal came about in conjunction with an agreement reached by all of the parties that a claim group meeting would be held per s 66B of the Native Title Act (NTA) to reconsider legal representation. Implicit in that submission was that the only reason he consented to the dismissal was by reason of that agreement.

Mr Lawrie also submitted that the Goldfields Land and Sea Council (GLSC), which represented the Mirning Applicant, did not have standing to seek costs. He argued that the Mirning Applicant can only act by consensus of the eight named applicants, which included Mr Lawrie who had no knowledge of such instructions.

Mr Lawrie contended that his interlocutory application was not unreasonable within the meaning of s 85A NTA. Section 85A of the NTA provides, 'Unless the Federal Court orders otherwise, each party to a proceeding must bear his or her own costs.' However, Mr Lawrie submitted that if s 85A NTA has no application in the matter, it would inappropriate for a costs order to be made against him because (1) he is a named applicant on the Mirning Claim, and a Mirning elder; (2) his application was supported by other named applicants; (3) the application raised a legitimate issue regarding the authorisation of the named individual applicants by the claim group; and (4) he is a pensioner and not in a position to pay costs.

The Court considered its broad discretion to award costs under s 43 of the Federal Court Act. The Court also considered s 85A of the NTA. In this regard, the Court considered Lardil Peoples v State of Queensland (2001) 108 FCR 453 at 156-157 and held that as the interlocutory application was sought pursuant to the Court's power under the Federal Court Act, s 85A of the NTA did not apply.

The Court also noted that the costs application was made on behalf of the Mirning Applicant, which was represented by the GLSC. The Court held that it is a part of the usual retainer of a legal representative to seek costs in a proceeding that was misconceived and without merit. It was not necessary, therefore, for the GLSC to seek specific instructions from the claim group when the claim group has already provided instruction to GLSC to protect its interests.

Further, the Court noted that it was difficult to see how the proposed s 66B NTA meeting was relevant to Mr Lawrie's costs application. The Court considered that the suggestion that Mr Lawrie agreed to dismiss the interlocutory application because of the proposed meeting did not deal with the fact that the submissions were made by the parties pointing out that his interlocutory application could not succeed in any event.

The Court held that the submission that Mr Lawrie is a pensioner and impecunious affords no basis upon which the Court should decline to exercise its discretion to make the usual order as to costs. The Court noted that if it did, impecunious parties would regularly seek to bring unmeritorious applications without sanction.

Finally, the Court found that the point is that Mr Lawrie instituted a course of action that caused the other parties considerable time and expense. Further, it was the making of the application and the failure to pursue it that means that costs should follow the event. Accordingly, the Court ordered that Mr Lawrie pay the Mirning Applicant's costs in relation to the dismissed interlocutory application.

Doolan on behalf of the Butchulla People Land and Sea Claim #2 v State of Queensland [2013] FCA 602

19 June 2013, Removal of party to the proceedings, Federal Court of Australia – Brisbane

Collier J

This matter concerned the application for the removal of Ms Lezia McIntosh as a party to the native title proceeding under s 84(3) and 84(8) of the *Native Title Act 1993* (Cth) (NTA). Under s 84(8) of the NTA the Court has the power to order the removal of a party where the Court considers that the person does not have a separate 'interest' that may be affected by a determination of the proceedings.

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The substantive native title claim in these proceedings was brought by the Butchulla People, representing the descendants of a number of apical ancestors. An application had been filed by Ms McIntosh and others to become a party to the proceedings representing the interests of the descendants of the Yalibura people of the Dundubara group, which it was claimed held a separate interest in the proceedings. The Butchalla native title claim group as applicant brought evidence that Ms McIntosh did not have a separate interest in the determination, but was actually a dissentient member of the native title claim group. In response, the Court ordered that Ms McIntosh provide evidence as to why she had a separate interest in the proceedings and should not be removed as a party.

Ms McIntosh produced a substantial amount of evidence that her ancestors were actually of the Yalibura people of the Dundora/Dundubara group of the Kabi/Kabu-Balgoin nation and that they were the traditional owners of the land and waters under claim, not the Butchulla people. However, in comparison to the expert anthropological evidence produced by the applicant proving otherwise, the Court was not convinced that the evidence of Ms McIntosh established a separate interest in the proceedings.

It was held by the Court that the evidence produced by Ms McIntosh did not establish that she had a separate interest from the native title group as required under s 84(3)(a)(iii) of the NTA, but that she was actually a dissentient member of the substantive native title claim. As a result, the Court exercised their power under s 84(8) of the NTA to order her removal as a party to the proceedings.

2. Legislation

Stronger leadership for Indigenous Government programs

A report by the Parliament's joint Public Accounts and Audit Committee recommending a high level review of leadership in Indigenous Affairs was tabled in the Federal Parliament on 29 May, 2013.

Committee chair Rob Oakeshott MP said the need for more effective leadership across government to tackle critical issues in Aboriginal and Torres Strait Islander affairs was clear.

'The Government needs a lead agency with authority and a clear mandate to oversee expenditure, monitor outcomes, define priorities and drive actions at whole-of-government level,' Mr Oakeshott said.

'We live in a time where the want to reconcile is high', he added. 'FaHCSIA has made commendable progress in improving coordination between government agencies, but the committee was not convinced that the current arrangements provide FaHCSIA with the authority needed to drive outcomes as effectively as possible.'

The committee's report also recommended:

- the development of an explicit whole-of-government strategy for capacity development — both within government and for not-for-profit Indigenous organisations
- improvements to the availability of location-based data on Indigenous expenditure and outcomes
- an update to be provided on efforts to measure outcomes in 'priority' remote service delivery communities and
- options to be examined for improving Aboriginal and Torres Strait Islander representation and involvement in decision-making processes.

For more information, see Parliament of Australia website.

Tax Laws Amendment Acts 2013

The Tax Laws Amendment (2012 Measures No. 6) Act 2013 (Cth) and the *Tax Laws Amendment* (2013 measures No. 2) *Act 2013* (Cth) were passed by the Australian Federal Parliament on 25 and 27 June, 2013 and have received Royal Assent. These amendments to the Income *Tax Assessment Acts* clarify that payments and benefits arising from native title agreements are exempt from taxation, ending long standing uncertainty surrounding their assessability.

Key features of the amendments:

- an income tax exemption for 'native title benefits' which include payments and benefits made to an indigenous person or an 'indigenous holding entity' under an agreement relating to native title or as a compensation payment required under the *Native Title Act 1993* (Cth)

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- a capital gains tax exemption for capital gains and losses made by an indigenous person or indigenous holding entity where the gain or loss results from the transfer, cancellation, surrender or creation of a trust over native title rights.

Payments and benefits will be exempt from taxation if paid to an 'indigenous holding entity' which is defined to include: Prescribed Bodies Corporate and Registered Native Title Bodies Corporate, Indigenous land councils, corporations registered under the *Corporations* (Aboriginal and Torres Strait Islander) *Act 2006* (Cth) and trusts with indigenous beneficiaries. The *Tax Laws Amendment* (2013 measures No. 2) *Act 2013* (Cth) has also amended this definition to ensure that it extends to charitable trusts.

The new exemption does not extend to remuneration, payments for goods or services or administrative costs. Nor will it apply to exempt investments or income generated from payments made under an agreement relating to native title.

The amendments are restrospective and apply to native title benefits provided on or after the 1 July, 2008.

For more information, see Parliament of Australia website.

Charities Act 2013

On 27 June, 2013 the Federal Parliament passed the *Charities Act 2013* (Cth) which sets out for the first time a single statutory definition of a charity and charitable purpose. In conjunction with the *Tax Amendment Acts* these changes have important implications for native title and indigenous groups. Specifically, the Act expands upon the common law test of 'charitable purpose' and exceptions to the 'public benefit' requirement to overcome previous uncertainty and difficulties over whether trusts established for the administration of payments and benefits for a native title group could obtain charitable status.

Key changes include:

- a 'public benefit' exception for entities which receive, hold or manage benefits that relate to native title or Indigenous land rights, where the purpose of the the entity is directed to the benefit of indigenous individuals and the public benefit requirement cannot be met because of the relationships between the indigenous individuals (see section 9)
- the expansion of purposes presumed to be for the public benefit from four categories to twelve, including: the promotion and advancement of health, education, social or public welfare, religion, culture, the natural environment, reconciliation, mutual respect and tolerance between groups in Australia, human rights, the security or safety of Australians, the prevention and relief of suffering to animals and any other benefifical purpose (see section 12).

Under the common law, a charity for the benefit of a group of persons related by family or blood would not fulfil the 'public benefit' requirement for charitable status. This requirement created particular uncertainty for Prescribed Bodies Corporate (PBC's) and Registered Native Title Bodies Corporate (RNTBCs) which hold native title on behalf of an Indigenous group commonly defined in a determination with reference to a common apical ancestor.

The exclusion of the 'public benefit' requirement under section 9 of the Act means that PBCs and other entities will be able to administer benefits relating to native title or Indigenous land rights as a charitable trust for a more limited group of related Indigenous individuals than was previously possible. Addionally, these benefits can now be administered for a wider array of purposes considered to be charitable under the expanded definition of 'charitable purpose' in section 12.

These changes are scheduled to commence on the 1 January 2014.

For more information, see Parliament of Australia website.

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3. 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 June 2013, **5** ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
5/6/2013	Kowanyama Pastoral Area ILUA	QI2013/007	AA	Qld	Access Pastoral
5/6/2013	Carpentaria Shire Council Kowanyama Area ILUA (Part B)	QI2013/003	AA	Qld	Government Communication
5/6/2013	Kowanyama People and Ergon Energy ILUA	QI2013/004	AA	Qld	Infrastructure Energy
7/6/2013	Mandandanji People and Roma Clay Target Club Inc ILUA	QI2012/134	AA	Qld	Extinguishment Tenure resolution
28/6/2013	Cultana Expansion Area ILUA	SI2013/001	AA	SA	Government Infrastructure

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 June 2013, **2** native title determinations were handed down.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC /PBC
Gooniyandi Combined #2	Sharpe v State of Western Australia [2013] FCA 599	19/06/2013	WA	Native title exists in parts of the determination area	Consent determination	Claimant	Gooniyandi Aboriginal Corporation
Mudgee Local Aboriginal Land Council	Mudgee Local Aboriginal Land Council v Attorney General of NSW [2013] FCA 668	27/06/2013	NSW	Native title does not exist	Unopposed determination	Non-claimant	

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5. 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 June 2013, **13** Future Acts Determinations were handed down.

Determination date	Parties	NNTTA number	State or Territory	Decision/Determination
7/6/2013	Limpet Giggles, Nancy Tommy, Gladys Walker, Eric Galby, Arthur Flatfoot and Roy Tommy on behalf of Gobawarrah Minduarra Yinhawanga (WC1997/043) (native title party) - and - The State of Western Australia (Government party) - and - Mines Services & Construction Pty Ltd (grantee party)	NNTTA 63	WA	Objection - Expedited Procedure Applies
11/6/2013	Peggy Patrick & Ors on behalf of Yurriyangem Taam; Maggie John & Ors on behalf of Malarngowem; Ike Simpson & Ors on behalf of Wajarri Yamatji; Wyamba Aboriginal Corporation on behalf of its members; LW (name withheld for cultural reasons) & Ors on behalf of Njamal (native title parties) - and - State of Western Australia (Government party) - and – Thundelarra Exploration Ltd; Rumble Resources Pty Ltd; Rumble Ashburton Pty Ltd; Dourado Resources Ltd; Bookaburna Minerals Pty Ltd (grantee parties)	NNTTA 65	WA	Objection - Dismissed
11/6/2013	Rita Augustine and Ors on behalf of Goolarabooloo-Jabirr Jabirr; George Brooking & Ors on behalf of Bunuba #2; Adam Andrews & Ors on behalf of Bunuba; Rita Albert Little & Ors on behalf of Badimia; Les Tullock & Ors on behalf of Tarlpa; Wilma Freddie & Ors on behalf of Wiluna; Yarnangu Ngaanyatjarraku Parna Aboriginal Corporation on behalf of its members; Scotty Birrell & Ors on behalf of Koongie-Elvire; Connie Jugarie & Ors on behalf of Ngarrawanji; Barbara Sturt & Ors on behalf of Jaru; Maggie John & Ors on behalf of Malarngowem (native title parties) - and - State of Western Australia (Government party) - and – Boral Resources (WA) Ltd; Sammy Resources Pty Ltd; Western Gold Pty Ltd; Phosphate Australia Limited; Delphi Resources Pty Ltd; Pathfinder Exploration Pty Ltd; Norvale Pty Ltd (grantee parties)	NNTTA 66	WA	Objection - Dismissed
11/6/2013	Leedham Papertalk and Others on behalf of Mullewa Wadjari (WC1996/093) (native title party) - and - The State of Western Australia (Government party) - and - Top Iron Pty Ltd (grantee party)	NNTTA 64	WA	Objection - Expedited Procedure Applies

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13/6/2013	LW name withheld for cultural reasons & Ors on behalf of Njamal (WC1999/008) (native title party) - and - The State of Western Australia (Government party) - and - Haoma Mining NL (grantee party)	NNTTA 67	WA	Objection - Dismissed
18/6/2013	Raymond William Ashwin, June Rose Ashwin, Geoffrey Alfred Ashwin and Ralph Edward Ashwin on behalf of the Wutha People (WC1999/010) (native title party) - and - The State of Western Australia (Government party) - and - Doray Minerals Limited (grantee party)	NNTTA 68	WA	Objection - Expedited Procedure Applies
18/6/2013	Mungarlu Ngurrarankatja Rirraunkaja Aboriginal Corporation; Western Desert Lands Aboriginal Corporation; Mark Lockyer & Ors on behalf of Kuruma Marthudunera; Kevin Cosmos & Ors on behalf of Yaburara & Mududhunera (native title parties) - and - State of Western Australia (Government party) - and – FMG Resources Pty Ltd; Iron Duyfken Pty Ltd ; FMG Pilbara Pty Ltd (grantee parties)	NNTTA 70	WA	Objection - Dismissed
18/6/2013	Victor Willis & Ors on behalf of Pilki; Western Desert Lands on behalf of its members (native title parties) - and - State of Western Australia (Government party) - and – Paul Winston Askins; Lazarus Resources Pty Ltd; Newsearch Pty Ltd (grantee parties)	NNTTA 69	WA	Objection - Dismissed
20/6/2013	Yindjibarndi Aboriginal Corporation (WC1999/014) (native title party) - and - The State of Western Australia (Government party) - and - Croyden Gold Pty Ltd (grantee party)	NNTTA 71	WA	Objection – Expedited Procedure Applies AND Objection – Expedited Procedure Does Not Apply
21/6/2013	Daisy Lungunan and Others on behalf of the Nyikina and Mangala People (WC1999/025) (native title party) - and - The State of Western Australia (Government party) - and - Areva Resources Australia Pty Ltd (previously known as AFMECO Mining and Exploration Pty Ltd) (grantee party)	NNTTA 74	WA	Objection - Expedited Procedure Does Not Apply
21/6/2013	The Miriuwung Gajerrong #1 & #4 (Native Title Prescribed Body Corporate) Aboriginal Corporation (native title party) - and - The State of Western Australia (Government party) - and - Stansmore Resources Pty Ltd (grantee party)	NNTTA 73	WA	Objection - Expedited Procedure Applies
21/6/2013	Raymond Ashwin & Ors on behalf of Wutha – (WC1999/010) (native title party) - and - The State of Western Australia (Government party) - and - Falcon Minerals Ltd (grantee party)	NNTTA 75	WA	Objection - Expedited Procedure Applies

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26/6/2013	Wilma Freddie & Ors on behalf of Wiluna (native title party) - and - The State of Western Australia (Government party) - and - Enterprise Metals Limited (grantee party)	NNTTA 76	WA	Objection - Dismissed

6. Registered Native Title Bodies Corporate & Prescribed Bodies Corporate

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

Information on RNTBCs and PBCs including training and support, news and events, research and publications and external links can be found at nativetitle.org. For a detailed summary of individual RNTBCs and PBCs see PBC Profiles.

Additional information about RNTBCs and PBCs can be accessed through hyperlinks to corporation information on the Office of the Registrar of Indigenous Corporations (ORIC) website; case law on the Austlii website; and native title determination information on the NNTT and ATNS websites.

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. Related Publications

Yamatji Marlpa Aboriginal Corporation

YMAC News Issue 21 – 20 June 2013

The latest edition of *Yamatji Marlpa Aboriginal Corporation (YMAC) News* features a range of stories covering the latest events and developments throughout central West Australia. Cover story features Yamatji and Pilbara traditional owners digitally recording their stories on film for the Indigenous Community Stories initiative.

Available at YMAC online.

Janet Hunt

Looking after country in New South Wales: Implementing a Land & Sea Country Plan on the far south coast –

June 2013

This case study is about the Eden Local Aboriginal Land Council's (LALC) engagement in cultural and natural resource management and the organisation's recent efforts to enhance these through development of a Land & Sea Country Plan. The paper outlines the early involvement and gradual exclusion of Aboriginal people from the natural resource industries of the Eden region and their efforts to negotiate agreements for access to and co-management of the considerable public lands in their region. The Land & Sea Country Plan, which is their latest effort to build greater opportunity for employment in cultural and natural resource management, is described. Unlike Indigenous land and sea country plans in northern Australia, in this case the Eden LALC is seeking opportunities to work on and be involved in the management of public and even private lands within the Land Council's boundaries, as well as on its own land. This necessitates negotiating arrangements and opportunities with a number of regional natural resource management agencies at all levels of government. These have come together to form a Steering Committee for the Land & Sea Country Plan to support its development and implementation. After just two years of implementation, the emerging benefits and challenges are discussed.

Available at CAEPR online.

Central Land Council

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Strong Aboriginal Governance Report – Aboriginal Peak Organisation fo the Northern Territory (APO NT)

This report details the outcomes and discussion from the *Strong Aboriginal Governance Summit* held in Tennant Creek, 18-19 April, 2013. The report details discussion centred on priorities, values and solutions for Aboriginal people and Governance, in seeking to strengthen their own communities and local decision making authorities.

Available at CLC online.

Sonia Leonard, John Mckenzie, Frances Kofod, Meg Parsons, Marcia Langton, Peter Russ, Lyndon Ormond-Parker, Kristen Smith & Max Smith

Indigenous Climate Change adaptation in the Kimberly region of North-western Australia – June 2013

Aboriginal communities in north-western Australia are likely to be disproportionately affected by climate change. Direct environmental impacts from predicted outcomes will exacerbate present difficulties in many Indigenous communities beset by social and economic disadvantages.

This report presents the findings of an investigation into the capacity of Indigenous people in north-western Australia to respond to climate risks and develop adaptation pathways, as well as their understanding and perceptions of climate and climate risks. Case studies were conducted in three targeted communities – the Kununurra community in the Keep River district (Western Australia/Northern Territory), the Warmun community (Western Australia) and the Bidyadanga community (Western Australia). This report provides an overview of the role of Indigenous people in developing adaptation strategies and the potential for these communities to build partnerships in these endeavours.
Available at National Climate Change Adaptation Research Facility (NCCARF) online.

Media Releases

The Hon. David Bradbury MP, Assistant Treasurer & The Hon. Mark Butler MP, Minister for Social Inclusion

'Statutory Definition of Charity Legislation Introduced into Parliament' – 29 May, 2013

The Federal Government introduced legislations into the Parliament for a statutory definition of a charity. Assistant Treasurer The Hon. David Bradbury said in a media release 'The meaning of a charity and charitable purpose has largely been administered on the basis of principles derived from common law… A statutory definition of a charity is a sensible and evidence based reform'. The proposed start date for the statutory definition of a charity will be will be 1 January, 2014.

See Media Release for more details.

North Queensland Land Council

'NQLC & QSNTS sign historic MOU' – 12 June, 2013

The North Queensland Land Council (NQLC) and Queensland South Native Title Services (QSNTS) signed an historic Memorandum of Understanding (MOU) at the National Native Title Conference in Alice Springs on 6 June, 2013. The MOU is required in the *Native Title Act* (Cth) and concerns the handling of cross border native title claims. NQLC Chairperson Errol Neal heralded that the MOU as creating a new era of cooperation between two neighbouring native title organisations.

See Media Release for more details.

Yindjibarndi Aboriginal Corporation

'New hope for the Yindjibarndi people' – 20 June, 2013

The Yindjibarndi Aboriginal Corporation (YAC) has signed an Indigenous Land Use Agreement (ILUA) with mining company Rio Tinto. An authorisation meeting was held on Tuesday 18 June, 2013, followed by a public signing ceremony. YAC stated that the agreement will give the Yindjibarndi People a measure of self-determination as well as providing much needed funding through charitable and commercial trusts which will be used for cultural, commercial and community development.

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See Media Release for more details.

North Queensland Land Council

'Carbon Farming Workshops' – 23 June, 2013

The North Queensland Land Council (NQLC) in partnership with the Aboriginal Carbon Fund, helped facilitate an introductory workshops on carbon farming initiatives at Mangalla Station near Ingham and in Georgetown, north Queensland.

At the workshops, traditional owners learnt about climate change and the carbon cycle before delving into how Indigenous peoples can engage with carbon farming.

See Media Release for more details.

The Hon. David Bradbury MP, Assistant Treasurer, The Hon. Jenny Macklin MP, Minister for Families and Housing, Community Services & Indigenous Affairs, the Hon Mark Dreyfus QC MP, Attorney-General of Australia

'Native Title Amendments pass the Parliament' – 26 June, 2013

The Tax Laws Amednment Bill 2012 was passed in the Senate on June 25. The amendments ensure certain payments and benefits arising from native title agreements will not be made subject to income tax and that certain capital gains from native title rights are not taxable. The amendments will apply from July 1, 2008.

See Media Release for more details.

The Hon. David Bradbury MP & The Hon. Mark Butler MP, Minister for Social Inclusion

'A Statutory Definition of Charity for Australia'– 28 June, 2013

The Federal Parliament have passed legislation introducing a statutory definition of charity. 'Finally Australia has legislation which will provide more certainty and clarity about the meaning of charity and charitable purpose and will make the definition easier to understand,' said David Bradbury in a media release. The new statutory definition will come into effect on the 1 January, 2014.

See Media Release for more details.

News Broadcasts and Podcasts

SBS News

'21 years after Mabo, how far have Indigenous rights come?' – 4 June, 2013

Twenty-one years after the landmark high court decision, some of the nation's top campaigners and academics have gathered in Alice Springs to talk about shaping the future, and to examine how effective that historic decision has been.

Available at SBS online.

SBS News

'Jabiru traditional owners recognised' – 26 June 2013

The Northern Territory's longest running native title claim may have reached a conclusion with the Federal Parliament passing a bill recognising the traditional owners. The Mirrar people have been returned their land in the Jabiru area which includes the township of Jabiru.

Available at SBS online.

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9. 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, RNTBCs and PBCs.

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 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.

Monash University Indigenous Australian Archives Scholarship

Monash University, the National Archives of Australia, the Australian Society of Archivists Inc., and the Australian Computer Society (ACS) are offering a scholarship for Indigenous Australians to undertake a Masters degree or Graduate Diploma specializing in Electronic record keeping and Archiving.

This scholarship is linked to the Bringing Them Home Report, which recommended that Indigenous Australians archivists be involved in archival projects that enable Indigenous Australians to locate records.

Please submit an application before the scholarship closing date (**Friday 25 July 2013 for semester 2, 2013 entry or, Friday 21 February 2014 for semester 1, 2014 entry**).

For more information, see Monash University website.

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 others who share an ambition to preserve and celebrate Indigenous languages. 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.

2013 National Indigenous Health Conference

Building Bridges in Indigenous Health

Date: 25-27 November 2013

Location: Pullman Cairns International Hotel

Registration: For registration information go to 2013 National indigenous Health Conference website or email admin@indigenoushealth.net

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The 2013 National Indigenous Health Conference is designed to bring together both government and non-government agencies who are working in the field of Indigenous health with the belief that working together can close the gap between the state of Indigenous Health as compared to the health of mainstream Australians.

Centre for Aboriginal Economic Policy Research (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

50 Years On: Breaking Barriers in Indigenous Research and Thinking
Date: 26-28 March 2014
Location: National Convention Centre, Canberra, ACT

In 2014, AIATSIS will be celebrating its 50th year. To celebrate this milestone, AIATSIS will be holding its biennial National Indigenous Studies Conference with the theme '50 years on: Breaking Barriers in Indigenous Research and Thinking'. The conference will celebrate how far we have come in the area of Indigenous studies in Australia in the past 50 years. It will celebrate the 50th anniversary of the legislated establishment of the Australian Institute of Aboriginal Studies (now AIATSIS) as well as 50 years of leadership and excellence in Indigenous studies by AIATSIS.

For more information including Call for Papers and Registration, please see AIATSIS website or contact Alexandra Muir: (02) 6261 4223

The Native Title Research Unit produces monthly publications to keep you informed on the latest developments in native title throughout Australia. You can subscribe to NTRU publications online, follow @NTRU_AIATSIS on Twitter or 'Like' NTRU on Facebook.

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