

WHAT'S NEW IN NATIVE TITLE

MARCH 2013

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1. Case Summaries

[Kevin Cosmos & Others on behalf of Yaburara & Mardudhunera People/Western Australia/Geotech International Pty Ltd \[2013\] NNTTA 14](#)

11 February 2013, Perth
Daniel O’Dea, Member

In this matter, the Tribunal dismissed Geotech International Pty Ltd’s application for an expedited procedure pursuant to s 148(a) of the *Native Title Act 1993* (Cth) (NTA) in respect of the state of Western Australia’s intention to grant exploration licence E08/2080.

The proposed licence wholly overlapped the registered native title claim of the Yaburara and Mardudhunera (‘the native title party’). The proposed licence was over sea areas, seven islands, and four small portions of the mainland. Accordingly, the native title party lodged an expedited procedure objection application with the Tribunal in respect of the proposed licence.

The Tribunal considered the possibility of extinguishment as a preliminary issue in relation to the seven islands, which fell within the Great Sandy Island Nature Reserve. The Tribunal considered the case of *Western Australia v Ward* (2002) 191 ALR 1, and found that given the islands are reserve lands held by the Western Australian Wild Life Authority under s 33 of the *Land Act 1933* (WA), the native title rights and interests in the seven islands were extinguished. Accordingly, the Tribunal found that it had no jurisdiction to make a determination in relation to these islands.

Similarly, the Tribunal found that it had no jurisdiction to consider the sea areas within the proposed licence. The Tribunal found that only those future acts which fall under Part 2 Division 3 Subdivision P of the NTA (the right to negotiate) are within the Tribunal's jurisdiction in this matter, and that s 26 (3) of the NTA specifically states that right to negotiate provisions of the NTA do not apply to sea areas.

After the parties were notified of the Tribunal's findings in relation to the seven islands and the sea area, the Tribunal asked the parties to provide submissions in relation to the remaining four mainland areas. Accordingly, the parties provided those submissions, and the Tribunal found that the four small portions of mainland were on the landward side of the mean high-water mark of the sea as required by s 26(3) of the NTA. Accordingly, the Tribunal found that it did have jurisdiction to consider the four portions of land.

However, shortly thereafter Geotech withdrew its application for the grant of the proposed licence and advised the Tribunal that the four remaining portions of land within the proposed licence were not necessary for Geotech's exploration plans. Accordingly, the Tribunal dismissed the expedited procedure objection application pursuant to s 148(a) of the NTA.

[Cyril Barnes and Others on behalf of Central East Goldfields People/Western Australia/AngloGold Ashanti Australia Ltd; Independence Group NL \[2013\] NNTTA 17](#)

15 February 2013, Perth
Daniel O'Dea, Member

In this matter, the Tribunal determined that the state of Western Australia's grant of exploration licence E28/2187 to AngloGold Ashanti Australia Ltd; Independence Group NL may be done under s 38 of the NTA. The proposed licence is situated entirely within the registered native title claim of the Central East Goldfields People (CEGP).

On 11 January 2012, the state of Western Australia gave notice under s 29 of the NTA of its intention to grant the proposed licence to AngloGold, and included in the notice a statement that it considered that the grant attracted the expedited procedure. This statement means that the proposed licence could be approved without the normal negotiations required by s 31 of the NTA.

The native title party objected to the expedited procedure in respect of the proposed licence, contending that the proposed licence would interfere with community activities on the land, and with areas of particular significance to the CEGP. Accordingly, the native title party lodged an expedited procedure objection application in relation to the proposed licence.

The Tribunal's primary task was to make a predictive assessment as to whether the grant of the proposed licences and activities undertaken pursuant to it are likely to interfere with the community or social activities of the native title party, or interfere with areas or sites of particular significance to the native title party under s 237(a) and (b) of the NTA.

The CEGP tended evidence of a large number of unidentified graves within the proposed licence area; the existence of 'lot of wildlife and bush tucker' that is hunted and gathered in the reserve area and the proposed licence area; a soak which produces fresh water; a big rock hole which also produces fresh water, and a tadpole rock hole within the proposed licence area. The native title party claimed that some of the water holes will disappear if mining is allowed in the area, which would upset the 'old people'. The native title party claimed that there are dreaming stories in relation to some of these areas, and that some of these areas are considered sacred.

The Tribunal found that the evidence produced by the native title party was insufficient to satisfy the Tribunal that the grant of the proposed licence will directly interfere with the carrying on of social and community activities, or interfere with areas or sites of particular significance. The Tribunal found that the native title party had not identified with enough specificity the location of graves, rock holes, and soak; or where hunting and gathering took place on the proposed licence area.

In addition, Tribunal noted that the conditions to be imposed on AngloGold and AngloGold's requirement to adhere to the *Aboriginal Heritage Act 1972* (WA) would prevent interference with gravesites, the rock holes, the soak, and the capacity of the members of the native title party to extract water from rock holes and the soak. Accordingly, the Tribunal determined that the grant of proposed licence to AngloGold is an act attracting the expedited procedure.

[Leedham Papertalk & Others on behalf of Mullewa Wadjari; Ike Simpson & Others on behalf of Wajarri Yamatji; Albert Little & Ors on behalf of Badimia; Ronald Corwe & Ors on behalf of Gnulli; Elsa Derschow & Ors on behalf of Palyku/Western Australia/ Moly Metals Australia Pty Ltd; Murchison Goldmines Pty Ltd; Shaw River Manganese Limited; Shaw River Resources Ltd; Gold & Mineral Resources Pty Ltd \[2013\] NNTA 25](#)

11 March 2013, Perth
Dan O'Dea, Member
Bulk dismissal

In these matters, the Tribunal ordered that the expedited procedure objection applications filed in relation to each of these matters be dismissed pursuant to s 148(a) of the NTA.

In relation to each of these matters, the Department of Mines and Petroleum on behalf the state of Western Australia advised the Tribunal that each of the parties to who it intended to grant an exploration permit to had discontinued or withdrawn their application, and as a result the matters were discontinued.

Accordingly, the Tribunal ordered that the expedited procedure objection applications on behalf of each of the native title parties in these matters be dismissed pursuant to s 148(a) of the NTA.

2. Legislation

Inquiry in to the Native Title Amendment Bill 2012

On the 18 March 2013, the Legal and Constitutional Affairs Legislation Committee tabled an advisory report in to the *Native Title Amendment Bill 2012*. The report supports the proposed reforms which will:

- Allow parties to set aside the historical extinguishment of native title in areas set aside for the preservation of the natural environment, such as parks and reserves
- Clarify the meaning of negotiating in 'good faith' in future act negotiations and makes associated amendments to the 'right to negotiate' provisions, and
- Broaden the scope and streamlines processes for voluntary Indigenous Land Use Agreements (ILUA's).

The Committee recommends the Bill pass the House and additionally, recommends a comprehensive inquiry that will offer a course for future reform in the native title system. View the report online at [Parliament of Australia website](#).

To view the list of submissions see [Parliament of Australia website](#) AIATSIS submission available for download at [AIATSIS website](#).

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 March 2013, 7 ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
01/03/2013	Jinibara People Protected Areas ILUA	QI2012/129	BCA	QLD	Co-management Government
06/03/2013	RTIO and Ngarlawangga People ILUA	WI2012/010	AA	WA	Infrastructure Mining Exploration
13/03/2013	RTIO and Nyiyaparli ILUA	WI2012/007	AA	WA	Mining
13/03/2013	Nyiyaparli People and BHP Biliton Comprehensive Agreement – Initial ILUA	WI2012/005	AA	WA	Consultation protocol Mining Communication
19/03/2013	Kalkadoon People, Vonhoff and Scott, and State of Queensland Surrender ILUA	QI2013/006	BCA	QLD	Extinguishment Tenure resolution
20/03/2013	ILUA relating to EPC772 and ATP718P	QI2012/090	AA	QLD	Mining Exploration
21/03/2013	Infrastructure on Part Lot 140, Town of Elliot ILUA	DI2012/001	AA	NT	Access 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 March 2013, **1** native title determination was handed down.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type
Tableland Yidinji People #3	Johnson on behalf of the Tableland Yidinji People #3 v State of Queensland (unreported, FCA, 26 March 2013, Dowsett J)	26/03/2013	QLD	Native Title exists in the entire determination area	Consent determination (conditional)	Claimant

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 March 2013, **7** Future Acts Determinations were handed down.

Determination date	Parties	NNTTA number	State or Territory	Decision/Determination
04/03/2013	Raymond Ashwin & Ors on behalf of Wutha – (WC1999/010) (native title party) - and - The State of Western Australia (Government party) - and - West Coast Geoscience Pty Ltd (grantee party)	NNTTA 34 (4 March 2013)	WA	Objection - Expedited Procedure Applies
08/03/2013	Les Tullock and Others on behalf of the Tarlpa Native Title Claimants (WC2007/003) (Applicant/native title party) - and - The State of Western Australia (Government party)	NNTTA 24 (March 2013)	WA	Future Act – Can be done

Determination date	Parties	NNTTA number	State or Territory	Decision/Determination
	- and - Allarrow Pty Ltd (grantee party)			
11/03/2013	Mervyn Cattalano Torres &Ors on behalf of Djabera-Djabera (native title party) - and - State of Western Australia (Government party) - and - Sheffield Resources Pty Ltd; Sheffield Resources Limited (grantee parties)	NNTTA 27 (11 March 2013)	WA	Objection - Dismissed
11/03/2013	Various Dismissal Dates (see Determination for details) Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and - Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 26 (11 March 2013)	WA	Objection - Dismissed
11/03/2013	Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and - Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 25 (11 March 2013)	WA	Objection - Dismissed
21/03/2013	Various Dismissal Dates (See schedule determination for further detail) Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and - Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 29 (21 March 2013)	WA	Objection - Dismissed
31/03/2013	Adani Mining Pty Ltd (grantee party) - and - Jessie Diver, Patrick Fisher, Lynette Landers, Irene White, Elizabeth McAvoy, Patrick Malone and Les Tilley on behalf of the Wangan and Jagalingou People (native title party) - and - The State of Queensland (Government party)	NNTTA 30 (31 March 2013)	QLD	Future Act – NGIF Satisfied – Tribunal has jurisdiction

6. Registered Native Title Bodies Corporate

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

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

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

Australian Institute of Aboriginal and Torres Strait Islander Studies, *Guidelines for Ethical Research in Australian Indigenous Studies*, 2012

The *Guidelines for Ethical Research in Australian Indigenous Studies* are based on the principles that Indigenous people have inherent rights to self-determination, the right to full and fair participation in any process, projects or activities that impact on them and the right to control and maintain their cultural heritage. The new edition of the *Guidelines* has been developed to reflect best practice in ethical research in critical areas that have emerged since previous editions. Whilst these guidelines have been developed specifically for research sponsored by AIATSIS, as the leading institute in Indigenous studies, AIATSIS recognises its responsibility in allowing these ethics guidelines to inform all relevant research in this area.

Available for download at [Australian Institute of Aboriginal and Torres Strait Islander Studies](#).

AIATSIS 2013 PBC Survey

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

Office of the Registrar of Indigenous Corporations, *Remuneration – a report benchmarking the salaries of Aboriginal and Torres Strait Islander corporations*

A number of cases in 2011 and 2012 in the Aboriginal and Torres Strait Islander corporate sector have raised concerns about the level of remuneration and other benefits paid to some directors, senior management and employees. The Registrar of Indigenous Corporations commissioned this report to obtain detailed information on remuneration and other benefits that corporations provide. The aim of this report is to provide the Aboriginal and Torres Strait Islander corporate sector, the Registrar and government with reliable information that can be used to develop policy proposals for remuneration.

Available for full download at oric.gov.au.

Media Releases

Graeme Neaten, President of National Native Title Tribunal (NNTT) & Mark Dreyfus QC MP, Attorney-General for Australia

Raelene Webb QC announced as next NNTT President – 5 March 2013

Raelene Webb QC has been announced as the next President of the NNTT. Ms Webb is the immediate former President of the Northern Territory Bar Association and will be permanently based in Perth. See NNTT [Media Release](#) and AG [Media Release](#) for more details.

The Hon Mark Dreyfus QC MP, Attorney-General for Australia

Native title tax treatment examined – 18 March 2013

The Federal Government will establish a working group led by Department of Treasury to examine the ongoing tax treatment of native title payments. The working group will examine a range of options to assist in holding, managing and distributing native title payments to ensure long term benefits for native title holders and their communities. See [Media Release](#) for more details.

The Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs & Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities on behalf of Jenny Macklin MP, Mark Dreyfus QC MP, Tony Burke MP & Warren Snowden MP

Native title changes flag Jabiru handover – 22 March 2013

New legislation amending Land Rights laws to allow for the transfer of Jabiru in the Northern Territory from National Parks to the Kakadu Aboriginal Land Trust was introduced in to Federal Parliament. The introduction of this Bill is

expected to resolve the Jabiru native title claim which is the longest running land claim in the NT. See Indigenous [Media Release](#) and Environment [Media Release](#) for more details.

Queensland Government, Department of Natural Resources and Mines

Tableland Yidinji People's native title rights recognise - 26 March 2013

The Federal Court of Australia today recognised the Tableland Yidinji People's native title rights and interests over its traditional lands in far north Queensland in a second consent determination handed down in Cairns.

See Queensland government [Media Release](#) for more details.

National Native Title Tribunal

Tribunal acknowledges President Graeme Neate's service to native title - 26 March 2013

The National Native Title Tribunal (NNTT) acknowledges the contributions made by outgoing President Graeme Neate who formally stepped down from his role at the end of March, 2013. After joining the NNTT in 1995, Mr Neate rose quickly to become President in 1999, committing the next 14 years as the Tribunal's President. Mr Neate said that it was rewarding to be a part of a system that is maturing and which contributes to the process of reconciliation among all Australians. See NNTT [Media Release](#) for more information.

Audio News and Podcasts

National Indigenous Radio Service

Banuba hope native title resolves conflict – 5 March 2013

A spokesperson for the Banuba people in Western Australia's north-west Kimberly region says that acknowledgement of native title will help resolve conflicts with other land users in the area. Full story available at [National Indigenous Radio Service](#).

ABC Radio National

Break away native title groups speaks out – 5 March 2013

Members of breakaway Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) have spoken out for the first time, detailing their story behind the split with Yindjibarndi Aboriginal Corporation (YAC). Full story available at [ABC Radio National Online](#).

Video Bulletins

BBC World Service

Red Dirt Dreaming – 2 March 2013

A documentary investigating the mining boom in Western Australia and what this means for Aboriginal people negotiating with mining companies through native title for royalties and protection of cultural significant areas. Full story available at [BBC World Service](#).

SBS World News Australia

Proposed changes to reverse burden of proof – 19 March 2013

Proposed changes to native title laws could reverse the burden of proof and force governments to provide proof that claimants do not have continuous connection to country. Current responsibility lies with claimants to provide proof of ongoing connection with their country. Whilst the amendments do have support in both houses of parliament, it is unclear whether the major parties will agree to the changes. Full story available at [SBS Website](#).

Message Sticks, ABC Indigenous

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New legislation amending Land Rights laws to allow for the transfer of Jabiru in the Northern Territory from National Parks to the Kakadu Aboriginal Land Trust was introduced in to Federal Parliament. The introduction of this Bill is

expected to resolve the Jabiru native title claim which is the longest running land claim in the NT. Full story available at [ABC Indigenous Website](#) and [7 News Online](#).

8. Online Resources

Indigenous Governance Toolkit

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

Prescribed Bodies Corporate (PBCs) website

AIATSIS is pleased to launch the new [PBC website](#). The website is designed as a resource for PBCs and those engaging in matters relating to PBCs, also known as Registered Native Title Bodies Corporate (RNTBCs). The new website will provide information on legislation and policy, events, resources and publications. For more information contact website@nativetitle.org.au.

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, and RNTBCs.

Native Title Anthropologists Grants Program

The Native Title Anthropologists Grants Program aims to attract new anthropologists to the field of native title. Priority areas include the training and professional development of anthropologists as well as strengthening linkages between academic and applied anthropological field work. Applications close on **19 April 2013**. For more information, see [Attorney-General's Department Website](#).

'So you want to work in native title anthropology?' Professional development masterclass

Convenor: Cairns Institute, James Cook University (JCU), Cairns

Date: 13–20 April 2013

Contact: please email susan.mcintyretamwoy@jcu.edu.au

More Information: See [The Cairns Institute](#)

10. Events

CAEPR Seminar Series 2013: Series 1

Convenor: Centre for Aboriginal Economic Policy Research (CAEPR)

Times: Wednesday's 12:30-2:00pm

Venue: Haydon Allen G052, Australian National University, Canberra ACT

Contact: admin.caepr@anu.edu.au

More Information: See [CAEPR Seminar Series 2013](#)

Mapping Indigenous Lands and their Values in Australia: An Exploration of Development Implications

Presenter: John Altman & Francis Markham

Convenor: Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)

Date: Wednesday 1 May, 2013

Venue: The Mabo Room, AIATSIS, Lawson Crescent, Canberra ACT

Contact: publicprograms@aiatsis.gov.au or RSVP with Amity.Raymont@aiatsis.gov.au

Further Information: See [AIATSIS Website](#)

In this seminar, John Altman and Francis Markham will combine the latest information on land tenure, population and resources in Australia, using the latest GIS spatial analysis techniques. Considering then why little is known about the extent of emerging Indigenous rights and interests in lands and waters, investigate the transformative

potential of changing land tenure in particular, over the last 40 years, and what this may mean for Indigenous economic futures.

Mabo: A catalyst for social change

Presenter: Greg McIntyre SC

Convenor: National Centre for Indigenous Studies (NCIS), Australian National University (ANU)

Date: Wednesday 15 May 2013, 11:00-12:30pm

Venue: Sparke Helmore 2, ANU College of Law, Fellows Rd, Australian National University, Canberra ACT

Contact: barbara.wallner@anu.edu.au

Further Information: See [Events NCIS](#)

A Symposium on Indigenous Peoples, Economic Empowerment and Agreement with Extractive Industries

Presenter: Dame Meg Taylor, Professor Saleem Ali and Professor Megan Davis

Convenor: Agreement, Treaties and Negotiated Settlement Projects (ATNS)

Date: June 25 – 26, 2013

Location: University of Melbourne, Melbourne, Victoria

Registration: For registration information go to [ATNS website](#) or contact Judy Longbottom lonj@unimelb.edu.au.

National Native Title Conference 2013: Shaping the Future

Date: 3–5 June 2013

Time: 9am-5pm each day

Location: Alice Springs Convention Centre, Alice Springs, Northern Territory

Registration: For registration information go to [National Native Title Conference 2013](#) or contact Jennifer Jones on (02) 6261 4250 or jennifer.jones@aiatsis.gov.au

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

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

<p>The Native Title Act 20 years on, where to from here?</p> <ul style="list-style-type: none"> • Native title and social justice • Native title rights and recognition in an international context • Emerging issues in native title 	<p>The Indigenous estate and development options</p> <ul style="list-style-type: none"> • Planning and investment priorities • Natural resource management • Culture and country
<p>Indigenous governance</p> <ul style="list-style-type: none"> • Getting the right cultural fit • Taking the long-term view, strategic planning • Building capacity 	<p>Building a future</p> <ul style="list-style-type: none"> • Economic and community development • Keeping culture strong • Education and job

