

Native Title Newsletter

January/February, No. 1/2011

WHAT'S NEW

2011 National Native Title Conference

'Our Country, Our Future'

Keynote Speakers

This year's National Native Title Conference will be held at the Brisbane Convention and Exhibition Centre from 1-3 June 2011.

Keynote speakers that have already confirmed include:

- Dr Kerry Arabena, CEO of the Lowitja Institute for Aboriginal and Torres Strait Islander Health Research;
- Mr. Kevin Smith, CEO of Queensland South Native Title Services and Deputy Chair of the National Native Title Council.

Registrations will be available online this year and are opening soon. Watch this space!

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Much in common (law): Malaysian law on customary lands, territories and resource rights

By Toni Bauman, Research Fellow, Native Title Research Unit, AIATSIS.

On 25-26 January 2011, I presented at a conference in the Faculty of Law at the University of Malaya in Kuala Lumpur together with three other Australians working in native title; Mick Dodson, Frank McKeown and Greg McIntyre. The conference, 'The Law on Customary Lands, Territories and Resource Rights: Bridging the Implementation Gap' was organised by the Centre For Malaysian indigenous Studies and the Centre For Legal Pluralism and indigenous Law at the University of Malaya, in conjunction with

the European Forest Institute, the Forest Law Enforcement Governance and Trade (FLEGT) Asia Support Program, the International Work Group for indigenous Peoples and the Malaysian Bar Council. The conference was led by a Kelabit woman, Associate Professor of Law and Director of the Centre for Malaysian Indigenous Studies, Ramy Bulan, who was a gracious and tireless host, and was ably supported by long term activist, Dr Colin Nicholas, who is a member of the Bar Committee for Orang Asli Rights and Coordinator of the Centre for Orang Asli Concerns (COAC).

Indigenous communities in Malaysia can be divided into Peninsular Malaysia Orang Asli (about 141,230

in 2008 or less than 1% of the total 27 million Malaysian population) and those living in Sabah and Sarawak in Borneo (broadly around 30% of the total Borneo population of 12.6 million), with the largest numbers in Sarawak.

As is the case in Australia, terminology to describe indigenous peoples is a matter of debate. The term 'Orang Asli' has been used to refer to aboriginal peoples in Peninsular Malaysia, whereas the term 'Orang Asal' is used to refer collectively to the indigenous peoples of Malaysia, including those who come from Borneo. Both Orang Asli and Orang Asal literally mean 'original people'. However the term Orang Asal is constantly under debate, as are alternative terms to further distinguish regional groupings.



Orang Asal participants and some international speakers at the conference on Law on Customary Lands, Territories and Resource Rights: Bridging the Implementation Gap Conference. Photo by Colin Nicholas (COAC).

The Malaysian legal system based as it is on the common law, has much in common with Australia (though their Court system varies slightly from ours). The conference aimed to locate Malaysian indigenous

customary law rights in a growing international jurisprudence and human rights law. There have been a number of landmark decisions handed by the Malaysian courts which have taken note of precedents from other common law jurisdictions. At the same time, indigenous Malaysians are struggling to achieve recognition in land development and negotiate on equal terms with large corporations involved in, as the conference flier describes, 'logging, to oil palm and industrial tree plantations and forests estates, to mega hydro electricity generation projects' and they 'pay the heaviest price through relocation, displacement, dispossession and encroachments on their livelihood'. There is grave concern for their cultural and economic survival.

The conference program was rich with many preeminent speakers and moderators including indigenous Malaysians, and it was an honour to meet them. Moderators included:

- Ramy Bulan, Associate Professor of Law, Kelabit woman and Director of the Centre for Malaysian Indigenous Studies, University of Malaya;
- Mr Steven Thiru, Co-Chair of The Bar Committee on Orang Asli Rights;
- Juli Edo, Associate Professor, Orang Asli Anthropologist, Faculty of Arts and Social Science, University of Malaya
- Mr Gerawat Galla, Advocate and Solicitor, and President of, Kelabit National Association ;
- Dato' Robert Jacob Ridu, former Speaker of Sarawak Council Negeri;
- Yogeswaran Subrmaniam, Advocate and Solicitor, and PhD Scholar at the University of New South Wales; and
- Mr Andrew Khoo, Chair of the Bar Council Human Rights Committee and Member of the Bar Committee on Orang Asli Rights.

There were many resonances as court cases were described in the Orang Asal battle for recognition. Jerald Gomez, one of the counsels for Sagong Tasi in *Sagong Tasi v Kerajaan Negeri Selangor* [2002] described legal and practical hurdles, requirements of proof, considered the judgments of the High Court, Court of Appeal and finally the Federal Court and the distribution of compensation benefits.

Presenter Baru Bian, whose legal firm is handling over one hundred pending Sarawak cases and created the landmark case of *Nor ak Nyawai vs. Borneo Pulp Plantation Sdn Bhd & 2 Ors* [2001], described some of the contemporary legal issues facing claimants in native customary rights cases including how the implementation of the law in Sarawak has given rise to many conflicts between the native customary land owners.

Datuk Kong Hong Ming, Advocate at the High Court of Sabah and Sarawak noted the efforts of activists in bringing cases to the court. Prior to 2007, claims

were 'frustrated or defeated either by the decision making process managed by the government land administrators or by the misapplication of the provisions in the Land Ordinance (Sabah Cap 68), which has been the sole legislation in land law for the State of Sabah since 1930'. He noted that the judgment of the Kota Kinabalu High Court in *Rambilin Bte Ambit v Ruddy Bin Awah* [2007]('Rambilin'), had been particularly important in raising the hopes of indigenous peoples. Rambilin was a judicial review by the High Court in Sabah and Sarawak. The Court said that natives in Sabah have a right to enter state lands and to establish customary rights on the land. That right has not been extinguished by any legislation. Nevertheless, decisions of the local courts in *Adong Bin Kuwau* [1997], *Nor Anak Nyawai* [2001]; *Sagong Bin Tasi* [2005], *Rambilin* [2007] and *Madeli* [2007] are not being accepted by the government or the land administrators as legal precedents. Lim Heng Seng, former Chairman of the Industrial Court, also noted that the Courts have held that both the federal and state governments owe fiduciary duties to the Orang Asli, founded on Article 8(5) of the Federal Constitution and the 1961 Statement of the Policy Regarding the Administration of Orang Asli in West Malaysia.

International speakers came from Australia, New Zealand, the Philippines (Bridget Hamad-Pawid, Commissioner of the newly established National Commission on Indigenous Peoples), Thailand, Indonesia and India. In the Australian context, Professor Dodson spoke about the Yawuru native title agreement in Western Australia and exclusive possession. Greg McIntyre, (as did Canadian Professor Bradford Morse, now Dean of the Faculty of Law at Waikato University, Hamilton) provided comparative information about the common law circumstances surrounding extinguishment of native title by the state in countries such as the United States, Canada, Australia, New Zealand, Malaysia and South Africa and 'bundle of rights' approaches. My presentation on engagement with government and practical 'on-ground' issues around consultation and Free Prior and Informed Consent (FPIC), clearly resonated with the audience (as was

my experience in Papua New Guinea at a recent conference in Madang on Asian investment in the Pacific). Tony Williams-Hunt pointed out, that in spite of the Malaysian Government's support for the Declaration on the Rights of Indigenous Peoples it appears to disregard the necessity for FPIC in its interventions in land policy matters pertaining to the Orang Asli and has ignored the core issues raised when Orang Asli have protested.

Other presentations considered:

- carbon trading including in West Papua;
- the social, cultural and economic effects of the loss to the state when large forest areas were formally gazetted and managed using modern scientific management practices;
- community mapping using a three dimensional model and computers which would be very useful in the Australian context;
- the role of traditional knowledge and the involvement of the local indigenous community in forest resource management;
- contradictions in the *Wildlife Conservation Act 2010* and Orang Asli rights; and
- climate change.

Associate Professor Ramy Bulan, in her presentation, pointed out that what appears to be a step forward in the perimeter surveying of native customary 'untitled' lands by the government, could well contain a number of issues of concern. This surveying occurs in Sarawak under section 6 of the *Sarawak Land Code 1958*, which allows the Minister to declare and gazette any state land to be Native Customary Rights land for the use of any community having a native system of personal laws. Concerns raised include: conflicts between the state and native peoples who claim pre-existing rights to the lands based on their native laws and customs; limiting factors in the use of aerial photos pre 1958 as the basis of survey; Native rights in Communal Reserve being regarded as mere licences and subject to degazettement at the discretion of the Director of Lands and Surveys ; whether communal reserve equates with communal ownership; and the restrictiveness of the

interpretation of the law. The state's view is that lands that are not surveyed and without title are state lands and belong to the government. Concerns were also expressed that surveying based primarily on aerial maps produced by the government would only cover the immediate influence of the longhouse and that customary lands, traditionally occupied beyond that could be lost. Associate Professor Bulan's view was that the existing section 18 of the Land Code could in fact be used to grant titles in perpetuity to the persons who could prove 'customary tenure amounting to ownership'.

Most noteworthy in comparing Australia and Malaysia is that there is no 'native title industry' in Malaysia. Most cases are prepared by lawyers on a pro bono basis. Anthropologists have been rarely if at all used – though what might be described as the anthropological role performed by Dr Colin Nicholas, who has a background in development studies, political sociology and resource economics, was championed on many occasions during the conference. Taking up this theme, Dr Frank McKeown noted that anthropologists were ubiquitous in the native title process in Australia, particularly in the role of expert in litigation, and that anthropological expertise is sought in every stage of the process. It was acknowledged that there is a need for the involvement of more anthropologists in claims in Malaysia since the burden of proof is very similar in demonstrating prior and continuous occupation according to indigenous law and custom.

A publication from the conference will be forthcoming and further details of the conference are available electronically in the conference booklet from toni.bauman@aiatsis.gov.au

P.S. Since the conference another historic High Court decision has been made in Malaysia in favour of Ibans from Kampung Merekai (Rumah Luang). See here for the press release: <http://www.facebook.com/notes/borneo-independent-news-service/high-court-decides-in-favour-of-ibans-from-kampung-merekai-rumah-luang-in-anothe/10150108634803337>

Prescribed Bodies Corporate: Charging fees for services

By Dr Lisa Strelein, Director of Research –
Indigenous Governance and Country, AIATSIS.

I have made a number of presentations over the last 12 months to groups of NTRBs and PBCs about charging fees for their services. A PowerPoint presentation is now available on the NTRU website (see <http://www.aiatsis.gov.au/ntru/pbc.html>) that supplements the following brief outline of the issues. Some of these issues may also apply to claim groups, although the legal framework of the *Native Title Act 1993* (Cth) (NTA) and the Native Title (Prescribed Bodies Corporate) Regulations 1999 (PBC regulations) is specific to PBCs who are Registered Native Title Bodies Corporate (RNTBCs).

There is no doubt that native title holders should be compensated for the costs of engaging with those who want to access their native title lands. This currently occurs in a few ways: funding may be agreed in some circumstances as part of the settlement of the original claim or in future compensation claims; payments may be negotiated as part of an ILUA or future act agreement package; or costs may be agreed as part of negotiation protocol.

However, there were technical legal issues that made it unclear whether PBCs could charge fees for their services, in the same way that NTRBs/NTSPs do, when they are fulfilling one of their functions under the NTA. The *Native Title Amendments (Technical Amendments) Act 2007* added Division 7 (sections 60AB and AC) into Part 2 of the NTA to make it clear that PBCs could charge fees for services that they provide. A set of regulations concerning PBC fees were drafted in 2010 to introduce some further definitions and checks and balances. These regulations are not yet finalised but are expected to come in to effect this year.

At the PBC national meeting held in 2007, PBCs talked about the strain of volunteering time and energy for free to administer the PBC and attend meetings. The changes to the law are an important clarification, as many PBCs lack funds to meet basic administrative requirements.

What 'services' are provided by PBCs?

Before determining what fees a PBC may charge, we need to consider what business the PBCs are engaged in. This is not referring to any commercial or profit making activities that are occurring, but the 'business of being a PBC'. The business of the PBC is set out in their rule book or constitution. PBC rule books generally refer to the functions of PBCs under the NTA and PBC regulations as well as other activities such as cultural activities. It may be that for many PBCs their primary business is 'being consulted'. Section 60AB of the NTA refers to activities such as:

- negotiating an agreement;
- negotiating an ILUA or compulsory acquisition;
- commenting or making submissions on future acts;
- consultation on future acts; and/or
- exercising procedural rights.

These activities may require:

- consulting with individual native title holders (in person or by phone);
- arranging community meetings;
- participating in meetings organised by others; and/or
- facilitating access to land for inspection.

What can a PBC charge?

Once a PBC has determined what services it provides in meeting obligations under the NTA, it is then necessary to determine whether it is reasonable to charge for those services. PBCs can set their own fees but they must be related to 'costs incurred' in performing one of the functions (section 60AB(3)). The important threshold in the NTA is that the fee cannot amount to a tax. Case law

suggests that whether a fee amounts to a tax will depend on whether or not:

- there is a specific identifiable service;
- the fee is payable by the person who receives the service; and
- the fee is proportionate to the cost of the service (*Matthews v Chicory Market Board* (1938)).

The case law also distinguishes 'arbitrary exactions' that have the character of a revenue-raising exercise intended to offset administrative costs without regard to proportionality (*Air Caledonie In'l v Cth* (1998)). In essence, PBCs must be able to justify their 'pricing structure' based on either data of the cost of the services over time, or perhaps industry standard. It is imperative that RNTBCs not be treated any differently to other businesses and that a realistic approach is taken to what constitutes incidental costs and overheads.

It is relatively simple to charge for costs that can be tracked on a case by case basis, such as:

- phone calls;
- travel;
- meeting costs;
- staff time;
- professional advice; or
- advertising.

However, it is more difficult to determine what is a reasonable allocation of 'overheads' or indirect costs to a particular case. PBCs need to cover the costs of running the PBC, for example:

- office rent;
- computers and phones;
- stationery;
- insurance;
- administrative staff;
- book keeping and accounting or audit fees; and
- governing committee meetings and AGMs.

A fee structure could be developed by looking in more detail at the annual budget of the organisations. In some cases, however, it may be simpler to apply an 'administration charge' on top of

the direct costs. In most industries, 15-20 percent is considered reasonable.

The person/organisation being charged by the body corporate can request a review by the Registrar of Indigenous Corporations (ORIC) (section 60AC). In this instance the PBC may be asked to provide information, including:

- the function performed or the service provided;
- the amount of the fee; and
- how the amount, including the profit was determined.

The Native Title (Prescribed Bodies Corporate) Amendment Regulations 2010 set out a specific time period to apply for the review, which can take up to five months before payment is finally made, regardless of whether the PBC has in good faith incurred costs (for further information see proposed regulation 21).

PBCs can take a proactive approach to this, by making their pricing structure available on request or on a website if they have one, as well as providing quotes upfront before any work is done. It would be useful to also give ORIC power to impose penalties or interest on proponents if appropriate, for example if the review is seen as vexatious.

Who PBCs cannot charge and what they cannot charge for

There are specific services and people you cannot charge fees. You cannot charge:

- native title holders, claimants, PBCs or NTRBs for your services (subsection 60AB(4)); or
- for participating in proceedings for a determination and court proceedings (subsection 60AB(5)).

There may be issues where native title holders are acting in a different capacity, such as wanting to negotiate a lease with their PBC. The issue of whether the capacity in which the person acts, makes a difference to whether they can be charged has not been clarified.

What are the implications of charging fees for services?

The reasonableness of the fee may hinge to some extent on the quality of the service provided. This may be reflected by accessibility, for example having someone available to answer the phone, providing documentation and meeting deadlines promptly. It may be useful for PBCs to give some thought to the level of services that it can offer, even for example developing a service charter that sets out what standard the PBC will set for itself, or what standard procedures it will adopt for commonly provided services.

Going down this track also requires PBCs to think more like a small business in terms of the kinds of obligations that might arise out of recouping fees, especially if the PBC begins to regularly receive income. If this is the case, PBCs may incur various statutory obligations in relation to income tax, GST and insurance for the corporation; as well as PAYG tax, super and workers compensation for employees.

By failing to provide adequate public funding to PBCs, governments have made it necessary for bodies corporate to be self sufficient. The regulations challenge current expectations, of governments in particular, who have been 'consulting' with Indigenous people for so long without recompense, to instead accept that these are 'services' that should be paid for.

Upcoming RNTBC State and Regional Meetings in 2011

By Tran Tran, PBC Project Officer, Native Title Research Unit, AIATSIS.

Registered native title bodies corporate (also known as prescribed bodies corporate or PBCs) are a key element of the native title system. There are currently 77 registered PBCs throughout Australia.¹ The primary functions of PBCs are to: protect and manage determined native title land and water in accordance with the laws and customs of the native title holders, as reflected in the objectives of their PBC; and to provide certainty for government and other parties wanting to access and use native title land and waters by providing a legal entity to manage native title.²

PBC experiences and aspirations are diverse and uniquely shaped by: the geographical location and size of the determination area, the nature of native title rights recognised, the level of future acts or development interests, the size and composition of the native title holding group; intersecting State and Territory legislation; the geographic dispersal of the native title holders; and the aims and aspirations of the group. Many PBC functions involve land and water management, engagement with government around service delivery, traditional and contemporary land use as well as development opportunities and enterprises. This work occurs within a common context where many PBCs have limited funding, support and capacity to carry out these functions.

¹ A PBC is a native title holding corporation and becomes a Registered Native Title Body Corporate (RNTBC) once it is established, approved by the court and entered into the National Native Title register. While PBC and RNTBC is used interchangeably here, the *Native Title Act 1993* (Cth) deals with them separately.

² Under the *Native Title Act 1993* (Cth) (NTA) PBCs must be established for each determination in order to hold in trust or manage native title rights and interests on behalf of native title holders. PBCs are currently regulated by the NTA, the *Native Title (Prescribed Bodies Corporate) Regulations*, and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

In 2006 the Attorney General's Department (AGD) and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) released a report reviewing the structure and processes of PBCs in order to better understand their operating context and needs.³ The report concluded that there was a need to:

- improve the ability of PBCs to access and utilise existing resources and assistance;
- authorise PBCs to recover costs reasonably incurred in performing specific functions at the request of third parties;
- encourage greater State and Territory government involvement in addressing PBC needs; and
- improve the flexibility of the PBC governance regimes while protecting native title rights and interests.

Based on these recommendations, measures have been implemented on both the policy and legal level in order to improve PBC access to resources

and to create opportunities for PBCs to generate income or recover costs from native title transactions. Under the proposed Native Title (Prescribed Bodies Corporate) Amendment Regulations 2010,

PBCs can charge fees for services

such as arranging consultations, meetings and travel required when government and other proponents seek to do business on native title country (see further [Dr Lisa Strelein's article in this newsletter, 'Prescribed Bodies Corporate: Charging fees for services' p. 5](#))



National Meeting of Registered Native Title Bodies Corporate, 2 June 2009, Melbourne. Photo by Otis Williams

The Aboriginal Councils and Associations Act 1976 was also replaced by the new *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) under which PBCs are required to be incorporated. The CATSI legislation changed the reporting requirements for corporations to be proportionate to their size or activity. PBCs can also access limited funding provided by FaHCSIA for start up costs through their NTRBs/NTSPs.

At a national meeting of PBCs, organised by AIATSIS in Melbourne in 2009, PBCs made a resolution that a national peak body should be established to represent collective PBC interests and wanted more opportunities to engage with state and territory governments. State and territory governments play a key role in land management and have a significant impact on native title country in the post determination environment. The NTRU has received funding from FaHCSIA to convene a series of state, territory and regional workshops during 2011 bringing state and territory departments

together with PBCs.

The NTRU is looking for suggestions and support from PBCs, representative bodies and relevant state and territory parties. We encourage the input of all

stakeholders in order to ensure that the workshops will be relevant, timely and provide the first positive steps towards greater awareness of the needs and aspirations of PBCs.

³ See

<[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)~c0000ReporttoGovernmentNativeTitlePrescribedBodiesCorporatePBCs.pdf/\\$file/c0000ReporttoGovernmentNativeTitlePrescribedBodiesCorporatePBCs.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~c0000ReporttoGovernmentNativeTitlePrescribedBodiesCorporatePBCs.pdf/$file/c0000ReporttoGovernmentNativeTitlePrescribedBodiesCorporatePBCs.pdf)>.

What's New?

Recent cases

Atkinson on behalf of the Mooka and Kalara United Families Claim v Minister for Lands for the State of New South Wales (No 2) [2010] FCA 1477

16 December 2010

Federal Court of Australia, Sydney

Jagot J

In a previous hearing, orders had been handed down requiring the applicants to file and serve an amended native title determination application. The applicants did not comply with those orders. Two notices of motion were filed, seeking to extend the time for the filing and serving of material until 30 April 2011.

Justice Jagot dismissed the notices of motion and reserved costs. She considered that fundamental requirements of fairness demanded that the other parties to the proceeding be served with all the relevant material before the hearing to allow them adequate opportunity to consider the material and formulate a response. She also doubted that the material was, at that time, complete.

Magnesium Resources Pty Ltd; Anthony Warren Slater/Puutu Kunti Kurrama and Pinikura People; Puutu Kunti Kurrama and Pinikura People #2/Western Australia [2010] NNTTA 211

19 December 2010

National Native Title Tribunal, Perth

Hon C J Sumner, Deputy President

In this matter the grantee party (Magnesium Resources Pty Ltd) and the native title parties (the Puutu Kunti Kurrama and Pinikura and Puutu Kunti Kurrama and Pinikura #2 People – PKK) failed to reach agreement within the statutory six month timeframe on the terms on which several mining and related tenements could be granted. The grantee party subsequently applied to the National Native Title Tribunal (NNTT) for a determination that the tenements could be granted.

The parties' submissions evidenced that the issues in contention centred on the level of funding to be provided by the grantee party towards the cost of a meeting with the native title party, and whether correspondence between legal representatives (as opposed to a face-to-face meeting) constitutes negotiation. In particular the native title party contended that the grantee party did not make a reasonable effort to engage and adopted a rigid, minimum compliance position and therefore brought into question whether the grantee party negotiated 'in good faith'.

The NNTT was satisfied that although the negotiations were largely 'desultory' [71] and despite the grantee party's 'rather formal approach' [72], the negotiations satisfied the requirements for good faith. This was on the basis that the grantee party was prepared to meet with the native title party, despite the fact that it did not agree with the level of funding requested.

The NNTT also made several observations 'of a policy nature' [73] about the funding of future act negotiations. In particular it noted that funding limitations have the potential to place native title representative bodies in a position where they are not adequately able to act for native title parties in future act negotiations, unless mining companies are willing to meet these costs. It proposed that 'the appropriate funding authorities' give this further consideration [78].

Austmin Platinum Mines Pty Ltd and Weld Range Metals Limited/Western Australia/Ike Simpson and Others on behalf of Wajarri Yamatji, [2010] NNTTA 212

19 December 2010

National Native title Tribunal, Perth

Hon C J Sumner, Deputy President

As with the *Magnesium Resources* matter above, this matter was primarily concerned with determining whether the grantee party negotiated in good faith with the native title party. The State of Western Australia proposed to grant several mining leases to the grantee party (comprising various resource companies including Weld Range Metals).

The grantee party failed to reach agreement on the terms of the grant with the native title party (the Wajarri Yamatji) within the statutory timeframe. The grantee party subsequently applied to the National Native Title Tribunal (NNTT) for a determination that the leases could be granted.

The native title party argued that the 'unilateral' provision of a draft agreement, ignoring consistent requests for a face to face meeting was indicative of bad faith. On this issue the NNTT adopted its findings in *Magnesium Resources*, determining that there is no requirement for a grantee party to meet personally with a native title party for negotiations to have commenced. The NNTT further held that 'the preparation of a proposal in the form of a draft agreement is perfectly consistent with the obligation on a grantee party to negotiate in good faith' (at [27]). In doing so the NNTT distanced itself from its earlier determination in *Cox and Others v FMG Pilbara Pty Ltd* [2008] NNTTA 90, which was overturned on appeal to the Federal Court in *FMG Pilbara Pty Ltd v Cox* [2009] FCAFC 49. The NNTT therefore found in favour of the grantee party, determining that the grantee party had negotiated in good faith.

The NNTT did however note that the negotiations in this matter were 'of a quite limited and cursory kind' (at [73]) and further stated that it 'cannot pretend that the outcome of this matter ... is entirely satisfactory given the importance of the right to negotiate in protecting native title' (at [76]). It went on to state that there is a need for greater alignment between government policy and the operation of the NTA, in that the latter does not require grantee parties to discuss or contribute to funding for negotiations, while the former channels funding principally toward the resolution of native title claims rather than future act negotiations – in this case placing a 'considerable burden' on the native title party (at [78]).

***Straits Exploration (Australia) Pty Ltd & Anor v The Kokatha Uwankara Native Title Claimants & Ors* [2011] SAERDC 2**

14 January 2011

Environment Resources and Development Court of South Australia

Tilmouth J

The applicants, Straits Exploration (Australia) Pty Ltd and its joint venturer Kelaray Pty Ltd, applied to the Environment, Resources and Development Court of South Australia (ERDC) for a determination authorising mining operations to commence on land the subject of an exploration licence.

The applicants argued that there is a geological anomaly within the area of the exploration licence – covering part of Lake Torrens in South Australia – showing the potential to discover valuable minerals capable of profitable exploitation. The applicants also argued that it was in the public interest to develop this resource.

The respondent, the Kokatha Uwankara Native Title Claimants, argued that the land in question is of extreme cultural and traditional significance to them, and that the proposed mining operations should not be allowed to proceed because of the negative effect they would have on various rights attaching to this significance.

The ERDC determined that the mining operations not be authorised, pursuant to the relevant section of the *Mining Act 1971* (SA). In making this determination, Judge Tilmouth found at [263] that the 'fundamental shortcomings of the applicants in the field, the failure to secure adequate consents and the posture of avoiding scrutiny and accountability for precipitous decision making, tell heavily against the proposed mining operations going ahead'.

***Far West Coast Native Title Claim v State of South Australia* [2011] FCA 24**

21 January 2011

Federal Court of Australia, Adelaide

Mansfield J

Justice Mansfield found that the Mirning Community Incorporated did not have sufficient interest in the case for the purposes of s. 84(5) of the *Native Title Act 1993* (Cth) as the objects of the Community as set out did not include any basis on which they could assert a direct entitlement to interests in the land or waters that constitute the present claim area. He therefore refused the Mirning Community Incorporated's application to be joined as respondents to this proceeding.

***Puutu Kunti Kurrama & Pinikura People; Puutu Kunti Kurrama & Pinikura People #2/ Magnesium Resources Pty Ltd; Anthony Warren Slater/Western Australia* [2011] NNTTA 2**

31 January 2011

National Native Title Tribunal (Brisbane)

Deputy President John Sosso

The Puutu Kunti Kurrama and Pinikura People sought an extension of time to provide witness statements in relation to disputed applications for mining tenements in the West Pilbara. The Puutu Kunti Kurrama and Pinikura People submitted that key witnesses were not available during January due to cultural business, and cited limited funding and ongoing mediation.

The Tribunal had earlier granted an extension of time for compliance with the good faith component of the dispute, with the parties' agreement that the substantive hearing of the application would not be delayed. The Puutu Kunti Kurrama and Pinikura People told the Tribunal that the grantee party, Magnesium Resources, through its solicitors Green Legal, had agreed to the extension during mediations, but Green Legal denied such an agreement.

The application was refused by Deputy President Sosso. He emphasised that s. 36 of the *Native Title*

Act 1993 (Cth) requires the Tribunal to determine a s. 35 application 'as soon as practicable', and cited case law on case management principles.

***Gale on behalf of the Darug Tribal Aboriginal Corporation v New South Wales Minister for Land and Water Conservation* [2011] FCA 77**

2 February 2011

Federal Court of Australia, Sydney Registry

Justice Jagot

The applicants were granted leave to discontinue the proceedings and the Darug People and the descendents of Maria Locke cannot commence or maintain a proceeding to any part of the claim area without the leave of the Court. In *Gale v The Minister for Land and Water Conservation for the State of New South Wales* [2004] FCA 374 (the Gale proceeding), Mr Gale sought a determination that native title existed in relation to a parcel of land at Lower Portland in New South Wales: [10]. This land had been the subject of a claim by Deerubbin Local Aboriginal Land Council ('Deerubbin') under the *Aboriginal Land Rights Act 1983* (NSW). Because of the Gale proceeding, there could be no transfer of the land to Deerubbin. The Deerubbin claimed that the proceedings were 'kept on foot as leverage to induce State Governments to negotiate with the applicants and other outcomes pursuant to an [ILUA].': [14].

The Deerubbin relied on *McKenzie v State of South Australia* [2006] FCA 89 which notes that that each party will bear its own costs of proceedings under the *Native Title Act 1993* (Cth). However, the Deerubbin claimed that the proceeding had been an abuse of process since 31 March 2004 because the applicants should have 'been aware from that time, as a consequence of Madgwick J's decision in the Gale proceeding, that they could not succeed.': [25]. Justice Jagot did not accept this argument but agreed to impose further conditions on any future applications given the delay caused to the Deerubbin land rights claim.

Dann v State of Western Australia [2011] FCA 99
14 February 2011
Federal Court of Australia, Perth Registry
Justice Barker

The Amangu native title claim group needed to authorise a new group of individuals to be the applicant to their claim. One member of the previous applicant had died, and they also needed to include other individuals representing the family groups. Section 66B of the *Native Title Act 1993* (Cth) allows the court to replace the existing Applicant group with a new group. Due to the applicant's responsibilities in a claim, the court's approach here was to scrutinise the decision-making process, to ensure the change was properly authorised by the claim group.

The claim group meeting was attended by around 90 Amangu people. The meeting was advised about the role of the applicant group to the claim, and discussed representation from each family group as descendant from apical ancestors. Resolutions authorising a new applicant group, which included most of the previous applicant group, were made and recorded.

Justice Barker was satisfied that the meeting had been properly notified by post to Amangu people, faxes to community organisations, advertisements in local newspapers and by community liaison officers and lawyers of Yamatji Marlpa Aboriginal Corporation. The reasons for judgment outline the steps that had been taken to notify the claim group and run the meeting. His Honour was satisfied that the replacement applicant was properly authorised.

Roe v State of Western Australia (No 2) [2011] FCA 102
15 February 2011
Federal Court of Australia, Perth Registry
Justice Gilmour

Joseph Roe and Cyril Shaw commenced an application as representatives on behalf of the Goolarabooloo / Jabirr Jabirr (GJJ) native title claim

group. However, Mr Roe and Mr Shaw have been unable to agree on how to negotiate with recent proceedings against the Kimberley Land Council (KLC) and their positions as joint applicants became unworkable.

In order to resolve this impasse which had resulted in the KLC being unable to obtain instructions from the applicant, the KLC helped organise and facilitate a meeting of the GJJ claim group on 3 August 2010 to consider replacing the current applicant. As a result of resolutions passed at that meeting, Mr Roe made objections to the substantive application for the court to make orders under s. 66B to replace him as an applicant on the basis that:

1. five of the six applicants on the motion were not the descendants of the apical ancestors listed in Form 1 and were therefore not members of the claim group;
2. nor were eighty-five of the two-hundred and twenty-eight persons who attended the meeting on 3 August 2010; and that
3. six applicants are also applicants in the Jabirr Jabirr claim which overlaps with the GJJ claim and therefore there is a conflict of interest.

Mr Roe argued that the applicants did not discharge the burden of proof that the KLC has appropriately carried out its statutory functions to maintain a claim group list. Gilmour J did not accept that the list was inaccurate or unreliable after a review of the anthropological evidence.

Mr Roe also contested the notification of the 3 August Meeting 2010 and its conduct but the court was satisfied that the requirements under ss. 203BB(1) and 203BC(1) were met. Gilmour J accepted that the people present at the 3 August 2010 meeting were members of the claim group.

Further, Mr Roe contested the validity of the new nominations under s. 66B(1) which requires that only a person or persons who are members of a native title claim group can apply for an order to replace an applicant. The Court considered the background of the claim and noted that

Goolarabooloo started the claim and it was open to Jabirr Jabirr to be a part of the application. The provisions of s. 190C(3) also meant that the Jabirr Jabirr cannot be registered so long as the GJJ claim is extant and that there was no conflict of interest. Therefore, Gilmour J ordered that the six nominations are added jointly as the applicant on a notice of motion, filed on 16 August 2010, to replace Mr Roe and Mr Shaw under s. 66B.

Anderson on behalf of the Numbahjng Clan within the Bundjalung Nation v New South Wales Minister for Lands [2011] FCA 114

17 February 2011

Federal Court of Australia, Sydney Registry

Justice Jagot

Leave was sought by the applicant to amend a native title determination application. This was contested by the NSW Minister for Lands on the basis that the proposed amendments are not likely to lead to the registration of the Application by the Native Title Registrar. The applicant argued that whether an application is 'obviously futile' should not be considered on the basis of whether there is a possibility of the registrar being satisfied but should be considered within the context of the entire application. Justice Jagot granted leave to amend the application noting that registration was not a condition precedent to the making of a determination of native title based on *Gurambilbarra People v State of Queensland [2008] FCA 1518*. Justice Jagot made his decision for the following reasons:

1. This was a case where the applicants were willing and able to amend the application.
2. The application was made in good faith.
3. The proposed amendments were supported by affidavits which were not available to the Registrar at the time of the registration decision as per s. 190A(3)(a) of the *Native Title Act 1993* (Cth).
4. The proposed amendments represent the best attempt of the applicants to advance the application.
5. The reasons for the failed registration are available and the need for the court to

make a predictive assessment of the outcomes of an administrative decision should be avoided based on Gurambilbarra People.

6. The function of the registrar is not discretionary and needs to follow the requirements established under s. 190A(6)(b).
7. If the amended claim is not registered the process under s. 190F(6) remains available to the applicants.

Legislation

Revised Notices Determination to commence on 11 April 2011

The Native Title (Notices) Determination 1998 will be revoked and replaced by the Native Title (Notices) Determination 2011 (No. 1) on 11 April 2011. The new Determination clarifies and defines terms which have created some uncertainty for stakeholders and brings the instrument in line with the *Native Title Act 1993* (Cth) following recent legislative amendments. All changes to the previous determination are outlined in the Explanatory Statement which can be downloaded here: '[Explanatory Statement – Native Title \(Notices\) Determination 2011 \(No. 1\) \[PDF 32KB\]](#)'. All stakeholders will be required to comply with the new notice requirements from 11 April 2011.

Native title publications

Native Title Publications:

Senate Legal and Constitutional Affairs Legislation Committee, Report on Provisions of Schedule 4 of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010. Available from: http://www.aph.gov.au/Senate/committee/legcon_ctte/fachsia_4/report/report.pdf

Australian Human Rights Commission - Native Title Report 2010

Chapter 1 of the Native Title Report 2010 explores themes in native title on which the Commissioner will focus during his five-year term. These include: building an understanding of, and respect for, rights to lands, territories and resources throughout Australia; creating a just and fair native title system through law and policy reform; promoting effective engagement between governments and Aboriginal and Torres Strait Islander peoples; and enhancing capacity to realise social, cultural and economic development aspirations. Chapters 2 and 3 build on the importance of 'effective engagement' in the creation of stronger relationships between governments and Indigenous peoples. An analysis of a selection of laws, policies and reform proposals that affect our rights to lands, territories and resources is included. The Native Title Report 2010 is available from: http://hreoc.gov.au/social_justice/nt_report/ntreport10/index.html

South West Aboriginal Land and Sea Council – 'The Noongar Dialogue Report February 2010'

Report available from: <http://www.noongar.org.au/images/pdf/misc/NoongarDialogueWebVersion.pdf>

Yamatji Marlpa Aboriginal Corporation (YMAC) – 'Uranium and Native Title'

You can contact YMAC at (08) 9268 7000 to request a copy complete with DVD. Alternatively it is available for download from the YMAC website: <http://ymac.org.au/download.cfm?DownloadFile=3CA26015-1372-5CE6-243C18666343FB85>

Other Publications:

Home Ownership on Indigenous Land Program: Department of Families, Housing, Community Services and Indigenous Affairs, Indigenous Business Australia

The Australian National Audit Office has undertaken an independent performance audit in the *Department of Families, Housing, Community Services and Indigenous Affairs* and *Indigenous*

Business Australia in accordance with the authority contained in the *Auditor-General Act 1997*.

Closing the gap - Prime Minister's Report 2011

The Closing the gap - Prime Minister's Report 2011 is categorised into 3 sections. Part A details the progress against targets; Part B focuses on the building the relationship Indigenous and non-Indigenous Australians on a national and local level; and Part C identifies seven key building blocks, addressing specific areas of Indigenous disadvantage. The Report is available from: http://www.fahcsia.gov.au/sa/indigenous/pubs/closing_the_gap/2011_ctg_pm_report/Documents/2011_ctg_pm_report.pdf

2010 Indigenous Expenditure Report

The Report contains estimates of the levels and patterns of government expenditure on services relating to Indigenous Australians in 2008-09. Report available to download from: <http://www.pc.gov.au/ier/publications/ier-2010>

CAEPR, Jon Altman, *Alternate Development for Indigenous Territories of Difference*, Topical Issue 5, CAEPR, Canberra, March 2011.

Native title in the news

National

17/02/2011

Native Title Tribunal Appointment

Attorney-General Robert McClelland has announced the re-appointment of Dr Gaye Scultorpe as a full-time member of the National Native Title Tribunal. *National Indigenous Times* (Maulua Bay NSW, 17 February 2011), 33.

Australian Capital Territory

11/02/2011

Revolve in Native Title Bid

The ACT Government has accused recycling operator Revolve of nuisance tactics after the business attempted to delay vacating its leased Hume residence, stating the land belongs to the Ngambri people. Revolve managing director, Kay Hewitt, rejected this claim stating, 'we believe we have a right to be there, not only because of the common law native title but because of what has happened to Revolve in the past'. Chief Executive of the Department of Land and Property Services, David Dawes, said the ACT Government would seek to take formal possession of the land and have Revolve's application dismissed. *Canberra Times* (Canberra ACT, 12 February 2011), 5. *Canberra Times* (Canberra ACT, 11 February 2011), 1.

New South Wales

20/01/2011

Jangga People Agree to Deal Waratah Coal has signed an agreement with the Jangga People who have a claim to about 150km of a rail project that will link a new mine with a new terminal at Abbot Point, near Bowen. Four underground mines, two surface mines and associated coal handling and processing facilities are planned for the Galilee Basin coal region near Alpha which is west of Emerald in Central Queensland. Under the agreement Waratah Coal is required to develop a cultural heritage management plan with Indigenous

groups holding a registered native title claim over the project area. *National Indigenous Times* (WA, 20 January 2011), 8.

Northern Territory

26/01/2011

New Land Council Appeal

Northern Territory traditional owners plan to make a submission to the Federal Government to set up a new land council. Representatives from several Aboriginal groups, including Jawoyn, Alawa and Mangarrayi, have joined to form the proposed Katherine Region Land Council. If successful, their lands will be removed from the control of the Northern Land Council. *The Weekend West* (Perth WA, 22 January 2011), 28.

08/02/2011

Katherine Regional Land Council

A group of traditional owners from the Jawoyn and other major clans have held a meeting with the Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin to seek permission to set up a breakaway Katherine Region Land Council. Minister Macklin stated that a 'proper process' must be followed before she could make any decision on the request for a new land council. 'I have met some of the people concerned and now discussions need to take place with the Northern Land Council'. *Northern Territory News* (Darwin NT, 8 February 2011), 3, 11.

25/02/2011

Phosphate Mine Agreement

An agreement has been signed between the Central Land Council, the Arruwurra Aboriginal Corporation and Minemakers Australia Pty Ltd. for a phosphate mine at Wonarah, 250km east of Tennant Creek. David Ross, Director of the Central Land Council, said the mine which will operate for at least thirty years and potentially longer, will provide economic opportunities for Aboriginal people in the region. Barkly MLA Gerry McCarthy said the mine was the beginning of a 'new social and economic chapter' for the region. *Central Advocate* (Alice Springs NT, 25 February 2011), 3.

Northern Territory News (Darwin, NT February 25 2011), 2. *Northern Territory News* (Darwin, NT February 26 2011), 5.

Queensland

14/01/2011

LNP's Dugong-Turtle Plan

The QLD State opposition has released draft legislation regarding cruelty to dugong and turtles December 2010, with penalties of up to \$200,000 for anyone if they wound, mutilate, torture or unnecessarily prolong the death of any animal whilst exercising traditional hunting rights. Independent Candidate for Cook, Ms Dewis-Batzke says she is outraged by State opposition leader John Paul Landbroek's latest draft legislation announcement and believes the draft animal care and protection regulation does not acknowledge the human rights of Indigenous people.

Mr O'Brien Cook MP says 'the LNP's attack on traditional hunting and fishing rights is in effect an attack on native title'. Mr O'Brien also stated the policy is based on disregard for the traditional cultural practices, which could result in serious health problems for Aboriginal and Torres Strait Islander people as dugongs and turtles are a traditional dietary supplement for Cape York and Torres Strait Islander people. *Cooktown Local News* (Cooktown QLD, 14 January 2011), 7.

11/02/2011

Wild Rivers Laws

Senator Nigel Scullion, the Nationals deputy leader, reintroduced the Wild Rivers Bill into the chamber on 10 February 2011. Although it was passed by the Upper House last June, the draft laws were not considered by the House of Representatives before the Federal election and have expired. *Cairns Post* (Cairns QLD 11 February 2011), 13. *Northern Territory News* (Darwin, NT 11 February 2011), 15. *Northern Territory News* (Darwin, NT 14 February 2011), 6.

17/02/2011

Dundubara Aboriginal Corporation to be Respondent

Dundubara Aboriginal Corporation for Social Justice from Bundaberg have stated that they plan to become respondents to a native title claim by the Butchulla people which is over a large part of Hervey Bay up to Burrum Heads in Queensland. *News-Mail Bundaberg* (Bundaberg QLD, 17 February 2011), 7.

South Australia

18/01/2011

Judge Rejects Bid to Explore Lake Torrens Region

The Environment Resources and Development Court of South Australia has denied Straits Resources and its joint venture partner Argonaut Resources the rights to explore a region around Lake Torrens, a salt lake about 60km north of Port Augusta in South Australia. The area had been described by Argonaut as a 'massive' copper-gold target, but Judge Tilmouth said the relatively scant material presented to the court showed the potential of the permit had been overstated.

He was particularly scathing of the actions of the miners and said the significance of the area to the Kokatha had not been sufficiently appreciated. 'The native title provisions in the land of the traditional owners in preventing mining are significant and genuine, and the failure to secure adequate consents and the posture of avoiding scrutiny and accountability for precipitous decision making, tell heavily against the proposed mining operations going ahead' he said. *Sydney Morning Herald* (NSW, 18 January 2011), 3. *Canberra Times* (ACT, 18 January 2011), 11. *Advertiser* (SA, 18 January 2011), 31. *Border Mail* (VIC, 18 January 2011), 15.

23/02/2011

Kingston District Council Removes Itself as Respondent

Kingston District Council has resolved to withdraw from the Ngarrindjeri native title claim extending to the Granites. The native title claim by the Ngarrindjeri people is mainly over the Coorong area

but extends to the Kingston District via the Granites. CEO Martin McCarthy told the January council meeting that Kingston District Council was only a minor group in the proceedings as it has practically no impact on development north of the township of Kingston. *South East Coastal Leader*, (Kingston SA 23 February 2011), 2.

Victoria

05/01/2011

Native Title Land Claim

A large section of Gippsland, including areas close to Mirboo North and Strzelecki down to Port Franklin, has been officially recognised as Gunaikurnai land via a native title agreement. The agreement was the first under the new *Traditional Owner Settlement Act 2010* between with the Gunaikurnai people and the Victorian Government. The area under the native title agreement does not affect private land, nor land already covered by lease and licenses, but covers crown land from West Gippsland to the Snowy River and north to the Great Dividing Range; it also includes 200m of sea country offshore.

The agreement gives rights for the Gunaikurnai people to access and use crown land for traditional purposes only. Ownership of some national parks and reserves will be jointly managed with the state. The parks and reserves to be handed back to the Gunaikurnai people for joint management include; the Knob Reserve, Stratford, Tarra Bulga National Park, Mitchell River National Parks, Lakes National Park, Gippsland Lakes Coastal Park, New Guinea Cave (within the Snowy River National Park), Lake Tyers Catchment are Buchan Caves Reserve at Raymond Island and Corringale Foreshore Reserve. *South Gippsland Sentinel Times* (South Gippsland VIC, 5 January 2011), 18.

06/02/2011

Cattle in Alpine National Park

The Gunaikurnai people of Victoria have expressed their concerns over not being consulted about the return of cattle to the Alpine National Park. Gunaikurnai Elder, Uncle Albert Mullett, said that

under the native title agreement, the government must consult with native title holders on activities that affect the environment and water across the land, which stretches from Warragul to the Snowy River. Several of the government's cattle grazing trial sites fall within this area. *Sunday Age* (Melbourne VIC, 6 February 2011), 10.

Western Australia

04/01/2011

Mayala native title agreement

Pluton Resources boss Tony Schoer has spent five years building relationships with local Mayala people of Irvine Island. This strong rapport has enabled Pluton Resources to gain a legally binding native title agreement with the Mayala people to develop iron ore mines on Irvine Island. Mr Schoer said 'this agreement builds on an excellent relationship between Pluton and the Mayala people, who already have had significant involvement in the project.' *The Australian* (National AU, 4 January 2011), 17.

13/01/2011

Third Native Title Claim Lodged Over Gas Hub Site

Goolarabooloo man Joseph Roe has lodged a third native title claim over an area including James Price Point. Kimberly Land Council executive director Wayne Bergmann believes it will not affect negotiations between the Kimberly Land Council, the State Government and Woodside over plans to build a gas processing precinct.

Kimberly Land Council executive director Wayne Bergmann questioned the relevance of Mr. Roe's latest claim, saying it could not be registered with the National Native Title Tribunal because the ancestors identified overlapped with those in the existing claim. Mr. Bergmann also pointed out that the deadline had passed for any new claim to have any procedural rights to challenge the gas precinct or the compulsory acquisition of land announced by Premier Colin Barnett last year.

Last month, Justice Michael Gilmore rejected a submission from Mr. Roe midway through the hearing on the matter that the original claim be dismissed outright. Mr Bergmann said as soon as Justice Gilmour delivered his finding regarding who has the right to negotiate for the claimants, then the heads of agreement would be taken back to the claim group for final consideration before a binding agreement was signed. *West Australian* (WA, 13 January 2011), 37. *National Indigenous Times* (NSW, 20 January 2011), 8. *Daily Advertiser* (NSW, 21 January 2011), 14. *Broome Advertiser* (WA, 20 January 2011), 7.

22/01/2011

Largest Native Title Claim in Australia

Negotiations between the Western Australia State Government and the South West Aboriginal Land and Sea Council, which represents WA's 30,000 Nyoongar people is entering a crucial stage, with claimants negotiating with Government on important issues for Nyoongar people.

According to the article, a new Act of Parliament which recognises Nyoongar people as the traditional owners of 185,000sqkm of land stretching between Jurien Bay and Hopetoun has emerged as a key part of the long-running negotiations. Nyoongar people are requesting ownership of reserves and missions held by the Aboriginal Land Trust, water catchments which are no longer used and unallocated crown land, all of which are culturally significant.

Western Australia's Attorney-General Christian Porter stated that the negotiations were

confidential. *The Weekend West* (Perth WA, 22 January 2011), 3. *The Weekend West* (Perth WA, 22 January 2011), 28.

16/02/2011

Legal Challenge Rejected











The Federal Court has rejected Goolarabooloo man Joseph Roe's latest legal challenge against negotiations over the \$30 billion gas hub to be built at James Price Point. Mr Roe lost his challenge against a decision by the claim group to remove him as a named applicant in the native title group involved in the negotiations with the state and federal governments and Woodside Energy Ltd. *West Australian* (Perth WA, 16 February 2011), 10. *The Age* (Melbourne VIC, 16 February 2011), 4. *Northern Territory News* (Darwin NT, 16 February 2011), 29.

23/02/2011

Yamatji Marlpa Aboriginal Corporation Releases Mining Information

Yamatji Marlpa Aboriginal Corporation (YMAC) has released a guide to uranium mining. YMAC Chief Executive Simon Hawkins said since the Western Australia Government announced it was supporting uranium mining there was a lot of concern about its impact on traditional owners' country. The guide is available from the YMAC website: <http://www.yamatji.org.au/> *Pilbara News* (Pilbara WA, 23 February 2011), 8.

Indigenous Land Use Agreements

NAME	TRIBUNAL FILE NO.	TYPE	STATE OR TERRITORY	REGISTRATION DATE	SUBJECT-MATTER	REGISTER EXTRACT
Gunaikurnai Settlement ILUA	VI2010/003	BCA	Victoria	08/02/2011	Consultation protocol Extinguishment Government Tenure resolution	
Iman People #2 and QGC Pty Limited ILUA	QI2010/003	AA	Queensland	07/02/2011	Infrastructure Pipeline Exploration	
Jirrbal People and Tablelands Regional Council	QI2010/029	AA	Queensland	07/02/2011	Consultation protocol Government	
Jirrbal People and QLACCA ILUA	QI2010/030	AA	Queensland	07/02/2011	Access Exploration Fossicking	
Jirrbal People and Ergon Energy ILUA	QI2010/031	AA	Queensland	07/02/2011	Infrastructure Energy Communication	
Jirrbal People Protected Areas ILUA	QI2010/033	AA	Queensland	07/02/2011	Access Co-management Government	
Looma Multi Function Police Facility	WI2010/021	AA	Western Australia	27/01/2011	Government	
Nyangumarta Warram Aboriginal Corporation & Anna Plains Pastoral Lease ILUA	WI2010/024	BCA	Western Australia	24/01/2011	Access	
Nyangumarta Warram Aboriginal Corporation & Mandora Pastoral Lease ILUA	WI2010/025	BCA	Western Australia	24/01/2011	Access	
Nyangumarta Warram Aboriginal Corporation & Wallal Downs Pastoral Lease ILUA	WI2010/026	BCA	Western Australia	24/01/2011	Access	
Kalkarindji ILUA	DI2010/003	AA	Northern Territory	21/01/2011	Infrastructure Energy	
Alpurrurulam ILUA	DI2010/004	AA	Northern Territory	21/01/2011	Infrastructure Energy	
Macedon ILUA	WI2010/023	BCA	Western Australia	17/01/2011	Access Petroleum/Gas Exploration	
Port Curtis Coral Coast & QGC Pty Limited ILUA	QI2010/009	AA	Queensland	17/01/2011	Pipeline	
Onslow ILUA	WI2010/027	BCA	Western Australia	17/01/2011	Mining	
Gangalidda and Garawa Peoples Escott Pastoral Lease ILUA	QI2010/025	AA	Queensland	17/01/2011	Access	
Gangalidda and Garawa Peoples Cliffdale Pastoral Lease ILUA	QI2010/026	AA	Queensland	17/01/2011	Access	

This information has been extracted from the Native Title Research Unit ILUA summary:
http://ntru.aiatsis.gov.au/research/ilua_summary.html, 1 March 2011.

AA = Area Agreement BCA = Body Corporate Agreement

The information included in this table has been sourced from the NNTT.

For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit
<http://www.nntt.gov.au>

Determinations

SHORT NAME	CASE NAME	DATE	STATE OR TERRITORY	OUTCOME	LEGAL PROCESS
Jirrbal People #1	Betty Cashmere on behalf of the Jirrbal People #1 v State of Queensland and Others (unreported, FCA, 8 October 2010, Dowsett J)	07/02/2011	QLD	Native title exists in the entire determination area	Consent determination
Jirrbal People #2	Betty Cashmere on behalf of the Jirrbal People #2 v State of Queensland and Others (unreported, FCA, 8 October 2010, Dowsett J)	07/02/2011	QLD	Native title exists in the entire determination area	Consent determination
Jirrbal People #3	Betty Cashmere on behalf of the Jirrbal People #3 v State of Queensland and Others (unreported, FCA, 8 October 2010, Dowsett J)	07/02/2011	QLD	Native title exists in the entire determination area	Consent determination

This information has been extracted from the Native Title Research Unit Determinations summary:
http://ntru.aiatsis.gov.au/research/determinations_summary.html, 11 January 2011.

The information included in this table has been sourced from the NNTT.

For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au

Featured items in the AIATSIS Catalogue

The following list contains either new or recently amended catalogue records relevant to Native Title issues. Please check MURA, the AIATSIS on-line catalogue, for more information on each entry. You will notice some items on MURA do not have a full citation because they are preliminary catalogue records.

As mentioned last Newsletter, new items are being added into the online exhibition, "To Remove and Protect." See <http://www1.aiatsis.gov.au/exhibitions/removeprotect/index.html>. The cataloguing of Native Title Research Unit publications has continued. If you use the query term, "ntru" you will be able to get a listing of all of these records. Papers from the native title conferences can be accessed this way as well. Only a selection of recently catalogued items online has been included in this listing. Audiovisual material of interest to native title includes:

Photographic

A collection of 421 negatives of images taken by Olive Pink in Central Australia in the 1930s are being processed. These contain images of people and ceremonies. (PINK.03.BW).

Video

The Council for Reconciliation has produced the following videos of interest to native title:

Cross-cultural communication: lawyers, Aboriginals & the Law / [production company] Aboriginal Law Centre, University of New South Wales. 1995. (PDAC00018_198)

Mabo and native title / [production company] ATSIC Television. Canberra: ATSIC, 1994. (PDAC00018_208).

Mabo ruling: business Sunday / [production company] Nine Network. [Sydney]: Nine, 1992. (PDAC00018_205).

[Native Title Act]: ATSIC / [production company] ATSIC Television. [Canberra]: ATSIC, [1994?]. (PDAC00018_173).

That land council business : Northern Land Council / [production company] Green Ant. Alice Springs: 1992. (PDAC00018_177).

Print and online resources:

Anthropology

Blowes, Robert.

Anthropologists in applications for recognition for native title. 2006.

http://pandora.nla.gov.au/pan/32635/20060622-0000/ntru.aiatsis.gov.au/conf2006/download_docs/Papers/Blowes_Anthropologists.pdf

Edmunds, Mary.

The Northern Territory Intervention and human rights: an anthropological perspective. Sydney: Whitlam Institute, 2010.

Weiner, James.

Contemporary socio-political fragmentation in native title claim groups in Queensland [electronic resource] 2005.

<http://www.aiatsis.gov.au/research/docs/pdfs2005/Weiner-paper.pdf>

Archaeology

Clune, Genevieve.

'Coastal shell middens of the Abydos coastal plain, Western Australia.' *Archaeology in Oceania* Vol. 44, supplement (April 2009), p. 70-80.

Harrison, Rodney.

'The archaeology of the Port Hedland coastal plain and implications for understanding the prehistory of shell mounds and middens in northwestern Australia.' *Archaeology in Oceania* Vol. 44, supplement (April 2009), p. 81-98.

McDonald, Josephine and Peter Veth.

'Dampier Archipelago petroglyphs: archaeological, scientific values and National Heritage Listing.' *Archaeology in Oceania* Vol. 44, supplement (April 2009), p. 49-69.

Paterson, Alistair.

'Indigenous perceptions of contact at Inthanoona, northwest Western Australia.' *Archaeology in Oceania* Vol. 44, supplement (April 2009), p. 99-111.

Slack, Michael et al.

'Aboriginal settlement during the LGM st Brockman, Pilbara Region, Western Australia.' *Archaeology in Oceania* Vol. 44 , supplement (April 2009), p. 33-39.

Tacon, Paul S. C. et al.

'Ancient bird stencils discovered in Arnhem Land, Northern Territory.' *Antiquity* Vol. 28, no.324 (June 2010), p. 416-427.

Cultural heritage

Aboriginal cultural heritage of the ACT. [Canberra]: Dept. of Territories and Municipal Services, 2010.

Ford, Payi Linda.

Aboriginal knowledge, narratives & country : marri kunkimba putj putj marrideyan. Mt Gravatt, Qld: Post Pressed, 2010.

Wallis, Lynley Anne.

'A time for change? Indigenous heritage values and management practice in the Coorong and Lower Murray Lakes region, South Australia.' *Australian Aboriginal Studies* no.1 (2010), p. 57-73.

Economics

Bradfield, Stuart.

Communal ownership of Indigenous land and individual wealth creation [electronic resource] : the debate so far, identifying key questions. 2005.

<http://www.aiatsis.gov.au/ntru/nativetitleconference/conf2005/papers/BradfieldS.pdf>

Denborough, David.

'Linking stories and initiatives : a narrative approach to working with the skills and knowledge of communities.' *International journal of narrative therapy and community work* Vol. 2 p. 19-51.[Adelaide: Dulwich Centre, 2006].

Governance

Bauman, Toni.

Summary of responses arising from NTRU PBC workshops to FaCSIA guidelines for supporting PBC's [electronic resource] 2006.

<http://www.aiatsis.gov.au/ntru/docs/researchthemes/pbc/PBCWorkshopSummary.pdf>

Ganter, Elizabeth Joan.

An ambivalent hospitality : Aboriginal senior public servants and the representation of others in Australia's self-governing Northern Territory. Thesis (PhD) Australian National University July 2010.

Sullivan, Patrick.

Complexity in the new regime for Indigenous affairs policy and administration [electronic resource] : implications for native title mediation and facilitation. 2005.

<http://www.aiatsis.gov.au/research/docs/pdfs2005/Sullivan-paper.pdf>

History

Evans, Raymond.

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