

Native Title Newsletter

November / December No. 6/2011

WHAT'S NEW

2012 National Native Title Conference “Echoes of Mabo: Honour and Determination”

4-6 June 2012, Townsville

This year the National Native Title Conference will be co-convened by AIATSIS and the North Queensland Land Council (NQLC), and held at the Townsville Entertainment & Convention Centre. In 2012 the conference celebrates 20 years since the Mabo decision, and is timed to follow on from events organized by the community on Sunday 3 June in Townsville.

Call for papers

Proposals for papers, panels, dialogue forums and Indigenous talking circles are invited for consideration by the conference conveners. Please submit your proposal with an abstract (up to 200 words) and biography (up to 150 words each) to nativetitleconference@aiatsis.gov.au by

Monday 20 February 2012

For further information, visit the conference website at: <http://www.aiatsis.gov.au>

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AIATSIS

AUSTRALIAN INSTITUTE OF
ABORIGINAL AND TORRES STRAIT
ISLANDER STUDIES

Native Title Research Unit, AIATSIS

NATIONAL NATIVE TITLE CONFERENCE 2012

Echoes of Mabo: Honour and Determination

4-6 June 2012, Townsville

In 2012, the annual National Native Title Conference will be co-convened by the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) and North Queensland Land Council (NQLC) on the traditional lands of the traditional owners of the Townsville area. It will be held at the Townsville Entertainment and Convention Centre from 4-6 June 2012. In 2012 the conference celebrates 20 years since the Mabo decision, and is timed to follow on from events organized by the community on Sunday 3 June in Townsville.

This year the theme of the conference is "Echoes of Mabo: Honour and Determination". The conference will address the following sub themes:

- Recognition, Reform, Revolution
- Leadership and Legacies
- Families and Youth
- Culture and Country

Relevant topics within these themes include decision making, case law, the experiences of Prescribed Bodies Corporate, compensation, water, hunting practices, cultural life, joint-management, anthropology and legal practice, mediation and dispute resolution, document and information management, making and implementing agreements, benefits, economic development, local government planning regimes, health, governance, weeds, housing, climate change, heritage, lateral violence, history, language, funding, policy, legal reform, environmental issues, international comparisons, research and statistics, sovereignty, reflections on the last 20 years, social relationships, theoretical developments, and future trends.

Conference presentations will be in five formats: keynotes and plenary speeches, dialogue forums, technical workshops, topical workshops and Indigenous talking circles.

Call for Papers

We encourage you to submit proposals for papers, panels and talking circles for consideration by

the conference conveners. Please submit your proposal with an abstract (up to 200 words) and biography (up to 150 words for each presenter) to nativetitleconference@aiatsis.gov.au by Monday 20 February 2012. Your proposal must include the Call for Papers Submission Form, available on our website or through contacting the NTRU. If you have any questions, please contact us on (02) 6246 1167 or at nativetitleconference@aiatsis.gov.au

For regular conference updates, visit the website: <http://www.aiatsis.gov.au/ntru/NTC12.html>

The program conveners will endeavour to meet your proposal, but this may not always be possible, or another choice may be offered to include you in the program.

RNTBC Regional Meetings

**Matthew O'Rourke,
PBC Project Officer, AIATSIS**

At national meetings of Registered Native Title Bodies Corporate (RNTBCs) convened by AIATSIS in 2007 and 2009, RNTBCs requested state or regional opportunities to meet with each other and engage directly with Commonwealth and State government representatives about issues relevant to managing native title rights and interests. Native title holders in Western Australia, Queensland and Victoria have now had the opportunity to meet in these settings. These meetings aim to provide directors or representatives of RNTBCs with an opportunity to come together to discuss shared challenges, concerns and achievements.

The NTRU has convened three RNTBC meetings, the first on 31 August– 2 September 2011 in Balgo WA. The meeting comprised representatives from Tjambu Tjambu (Aboriginal Corporation) and Parna Ngururrpa (Aboriginal Corporation) and took place at the Balgo Community Centre. The meeting was co-facilitated with the Central Desert Native Title Services and with the support of consultant anthropologist, David Martin.

Western Australia government representatives from various departments attended the meeting. The Department of Sustainability, Environment, Water, Population and Communities discussed the Caring for Country Program, Indigenous Protected Areas and carbon farming. The Department of Indigenous Affairs



(DIA) provided examples and outlined opportunities for leasing Aboriginal Lands Trust (ALT) land and the Department of Regional Development and Lands (Royalties for Regions) provided an overview of potential funding opportunities. Commonwealth government representatives from the Department of Broadband, Communications and the Digital Economy also attended and discussed RNTBC internet access, remote business, recording culture and the My Story database.



Western Australia Registered Native Title Bodies Corporate meeting in Balgo

The second meeting took place in Cairns on 25-27 October 2011. Representatives from 26 Queensland RNTBCs attended the workshop. This included representatives from five RNTBCs of the Torres Strait Islands. The Queensland meeting involved native title representative bodies throughout the state and was facilitated by Lisa Strelein, Vincent Mundraby and Valerie Cooms.

Queensland government representatives from various departments attended the meeting. The Aboriginal and Torres Strait Islander Land Acts Branch of the Department of Environment and Resource Management (DERM) discussed the transfer of land under the Aboriginal and Torres Strait Islander Land Acts 1991, they gave examples for transfer of inalienable freehold in Cape York and land trusts under specific protected areas. The Department of Local Government and Planning discussed planning processes and relationships with local councils. The Remote Indigenous Land and Infrastructure Program Office in the Department of Communities provided information on facilitating home ownership, surveys, community engagement and planning and 40 year leases.

The Department of Employment, Economic Development and Innovation (DEEDI) discussed the development of economic and business expertise for Indigenous organisations. Commonwealth government agency representatives from FaHCSIA presented information on existing funding and support for RNTBCs and the Indigenous Leadership Program. Indigenous Business Australia spoke to the group on potential collaborations with RNTBCs.



Queensland Registered Native Title Bodies Corporate meeting in Cairns

The most recent meeting took place in Melbourne, 13-14 December 2011. Representatives from all four Victorian RNTBCs attended the meeting. The Victorian meeting was facilitated by Austin Sweeney of NTSV and Lisa Strelein of AIATSIS. Victorian government representatives from Aboriginal Affairs Victoria discussed potential opportunities for cultural heritage business development and the review of the Aboriginal Heritage Act 2006 (Vic). A representative from the Parliament of Victoria Environment & Natural Resources Committee gave a presentation on the parliamentary inquiry into Registered Aboriginal Parties. Representatives from the Department of Sustainability & Environment presented on state government planning for Victoria's Forests and Parks. The Native Title Unit from the Department of Justice and FaHCSIA both spoke about RNTBC funding.

All meetings provided the opportunity for RNTBCs to familiarise themselves with each other's activities, issues, structures, challenges and aspirations. Short informal presentations from RNTBC representatives and breakout sessions with small groups were used



to promote discussion. These sessions highlighted the work that RNTBCs are doing and this was then compared to what they would like to be doing if they had resources and time.



Victorian Registered Native Title Bodies Corporate meeting in Melbourne

Common issues were shared at all workshops, with many RNTBC representatives speaking positively about the strength and determination of their groups. However as was the case at both national RNTBC meetings in 2007 and 2009, RNTBCs were disheartened by the lack of funding for RNTBCs to allow for effective governance, coordination, administration and to fulfil their statutory responsibilities. Participants from all meetings identified the importance of RNTBCs supporting each other in business and commercial activities and for regular RNTBC national and state or regional based meetings.

It is hoped that through the AIATSIS RNTBC Support Project progress can be made towards national RNTBC representation to generate greater cohesion in the RNTBC sector and influence policy design in a way that matches the needs of native title communities. All three meetings have provided RNTBCs with the opportunity to discuss these issues. AIATSIS is still in the process of seeking representatives from other jurisdictions.

A South Australia RNTBC meeting will be taking place on the 11-13 February 2012 in Port Augusta, SA. This will be co-convened with South Australia Native Title Services (SANTS). AIATSIS acknowledges the funding support of the Native Title and Leadership Branch of FaHCSIA for these workshops. For further information please contact Matt O'Rourke on (02) 6246 1158 or morourke@aiatsis.gov.au.

For more information on RNTBCs see the website at www.nativetitle.org.au

Weeds management on native title lands

Nick Duff, AIATSIS

A new AIATSIS research project is considering the relationship between native title and the weeds responsibilities of 'land holders' under different State and Territory land management legislation. This project is funded by the Rural Industries Research and Development Corporation (RIRDC), and is considering three research issues:

- the implications of the changing nature of land ownership for Australia's weed management;
- the weed management priorities of native title holders; and,
- the opportunities and limitations of current weed institutions, policies and programs with respect to native title holders.

In October 2011, NTRU Research Fellow Jessica Weir convened a workshop, 'Managing Weeds on Native Title Lands', in partnership with Bruce Goring from the Nulungu Centre for Indigenous Studies at Notre Dame University's Broome campus, and with input from the Kimberley Land Council. Workshop participants included Kimberley Indigenous Ranger groups, registered native title bodies corporate (RNTBCs), State and Commonwealth government departments, non-government organisations, and the Kimberley Land Council. The workshop was facilitated by Paul Mitchell from EthnoScapes. One aim was to provide an opportunity for non-Indigenous stakeholders to gain a better understanding of the cultural landscape for weeds management on native title lands, as well as the governance and logistical environment of RNTBCs (the corporate entities that hold native title rights and interests under the *Native Title Act 1993* (Cth)). Another aim was to give RNTBC land managers an opportunity to talk to other stakeholders about effective systems of weed management and issues of funding.

The workshop included a field trip to Minyirr Park, a coastal reserve adjoining Cable Beach in Broome. The field trip was hosted by Yawuru man Michael 'Micklo' Corpus and the Yawuru Rangers, who spoke to participants about Minyirr Park's cultural significance, the ecological degradation it had experienced over the years, and the efforts that traditional owners had made to protect and rehabilitate the site in conjunction with the Shire of Broome and the Western Australian Department of Environment and Conservation.

On the second day, the workshop presentations began with the Wunggurr (Willingin), Bardi Jawi, Karajarri, and Yawuru Ranger groups. The rangers and ranger coordinators spoke about the need to control weeds on their country to protect culturally significant sites and species, including bush food and medicine. Some of the main challenges they faced were the large land areas involved; the lack of sufficient funding for chemicals, equipment, training, and wages; and the limited capacity of their RNTBCs in administration and communication with external stakeholders. Rangers stressed the importance of cultural protocols and cultural competence – to be respected by both government and the rangers themselves. Alan Lawford ('Doody'), a Walmajarri man and the manager of Bohemia Downs Station, shared his experiences with weeds on an Aboriginal-owned pastoral station on native title country. He also spoke about the sorry history of weed control in the region, when in the 1970s the government paid Aboriginal people to spray Noogoora burr infestations along the Fitzroy River without protective clothing, training, or any warning about the dangers posed by the pesticide chemicals. Many people died and continue to suffer chronic illness as a result.

Representatives of the Western Australian Department of Agriculture and Food, Department of Environment and Conservation, and Main Roads WA, presented information about the areas of their respective responsibility. Participants discussed the question of who holds legal obligations to control weeds on different tenures within native title land. It emerged that there is considerable uncertainty and ambiguity on this question, and that statutory amendment and ILUAs dealing with weeds issues will be necessary to clarify the situation. It also became clear that in some situations, native title holders will have legal obligations to control weeds but without any funding to enable them to discharge those obligations.

Other presentations and contributions on collaborative weeds management in the Kimberley were given by Environs Kimberley, the Commonwealth Department of Sustainability, Environment, Water, Population and Communities, Rangelands NRM WA and the Australian Quarantine and Inspection Service. Different management and funding schemes were discussed, including Indigenous Protected Areas, Working on Country, Weeds of National Significance, Kimberley Science and Conservation Strategy, and joint management opportunities. Government stakeholders said that while their ability to commit

substantial funding for weeds management was limited, they could assist with some of the administrative and procedural hurdles that may otherwise make it difficult for RNTBCs and ranger groups to access funding sources. The need to promote the importance and benefits of weeds management to decision-makers in broader policy forums was also stressed.



Bardi Jawi Rangers Gemma Chaquabor and Kevin George with Bardi Jawi Ranger Coordinator Todd Quartermaine, talking about their work and its challenges. Facilitator Paul Mitchell behind.

A recurring issue in the discussion was that weeds management funding is largely limited to weeds that are 'declared' by the WA Department of Agriculture and Food. Declared weeds almost always present some risk to agriculture or some other economic risk, to the exclusion of cultural, social, ecological, or even broader economic values (such as tourism or cultural economic livelihoods).

To round off the workshop, participants broke into groups to design the key elements of a collaborative weeds management plan for native title lands. This activity produced some really useful and practical insights into how the important and difficult task of controlling weeds can be improved through better coordination, and increased and more strategic resourcing.

Overall, five main themes emerged from the workshop.

Clear responsibilities

A clear allocation of legal responsibilities for weeds management is required, and any decisions about allocating legal responsibility should take into account the resourcing and capacity constraints of traditional owners.

Proper process

Government agencies, companies, and other parties need to invest in understanding the cultural landscape,

and obtaining approvals for weeds work. This includes appreciating the role of RNTBCs in holding native title and representing the decisions and interests of the community; cultural protocols; Indigenous ecological knowledge; and the history of relations between government and traditional owners.

Proper priorities

The process and criteria for declaring weeds at the State level is too narrow. Further work is needed on identifying Aboriginal cultural values that may be threatened by weeds – mapping cultural sites, developing ways of explaining or ‘measuring’ the cost of different weeds in different places, so that cultural values can compete for priority on the agenda.

Proper resourcing

There are a number of issues with current funding for weeds management, including insufficient funding, funding being tied to a narrow list of specific species, and funding being short-term and one-off. Funding to support the administrative and organisational capacity of RNTBCs was also highlighted as a key priority.

Integrated, holistic and coordinated efforts

Weeds sit within a complex web of interconnected issues, and recognising these interconnections can help with better management of all of those issues. Weeds management needs to be coordinated between all parties, with a proactive and holistic approach.

These five themes are discussed at greater length in the weeds workshop report, which will be available shortly online. If you wish to have an electronic copy emailed to you, please contact jess.weir@aiatsis.gov.au.

The Kimberley workshop has provided valuable contextual information to support our national research into weeds responsibilities and native title. The outcomes of our national research, including a legal analysis of whether native title holders are responsible for weeds management, will be reported on at the National Native Title Conference 2012 and in a project report in 2012.



Yawuru man Micklo Corpus with Yawuru Rangers project manager Dean Mathews, explaining threats to culturally significant species such as the gubbinge tree to workshop participants in Minyirr Park

The Social Justice and Native Title Reports 2011

Mick Gooda - Aboriginal and Torres Strait Islander Social Justice Commissioner

The Aboriginal and Torres Strait Islander Social Justice Commissioner (Social Justice Commissioner), Mick Gooda, is required by legislation to prepare two reports on Aboriginal and Torres Strait Islander peoples' human rights issues each year – the *Social Justice Report* and the *Native Title Report*.

Both Reports are tabled annually in federal Parliament and consider major issues in Aboriginal and Torres Strait Islander affairs. They include recommendations to governments that promote and protect the rights of Aboriginal and Torres Strait Islander peoples.

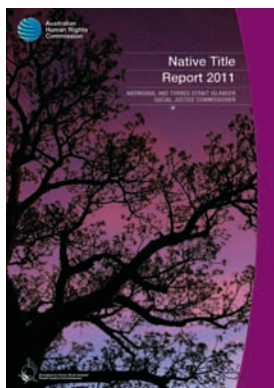
The 2011 *Social Justice and Native Title Reports* identify the key developments affecting Aboriginal and Torres Strait Islander peoples between 1 July 2010 and 30 June 2011. These include a broad range of issues such as:

- native title reform
- the National Congress of Australia's First Peoples
- constitutional reform and recognition
- the Northern Territory Emergency Response
- giving effect to the *United Nations Declaration on the Rights of Indigenous Peoples*
- the Indigenous Human Rights Network Australia
- the Close the Gap campaign
- the Australian Government's engagement framework and draft Indigenous Economic Development Strategy.



This year's *Social Justice and Native Title Reports* also start a conversation about lateral violence. Lateral violence, also known as horizontal violence or intra-racial conflict, is created by experiences of powerlessness. It plays out in families and communities through behaviours such as gossiping, jealousy, bullying, shaming, social exclusion, family feuding, organisational conflict and physical violence.

Both of the Reports outline examples of lateral violence in Aboriginal and Torres Strait Islander communities. The *Social Justice Report* looks at the historical and contemporary factors in Palm Island, cyber bullying, young people and bullying in schools, organisational conflict, workplace bullying, social emotional wellbeing and involvement in the criminal justice system.



The *Native Title Report* talks about how native title provides a system for lateral violence to be played out within Aboriginal and Torres Strait Islander families, communities and organisations. The Report notes that, although native title can generate positive outcomes for Aboriginal and Torres Strait Islander

peoples, these outcomes often do not occur because lateral violence fragments communities as they navigate the native title system.

Commissioner Gooda argues that lateral violence is a human rights issue and that the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) provides the most promising overarching response to lateral violence. This is because the Declaration contains the following key principles: self-determination; participation in decision-making; non-discrimination and equality; and respect for and protection of culture. These principles underpin all human rights and guide Aboriginal and Torres Strait Islander peoples to build stronger relationships within their families and communities.

Using these principles, the *Social Justice Report 2011* and *Native Title Report 2011* set out options to establish strong structural foundations to address lateral violence including:

- Naming lateral violence as a process of raising awareness and education.
- Undertaking legislative review and policy reform to assist Aboriginal and Torres Strait Islander communities to create structures that promote healthy relationships within their communities and with external stakeholders.
- Creating environments of cultural resilience within Aboriginal and Torres Strait Islander communities.
- Creating cultural competency by governments, non-government organisations and industry who engage with Aboriginal and Torres Strait Islander communities.

What's New

Recent Cases

Delaney on behalf of the Quandamooka People v State of Queensland [2011] FCA 741

4 July 2011

Federal Court of Australia, Stradbroke Island QLD

Dowsett J

This judgment recognises, by consent, the native title of the Quandamooka people over land and waters at Stradbroke Island in Queensland.

Dowsett J outlined the legal principles, the historical background, the anthropological research and the evidence of claimant witnesses. His Honour found that the Quandamooka people are descended from a society of Aboriginal people who were in occupation of the land and waters of the determination area at the time of first assertion of British sovereignty. Those people formed a society, united in and by their acknowledgment and observance of traditional laws and customs. Through the observance of these traditional laws and customs, the Quandamooka people have maintained a connection with the determination area.

The determination recognises exclusive rights to possession, occupation, use and enjoyment of some areas. In other areas, the claimants have non-exclusive rights to live and be present on the area; take, use, share and exchange traditional natural resources for personal, domestic and non-commercial communal purposes; conduct burial rites; conduct ceremonies; teach on the area about the physical and spiritual attributes of the area; maintain and protect significant places; light fires for domestic purposes; be accompanied into the area by non-Quandamooka people required by traditional law and custom for the performance of ceremonies or cultural activities, or required by the Quandamooka people to assist in observing or recording traditional activities on the area. In other areas, more limited non-exclusive rights were recognised. In relation to water, the claimants were recognised as having the right to take and use traditional natural resources from the water for personal, domestic and non-commercial communal purposes; and to take and use the water for personal, domestic and non-commercial communal purposes. The rights and interests were recognised subject to certain other rights and interests of other parties.

Dowsett J concluded the judgment with the following words:

I have not come here today to give anything to the Quandamooka people. These orders give them nothing. Rather, I come on behalf of all Australian people to recognize their existing rights and interests, which rights and interests have their roots in times before 1788, only some of which have survived European settlement. Those surviving rights and interests I now acknowledge. In so doing I bind all people for all time...

I congratulate the Quandamooka people upon their achievements today. I do so on behalf of all Australian people, but particularly on behalf of the Judges of this Court and our staff. We know that the years since first European settlement have not been kind to you and to those who have gone before you. There has been much sadness for which the belated recognition of ancient rights offers little compensation. Nonetheless we hope that with this step today, you will have a firm basis for a brighter future in which we hope to help rather than hinder, and in which we hope to share.

Wonga on behalf of the Wanyurr Majay People v State of Queensland [2011] FCA 1055

31 August 2011

Federal Court of Australia, Babinda QLD

Dowsett J

This is a consent determination in favour of the Wanyurr Majay people over areas of land around Mount Bellenden Ker in North Queensland.

Dowsett J set out the legal principles governing consent determinations before outlining the anthropological material that established the relationship of the claimant group to its broader cultural context. The Wanyurr Majay people form a separate group within the broader Yidinji language bloc, which itself is part of the larger Yidinyji/Gungganyji/Djabugay rainforest peoples. Groupings, such as clans or families, exercise rights and interests in specific tracts of land at a level below these recognised groupings, as a consequence of the recognition afforded to those rights by the body of laws and customs held in common by a broader community of native title holders. His Honour referred to evidence from claim group members describing the interrelation of these groupings, and their relationship to country.

Dowsett J went through the historical material and was satisfied that the Wanyurr Majay people were a normative society at the time of assertion of British sovereignty. Through the continued acknowledgement and observance of their traditional laws and customs they have maintained a connection with the claim area. His Honour was satisfied that it was within the power of the Court to make the orders sought and that those orders could appropriately be made without a trial.

The determination recognised non-exclusive rights to access; camp; hunt, fish and gather; take, use, share and exchange natural resources from the area for personal, domestic and non-commercial communal purposes; light fires for domestic purposes; conduct ceremonies; teach; maintain and protect significant sites. In relation to water, the claimants have the non-exclusive rights to hunt and fish in or on, and gather from, the water for personal, domestic and non-commercial communal purposes; and take and use the water for personal, domestic and non-commercial communal purposes. These rights were subject to a number of qualifications and the rights of other parties.

Hart on behalf of the Djiru People 2 v State of Queensland [2011] FCA 1056

1 September 2011

Federal Court of Australia, Mission Beach QLD

Dowsett J

In this judgment the Court made orders by consent recognising the Djiru people's exclusive and non-exclusive native title rights and interests in areas around El Arish and Mission Beach in northern Queensland.

Dowsett J set out the principles governing the making of consent determinations, noting that the Court must be satisfied that the proposed orders are within the Court's power and that it is appropriate to make the orders. His Honour noted that in some circumstances the Court may decline to act on facts agreed between the parties, especially because the determination may affect the interests of persons who are not party to the application. In this case, there was no reason to depart from the parties' consensual resolution of the issues: all parties had the benefit of appropriate legal advice and representation, the proceedings had been on foot for eight years and had been appropriately publicised, and the government parties had acted as suitable guardians of the public interest.



Dowsett J summarised some of the archaeological and anthropological evidence supporting the claim, stating that Aboriginal people had occupied the rainforest area for at least 5,100 years and used and occupied the off-shore islands for the last 1,700 years. The coastal flood plain has been occupied and exploited for the last 2,000 years, and the Aboriginal occupation of upland rainforest areas dates from about 700 year ago. The Djiru people demonstrated, through extensive anthropological research, their unbroken physical connection to their country since first contact with European explorers and settlers, and their continuous acknowledgement and observance of traditional laws and customs.

The exclusive rights and interests were defined in the determination as the rights to possession, occupation, use and enjoyment, to the exclusion of all others, although in some areas those rights are subject to other rights and interests of public agencies, utilities, Indigenous land use agreement (ILUA) partners, and the general public.

The non-exclusive rights included access; camping; hunting, fishing and gathering for personal, domestic and non-commercial communal purposes; taking and using natural resources including water for personal, domestic and non-commercial communal purposes; exchanging and sharing non-water resources; conducting ceremonies; burial; maintenance of significant sites; teaching; lighting fires for cooking but not for hunting or clearing vegetation.

The determination recognised rights below the high water mark, and rights in relation to waters.

Dowsett J acknowledged that only some of those traditional rights and interests have survived European settlement, and said:

We know that the history of the Djiru people since European settlement has been hard. There was substantial dislocation by removals, both before and after the 1918 cyclone. We hope that in what we do today, we will assist the Djiru people to enjoy a better future in which we hope to share.

Hazelbane on behalf of the Warai and Kungarakany Groups v Northern Territory of Australia [2011] FCA 1186

19 October 2011

Federal Court of Australia, Darwin NT

Mansfield J

In this matter, three separate claims exist over a single area of land. One of the applicants sought leave from

the Court to discontinue their claim, because funding was not available for legal representation and the applicant considered that they could not properly present their case. Leave to discontinue was granted on the condition that the claim group not be allowed to make a new application, or to join as a respondent to the other two claims, without the Court's leave.

Three native title applications had been made over an area around the town of Batchelor in Northern Territory – the Hazelbane application, the Petherick application and the Devereaux application. Negotiations between the Northern Territory, the Hazelbane applicants and the Petherick applicants, had been progressing towards a resolution of those two claims. The Devereaux applicants declined to participate in those discussions, and the matter was at a stalemate. The Court ordered a separate trial on the issue of whether the Devereaux applicants represented a native title claim group with native title rights and interests in the claim area.

During the trial the Devereaux applicants sought an adjournment to obtain legal representation and to gather further evidence. When the hearing resumed, the Devereaux claimants indicated through their legal representative that they wished to discontinue their claim because they were unable to obtain funding for ongoing legal assistance and felt unable to present their claim properly without legal assistance. They indicated that they still intend to be respondents to the Hazelbane and Petherick applications, in order to maintain their resistance to those two claims.

Mansfield J, on the suggestion of the Northern Territory and the other two applicants, decided to allow the Devereaux applicants to discontinue on two conditions:

- that the Devereaux claimants not be allowed to start a fresh native title application over the Batchelor area without the leave of the Court; and
- that they not be allowed to act as respondent in the other two applications for the purpose of asserting rights and interests inconsistent with those claimed in the other applications, without the leave of the Court.

It was understood that the Court would not grant leave for the Devereaux claimants to recommence their claim unless they could present new and cogent anthropological evidence in support of their claim.

These conditions were considered necessary to prevent the disagreement between the Devereaux

claimants and the other claimants from continuing to hinder a negotiated resolution. This does not exclude the Devereaux claimants from negotiations between the other parties – they may participate in discussions with a view to ensuring that their interests are reflected in an ultimate agreement. Mansfield J stated that his decision in this judgment did not reflect any view about the strength or weakness of any of the claims – there had simply been no adjudication on that question. Allowing the discontinuance of the Devereaux claim was considered the better alternative to proceeding to a trial in circumstances where the applicants considered themselves unable to present their case properly. And the conditions attached to the discontinuance were regarded as necessary to allow the ultimate resolution of the outstanding claims.

Tucker on behalf of the Narnoobinya Family Group v Western Australia [2011] FCA 1232

31 October 2011

Federal Court of Australia, Sydney NSW

Marshall J

This judgment deals with an application to amend the points of claim in a native title application. The amendment was refused because it would serve no useful purpose, as the claim would be invalid anyway because it was not properly authorised by the entire claim group.

Two claims had been filed with substantially overlapping claim areas. One claim is called the Ngadju claim and the other the Narnoobinya claim. On 29 January 2010, the Narnoobinya applicant filed her points of claim. Relevantly, those points of claim include the following statements:

- The Narnoobinya group is one of the family groups that make up the Ngadju people, or is part of one of the family groups that make up the Ngadju people, namely the Dimer family.
- Native title in the claim area is held in common by the Ngadju people, which includes the Narnoobinya group; or alternatively group rights are held by the Narnoobinya group and others as members of the Dimer family group; or alternatively group rights are held by the Narnoobinya group as members of the broader Ngadju society.

The Goldfields Land and Sea Council (GLSC), on behalf of the Ngadju applicants, applied for the dismissal of the Narnoobinya claim. The day before the dismissal hearing, the Narnoobinya applicant proposed amended points of claim. At the hearing it became apparent that if the amendment were

not allowed, then the Narnoobinya claim would be dismissed on the grounds that there would be no serious issue to be tried.

The proposed amended points of claim state that:

- The members of the Narnoobinya group are all descendants of Anna Whitehand, one of the members of the ‘original society’ being ‘the Ngadju peoples’.
- Anna Whitehand was a member of the family group that held the native title rights and interests:
 - to the exclusion of all others in one part of the claim area, and
 - together with other members and family groups of the original society in the remainder of the claim area, subject to the rights of particular family groups to particular areas.

In the proposed amended points of claim, the Narnoobinya group claims exclusive native title in one part of the claim area, and in the other part of the claim area claims native title ‘together with other Ngadju peoples’ in the remaining area, subject to the rights and interests of particular family groups in particular areas.

The Narnoobinya applicant filed an affidavit in support of the proposed amendment, stating:

- She was ‘not in a clear frame of mind’ when she signed the original points of claim, on account of the death of her husband six weeks earlier.
- When she re-read the points of claim in November 2010 she realised they were inaccurate.
- She drew the inaccuracies to the attention of other members of the claim group, who had not seen the original points of claim and who agreed with her views about inaccuracies.
- She then instructed her solicitor to prepare the proposed amended points of claim.

GLSC objected that the amendments withdraw important admissions relating to the Ngadju claim, admissions that the Ngadju claimants had relied on in resolving to recognise the Narnoobinya claimants as members of the Ngadju Dimer family. It argued that the Narnoobinya applicant had made no satisfactory explanation for why the admissions had been made or for the delay in withdrawing them. It said that the Ngadju claimants would suffer significant prejudice if the amendments were allowed.

In addition to these objections, GLSC argued that the amendments would be futile because the Narnoobinya



claim would still be invalid for failure to comply with the authorisation requirements of s 61 *Native Title Act 1993* (Cth). Marshall J agreed with this argument:

- Section 61 requires that a claim be made and authorised by all of the persons who, according to their traditional laws and customs, had the common or group rights and interests over the area claimed.
- This means that a sub-group cannot bring a claim in its own right, unless under traditional law and custom the sub-group possess exclusive rights and interests in its own right. In that case, it is properly regarded as a claim group rather than a sub-group.
- The Narnoobinya claim, if amended as proposed, would purport to cover areas in which other Ngadju persons are admitted to have rights and interests. Those other persons had not authorised the making of the Narnoobinya claim, meaning that the application did not comply with s 61.

Marshall J considered that the Narnoobinya application could be amended to limit the claim area to those areas which are claimed as exclusive Narnoobinya land. This would not save the application, however: even in that amended form, the application would not have been authorised by all of the persons comprising the Narnoobinya claim group. A brother of the Narnoobinya applicant, who was caught by the definition of the Narnoobinya claim group as set out in the proposed amended points of claim, had apparently not authorised the amendments. The Narnoobinya applicant argued that her brother is no longer part of the group, but Marshall J held that it is not open to the claim group to self-define: the group is defined by traditional law and custom.

Further, his Honour held that the claim of exclusivity was bound to fail. Under cross examination, the Narnoobinya applicant's sister made it clear that non-Narnoobinya Ngadju persons have rights and interests in the area which is claimed exclusively as Narnoobinya land.

Marshall J refused the amendments on account of:

- the GLSC's objections about prejudice and the lack of a satisfactory explanation for the earlier admissions and the delay;
- the inclusion of areas that the Narnoobinya applicant admitted were not exclusive of broader Ngadju rights and interests; and
- the failure for the entire Narnoobinya claim group to authorise the amendment.

This decision does not shut out the Narnoobinya group completely: they may have native title rights recognised as part of the broader Ngadju claim, or they may make a fresh application that is properly authorised under s 61.

Murgha on behalf of the Combined Gunggandji Claim v State of Queensland [2011] FCA 1317

14 November 2011

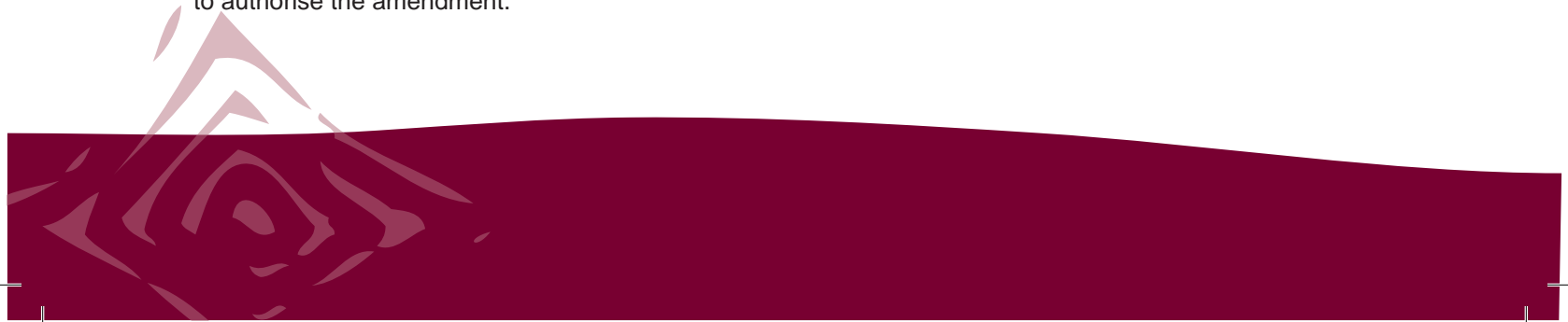
Federal Court of Australia, Brisbane

Dowsett J

This judgment concerns the authorisation of native title applicants. Before November 2004 this native title claim was being conducted by three named applicants. At a meeting in November 2004, a proposal was made to remove one of the named applicants, and the claim group decided that such a decision should be made by the elders. The elders held a separate meeting and decided that the person should be removed. Dowsett J subsequently made an order to remove that person as applicant, with the remaining two individuals continuing to act jointly as applicant. In August 2010, one of those two remaining applicants died. The sole remaining applicant, Mr Murgha, applied to have the deceased applicant's name removed from the application – effectively making himself the sole authorised applicant for the claim. The claim was scheduled for a consent determination in December 2011.

Mr Murgha argued he was entitled to make the application to remove the deceased applicant, in an exercise of his power as an authorised applicant. Cases cited in support of this argument were *Lennon v State of South Australia* [2010] FCA 743 (Mansfield J) and *Dodd on behalf of the Gudjala People Core Country Claim #1 v State of Queensland* [2011] FCA 690 (Logan J). Dowsett J, however, preferred the opposite view as expressed by Siopis J in *Sambo & Ors v Western Australia & Ors* (2008) 172 FCR 271. On that view, s 66B (Cth) sets out the only method available for changing the named applicants for a native title application, and requires the 'new' applicant to be properly authorised by the claim group.

Dowsett J accepted that the claim group's original authorisation of Mr Murgha and the deceased applicant could, in principle, have contained an implied power for a surviving applicant to remove a deceased applicant. His Honour, however, did not consider that the evidence established that the claim group intended such an implied power when they originally authorised the applicants. He said 'Were the matter to be resolved purely upon the evidence



as to the terms of the original authorization I would be inclined to the view .. that the claim group must authorise any application for the removal of Mr Harris as an applicant or, more correctly, authorizing Mr Murgha to act alone'.

There were additional facts, however, that supported a different outcome. Since the death of the other named applicant, the claim group had met as a whole to authorise a number of Indigenous land use agreements, and various working groups from the claim group had met in regard to various aspects of the native title claim. The members of the claim group were certainly aware of the deceased applicant's death, and Dowsett J considered it reasonable to infer that they intended for Mr Murgha to continue as the sole applicant and had implicitly authorised him to do whatever was necessary to formalise that arrangement. Accordingly, Dowsett J considered that Mr Murgha was properly authorised pursuant to s 66B. His Honour made the order to make Mr Murgha the sole applicant for the claim.

***Smith v Marapikurrinya Pty Ltd* [2011] FCAFC 150**

25 November 2011

Full Court of the Federal Court of Australia, Perth Stone, Siopis and Collier JJ

This judgment raises an issue of legal standing, and also deals with the question of whether a corporation offering to conduct Aboriginal heritage surveys in a native title claim area is purporting to act on behalf of individual members of the native title claim group.

The judgment is an appeal against a decision of Gilmour J in the Federal Court. A number of Kariyarra individuals had brought an action under the *Trade Practices Act 1974* (Cth) against Marapikurrinya Pty Ltd and its directors, alleging that the corporation had falsely represented that it is a representative of the Kariyarra People and entitled to act in that capacity. Before the case came to trial, the parties agreed to a consent orders intended to resolve the matter. One of the proposed orders was for the making of a declaration that 'The [Respondents] do not have and have not previously had authority to act for or on behalf of the Applicants in relation to any matters'.

Gilmour J refused to make this order for a number of reasons: first, on the grounds that the individual Kariyarra persons had no standing to bring the proceeding; second, because there would be no utility in making the declaration sought; and third, on the basis that there was 'no justiciable controversy' between the parties.

On the standing issue, his Honour considered that the *Trade Practices Act* matter was so closely connected to the Kariyarra native title claim that only the native title applicant (the person or persons authorised by the claim group) were capable of bringing an action complaining that the corporation was falsely claiming to represent the claim group. As individuals, the persons who had in fact brought the claim lacked the requisite standing.

The individual Kariyarra persons appealed from Gilmour J's decision, arguing that his Honour had wrongly decided the standing issue. On appeal, Stone, Siopis and Collier JJ supported Gilmour J's reasoning but found it unnecessary to make a final decision on the standing issue. Instead, their Honours considered that Gilmour J's refusal to make the declaration sought by the parties was a valid exercise of his discretion.

In particular, the Court on appeal agreed with Gilmour J's view that the evidence did not establish that the corporation had purported to act on behalf of each individual person in the Kariyarra claim group. Any evidence that the corporation had purported to represent the claim group as a whole did not amount to evidence that the corporation had purported to represent each member individually. This meant, in the Court's view, that it was inappropriate to make the declaration sought, and so the appeal against Gilmour J's decision was dismissed.

***Pat v Yindjibarndi Aboriginal Corporation* [2011] WASC 354**

29 November 2011

Supreme Court of Western Australia (in Chambers), Perth Master Sanderson

This judgment deals with the grant of an injunction to prevent certain actions being taken at the annual general meeting of an Aboriginal corporation and registered native title body corporate.

The plaintiffs commenced proceedings to have a receiver appointed to the Yindjibarndi Aboriginal Corporation, and to reinstate certain persons as members and directors of the Corporation. Before the substantive hearing in those proceedings, the plaintiffs applied for an injunction that would:

- prevent the Corporation from holding its annual general meeting unless 21 days' notice was given to the plaintiffs and certain other persons;
- prohibit the Corporation from preventing the plaintiffs and certain others from attending the meeting and participating as members;



- prevent the Corporation from considering certain matters or draft resolutions.

The plaintiffs' case in the substantive proceeding was that at the previous annual general meeting the Corporation had purported to cancel the membership of numerous persons including the plaintiffs. They say this cancellation was ineffective because it required notice of a special resolution to be given prior to the meeting (s 201.35(1)(c) *Corporations (Aboriginal and Torres Strait Islander) Act 2006*). No such notice was given.

In the circumstances, Master Sanderson considered that it would be unfair to allow the Corporation to conduct its 2011 annual general meeting without having given proper notice to the plaintiffs, and without allowing the plaintiffs to participate in debates and cast their votes. Accordingly, the injunction in respect of those matters would be granted.

In relation to the matters to be decided at the meeting, Master Sanderson agreed to grant an injunction preventing the meeting from considering a resolution that would amend the eligibility criteria for membership. The plaintiffs argued that such amendment would be used to exclude them from membership, and would be oppressive and contrary to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. Master Sanderson did not make a final determination on that question, but considered that there was a serious question to be tried and was therefore satisfied that an injunction was appropriate.

**McKenzie v Minister for Lands [2011] WASC 335
6 December 2011**

**Supreme Court of Western Australia, Perth
Martin CJ**

This decision does not deal directly with native title issues, but instead relates to the legislation under which the Western Australian government can compulsorily acquire land. Native title is raised primarily in relation to issues of legal standing.

In 2008 James Price Point (known as Walmadany to traditional owners) was named by the Western Australian government as the preferred site for a plant to process liquefied natural gas from the Browse basin. If the development goes ahead, it will use land for a number of purposes, including a port, processing plants, pipelines, light industrial facilities, accommodation and other infrastructure. All the land in the vicinity of James Price Point is unalienated Crown land, but is subject to native title claims.

The State, Woodside Energy Ltd and the Kimberley Land Council (KLC) entered into a Heads of Agreement and a Heritage Protection Agreement. A schedule to the Heritage Protection Agreement contained a map setting out the approximate location of the various components of the development, including workers' accommodation and light industrial area. The KLC indicated during negotiations that it was unable to express a preference about the location of the workers' accommodation and light industrial facilities, because it did not have the time and appropriate resources to focus on the question of what commercial and land use arrangements the traditional owners may want in the compensation package.

In May 2010, the State intended to compulsorily acquire land for the development, but there had not been sufficient heritage surveys or negotiations to identify the precise locations for the accommodation and light industrial areas, and therefore for a range of other infrastructure areas also. When the State issued the notices of intention to acquire the land, the notices identified a larger area of land from which smaller areas would be acquired, but did not specify the location of those smaller areas. The size of each smaller area and the total area was indicated, but no specification was made as to the configuration, boundaries or dimensions of the total land to be taken. A number of objections against the compulsory acquisition notices were lodged by traditional owners, many on the basis that the notices did not adequately describe the land required, and in particular did not identify the location and boundaries of the land which was proposed to be acquired. The Minister did not change his decision in response to these objections. A number of those traditional owners then brought an action in the Supreme Court of Western Australia to challenge the acquisition notices. The notices were alleged to be invalid because they did not contain a 'description of the land required' – a feature demanded by s 171(1) of the *Land Administration Act 1997* (WA).

The land to be acquired is subject to one registered native title application and two applications for which registration was refused. The plaintiffs are both members of the Goolarabooloo/Jabirr Jabirr native title claim group (the group whose application is registered) and each is a member of one of the other unregistered applications. One of the plaintiffs is also a Law Boss, whose responsibilities include speaking on behalf of the country, and acting as a custodian and protector of the country in accordance



with traditional law and custom. The Minister argued that the plaintiffs lacked legal standing to challenge the acquisition notices, on the basis that the plaintiffs needed to invoke the Court's federal jurisdiction under s 39(2) *Judiciary Act 1903* (Cth), which in turn required that they establish a 'matter' within the meaning of that section. A 'matter' involves the determination of an immediate right, duty or liability and the Minister argued that the plaintiffs have no such right because they are neither named applicants in their respective native title applications nor members of claim groups that have been already determined to hold native title over the relevant land.

Martin CJ in the Supreme Court rejected the Minister's argument about legal standing on three grounds:

- (i) The plaintiff's challenge does not raise any issue arising under a law of the Commonwealth – it deals solely with the interpretation of a Western Australian statute and its application to uncontroversial facts. Therefore federal jurisdiction is not engaged and there is no need for the plaintiffs to establish a 'matter'.
- (ii) Even if previous ground were wrong, the Minister was mistaken in contending that the 'immediate right, duty or interest' to be determined in a 'matter' must be a right, duty or interest of the applicant for relief. If necessary, the plaintiffs could point to a 'matter' in the determination of the Minister's right to issue an order acquiring the land.
- (iii) Finally, the Minister was incorrect in saying that traditional owner plaintiffs would only have a sufficient legal interest to challenge the acquisition notices if they were (a) the named applicants in a registered application (and therefore held procedural 'future acts' rights under the *Native Title Act 1993*); or (b) members of a claim group who had already been determined to hold native title over the area (and therefore had established substantive legal interests in the land).

This last point was based on the reasoning that a party may seek relief from a Court in relation to a public officer's performance of their duties either because that party's private rights are affected or because the party had some 'special interest' in the matter over and above other members of the public (*Boyce v Paddington Borough Council* [1903] 1 Ch 109; *Onus v Alcoa of Australia Ltd* [1981] HCA 80). Previous authority established that a party could establish this

'special interest' if they could point to an unresolved claim which would be adversely affected by the public act under challenge (*Robinson v Western Australian Museum* (1977) 138 CLR 283). The plaintiffs in the present matter have unresolved claims over the land that would be acquired pursuant to the Minister's notices, claims that would be extinguished should the acquisition go ahead. That was sufficient to establish their standing.

Having confirmed the plaintiffs' standing, Martin CJ went on to find that the acquisition notices had not adequately described the land to be acquired, and were therefore invalid.

Dale & Ors v State of Western Australia & Ors
[2011] HCATrans 332

9 December 2011

High Court of Australia, Canberra
Hayne, Crennan and Kiefel JJ

This is the transcript for an application for special leave to appeal from a decision of the Full Court of the Federal Court.

It raises issues of estoppels and abuse of process in the native title context. Special leave was refused.

In the relevant area of the Pilbara region, there were a number of native title claims that overlapped each other and were ordered to be heard together under s 67(1) *Native Title Act 1993* (Cth). There was a trial relating to a portion of the land area claimed by the present applicants (Dale and others, called the Wong-Goo-TT-OO group), and at that trial the Wong-Goo-TT-OO were held not to be a group capable of holding native title. The Wong-Goo-TT-OO group persisted with their claim over the rest of the claim area. The State of Western Australia applied for the claim to be summarily dismissed on the grounds that it would involve re-litigating the question of whether the Wong-Goo-TT-OO were a group capable of holding native title. The application for dismissal was successful; the trial judge held that the Wong-Goo-TT-OO were prevented from re-arguing the point by the rule of issue estoppel. They appealed against this decision, and on appeal the Full Court considered that, although issue estoppel did not necessarily prevent the Wong-Goo-TT-OO group from pursuing their claim, the claim should nevertheless be stayed as an abuse of process. They then applied for special leave to appeal to the High Court from the Full Court's decision.

Hayne, Crennan and Kiefel JJ refused special leave. They said that for the Wong-Goo-TT-OO claim to



succeed, the applicants would have to controvert conclusions that had been made in the previous trial. Issue estoppel did not prevent the applicants from doing so, because not all of the parties to the current claim were parties in the previous trial. But principles of abuse of process were engaged under these circumstances, since it is 'well settled that an attempt to re-litigate an issue which has been resolved in earlier proceedings may constitute an abuse of process even though the earlier proceedings did not give rise to a *res judicata* or issue estoppel'. The previous findings about the Wong-Goo-TT-OO group were fundamental to the whole of the applicant's claim, and did not depend on geographical factors that may differ between different parts of the claim area. In these circumstances, Hayne, Crennan and Kiefel JJ considered that the applicants would have insufficient prospects of success in an appeal against the Full Court's finding on the abuse of process point. It was on that basis that they refused special leave.

***Kogolo v State of Western Australia* [2011] FCA 1481**

15 December 2011

Federal Court of Australia, Perth

Gilmour J

This case deals with a procedural issue necessary to overcome a mistake made in connection with s 47B *Native Title Act 1993*.

Section 47B allows native title to be recognised in circumstances where it would otherwise be extinguished by the previous creation of some other interest in the land. It requires the previous extinguishment to be disregarded where one or more members of the native title claimant group 'occupy' the area, but only if the relevant land is not covered by a freehold estate, a lease, or a 'reservation, proclamation, dedication, condition, permission or authority, made or conferred by the Crown in any capacity...'

The original native title application in this matter, filed in 1996, covered areas that had never been subject to any extinguishing rights, interests or reservations etc, as well as four areas that had at one stage been reserved for public purposes. The former areas were together the subject of a positive native title consent determination in 2007. At that time, the parties decided that the remaining areas would be dealt with together at a later date, after evidence about the occupation of those areas had been provided. In December 2008 a second native title application was filed in respect of the four excluded areas, and several weeks later the

applicants filed a discontinuance in the first application in respect of the same four areas.

In 2010 it was discovered that one of the four areas, that had previously been subject to a stock route reserve, was subject to an exploration permit when the second native title application was made in December 2008. The exploration permit was granted in 2000, but its operation had been subsequently suspended. At the time that the first native title application was discontinued, all parties assumed that this suspension meant that s 47B could still apply to disregard the previous extinguishment (namely, the stock route reserve). Later, it transpired that even though the operation of the permit was suspended, the permit itself remained on foot, and as such prevented the application of s 47B.

The original application, however, had been filed before the exploration permit had been granted. This meant that s 47B would still apply and the extinguishing effect of the stock route reservation would be disregarded. The applicants therefore applied to have the discontinuance of the original application set aside, and the State respondent consented to this. The Court, however, still had to determine whether it could and should make the order sought.

Gilmour J found that the discontinuance should be set aside on two grounds. Firstly, the applicants' act of filing the discontinuance was a 'nullity' in the eyes of the law, because it was the result of an innocent mistake rather than a deliberate and informed decision. The applicants had relied on the statement by the State's solicitor that s 47B would apply to the stock route reservation, and were not obliged to inquire further into the existence of any extinguishing interests over the land. In light of this, the law regards the discontinuance as never having taken effect. Secondly, the Court has an inherent power to prevent injustice, to be exercised according to judicial discretion weighing up various factors. In this case, if no discontinuance were allowed, the applicants would not have the opportunity of obtaining a determination to which they would otherwise be entitled. There was a viable explanation for the mistake, the application would be likely to succeed if reinstated, and the State would not suffer prejudice (and indeed had consented to the proposed order).



Banjima People v State of Western Australia
[2011] FCA 1454

15 December 2011

Federal Court of Australia, Perth

Barker J

This case deals with two aspects of evidence law. The first issue relates to evidence given by witnesses to support an order to restrict certain men's evidence in the trial. The second question relates to the tendering of affidavits of deceased witnesses.

In the trial of this matter, two of the applicant's witnesses gave restricted men's evidence which was made the subject of confidentiality orders. The State wanted to cross-examine the witnesses about aspects of that restricted men's evidence in open court on the basis that those aspects should not be restricted. The applicant opposed this, and called the two witnesses to give further evidence (subject to the same confidentiality orders) explaining why the whole of the original evidence should continue to be restricted. In light of that further evidence, the Court ruled that the original evidence would continue to be restricted in its entirety.

The applicant then applied for that further evidence to be treated as evidence in support of their substantive native title claim, rather than just evidence supporting the confidentiality orders. The applicant argued that the Court could only properly understand the original restricted evidence if it was put into context by the further evidence. The State opposed this course, arguing that the further evidence was only relevant to the narrow question of the confidentiality orders, having been received in a 'trial within a trial' (called a *voir dire*). The State also argued that it had been open for the applicant to lead this evidence in the normal course of the trial, but that the applicant had not done so. Accordingly, the State argued, if the applicant wanted to have the further evidence considered in support of their substantive native title claim, they would have to tender it again.

Barker J first noted that the section of the *Evidence Act 1995* (Cth) that deals with *voir dire* evidence (s 189) does not apply to questions about whether particular evidence should be restricted. Rather, s 189 addresses preliminary questions as to whether evidence should be admitted, or whether evidence can be used against a person, or whether a witness is competent or compellable. Barker J went on to say that, even if a broader view of 'preliminary questions' is taken, 'the authorities predominantly support the view that the evidence given on a *voir dire* (or trial

within a trial) in such a proceeding as this is evidence in the proceeding and does not need separate tender in order to receive it'. His Honour considered that the witnesses' further evidence was relevant to matters in issue, and that there was no other reason to exclude it.

The second issue considered in this judgment related to affidavit evidence sworn by four witnesses who had subsequently died. The applicant wished to tender the affidavits into evidence, and the State objected on the grounds that it would be unfairly prejudicial because the State had not had an opportunity to cross-examine other witnesses about the matters discussed in the affidavits.

The applicant argued that it had notified the State of its intention to tender the affidavits some six months earlier, when it gave the State a list of documents to be tendered at trial. Against this, the State argued that the applicant should have tendered the affidavits at the opening of the trial to give the State an opportunity to cross-examine other witnesses about the material in the affidavits. The State said it was not obliged to cross-examine on a document just in case the applicant wishes to tender it later.

Barker J noted that the affidavits had been prepared for a different claim lodged in 1999, that the State had been aware of the affidavits for some 11 years, and that they had been notified of the applicant's intention to tender the affidavits in the current proceedings. Further, the State and other parties had extensively cross-examined witnesses about ancestral matters and questions about traditional law and custom. In light of these facts, his Honour was not satisfied that the probative value of the affidavits would be outweighed by the potential prejudice to the State's case. The affidavits were accepted into evidence.

QGC Pty Limited v Bygrave [2011] FCA 1457

16 December 2011

Federal Court of Australia, Brisbane

Reeves J

This judgment concerns a challenge to a decision by a delegate of the Native Title Registrar not to register an Indigenous land use agreement (ILUA). It deals with authorisation issues.

The ILUA sought to be registered was executed between QGC Pty Ltd and representatives of the Bigambul People native title claim group – the only group with a registered native title application in the relevant area. A meeting about the proposed QGC-Bigambul agreement had been held in December



2009, attended by approximately 140 people of whom 38 identified as Kamilaroi/Gomeri, 6 identified as both Bigambul people and Kamilaroi people, and 75 identified as Bigambul people. Before resolutions relating to the QGC-Bigambul agreement were passed, between 50 and 60 people walked out of the meeting, many of whom identified as Kamilaroi/Gomeri. The meeting then proceeded to pass resolutions adopting a decision-making process, authorising the making of the QGC-Bigambul agreement in accordance with that adopted process, and authorising QGC to apply to the Native Title Registrar to register the agreement.

A delegate of the Registrar refused to register the agreement because she was not satisfied that all the persons who hold or may hold native title in the relevant land area had authorised the making of the agreement as required by s 251A of the *Native Title Act 1993*. In particular, she was 'not satisfied that the Kamilaroi/Gomeri People, as persons identified through the process set out in s 24CG(3)(b)(i) have authorised the making of the [QGC-Bigambul agreement] as required by s 24CG(3)(b)(ii) and s 24CL(3) [of the *Native Title Act*]'.

QGC challenged the delegate's decision in the Federal Court.

Reeves J held that the delegate had made a mistake in finding that the Kamilaroi/Gomeri were entitled to participate in the authorisation process for the ILUA.

His Honour found that there were two distinct groupings of people referred to in the relevant sections of the *Native Title Act 1993*: the first was 'all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement'; and the second was 'the persons who hold or may hold the common or group rights comprising the native title'. The former grouping is relevant to s 24CG(3)(b) – all reasonable efforts must be taken to identify persons falling within that description, and all persons so identified must authorise the making of the agreement. The latter grouping is relevant to the definition in s 251A of what processes constitute valid authorisation by the former group. Under s 251A, the authorisation process that must be followed is either a process prescribed by 'the traditional laws and customs of the persons who hold or may hold the common or group rights comprising the native title', or if there is no such 'traditional' process, a process agreed to and adopted by that same latter group.

Reeves J found that the former grouping 'is to be construed expansively and inclusively to mean every individual, group of persons, or community,

of Aboriginal or Torres Strait Islander descent, who holds native title, or by any means makes a claim to hold native title, or otherwise has a characteristic from which it is reasonable to conclude that person, group, or community holds native title, in any part of the area covered by the agreement'. He rejected the proposition that a person must be a member of a claim group who had a registered native title application, and specified that the broad grouping would include unregistered applications and even informal claims made orally at an authorisation meeting.

By contrast, Reeves J found that the latter grouping, the persons who 'hold or may hold the common or group rights comprising the native title', has a confined and exclusive meaning. His Honour considered contextual matters that suggested that the purpose of that narrow phrasing was to limit the number of groups with whom non-Indigenous parties are required to negotiate. The second reading speech for the relevant provisions indicated that the Attorney-General's intention was to use the registration test as a gateway to the statutory benefits available under the *Native Title Act 1993*, and that only those groups with credible claims would be negotiating with developers. Reeves J considered that it is 'fair and just to an existing registered native title claimant by requiring that any other community or group seeking to advance conflicting claims to its claims, has to submit those claims to the discipline of the [registration and authorisation] processes'. Further, certainty for outside parties is served by ensuring that the people with whom developers are negotiating are actually entitled to speak on behalf of the native title claimants. All of these factors led Reeves J to conclude that authorisation procedures under s 251A must be those defined by the traditional law and custom of, or agreed to by, a native title claim group with a registered application. A group who wishes to oppose the registration of an ILUA must therefore file a native title application and have it registered before they can demand to be included in the authorisation as a separate group.

As Kamilaroi/Gomeri people did not have a registered native title application over the area of the ILUA, they were not able to challenge the decision-making process adopted by the Bigambul meeting. Reeves J did not need to consider how the authorisation process in s 251A would operate where two or more conflicting groups have registered claims over the same area of land.



Franks and Lester for the Plains Clans of the Wonnarua People v National Native Title Tribunal [2011] FCA 1530; Franks and Lester for the Plains Clans of the Wonnarua People v National Native Title Tribunal (No 2) [2011] FCA 1531

19 December 2011

Federal Court of Australia, Sydney

Jagot J

In the first judgment, the applicant sought leave for an extension of time to file an appeal against a decision of the National Native Title Tribunal. The Tribunal had decided that the mining parties that had been negotiating with the Wonnarua people native title claimants, had negotiated in good faith as required by the *Native Title Act 1993*. The native title claimants sought to appeal this decision on the basis that the Tribunal should have held a hearing and allow cross-examination of witnesses, but instead made a decision on the papers alone. The time limit for filing an appeal had elapsed and so the native title claimants needed to apply for an extension of the time limit.

Jagot J considered six factors relevant to the decision whether or not to grant the extension: whether or not there was an acceptable explanation for the delay in filing the appeal; any other action the applicants had taken; any prejudice to other parties that the delay would cause; any other effects on other persons; the merits of the substantial application; and fairness. His Honour held that there was no acceptable explanation for the delay, and also that the substantive case was not particularly strong. Accordingly, no extension of time was granted.

In the second judgment, the Wonnarua native title claim group appealed to the Federal Court from a decision of the National Native Title Tribunal. The Tribunal had decided that a mining lease was to be granted without any conditions. The Tribunal had made that decision without holding a hearing.

The question of whether the Tribunal was to make a decision on the papers or by way of a hearing was discussed at a directions hearing in June 2011. At that directions hearing, the Wonnarua people's lawyer proposed that the Tribunal consider whether or not the future act should be done, and then hear further evidence and submissions on any conditions to be imposed. The Tribunal decided that this course was not open to it, and noted that there was no material before it that related specifically to conditions to be imposed should the mining lease be granted. Asked what further material about conditions he would seek to provide, the Wonnarua lawyer said 'Well I haven't

got any other evidence at the moment but I am instructed that I should be in a position of having further evidence in terms of putting a value on what would be destroyed [should the mining lease be granted]'. The Deputy President of the Tribunal said that it was 'one of these matters I think where, I'll have to determine whether the future act be done or not be done. Full stop.' From the Wonnarua lawyer's responses to this, the Tribunal took him to be consenting to that course of action.

On appeal, the Wonnarua lawyer argued that the Tribunal had misunderstood what he had been agreeing to, and further that the Tribunal had not specifically asked itself whether the matter could adequately proceed on the papers without a hearing. Jagot J examined the transcript of the Tribunal directions hearing and concluded that the Tribunal had clearly considered the merits of proceeding without a hearing, proposed adopting that course of action, and given the Wonnarua people's lawyer an opportunity to raise objections or concerns. In addition to this, Jagot J found that the notice of appeal was inadequate. The notice of appeal stated the question of law to be determined on appeal by the Federal Court: 'Whether in making the [decision of 24 June 2011] the Tribunal erred in law in determining that the... grant of Mining Lease 351 may be done without conditions'. Jagot J found that this was not a question of law, and therefore did not present a valid ground of appeal under s 169 *Native Title Act 1993*. For that reason, the Court did not have jurisdiction to determine the appeal. The appeal was dismissed.

Legislation and Policy

Commonwealth

Prescribed Bodies Corporate Amendment Regulations

The Native Title (Prescribed Bodies Corporate) Amendment Regulations 2011 ('the Amendment Regulations') were registered on 14 December 2011 and are now in operation. The Amendment Regulations are made under the *Native Title Act 1993* (Cth) and implement a number of recommendations concerning the structures and processes of Prescribed Bodies Corporate (PBC). These recommendations originate from a review of the native title system conducted in 2005 and can be found in the [Structures and Processes of Prescribed Bodies Corporate Report](#) (the 'PBC Report').

The Amendment Regulations are designed to improve the effectiveness of the post-determination management of native title by PBCs. The Amendment Regulations will amend the existing regulations to improve the flexibility of the PBC governance regime by:

- enabling an existing PBC to be determined as a PBC for subsequent determinations of native title;
- removing the requirement that all members of a PBC must also be the native title holders (where agreed by the native title holders);
- clarifying that standing authorisations in relation to particular activities of a PBC need only be issued once; and
- subject to certain exceptions, including native title holder consent, allowing PBCs to substitute their own consultation requirements in relation to native title decisions rather than follow the requirements in the regulations;
- provide for the transfer of PBC functions in circumstances where there has been failure to nominate a PBC, where a liquidator is appointed, or where a PBC wishes this to occur; and
- enable PBCs to charge a fee for costs incurred in providing certain services and set out a procedure for review by the Registrar of Indigenous Corporations of a decision by a PBC to charge such a fee. The Registrar will be required to give written reasons for an opinion about a fee charged by a PBC.

The Amendment Regulations are registered on the Federal Register of Legislative Instruments and are available at the following link.

- [Native Title \(Prescribed Bodies Corporate\) Amendment Regulations 2011](#)

An information sheet providing more detailed guidance material on the Amendment Regulation can be accessed via the link below.

- [Native Title \(Prescribed Bodies Corporate\) Amendment Regulations 2011 Information Sheet](#)

Consultation on Native Title (Consultation and Reporting) Determination 2011

The *Native Title Amendment Act (no. 1) 2010* inserted subdivision 24JA into the Native Title Act 1993. This subdivision created a new native

title process for the timely construction of public housing and infrastructure in communities on Indigenous held land which is, or may be, subject to native title.

In accordance with section 24JAA(16) the Commonwealth Minister is able to set reporting requirements by legislative instrument. Comments are being sought on the draft Native Title (Consultation and Reporting) Determination and the accompanying Explanatory Statement. A discussion paper has been included to assist in facilitating comments.

A copy of the discussion paper is available for download below.

- [Discussion Paper - Consultation and Reporting Determination 2011 \[DOC 58KB\]](#)
- [Discussion Paper - Consultation and Reporting Determination 2011 \[PDF 181KB\]](#)
- [Attachment A - Native Title \(Consultation and Reporting\) Determination 2011 \[DOC 254KB\]](#)
- [Attachment A - Native Title \(Consultation and Reporting\) Determination 2011 \[PDF 144KB\]](#)
- [Attachment B - Native Title \(Consultation and Reporting\) Determination 2011 - Explanatory Statement \[DOC 47KB\]](#)
- [Attachment B - Native Title \(Consultation and Reporting\) Determination 2011 - Explanatory Statement \[PDF 128KB\]](#)

No public consultation sessions will be held. Written submissions are due by 29 February 2012.

New South Wales

Aboriginal Land Rights Amendment (Housing) Act 2011 No 56

The *Aboriginal Land Rights Amendment (Housing) Act 2011 No 56* was assented on 16 November 2011. The object of this Act is to amend the *Aboriginal Land Rights Act 1983* to facilitate the entering into and management of residential tenancy agreements of less than 3 years, or periodic agreements, by Boards of Local Aboriginal Land Councils where the other parties to the agreements are natural persons.

Further information is available at:
<http://www.legislation.nsw.gov.au/sessionalview/sessional/act/2011-56.pdf>



Queensland

Aboriginal and Torres Strait Islander Land Holding Bill 2011

This Bill repeals the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* and introduces a new Act with the required tools to finalise leasing matters outstanding under the repealed Act. The Bill aligns the new Act with the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*, now the principal legislation for leasing on Aboriginal and Torres Strait Islander lands, to the extent possible.

The Bill explicitly protects and continues leases and lease entitlements under the repealed Act and provides a number of mechanisms to facilitate resolution of outstanding issues by agreement. The Bill has been referred to a Parliamentary Committee, the Community Affairs Committee, which is required to investigate the Bill and report back to the Parliament by 19 March 2012.

Further information is available at:

<http://www.legislation.qld.gov.au/Bills/53PDF/2011/ATSILandHoldB11.pdf>

Read more about the Bill in the Explanatory Notes available at:

<http://www.legislation.qld.gov.au/Bills/53PDF/2011/ATSILandHoldB11Exp.pdf>

Grants for Traditional Owners caring for the Great Barrier Reef

Traditional owners are encouraged to apply for Sea Country Grants of \$5,000 to \$50,000 to support their environmental initiatives that will improve the resilience of the Great Barrier Reef. Great Barrier Reef Marine Park Authority Chairman Russell Reichelt said a total of \$500,000 in grants were available through the Great Barrier Reef Marine Park Authority's Sea Country Grants Program. Traditional owner groups from the Great Barrier Reef region will have until **17 February 2012** to apply for the grants.

More information is available at:

<http://www.gbrmpa.gov.au/media-room/latest-news/sea-country-partnerships/2011/grants-for-traditional-owners-caring-for-the-great-barrier-reef>

Queensland Pastoral ILUA Template

The Queensland Department of Environment and Resource Management has released at Pastoral ILUA template.

The template is available here:

<http://www.qsnts.com.au/publications/QueenslandPastoralILUATemplate.pdf>

Pastoral leases cover almost 50 percent of Queensland. This template is the result of collaboration between QSNTS, the Queensland Government, the National Native Title Tribunal and pastoralist groups to facilitate native title agreement-making.

Western Australia

Cultural Heritage Due Diligence Guidelines

The Guidelines were developed to identify reasonable and practical measures for ensuring that activities are managed to avoid or minimise harm to Aboriginal sites protected by the *Aboriginal Heritage Act 1972* (WA). For further information about Aboriginal heritage see the Department of Indigenous Affairs webpage about **Section 18 applications**.

The guidelines are available at:

<http://www.nativetitle.wa.gov.au/MediaPublications/Documents/Cultural%20Heritage%20Due%20Diligence%20Guidelines%20November%202011.pdf>

Native Title Publications

Issue papers

- J Altman, 'Reforming the Native Title Act', CAEPR Topical Issue 10/2011.

In this Topical Issue, Jon Altman seeks to explore the ramifications of the Native Title Act Reform Bill, a private Senator's Bill introduced by Senator Rachel Siewert of the Australian Greens.

The PDF version of this paper is available at: http://caepr.anu.edu.au/sites/default/files/Publications/topical/TI2011_10_Altman%20NTA.pdf

Journals

- W Asche and D Trigger, 'Native title research in Australian anthropology' special edition, *Anthropological Forum*, 21 3: 219-232, 2011.



Abstract

Anthropology's involvement with Australian Indigenous people seeking to obtain legal rights, particularly in the context of the Native Title Act, has been subject to considerable critique both within and outside of the academy. The collected papers in this volume provide a constructive case for best approaches in this applied anthropological research, given the apparent constraints of the legal environment and the necessity to retain professional anthropological integrity. Issues of cultural change and identification of the relevant traditional 'law and custom' continuing through time are among a range of matters at the intersection of Australian and Aboriginal customary law. This collection assembles papers that demonstrate the relevance and significance of applied research in this area.

To subscribe, please follow the link:

<http://www.tandfonline.com/action/pricing?journalCode=canf>

Reports

- Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2011*, Australian Human Rights Commission, 2011.

Under the *Native Title Act 1993* (Cth), the Social Justice Commissioner is required to prepare a *Native Title Report* each year for federal Parliament. Through these reports the Commissioner gives a human rights perspective on native title issues and advocates for practical co-existence between Indigenous and non-Indigenous groups in using land.

The report is available online at:

http://www.hreoc.gov.au/social_justice/nt_report/ntreport11/index.html

- Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2011*, Australian Human Rights Commission, 2011.

The Aboriginal and Torres Strait Islander Social Justice Commissioner is required to report annually to the Attorney-General regarding the exercise and enjoyment of human rights by Australia's Indigenous peoples.

The report is available online at:

http://www.hreoc.gov.au/social_justice/sj_report/sjreport11/index.html

- The Australian National Audit Office, *Indigenous Protected Areas*, Audit Report No.14 2011–12; Performance Audit, 23 November 2011.

The audit objective was to assess the effectiveness of the Department of Sustainability Environment Water Population and Communities management of the IPA program in relation to the two primary targets of the IPA program under the Caring for our Country initiative (2008–13) which are to:

- expand the contribution of the IPA program to the NRS by between eight and 16 million hectares (an increase of at least 40 per cent), of which 1.8 million hectares are to be in northern and remote Australia; and
- ensure the continued use, support and reinvigoration of traditional ecological knowledge to underpin biodiversity conservation in the Plans of Management of 32 newly initiated projects.

The report is available online at:

<http://www.anao.gov.au/~media/Uploads/Audit%20Reports/2011%2012/201112%20Audit%20Report%20No%2014.pdf>

Annual reports

- South Australia Native Title Services, *Annual Report 2010/2011*.

The Report is available online at:

<http://www.nativetitlesa.org/Uploads/Downloads/annual-report-final.pdf>

- Goldfields Land and Sea Council Aboriginal Corporation, *Annual Report 2010–2011*.

The Report is available online at:

<http://www.glsc.com.au/annual-reports>

- Central Land Council, *Annual Report 2010/2011*.

The Report is available online at:

http://www.clc.org.au/Media/annualrepts/CLC_annual_report_2010_2011.pdf

Guides

- National Native Title Tribunal, *Guide to future act decisions made under the Right to negotiate scheme*, compiled by Deputy President of the National Native Title Tribunal the Hon C J Sumner with the assistance of the Legal Services unit, 2011.

The guide is available online at:

[http://www.nntt.gov.au/Future-Acts/Documents/Procedures and Guidelines -Various/Guide_to_future_act_decisions_made_under_the_right_to_negotiate_scheme_as_at_301111.pdf](http://www.nntt.gov.au/Future-Acts/Documents/Procedures%20and%20Guidelines-Variou s/Guide_to_future_act_decisions_made_under_the_right_to_negotiate_scheme_as_at_301111.pdf)



Newsletters

- Native Title Services Victoria, *NTSV Newsletter*, Issue 22, December 2011
- Yamatji Marlpa Aboriginal Corporation, *YMAC News*, Issue 16, December 2011

Native Title in the News

National

18/11/2011

Tribunal to merge

At a confidential meeting between the government and the heads of courts and tribunals, the National Native Title Tribunal was told it would be administered by the Federal Court as part of a costs review. A major change under the plan would be to give the court direct control of disputes over the future use of current or potential native title land, often involving mining companies who seek to expand their operations.

Australian Financial Review (Australia, 18 November 2011), 40

07/12/11

Commonwealth government decision to withhold native title funding

Prime Minister Julia Gillard has told the Western Australian government it intends to withdraw from an understanding between the Commonwealth and state and territory governments that the Commonwealth would meet 75 percent of the costs and compensation involved in native title agreements. The decision to withdraw would affect all state and territory governments in Australia and have a serious impact on how native title claims may be treated in the future.

National Indigenous Times (Malua Bay NSW, 7 December 2011), 3. *Esperance Express* (Esperance WA, 7 December 2011), 1.

Australian Capital Territory

03/11/2011

Ngarigu people

The ACT Civil and Administrative Tribunal said Ngarigu woman Ellen Mundy is seeking recognition by the government of her clan's connection with the land. Ms Mundy is pursuing a discrimination complaint against the Chief Minister and the Minister

for Aboriginal and Torres Strait Islander Affairs. The legal claim on behalf of the Ngarigu people argues that of the Ngarigu people have been left out in the cold by the ACT government when it makes decisions about acknowledging Aboriginal culture and history and in providing services to the territory's Indigenous people.

Canberra Times (Canberra ACT, 3 November 2011), 1.

Northern Territory

02/11/2011

Lease funds

Opposition Indigenous Affairs spokesman, Nigel Scullion told the hearing the Federal Government had paid money to the Northern and Central Land Councils to distribute to traditional owners but the councils were refusing to distribute the money and the parties had been locked in a stalemate since May 2010.

National Indigenous Times (Malua Bay NSW, 2 November 2011), 12.

22/11/2011

Marra people

The Marra people who live near Limmen Bight on the Gulf of Carpentaria and hold native title rights where Western Desert Resources have lodged notice of intent to pipe iron ore slurry from a project, have presented a petition to senior MP's outside the Northern Territory parliament. The Marra people believe the mine will disturb and harm sacred sites on the island.

AAP Newswire (Australia, 22 November 2011).

Queensland

02/11/2011

Wild Rivers

State Environment Minister Vicky Darling announced consultations of three far north Queensland river catchments—the Coleman, Olive-Pascoe and Watson river basins would begin in November for Wild Rivers declaration.

National Indigenous Times (Malua Bay NSW, 2 November 2011), 7. *Weekend Australian* (Australia, 5 November 2011), 2. *AAP Newswire* (Australia, 4 November 2011). *Weekend Post* (Cairns Qld, 5 November 2011), 2. *Koori Mail* (Lismore NSW, 16 November 2011), 16.



18/11/2011**Cultural assessment**

The Gold Coast City Council has apologized to the city's Aboriginal community after failing to allow for a cultural assessment of the site at Tipplers by the coasts native title group. The council has suspended all work on the barefoot bar and swimming enclosure.

Gold Coast Bulletin (Gold Coast QLD, 18 November 2011), 21.

22/11/2011**Coalmine at Bathurst Bay**

A traditional owner of Bathurst Bay in the Cape York area will fight an Indigenous land use agreement (ILUA) aimed at helping open a coalmine. More than 80 people are expected to attend an ILUA meeting at Kalpowar Crossing, for native title claimants to sign an agreement. The issue involves Cape York Land Council and Balkanu Cape York Development Corporation against locals who say their interests are being ignored.

Courier Mail (Brisbane QLD, 22 November 2011), 5.

28/11/2011**Mandingalbay Yidinji Country**

The Mandingalbay Yidinji people have signed an Indigenous Protected Area agreement over Mandingalbay Yidinji Country. It was the first of its kind in Australia and includes almost 10,000 ha of land including rainforest, woodland and marine park areas across from Trinity Inlet.

Cairns Post (Cairns QLD, 28 November 2011), 5.

01/12/11**Cape York Peninsula coal mine**

Aust-Pac Capitals have been given approval to go ahead with Cape York Peninsula's first coal mine with the signing of an Indigenous land use agreement. The small scale underground coking coal mine will be located on Aboriginal land in the Laura basin, 150 km north west of Cooktown.

Cooktown Local News (Cooktown QLD, 1 December 2011), 5.

08/12/11**AgForce Template pastoral ILUA**

AgForce native title spokesman John Stewart said the state government's support for the template pastoral Indigenous land use agreement is a 'big win for pastoralists as it provides a 25% reduction in land rent for five years to landholders who sign'. Mr Stewart said that the template ILUA creates opportunities for

native title claimants to access pastoral properties for traditional purposes. AgForce hope the template will assist parties to negotiate agreements.

Rural Weekly – North Central Queensland (Mackay QLD, 8 December 2011), 4. *Central Queensland News* (Emerald QLD, 9 December 2012), 18.

08/12/2011**Land handover**

Sixty-three thousand hectares (ha) of land between Mossman and Cooktown has been handed back to the Eastern Kuku Yalanji people. 16,500 ha will be available for the development of the Eastern Kuku Yalanji people's social, cultural and economic aspirations, with the rest to be declared a nature refuge.

Port Douglas Mossman Gazette (Port Douglas QLD, 8 December 2012), 5.

09/12/11**Bandanna coal project**

Bandanna Energy announced that the South Galilee Coal Project Joint Venture has received consent from the Wangan and Jagalingou people for all approvals needed to develop the project and infrastructure corridor.

Central Queensland News (Emerald QLD, 9 December 2011), 5.

13/12/11**Kalkadoon people**

The Kalkadoon people have been recognised as native title holders of 40,000 sq km of land in the Mt Isa region. The Kalkadoon people hold exclusive native title rights over about 4,000 sq km and non-exclusive rights over the remaining land.

Courier Mail (Brisbane QLD, 13 December 2011), 18. *Townsville Bulletin* (Townsville QLD, 13 December 2011), 7. *National Indigenous Times* (Malua Bay NSW, 14 December 2011) 9.

14/12/11**Muluridji people**

The Muluridji people have had their native title rights recognised over about 12,000 hectares (ha) of land in and around Mareeba in far north Queensland. The Federal Court recognised the Muluridji people hold exclusive native title rights over about 745 ha and non-exclusive native title rights over the remaining areas. The Muluridji Tribal Aboriginal Corporation has been established to manage the native title rights and interests on behalf of all native title holders.



AAP Newswire (Australia, 14 December 2012). *AAP Newswire* (Australia, 15 December 2011). *Cairns Post* (Cairns QLD, 16 December 2011), 16.

20/12/11

Gungandji peoples

The Federal Court has recognised the Gungandji people's native title rights over 7528 hectares, including areas on Fitzroy Island after a 17 year court battle.

Cairns Post (Cairns QLD, 20 December 2011), 5. *Townsville Bulletin* (Townsville QLD, 21 December 2011), 16.

South Australia

03/11/2011

Coorong National Park

After negotiations with the state government and the Ngarrindjeri nation over native title it was decided the Coorong National Park will be co-managed by the traditional owners. There are currently six co-managed agreements in place in South Australia, covering the Vulkathunha-Gammon Ranges, the Witjira, the Coongie Lakes and the Flinders Ranges National Parks as well as the Mamungari and Ngaut Ngaut Conservation Parks.

Murray Valley Standard (Murray Bridge SA, 3 November 2011), 3. *Sunday Mail Adelaide* (Adelaide SA, 6 November 2011), 26.

09/11/2011

Ngadjuri people

A Native Title mining agreement has been signed with the Traditional owners – the Ngadjuri Nation and Royal Resources for the Razorback Iron Ore project. The project is situated 80km north-east of Peterborough and 40km south of Yunta.

Burra Broadcaster (Burra SA, 9 November 2011), 1.

19/11/2011

Murray rights

The first people of the River Murray and Mallee region have had their native title rights recognised over an area of 150km along a stretch of river in South Australia.

Adelaide Advertiser (Adelaide SA, 19 November 2011), 16. *Herald Sun* (Melbourne VIC, 19 November 2011), 26. *Sunraysia Daily* (Mildura VIC, 19 November 2011), 4. *AAP Newswire* (Australia, 18 November 2011). *Barrier Daily Truth* (Broken Hill NSW, 19 November 2011), 7. *Townsville Bulletin* (Townsville

QLD, 19 November 2011), 45. *Daily Advertiser* (Wagga Wagga NSW, 19 November 2011), 22. *Murray Pioneer* (Renmark SA, 22 November 2011), 5. *River News* (Waikerie SA, 23 November 2011), 4. *Robinvale Sentinel* (Robinvale VIC, 24 November 2011), 3. *Riverland Weekly* (Riverland VIC, 24 November 2011), 5.

23/11/2011

Compulsory acquisition

The Australian Defence Force has announced it will start compulsory acquisition of the pastoral leases within the Cultana expansion area. The announcement comes after defence reached an agreement with the registered native title claimant regarding an Indigenous land use agreement.

Port Augusta Transcontinental (Port Augusta SA, 23 November 2011), 1.

22/12/11

Gawler Ranges

The Gawler Ranges Aboriginal claimant groups have been recognised as the native title holders of about 34,000 square kilometres of pastoral lease and national park land in South Australia. Justice John Mansfield of the Federal Court made the consent determination on 19 December. The Federal Court recognised non-exclusive native title rights. Indigenous land use agreements were signed for the Lake Gairdner National Park and Gawler Ranges National Park.

West Coast Sentinel (Ceduna SA, 22 December 2011), 3. *Kalgoorlie Miner* (Kalgoorlie WA, 20 December 2011), 4. *Canberra Times* (Canberra ACT, 20 December 2011), 6. *AAP Newswire* (Australia, 19 December 2011). *Port Lincoln Times* (Port Lincoln SA, 20 December 2011), 4.

Western Australia

01/11/2011

Native title mining agreement

Tasman Resources have secured a native title mining agreement with the Kokatha Uwankara native title claimants for the exploration of almost the entire Lake Torrens project.

Mining Chronicle (Australia, November 2011), 27.

02/11/2011

Mayala people celebrate deal

Mayala traditional owners celebrated a deal made with Pluton Resources for construction of an iron ore mine in the north Kimberley. The agreement will



provide significant employment, training and business opportunities for Mayala people while protecting environmental and cultural heritage standards.

Koori Mail (Lismore NSW, 2 November 2011), 39.

03/11/2011

Fortescue Metals Group

An administrative error by the West Australia government allowed Fortescue Metals Group to obtain an exploration licence without input from the local Indigenous community. The error was exposed when the WA Department of Mines and Petroleum granted Fortescue the license in August for the midwest location after inadvertently failing to register an objection by the local Wajarri Yamatji people. Fortescue Metals has since sent a heritage agreement to the Wajarri Yamatji people and says it will consider amendments.

Sue Singleton, the archaeologist that completed a survey of Aboriginal heritage sites commissioned by Fortescue Metals Group has admitted she removed key sections of the survey as she feared she would not be paid \$70,000 of an outstanding bill if she did not remove the information.

Australian Financial Review (Australia, 3 November 2011), 13. *Age* (Melbourne Vic, 10 November 2011), 5. *Pilbara News* (Pilbara WA, 16 November 2011), 4. *Pilbara News* (Pilbara WA, 9 November 2011), 3. *Broome Advertiser* (Broome WA, 10 November 2011), 7. *Koori Mail* (Lismore NSW, 16 November 2011), 6. *National Indigenous Times* (Malua Bay NSW, 16 November 2011), 6, 7, 18. *Sydney Morning Herald* (Sydney NSW, 23 November 2011), 1. *AAP Newswire* (Australia, 22 November 2011). *AAP Newswire* (Australia, 23 November 2011).

16/11/2011

Woodside

Woodside will conduct a series of skill assessment workshops to enable Woodside to gain a better understanding of the training requirements and strategies required to maximize Indigenous participation in the development.

Woodside petroleum released information stating the Browse liquefied-natural-gas joint venture project could generate up to \$50 billion for the Australian economy and create 6000 jobs onshore and 2000 jobs offshore during its construction phase.

National Indigenous Times (Malua Bay NSW, 16 November 2011), 36. *Broome Advertiser* (Broome WA, 17 November 2011), 3.

17/11/2011

Decmil Australia

Construction and contracting group Decmil Australia has reached a 5 year agreement with the Goolaraabooloo Jabirr Jabirr native title claim group. The agreement will target government, private and resource project opportunities and key performance indicators include measures benefiting Indigenous education, training, business development and employment.

Business News (Perth WA, 17 November 2011), 19.

17/11/2011

Toro Energy

Toro Energy has set an exploration target range following promising results from drilling at its wholly owned Theseus Uranium Project in north eastern WA. The 14 tenements forming the project cover a total area of approximately 3286 sq km. The project is within native title determined lands overseen by the Ngaanyatjarra Land Council and an agreement is in place with the Kiwirrkurra people which allow Toro to explore for uranium and other metals on the reserve.

Kalgoorlie Miner (Kalgoorlie WA, 17 November 2011), 9.

07/12/11

Compulsory acquisition notices unlawful

Chief Justice of the WA Supreme Court Wayne Martin determined that three notices of land acquisition at James Price Point were invalid because they did not contain a description of the land required, as needed under the Land Administration Act. Chief Justice Martin determined that any decisions made since the government-issued notices to take land and extinguish native title were also unlawful. This determination does not prevent the WA Lands Minister from issuing further notices of intention to take land in this area.

Hobart Mercury (Hobart TAS, 7 December 2011), 36. *Canberra Times* (Canberra ACT, 7 December 2011), 15. *AAP Newswire* (Australia, 6 December 2011). *Shepparton News* (Shepparton News VIC, 7 December 2011), 20. *Australian* (Australia, 7 December 2011), 6, 3. *Age* (Melbourne VIC, 7 December 2011), 1. *Townsville Bulletin* (Townsville QLD, 7 December 2011), 26. *Adelaide Advertiser* (Adelaide SA, 7 December 2011), 64. *Herald Sun* (Melbourne VIC, 7 December 2011), 38. *Sydney Morning Herald* (Sydney NSW, 7 December 2011), 8. *Daily Advertiser* (Wagga Wagga NSW, 7 December 2011), 21. *AAP Newswire* (Australia, 6 December 2011). *Launceston Examiner* (Launceston TAS, 7 December 2011), 22. *Business*

News (Perth WA, 8 December 2011), 2. *Australian Financial Review* (Australia, 10 December 2011), 12. *Geelong Advertiser* (Geelong VIC, 7 December 2011), 28. *Newcastle Herald* (Newcastle NSW, 7 December 2011), 31.

07/12/11

Chevron

Buurabalayji Thalanyji native title holders refused to provide a welcome to country for a ceremony marking the start of construction at Chevron's Wheatstone Project in Onslow. Buurabalayji Thalanyji Aboriginal Corporation chairman Rodney Hicks said the timing of the ceremony was "an insult to the Thalanyji people's elders". He said it would only inflame relations between the native title holders and Chevron because of unfinished and outstanding heritage issues surrounding the project.

Pilbara News (Pilbara WA, 7 December 2011), 3.

07/12/11

Pilbara native title groups

Indigenous Affairs Minister Jenny Macklin announced an initiative to deliver management and governance training to Pilbara native title groups who have entered into an Indigenous land use agreement with Rio Tinto. This initiative will include induction training for new directors, corporate governance workshops and ongoing corporate governance support and mentoring services for directors to assist them to manage the significant benefits they will receive under the native title agreement—around \$2 billion for 40 years.

North West Telegraph (South Hedland WA, 7 December 2011), 31.

07/12/11

Fortescue Metals

Elderly Yindjibarndi woman, Mavis Pat has made a sworn statement which was presented to the court that claimed she was pressured by Fortescue Metals Group lawyer and others present who had come to the home of her sister-in-law, Esther, at Cheeditha and drove to a location used as an office to sign a statement that she did not agree with. Fortescue has denied any involvement in pressuring Mrs Mavis Pat to sign documents supporting the Wirlumurra Yindjibarndi group.

National Indigenous Times (Malua Bay NSW, 7 December 2011), 7.

07/12/11

Walmandan tent embassy

Traditional owners protesting the Kimberley gas hub proposal have claimed Western Australia's Department of State Development (DSD) has threatened to forcibly remove them from the Walmandan tent embassy. The tent embassy was declared at the site earlier this year and acts as a replica, in the spirit of the Canberra's Aboriginal tent embassy.

National Indigenous Times (Malua Bay NSW, 7 December 2011), 12.

28/12/12

Fortescue signs deal

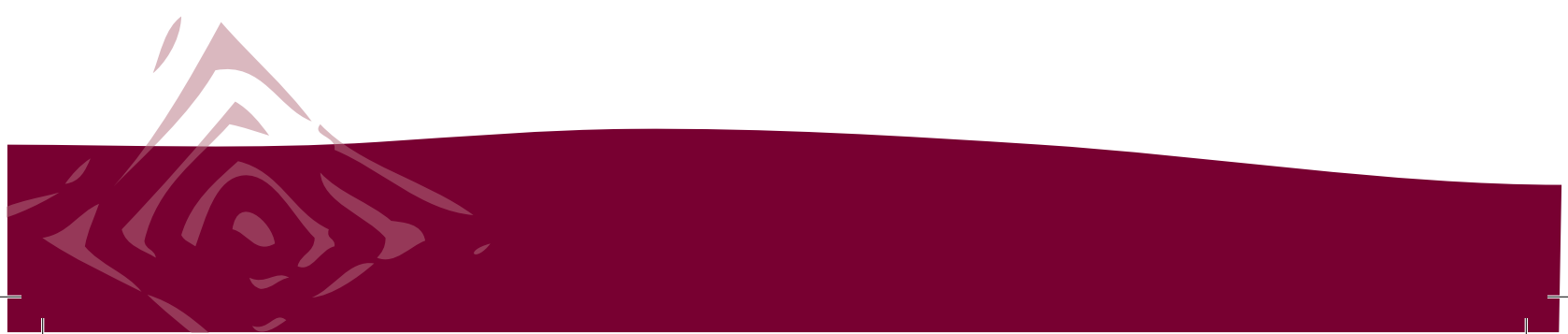
Fortescue Metals have signed a land access agreement with the Njamal people for access to land covered by the company's North Star and Glacier Valley magnetite projects. In exchange the Njamal people will become co-owners and joint owners of another magnetite mine.

Border Watch (Mt Gambier SA, 28 December 2011), 10. *Adelaide Advertiser* (Adelaide SA, 24 December 2011)1, 42. *Sydney Morning Herald* (Sydney NSW, 24 December 2011), 4. *Hobart Mercury* (Hobart TAS, 24 December 2011), 20. *Canberra Times* (Canberra ACT, 24 December 2011), 1. *AAP Newswire* (Australia, 23 December 2011). *Shepparton News* (Shepparton VIC, 24 December 2011), 32. *Ballarat Courier* (Ballarat VIC, 24 December 2011), 27. *Border Mail* (Albury-Wodonga VIC, 24 December 2011), 2



Indigenous Land Use Agreements (ILUAs)

Date	NNTT File No.	Name	Type	State/Territory	Subject Matter
8/11/2011	WI2011/008	Wickham Motorcross ILUA	BCA	WA	Government Public Community
11/11/2011	QI2011/025	Australia Pacific LNG and Iman People ILUA	AA	QLD	Pipeline
11/11/2011	WI2011/006	Churdy Pool Siding Special Lease ILUA	AA	WA	Tenure resolution
14/11/2011	QI2011/026	Woorabinda Rehabilitation Facility ILUA	AA	QLD	Community
25/11/2011	QI2011/029	Woorabinda Social Housing and Home Ownership ILUA	AA	QLD	Residential
28/11/2011	QI2011/030	Kalkadoon People and Ergon Energy ILUA	AA	QLD	Access Infrastrucure Energy
02/12/2011	QI2011/053	Hopevale Congress Aboriginal Corporation Body Corporate ILUA	BCA	QLD	Access Tenure resolution
08/12/2011	QI2011/038	Quandamooka State ILUA	AA	QLD	Government
09/12/2011	QI2011/040	Australia Pacific LNG Pty Limited Wulli Wulli Djaku-nde and Jangerie Jangerie ILUA	AA	QLD	Petroleum/Gas Pipeline
09/12/2011	QI2011/028	Arrow Jangga LNG Project ILUA	AA	QLD	Pipeline
09/12/2011	QI2011/039	Quandamooka Redland City Council ILUA	AA	QLD	Government
09/12/2011	QI2011/037	Cairns Regional Council - Wanyurr Majay ILUA	AA	QLD	Consultation pro- tocol Government Infrastructure Communication Community
12/12/2011	QI2011/041	Juru (Cape Upstart) People Protected Area ILUA	AA	QLD	Access Government
12/12/2011	QI2011/042	Juru (Cape Upstart) People (formerly known as the Birri Gubba (Cape Upstart) People) and Ergon Energy	AA	QLD	Access Infrastructure
14/12/2011	QI2011/031	Arrow Barada Barna People LNG Project ILUA	AA	QLD	Pipeline
14/12/2011	QI2011/033	Arrow Barada Barna People and Wiri People LNG Project ILUA	AA	QLD	Pipeline
14/12/2011	QI2011/034	Arrow Wiri LNG Project ILUA	AA	QLD	Pipeline
14/12/2011	QI2011/035	Arrow Birri LNG Project ILUA	AA	QLD	Petroleum/Gas Pipeline



Date	NNTT File No.	Name	Type	State/Territory	Subject Matter
19/12/2011	QI2011/056	Dauanalgaw (Torres Strait Islanders) Corporation and Islanders Board of Industry and Services ILUA	BCA	QLD	Government
22/12/2011	QI2011/048	Combined Gunggandji and Cairns Regional Council ILUA	AA	QLD	Consultation protocol Government
23/12/2011	VI2011/002	Gunai / Kurnai – Stan Wassylko ILUA for EL5229	AA	VIC	Exploration

This information has been extracted from the Native Title Research Unit ILUA summary:
http://ntru.aiatsis.gov.au/research/ilua_summary.html, 28 December 2011. For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

Determinations

Date	Short Name	Case Name	State/Territory	Outcome	Legal Process
18/11/2011	First Peoples of the River Murray & Mallee Region	<i>Turner v State of South Australia</i> [2011] FCA 1312	SA	Native title exists in parts of the determination area	Consent Determination
19/12/2011	Gawler Ranges People	McNamara on behalf of the Gawler Ranges People v State of South Australia [2011] FCA 1471	SA	Native title exists in parts of the determination area	Consent Determination
13/12/2011	Eringa No. 2 and Wangkangurru/Yarluyandi	King on behalf of the Eringa Native Title Claim Group and the Eringa No 2 Native Title Claim Group v State of South Australia [2011] FCA 1387	SA	Native title exists in parts of the determination area	Consent Determination
13/12/2011	Eringa	King on behalf of the Eringa Native Title Claim Group v State of South Australia [2011] FCA 1386	SA	Native title exists in parts of the determination area	Consent Determination
12/12/2011	Juru (Cape Upstart) People	Prior on behalf of the Juru (Cape Upstart) People v State of Queensland (No 2) [2011] FCA 819	QLD	Native title exists in parts of the determination area	Consent Determination
12/12/2011	Kalkadoon People #4	Doyle & Ors on behalf of the Kalkadoon People #4 v State of Queensland (unreported, FCA, 12 December 2011, Dowsett J)	QLD	Native title exists in parts of the determination area	Consent Determination (conditional)
09/12/2011	Quandamooka People #1	Delaney on behalf of the Quandamooka People v State of Queensland [2011] FCA 741	QLD	Native title exists in parts of the determination area	Consent Determination
09/12/2011	Quandamooka People #2	Delaney on behalf of the Quandamooka People v State of Queensland [2011] FCA 741	QLD	Native title exists in parts of the determination area	Consent Determination
09/12/2011	Wanyurr Majay People	Wonga on behalf of the Wanyurr Majay People v State of Queensland [2011] FCA 1055	QLD	Native title exists in parts of the 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, 28 December 2011. 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.

The 2009 issue of *Reform*, the Australian Law Reform journal, is dedicated to Native Title. See <http://www.austlii.edu.au/au/other/alrc/publications/reform/reform93/>. All articles are available online, and authors include Lisa Strelein, Garth Nettheim, and Robert French.

Several sites for Native Title Representative Bodies and Local Land Councils are being included on MURA. You will find direct links to the Central Desert Land Council, the Darkinjung Local Aboriginal Land Council, and Yindjibarndi Aboriginal Corporation.

Check MURA for entries from *Land Rights News* from 2009 to 2011. Some relevant references are mentioned under the section on Native title claims and specific issues.

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.

The AIATSIS journal, *Australian Aboriginal Studies* no. 2 (2010) has a collection of papers dealing with research ethics. Some of the articles are mentioned in the topical listing below.

Audiovisual material of interest to native title includes:

Slides and photographs

GOODALE.J04.CS

A collection of 538 colour slides taken by Jane C. Goodale document a Pukamani ceremony at Melville Island in 1954.

STANNER.W16.BW

The collection contains black and white negatives of 175 rock art sites at the Fitzmaurice River visited by William E. H. Stanner in 1957.

WALLIS.R01.DF

A black and white photograph, deposited by Rosalind Wallis, taken c1920s in the East Kimberley region shows Aboriginal men being arrested and put in chains.

WILSON.L01-L03.CS

Three collections of a total of 57 colour slides taken by Les Wilson, Commonwealth Protector of Aborigines in the 1950s of restricted male ceremonies at Haasts Bluff and Mt. Liebig.

Sound recordings

HALE.K08

The linguist, Ken Hale, recorded 13 hours of elicitation of Lamalamic and Lardil language from 1960-1967.

Video

V09281_1-18

Felicity Meakins deposited 15 videocassettes of interviews from the Gurindji language and culture project recorded 2007 -2009.

Luise Hercus has deposited a box containing three booklets and two CD Roms of song stories from the Simpson Desert as told by Mick McLean Irinyili, with recordings, commentary and translations by Luise Hercus and notations by Grace Koch. This work, completed in 2008, is the first instalment of a series of documentary works on the Lake Eyre district based upon the research of Luise Hercus and Mick McLean.

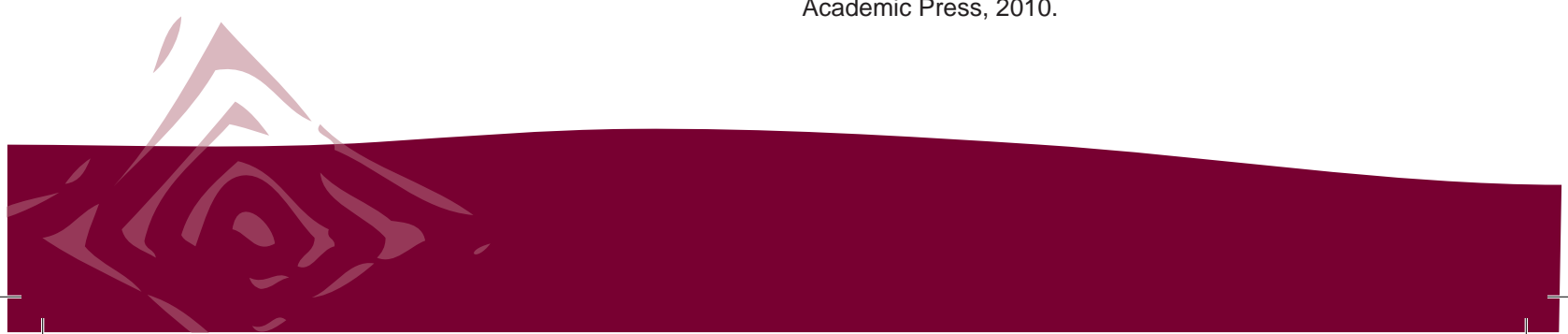
Print and online material

Anthropology

Glaskin, Katie.

'Dreams and memory: accessing metaphysical realms in northwest Kimberley.' *Journal of the Anthropological Society of South Australia* Vol. 33 (Aug. 2008), p. 39-73, map.

Grimshaw, Patricia and Andrew May, eds. *Missionaries, Indigenous peoples and cultural exchange*. Brighton [England] ; Portland, Or. : Sussex Academic Press, 2010.



Holcombe, Sarah.

'The arrogance of ethnography: managing anthropological research knowledge.' *Australian Aboriginal Studies* no.2 (2010), p. 22-32.

Langton, Marcia.

'Anthropology, politics and the changing world of Aboriginal Australians.' *Anthropological Forum* Vol. 21, no. 1 (March 2011), p. [1]-22.

Martin, David.

'Aboriginal sorcery and healing, and the alchemy of Aboriginal policy making.' *Journal of the Anthropological Society of South Australia* Vol. 33 (Aug. 2008), p. 75-128.

McCaul, Kim.

'The persistence of traditional healers in the 21st century and of anthropology's struggle to understand them.' *Journal of the Anthropological Society of South Australia* Vol. 33 (Aug. 2008), p. 129-166.

Tidemann, Sonia and Andrew Gosler, eds.

Ethno-ornithology : birds, Indigenous peoples, culture and society. London : Earthscan, 2011.

Archaeology

Etheridge, R. (Robert) 1846-1920, et al.

The dendroglyphs or "carved trees" of New South Wales. Sydney : Dept. of Mines, 1918 William Applegate Gullick, Government Printer) ; Sydney : Sydney University Press, 2011.

Lees, Emma.

'Rock art and modified tree tracings digitisation: background, sites, issues and access.' *Australian Archaeology* no. 71 (2010), p. 89-92

Economics

Norris, Rae.

The more things change- : the origins and impact of Australian Indigenous economic exclusion. Mt Gravatt, Qld. : Post Pressed, c2010.

Government and other reports

Australia and Minerals Council of Australia. *Memorandum of understanding on Indigenous employment and enterprise development between the Australian Government and the Minerals Council of Australia*. Canberra : Dept. of Families, Housing, Community Services and Indigenous Affairs, 2009.

Australian Research Council

Discovery Indigenous funding rules for funding commencing in 2012 : Australian Research Council Act 2001. [Canberra] : Australian Research Council, 2011.

Memmott, Paul et al.

Indigenous mobility in rural and remote Australia [electronic resource] : final report. [Melbourne] : Australian Housing and Urban Research Institute, 2006. Search at <http://www.ahuri.edu.au/publications>

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Steering Committee for the Review of Government Service Provision.

Australian government expenditure by state and territory, 2010 Indigenous expenditure report Supplement. Melbourne : Productivity Commission, 2011.

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The earliest inhabitants : Aboriginal tribes of Dungog, Port Stephens and Gresford. Dungog : Chronicle Print, 1964

Chewings, Charles, 1859-1937.

The sources of the Finke River : and other expeditions / by Charles Chewings ; introduction by Valmai Hankel. Adelaide. : Friends of the State Library of South Australia, 2010.

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'Going white: claiming a racialised identity through the White Australia Policy.' *Indigenous Law Bulletin*, Vol. 7, No. 23 (March - April 2011), p. 16-19.

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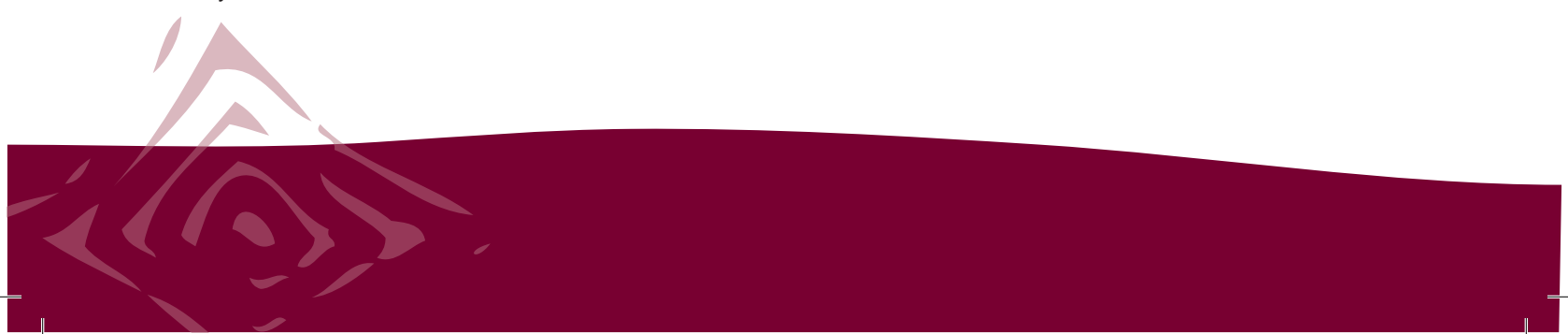
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