

# Native Title Newsletter

May / June, No. 3/2010

## WHAT'S NEW



Two new publications have been released by staff members of the NTRU. *Dilemmas in Applied Native Title Anthropology* by Toni Bauman (ed.) and *Dialogue about Land Justice* by Lisa Strelein (ed.).

See page 8 for more details

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**AIATSIS**  
Australian Institute of Aboriginal and Torres Strait Islander Studies

Native Title Research Unit, AIATSIS

# People, Place, Power explored at the Native Title Conference 2010



Hosted by the traditional owners of the Canberra region, this year's National Native Title Conference was co-convened by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)

and the National Native Title Council (NNTC). With approximately 580 registered delegates including some 120 speakers, the event was held at the National Convention Centre, Canberra, from 1-3 June, 2010.

AIATSIS Chairperson Professor Mick Dodson AM said that this year's conference theme of *People, Place, Power* was specifically aimed at reflecting the significance of holding the event in Canberra. 'Canberra is where the major legal and policy decisions about native title have been made, and it's where legislation is still being discussed and

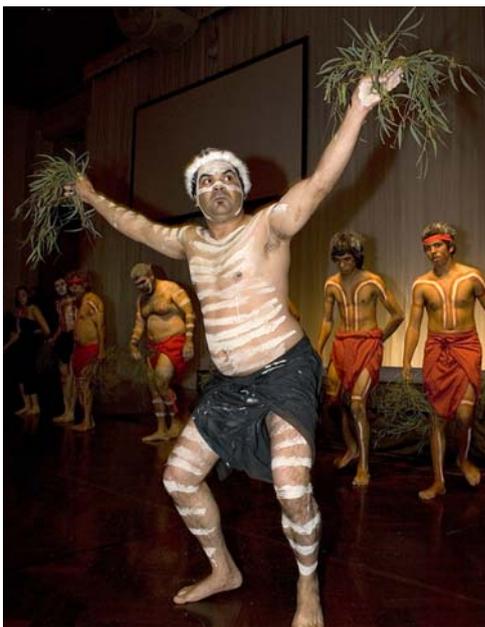
formulated,' Professor Dodson said.

'No other national forum fosters knowledge in this dynamic area of law and agreement making and gives native title parties a chance to share information and experiences as the Native Title Conference does.'

Through workshops, speeches and keynote speakers, this year's conference explored contemporary native title issues including governing native title land, housing, tenure and community development, environment, conservation and joint management, the national policy framework and proposed National Partnership Agreement and the reforms to the *Native Title Act 1993* (Cth).



(l-r) AIATSIS Chairperson Professor Mick Dodson, British Columbia Treaty Commissioner, Shana Manson, and President of the Sámi Parliament, Lars Anders-Baer.  
Photo by Otis Williams



Performance by the Ngambri dance group at the Conference Opening.  
Photo by Otis Williams

Each year the Native Title Conference hosts international speakers who deliver keynote addresses relating to the international experience of native title, land rights and Indigenous justice issues. This year, the President of the Sámi Parliament, Mr Lars Anders-Baer addressed the delegates on the topic of: *The Sámi people in the outmost North - the people in the twilight zone*. Mr Anders-Baer explained that the Sámi are 2 million people living across four countries in the Arctic Circle - namely, Norway, Sweden, Russia and Finland. He explored the varying political systems and challenges faced by the Sámi and the similarities in land rights struggles between Aboriginal Australians and the Sámi people.

Canadian Shana Manson, who is a member of the Lyackson First Nation, described the British Columbia Treaty system in her address: *Reconciling Aboriginal Title and Rights with Asserted Sovereignty: The Modern day BC Treaty process*.

Mrs. Bonita Mabo, the widow of the late Eddie Mabo and their daughter Jessie Mabo attended this year's Mabo Lecture, delivered by Professor Marcia Langton – the first woman to deliver the annual Mabo Lecture in its 11-year history.



Professor Marcia Langton – the first woman to deliver the annual Mabo Lecture in its 11-year history.  
*Photo by Otis Williams.*

The Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon. Jenny Macklin MP presented a keynote address where she flagged that the government would soon be consulting widely on changes to regulatory rules applying to native title corporations. Speaking after the Mabo Lecture, Minister Macklin said stronger governance regimes in Indigenous native title corporations would help ensure payments from the mining sector are best used to build economic and social independence in Indigenous communities.

The inspiration for the 2010 Native Title Conference logo came from Ngunnawal artist Jim Williams' painting, *Bogong Dreaming*. The moth was an important part of male initiations and ceremonies for Ngunnawal men.

The Conference Opening, held at Parliament House, was hosted by NTSCorp board member and Ngambri Elder, Matilda House, who started proceedings with a smoking ceremony. Performances included songs by the Queanbeyan South Public School and the Ngambri dance group.

Throughout the conference, delegates were able to browse and purchase goods from the Conference Trade Fair, which enabled local Indigenous people to exhibit, display and sell art, craft and other products. Stalls included Kemarre Arts, Bala Arts, the Yuarana (Canberra Institute of Tafe) and Jabal (Australian National University) Centres, Burunju

Arts and Ronin Films representing CAAMA Productions as well as sponsor stalls from IBA, and AIATSIS/ Aboriginal Studies Press.

Next year's Native Title Conference will be co-convened by AIATSIS and Queensland Native Title Services (QSNTS) and will take place at the Brisbane Convention and Exhibition Centre on the 1<sup>st</sup> - 3<sup>rd</sup> June.

Papers, audio and PowerPoints from this year's conference will be available shortly on the Native Title Research Unit website at <http://www.aiatsis.gov.au/ntru/overview.html>



(l-r) Jessie Mabo, daughter of Eddie Mabo, The Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon. Jenny Macklin MP and Mrs Bonita Mabo, the widow of the late Eddie Mabo.  
*Photo by Otis Williams*

# An Historic Moment: Jutpurra (Gregory) National Park handback and joint management

**Toni Bauman, Research Fellow, NTRU**

On 13<sup>th</sup> May 2010, an event of great historical significance took place at Mulukurr, close to Jasper Gorge, about 350km south west of Darwin, and east of the town of Timber Creek in the Northern Territory. Gregory National Park, now renamed as Jutpurra, and one of Australia's largest national parks consisting of an area of around 1.3 million hectares, was handed back to its Traditional Owners (TOs). Hundreds of TOs and their relatives camped at dusty Mulukurr, waiting with great interest for the Governor-General, Her Excellency Ms

Quentin Bryce, the woman they referred to as 'the Australian Queen', and for the Federal Minister for Indigenous Affairs, Jenny Macklin, to initiate the handback ceremony.

Jutpurra straddles both the Northern Land Council (NLC) and Central Land Council (CLC) regions. It comprises a smaller northeast section along the Victoria Highway and a larger southern section between the Victoria and Buntine Highways. It contains highly significant Aboriginal sites that have remained untouched for tens of thousands of years and startling land formations. Jutpurra also includes *Gregory's Tree Historical Reserve* which is the site

of the base camp for Augustus Gregory's 1855-1856 North Australia Expedition.

The handback was part of a comprehensive landmark settlement by the Northern Territory Government, the CLC and the NLC (on behalf of TOs) in 2005. This settled outstanding, existing or potential claims over 27 parks and reserves made under the *Aboriginal Land Rights Act 1976* (ALRA) and the *Native Title Act 1993* (NTA). These claims would have otherwise taken years to finalise in court. Part of the settlement involved new legislation, the *Northern Territory Parks and Reserves (Framework for the Future) Act 2005* and amendment to existing legislation, the *Territory Parks and Wildlife Conservation Amendment Act 2006*.

As part of this settlement, a set of core principles was established, defining the overall objective of joint management and how such an objective would be achieved. A new form of 'Northern Territory Parks Freehold' was also created. Key provisions recognise and promote Aboriginal cultural values, common joint management arrangements with a focus on



Traditional Owners and senior members of the Nalipinggak, Bilinara-Jutpurra and Winan Aboriginal Land Trusts proudly showing their land title agreements to Jutpurra (Gregory) National Park with (from L to R) Northern Territory Parks and Wildlife Minister Karl Hampton, the Federal Member for Lingiari Warren Snowden, the federal Minister for Family and Housing Community Services and Indigenous Affairs (FaHCSIA), Jenny Macklin, and the Governor-General, Quentin Bryce. Traditional owners also signed documents agreeing for the Park to be leased back to the NT Government for 99 years under a joint management arrangement.

*Photo by Mahala Strohfeldt, courtesy of The Koori Mail*

responsibilities of the partners, the granting of community living areas within parks, joint management deeds, the establishment of advisory regional joint management groups

and a peak Northern Territory joint management forum to advise the Minister, and the development of an employment and training strategy.

In 2005, Indigenous land use agreements (ILUAs) were signed by the CLC, the NLC and the Northern Territory Government for the purpose of granting Gregory National Park as Aboriginal land under the ALRA. The purpose of the ILUA is to satisfy the condition set out in s 10(1)(b) of the *Parks and*

*Reserves (Framework for the Future) Act*, and to otherwise deal with native title issues with respect to the scheduling of the park as Aboriginal land under the ALRA (Agreements, Treaties and Negotiated Settlements Project, <http://www.atns.net.au/agreement.asp?EntityID=3111>).

Traditional Owners, the Northern Territory and Federal Governments agreed that the land would be scheduled as Aboriginal freehold under the ALRA and leased back to the Northern Territory Government for 99 years for use as a national park. Representatives of three land trusts accepted titles to the land: the Winan Land Trust for the main portion of the park including the eastern portion around Langgayi or the Victoria River Crossing; the Bilinara-Jutpara Land Trust for the southern portion in the CLC's region and the Nalipinggak Land Trust which includes Gregory's Historic Tree Nature Reserve. It is also expected that existing land under the Wambardi Land Trust will soon be leased back to Jutpurra under joint management arrangements thereby linking up eastern and western sections of Jutpurra.

Numerous language groups should benefit from the handback and joint management arrangements including the Ngaliwurru, Ngarinyman, Nungali, Bilinara, Malgnin, Karangpurru, Wardaman, Jaminjung and Gurindji. Indeed the range and diversity of the affiliations and languages of groups in the area presented something of a challenge to TOs in finding



Local school children and the crowd members enjoying the ceremony. Photo by Toni Bauman.



Alan Griffiths' songs performed by dancers with spectacularly coloured woven 'boards' related to his picking up his daughter from Broome in Western Australia to where she had been taken by government officials. Photo by Ross Turner



Site of Jutpurra National Park handback. Photo by Francois Faber

an appropriate name for the park. Such a name needed to be inclusive and representative, but also, as the TOs considered, easy to pronounce and amenable to tourism promotions. The name 'Jutpurra' was agreed not long before the handback ceremony was about to commence. As Larry Johns, a senior TO commented to the *Koori Mail*: 'If this name is going to travel the world and people overseas can say "Canberra", I'm sure they can say "Jutpurra". Jutpurra is a very important, sacred ceremony place of the people' (*Koori Mail*, 19 May 2010, p. 6).

The Governor-General acknowledged 'the ancient and living keepers of this sacred land beneath and around us' and her privilege 'to experience the beautiful place'. She also recognised the hard work, co-operation and pragmatics required as those involved worked towards common ground over many years. Minister Macklin commented that what was 'a day of national significance' represented a reconfiguring of relationships which will see the land in the 'safekeeping of the Traditional Owners for generations to come' and for all Australians to share.

Senior men from the area, Jerry Jones and Bill Harney sang songs, both newly dreamed and

ancient, accompanied by Jimmy Wave Hill on the didjeridu. One of Alan Griffiths' songs performed by dancers with spectacularly coloured woven 'boards' related to his picking up his daughter from Broome in Western Australia to where she had been taken by government officials. Women from Kalkaringi, Dagaragu and Lajamanu painted their bodies and danced the stories of their ancestral women. NLC provided wonderful food and a local band, The White Water Band, from the neighbouring Aboriginal community of Yarralin, entertained the crowd.

There were a number of other speakers including the NT Parks and Wildlife Minister Karl Hampton, the Federal Member for Lingiari, Warren Snowden, NLC Chief Executive Officer, Kim Hill, and NLC Chairman, Wali Wunungmurra. David Ross, CEO of CLC commented, 'for years people have had to stand on the sidelines while other people made decisions about their traditional country... Now, with these joint management arrangements, people will be asked – asked about future developments on their land, about the use of it, about access to it – this is the crux of joint management. To be finally recognised as the traditional land owners is an enormous step forward for these peoples.'

Local Indigenous people will be trained as rangers and to set up tourism enterprises and TOs should be more able to fulfill their responsibilities to protect sacred sites. Opportunities should also present themselves for economic development including eco-tourism ventures, for weed and fire management and for the preservation and research of native flora and fauna.

But these activities will only occur with the necessary Northern Territory and Federal Government support for building the foundations of such activities including good governance, office space, transport and salaries and the prioritisation of local people in the park's management and contracting processes. As Sharona Bishop, a young artist, commented: '...the government should provide start-up money for art galleries, accommodation and tour guide operations (*The Australian*, May 14 2010).

So let's hope that TOs, Larry Johns and Jerry Jones, who shared their birthday on the day of the handback have something else to celebrate; that the 13<sup>th</sup> May will be, as Larry predicted: '...the most important day in the lives of my people' (*The Age*, 10 June 2010).

## Case Note: *Aplin on behalf of the Waanyi Peoples v State of Queensland [2010]* FCA 625

By Zoe Scanlon, Research Officer,  
NTRU

Federal Court of Australia - Brisbane Registry  
Dowsett J  
18 June 2010

### Background

The Waanyi people filed their native title application in 1999. Their claim covered land in both Queensland and the Northern Territory, in the southern Gulf of Carpentaria region. Mr Phillips, who does not form part of the claim group, claimed his ancestor, 'Minnie', was a Waanyi woman, therefore he and Minnie's other descendents should be recognised as members of the claim group. The rest of the claim group, however, rejected this assertion, and do not recognise Mr Phillips as part of the group. They argued that group identity depends substantially, if not entirely, on acceptance from other members of the claimant group that the person in question is of Waanyi descent. Mr Phillips, conversely, submitted that identity depends on biological descent or adoption and the acceptance of that fact by one or more senior Waanyi people [79].

### Is Minnie recognised as a Waanyi person?

Justice Dowsett gave detailed consideration to the evidence relating to Minnie's identity provided by various interviewees in Professor Trigger's report on this matter. He found that, on the balance of probabilities, Minnie identified as a Waanyi person and, at least at certain points in her life, was accepted by Waanyi people at Burketown and Lawn Hill as being Waanyi. He noted however, that crucially, the contemporary Waanyi people have as yet refused to recognise her as a Waanyi person.

He then reiterated that the central question was whether Minnie's descendents are accepted as Waanyi. This would also require a finding as to whether the claim group accept Minnie as a Waanyi person.

## Membership of a claim group

### *Native Title Act 1993 (Cth)*

Justice Dowsett examined s 61(1) of the *Native Title Act 1993 (Cth)* (NTA) which defines those who may make an application for a native title determination. He also considered s 251B of NTA which outlines a requirement that if a process under the traditional law and custom of the claim group exists by which the claim group authorises the applicant to make the application and deal with related arising matters on behalf of the claim group, that process must be followed. If no such process exists under traditional law and custom, a process adopted and agreed to by the claim group must then be followed.

He found that these provisions inevitably require that the claim group determine its own composition, and that this decision should be made in line with the processes outlined in s 251B. He reinforced the fact that while all claim group members do not have to be identified in the application, such identification must be possible at a later stage; claim groups do not have the right to arbitrarily determine who is and is not a member. In determining who forms part of the group, the claim group must act in accordance with traditional laws and customs [256].

### *Case law*

Justice Dowsett considered Brennan J's statement in the *Mabo* case that 'as long as people remain an identifiable community, the members of whom are identified by one another as members of that community living under its laws and customs, the communal native title survives' and the *Yorta Yorta* decision supports this. He then outlined the Full Court's statement in the *Sampi* appeal that 'a relevant factor among the constellation of factors to be considered in determining whether a group constitutes a "society" in the *Yorta Yorta* sense is the internal views of the members of the group- the emic view. The unity among members of the group required by *Yorta Yorta* means that they must identify as people together who are bound by the one set of laws and customs or normative system'.

From these authorities, Dowsett J drew the conclusion that membership must be based on group acceptance, as that requirement is inherent in the concept of a society. He also relied on these authorities to find that membership of a society cannot be the product of acceptance by one other member; rather, acceptance must be by the community at a more general level [260-261].

### *Self-identification/assertion*

As Dowsett J found that Minnie identified as Waanyi, the question of self-identification did not directly arise in this case, however he considered that it should be resolved nonetheless.

He noted that for many Waanyi, no overt assertion of identity is necessary because they will already be accepted by those with whom they live. However, public assertion may be necessary where a person has not previously been recognised as Waanyi (it is possible to re-establish an affiliation) or where a person must choose between different affiliations of his or her parents. Justice Dowsett was inclined to think that living according to Waanyi custom, or not choosing to abandon Waanyi identity in the case of an individual with parents from different groups, would be sufficient.

### **Guidance provided to the claim group when making a decision**

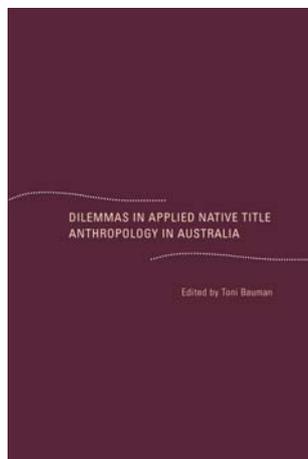
Although Dowsett J ultimately left the Waanyi claim group to decide whether Mr Phillips was a member, he offered some thoughts on how such a decision ought to be made. It was noted that the politics of the situation may distort the claim group's views of the evidence and may not result in an informed and fair decision. He suggested that the claim group be advised to form a small committee, perhaps made up of those people who form the applicant. This committee could examine the evidence in light of the findings made in the present case and any other legal advice they receive. It should then formulate a recommendation that may be adopted by the claim group. He particularly urged that the views of certain interviewees be considered rather than disregarded based on preconceived notions.

### **The possibility of review**

Although the Waanyi claim group was to make this decision, Dowsett J suggested that given the significance of this issue for the purposes of the NTA, any decision might not necessarily be beyond review. Although he was not aware of any existing precedent in which judicial relief was available to someone who was wrongfully excluded from a claim group, he suggested that relief may be available by analogy to the doctrine of fraud on the power, which has been used in the past to grant relief for the oppression of minority company shareholders.

# NTRU Project Report

## NTRU Research Monograph Released



The Native Title Research Unit at the Australian Institute of Aboriginal and Torres Strait Islander Studies has recently published a research monograph titled *Dilemmas in Applied Native Title Anthropology in Australia*. The volume was edited by Toni Bauman and contains a collection of papers from a number of contributors:

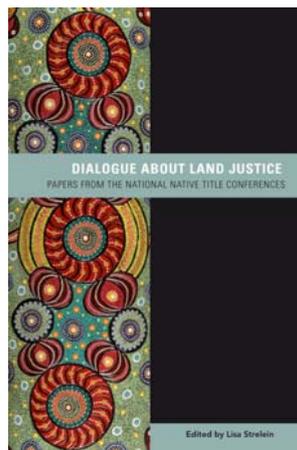
John Morton, Katie Glaskin, Paul Burke, Kingsley Palmer, Tim Pilbrow, Kim McCaul, Toni Bauman and David Trigger.

These papers consider the numerous dilemmas that native title raises for anthropologists in Australia. It is anthropologists' task, among others, to address Indigenous claims under s 223 of the *Native Title Act* by preparing connection materials and giving expert evidence in Federal Court hearings. The papers in this collection provide a critical but constructive analysis of a range of these dilemmas, and have significant implications for claimant groups, the disciplines of law and anthropology and policy makers.

Issues discussed include the need to contextualise early and contemporary ethnographic texts, including within the discipline of anthropology in attributing weight to them as evidence; creative ways of defining normative systems and societies which better reflect the complexities of layered responsibilities for Indigenous laws and customs; seldom discussed overlaps between legal and anthropological discourses and the need for them to inform each other; competing narratives of law and anthropology; issues of procedural fairness in State and Territory Government connection assessment processes; differences in assessing ethnographies which can arise depending on whether a positional or interest-based approach is taken to negotiation; methodological and evaluative dilemmas facing anthropologists as expert witnesses in litigation; and ways of encouraging early career anthropologists into the native title area.

The volume was developed from papers and discussion at the 2009 Australian Anthropological Society Conference. A PDF copy of the volume can be accessed at: <http://www.aiatsis.gov.au/ntru/monographs.html>. A limited number of hard copies are available on request.

## Dialogue about Land Justice



Aboriginal Studies Press has recently published a selection of papers presented at the National Native Title Conference over its first 10 years, entitled *Dialogue about Land Justice*. The collection was edited by Dr. Lisa Strelein, the Director of Research, including the Native Title Research Unit at AIATSIS.

*Dialogue about Land Justice* comprises a selection of papers presented by Australia's leading thinkers, senior jurists and Indigenous leaders. It encapsulates the key issues that have been at the forefront of discussions about native title for a decade. The papers place native title within a broader discussion of land justice and the place of Indigenous peoples in relation to the Australian political and legal framework.

It provides a comparative understanding of Indigenous land rights and interests by including an international perspective, with papers about Aotearoa New Zealand and the United States of America.

Contributors include: Mick Dodson, Marcia Langton, Noel Pearson, Chief Justice Robert French, Justice John Basten, Tom Calma, Aden Ridgeway and Graeme Neate.

*Dialogue about Land Justice* can be purchased for \$45 from the AIATSIS website at: <http://www.aiatsis.gov.au/asp/aspbooks/dialogueinlandjustic.html>

# What's New

## Recent Cases

### ***Strickland v State of Western Australia* [2010] FCA 272**

29 April 2010

Federal Court of Australia, Perth Registry  
McKerracher J

The Native Title Registrar did not accept the Maduwongga people's native title application for registration under s 190A of the *Native Title Act*. The Registrar was not satisfied that the applicant was authorised by all members of the claimant group to make an application, that the factual basis for the claim was adequate, that the applicants had established any of the claimed rights and interests, that there was a physical connection with the land or waters covered by the application or that the applicants were not making a claim to the ownership of gas.

In December 2009, McKerracher J had ordered that submissions in relation to the application be filed by the applicant by 19 February 2010 or the Court would proceed to determine the matter without submissions.

As no submissions were filed by that time, McKerracher J was satisfied that the application had not been amended and found no evidence that it would be amended in a way that would lead the Registrar to reach a different conclusion. He therefore dismissed the application.

### ***Rose on behalf of the Kurnai Claims v State of Victoria* [2010] FCA 460**

14 May 2010

Federal Court of Australia, Melbourne Registry  
North J

On 14 May 2010, Justice North dismissed the Kurnai's application for a determination of native title in the Gippsland region of south-east Victoria. The Kurnai application was brought on behalf of a group of people identified as descendants of Larry Johnson and Kitty Perry Johnson, excluding the wider Gippsland Aboriginal community. It came before the Court as alternative mechanisms could not resolve the disagreement over who should be included in the determination.

The Kurnai argued that none of the descendants of Aboriginal people in the Gippsland area, save for the descendants of Larry Johnson and Kitty Perry

Johnson, remain as part of a continuing society. Their argument was therefore that none of the identified 25 ancestral sets, recognised as part of the Kurnai society today, form a continuing society. Two particular ancestral sets were examined to highlight the inadequacies of the Kurnai line of argument, and because ancestors from these groups were excluded, the claim could not succeed. Ms Pauline Mullet - self-represented litigant and main spokesperson for the Kurnai case - was unable to satisfy the Court that the remaining individuals as identified by other witnesses and in a report produced by the State should be excluded from the claim, hence it failed.

### ***Brown (on behalf of the Ngarla People) v State of Western Australia (No 2)* [2010] FCA 498**

21 May 2010

Federal Court of Australia, Perth Registry  
Bennett J

Justice Bennett considered the issue of whether the grant of the Mt Goldsworthy mining leases in the Pilbara region of Western Australia effected or gave rise to the extinguishment of native title at common law. The *Native Title Act 1993* does not support an intention to extinguish native title, and therefore the concept of common law extinguishment of native title was relevant. It was agreed that the Ngarla hold native title rights and interests in the relevant land, and therefore the case centred on whether the rights granted by the lease affected the native title rights and interests or whether any inconsistencies arise at all.

The applicants (Brown on behalf of the Ngarla People) argued that mining leases do not extinguish all native title rights and interests, as they were granted by agreement differing from those made under the *Mining Act 1904*. Her Honour applied the 'inconsistency of incidents' test to determine whether the rights of the joint venturers that appeared to conflict with the determined native title rights extinguished them, prevailed over or suspended the exercise of native title. If the leases extinguished native title, there would be no issue as native title cannot be revived.

Her Honour held that the leases had not granted exclusive possession over the whole determination area and therefore not all native title interests had been extinguished. The land in which these rights were extinguished was limited to areas where there was a legal inconsistency between the interests granted by the lease and the continuing interests of the native title holders. This was limited to the areas where there had been development, namely the mines, town sites and associated infrastructure.

**Edwards v Santos Limited [2010] FCAFC 64**

(4 June 2010)

Full Federal Court of Australia  
Stone, Greenwood and Jagot JJ

The Full Federal Court (Stone, Greenwood and Jagot JJ) on 4 June 2010 dismissed the application for leave to appeal a decision of the Primary Judge, Justice Logan, 18 December 2009 (see Native Title Newsletter Nov/Dec 6/2009 for summary of this case). Edwards and others sought leave to appeal the decision which dismissed their application for an injunction which sought to prevent the granting of petroleum leases over their native title claim area.

The decision was affirmed by the Full Federal Court which did not allow leave to appeal for what it considered amounted to an 'advisory opinion'. Edwards and others were native title claimants, so they did not yet have a legal or equitable interest to be protected. The order for Edwards and others to pay costs was also affirmed, as there was no reason why costs should not follow the event.

**Huddleston v Aboriginal Land Commissioner [2010] FCAFC 66**

(8 June 2010)

Full Federal Court of Australia  
Keane CJ, Spender and Barker JJ

The Full Federal Court (Keane CJ, Spender and Barker JJ) on 8 June 2010 overturned a decision of the Aboriginal Land Commissioner to dispose of the Huddleston land claim in the Northern Territory. The Commissioner had disposed of the claim due to the claimants not providing further information relating to their application within a six month period as requested pursuant to s 67A(7) of the *Aboriginal Land Rights (NT) Act 1976*.

The Northern Land Council (NLC) on behalf of the applicants challenged this determination claiming a failure to accord procedural fairness in reaching the decision. The Commissioner emphasised that an extension was possible if satisfied that a genuine effort was being made to provide the information requested. The Principal Legal Officer of the NLC conceded that the Commissioner's requests had been mislaid by staff, however argued that the information requested was extensive and that its legal and anthropological branches were working at capacity in resolving other outstanding claims.

Although the Court held that the Commissioner was entitled to take the view that he was not provided with a sufficient basis to grant an appropriate

extension, the common law duty to act fairly and accord procedural fairness prevailed. Therefore the Court rendered the Commissioner's decision to dispose of the claim invalid and of no effect. Further, due to its active support of the Commissioner, the second respondent, the Government of the Northern Territory, was ordered to pay costs.

**Murray on behalf of the Yilka Native Title Claimants v State of Western Australia [2010] FCA 595**

(11 June 2010)

Federal Court of Australia, Western Australian  
District Registry  
McKerracher J

A number of parties gave notice that they wished to join the proceeding but the applicant claimed that the notices were deficient and shouldn't be accepted. The applicant considered that, as the notices made no reference to a claim to hold native title, they did not trigger the operation of s 84(3)(a)(ii) of the Native Title Act, which allows affected persons to become parties to a native title claim.

Justice McKerracher found that despite the inadequate notices, the parties wishing to join should be permitted to clarify the content of the notices they had provided through further evidence and submissions.

In relation to those parties that had provided further submissions, McKerracher J found that it would be too severe not to allow them to join the proceeding, as the further evidence provided by those parties suggested they ought to be joined. However, he considered that those who had not filed further clarificatory material should not be a party to the proceeding but, if they wished to, would have 21 days to apply through s 84(5) of the Native Title Act, which allows the Federal Court to join parties to proceedings.

He ordered that the parties resubmit the notices with greater clarity so that later in the matter, there wouldn't be a need to rely on affidavit material.

**Aplin on behalf of the Waanyi Peoples v State of Queensland [2010] FCA 625**

(18 June 2010)

Federal Court of Australia, Brisbane Registry  
Dowsett J

See Page 6 for detailed case note.

***Gangalidda and Garawa Peoples v State of Queensland and Gangalidda and Garawa People v State of Queensland #2 [2010] FCA 646***  
(23 June 2010)

Federal Court of Australia, Burketown Registry  
Spender J

Justice Spender heard these two consent determinations together and recognised the native title rights of the Gangalidda and Garawa people over 5,810 sq km of land approximately 650 km west of Cairns. This determination included exclusive native title rights over approximately one third of the land and non-exclusive rights over the other two thirds (made up of predominantly pastoral leases).

Their rights in relation to the area of exclusive native title land are the right to possession, occupation, use and enjoyment of that area to the exclusion of all others.

Their rights in relation to the area of non-exclusive rights are: the right to access, to be present on and to traverse the area; to hunt, fish and gather on the area for personal, domestic and non-commercial communal purposes; to take and use natural resources from the area for personal, domestic and non-commercial communal purposes; to camp on the area but not to reside permanently or to erect permanent structures or fixtures; to light fires on the area for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation; to conduct religious and spiritual activities and ceremonies on the area; to be buried on, and bury Native Title Holders on the area; to maintain places and areas of importance or significance to the Native Title Holders under their traditional laws and customs and protect those places and areas by lawful means from physical harm and to share or exchange natural resources from the area for personal, domestic and non-commercial communal purposes.

In relation to water, the Gangalidda and Garawa people have non-exclusive rights to hunt and fish in and on and gather from the water and take, use and enjoy the water for personal, domestic and non-commercial communal purposes.

Being satisfied that a determination in the terms agreed by the parties would be within the power of the Court and that it was appropriate for the Court to do so, Spender J was able to make the consent determination.

***QGC Pty Ltd v Bygrave [2010] FCA 659***

(23 June 2010)

Federal Court of Australia, Brisbane Registry  
Reeves J

QGC Pty Ltd intended to develop a liquefied natural gas project on land that was included in the Iman #2 native title claim. To do so, they negotiated an ILUA over the area with the claimant group. One native title claimant, however, refused to sign and QGC attempted to have the agreement registered nonetheless. Queensland South Native Title Services (QSNTS) applied to be made party to this proceeding.

QGC argued that QSNTS did not have sufficient interest in the case as they were in the same position as any other representative body in Australia and comparatively, held no greater interest in the case. Conversely, QSNTS submitted that they held sufficient interest in the case as they are the representative body responsible for the area that was the subject of the agreement, which gives them a number of relevant responsibilities including facilitation, dispute resolution and agreement-making functions.

Justice Reeves found that as the *Native Title Act 1993* (Cth) requires the relevant representative body to perform certain functions in such circumstances, QSNTS had a 'direct and demonstrable' interest in the proceedings.

QGC also submitted that if QSNTS were joined as a party, a conflict of interest would arise for Mr Hardie (the solicitor on the record in the Iman #2 claim). They suggested that in acting as an agent to QSNTS, he would breach his duty of loyalty to the Iman #2 claimants.

Justice Reeves surmised the Mr Hardie could hold concurrent fiduciary duties and that there was no actual or perceived conflict of interest between the duties Mr Hardie owed to the Iman people as his client and the duties he owed to QSNTS as principal.

In light of the absence of the conflict of interest and the direct interest in the case, Reeves J ordered that QSNTS be made party to the proceedings.

# Native Title Publications

## AIATSIS Publications:

- T Bauman (ed), *Dilemmas in applied native title anthropology in Australia*, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2010.
- L Strelein (ed), *Dialogue about land justice: papers from the National Native Title Conference*, Aboriginal Studies Press, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2010.

## Papers:

- G Neate and D O'Dea, *The functions of the National Native Title Tribunal*, Paper delivered to the *Legalwise Native Title Seminar* on 28 May 2010 by Graeme Neate and 4 June 2010 by Daniel O'Dea.
- G Neate, *Assessing native title and economic development*, Paper delivered to Aligning Indigenous Land Management with Economic Development Conference, Darwin, 24 March 2010.

## Speeches:

- Hon J Macklin MP, *Harnessing opportunities for future generations of Indigenous Australians*, National Native Title Conference 2010, Canberra, 2010.

## Journal Articles:

- A Awad, 'Native ambitions', *Lawyers Weekly*, No. 479, 2 April 2010, pp. 16-17.
- S Labowitch, 'Integration and reconciliation of social, legal and environmental interests under Indigenous land rights sea claims', *Environmental and Planning Law Journal*, Vol. 27, No. 3, 2010, pp. 189-201.
- AC Neal SC., 'The native title concept of 'society': reflections post *Sampit*', *Native Title News*, Vol. 9, Issues 7&8, 2010, p.117-120.
- J Southalan, 'Authorisation of native title claims: problems with a 'claim group representative body'', *Australian Resources and Energy Law Journal*, Vol. 29, No. 1, 2010, pp. 49-59.

- M Gregory and A Maharaj-MacLean, 'Recent proposed amendments to the *Native Title Act*', *Australian Resources and Energy Law Journal*, Vol. 29, No. 1, 2010, pp. 7-9.
- L Terrill, 'Indigenous land reform: an economic or bureaucratic reform?', *Indigenous Law Bulletin*, Vol. 7, Issue 17, 2010, pp. 3-7.
- R Ye, 'Torrens and customary land tenure: a case study of the *Land Titles Registration Act 2008* of Samoa', *Victoria University of Wellington Law Review*, Vol. 40, No. 4, 2010, pp. 827-861.
- S Young, 'Tides of history and jurisprudential gulfs: native title proof and the Noongar Western Australia claim', *The Indigenous Law Journal at the University of Toronto Faculty of Law*, Vol. 8, Issue 1, 2010, pp. 95-120.
- K McNeil, 'Reconciliation and third-party interests: *Tsilhqot'in Nation v British Columbia*', *The Indigenous Law Journal at the University of Toronto Faculty of Law*, Vol. 8, Issue 1, 2010, pp. 7-25.

# Native title in the News

## National

19/05/2010

### Tax relief plan for native title

Indigenous people who receive native title payments may no longer pay tax under radical proposals being floated by the Rudd government. The federal government has floated three different approaches to allow Aboriginal communities who receive native title funds to keep more money and use it to benefit their communities. One plan involves a tax exemption for all native title payments. The second involves the creation of a new tax-exempt entity, an Indigenous community fund, to deal with the taxation of benefits when they are used for a range of defined purposes that benefit Indigenous Australians, such as education. The third option allows the government to withhold an amount of tax before the payment goes to the native title holders. The rest of the payment would then be income tax exempt. *Australian* (National AU, 19 May 2010), 7.

**5/06/2010****Native title reforms**

Indigenous Affairs Minister, Jenny Macklin, is considering appointing a new Commonwealth Officer to check that native title agreements are sustainable and will benefit all Indigenous communities, including future generations. Aboriginal leaders have labelled the idea as 'paternalistic' and 'racist'; because it seeks to tell Indigenous groups how to spend money collected from their own lands. A discussion paper is available for download from the FaHCSIA website. *Weekend Australia* (Australia 5<sup>th</sup> June 2010), 8. *Australian* (Australia, 4<sup>th</sup> June 2010), 8. *Australian* (Australia, 3<sup>rd</sup> June 2010), 7.

**New South Wales****04/05/2010****Jetty community garden**

A site has been found for Coffs Harbour's community garden after 17 months of searching. The area is subject to a native title claim. Because of the claim the gardeners will initially only be offered a 12-month lease by both the council and the state government. The site covers both Crown and council owned land and therefore the gardeners will also need to get two separate licences to operate the gardens. *Advocate* (Coffs Harbour NSW, 4 May 2010), 5.

**5/06/2010**

**Native title holders accused of squandering compensation money** Native title holders who won the first native title claim on the Australian mainland have been accused of wasting the \$740,000 in compensation money they received from the NSW Government. Reports reveal the Dughutti Elders Council (Aboriginal Corporation) is in severe financial hardship after losing more than \$545,000 last financial year, including almost \$400,000 in undocumented expenses, and more than \$115,000 the year before. *Sydney Morning Herald* (Sydney NSW, 5<sup>th</sup> June 2010) 14.

**Northern Territory****13/05/2010****Gregory National Park returns to its traditional owners**

The Northern Territory Government has handed back ownership of the Gregory National Park to Traditional Owners, who have agreed to make the land available to the public as a park through a 99-year lease to the government. Traditional Owners will jointly manage the park with the Territory's

Parks and Wildlife Department under an agreement that has taken years to negotiate. This will benefit about 300 Indigenous people from seven Aboriginal language groups. Federal Minister for Indigenous Affairs Jenny Macklin said the joint management would help 'strengthen the relationship between Indigenous and other Australians'.

It ensures the protection of vast areas of semiarid and tropical land that includes sacred Aboriginal sites that have remained untouched for tens of thousands of years. Ngarinyman Traditional Owner Larry Johns said that the park would be renamed Jutpurra National Park. *Age* (Melbourne VIC, 13 May 2010), 6. *Australian* (National AU, 14 May 2010), 2. *Fraser Coast Chronicle* (Hervey Bay QLD, 15 May 2010), 20. *Canberra Times* (Canberra ACT, 15 May 2010), 5. *Advocate*, Coffs Harbour NSW, 15 May 2010), 22. *Katherine Times* (Katherine NT, 26 May 2010), 7.

**29/05/2010****Uranium site to be made part of Kakadu**

Thousands of hectares of wilderness land, including the large Koongarra uranium deposit estimated to hold about 14,000 tonnes of uranium, are set to be handed over to become part of Kakadu National Park. The land has been offered on behalf of Traditional Owner Jeffrey Lee. Federal Environment Minister Peter Garrett has said, 'whilst there are important questions of Indigenous rights and natural justice that need to be worked through, this is a once in a generation opportunity that I would naturally encourage'. French miner Areva has been stopped from mining the area by Mr. Lee, who has said he is not interested in money. According to Aboriginal beliefs, the land includes places where the rainbow serpent entered the ground and rock art from hundreds, perhaps tens of thousands of years ago. *Sydney Morning Herald* (Sydney NSW, 29 May 2010), 14. *Age* (Melbourne VIC, 29 May 2010), 5. *Northern Territory News* (Darwin NT, 31 May 2010), 4.

**Queensland****11/05/2010****McCracken admits clearing bushland**

Developer and former rugby league star Jarrod McCracken faces fines of up to \$250,000 after pleading guilty to clearing protected bushland to make way for his new home, driveway and a horse paddock. Excavation and clearing of vegetation at the property finally stopped after the Whitsundays Shire Council applied to the Planning and Environment Court in late 2007.

The charges are said to include clearing 265sq m of protected forest from Dryandra National Park, which adjoins the McCracken property, as well as the destruction of shell middens and sites with heritage value to the Gia Aboriginal people, who have a native title claim on the land. *Townsville Bulletin* (Townsville QLD, May 2010), 4.

**19/05/2010**

**Native title check on \$1 m project**

A Cairns law firm has been engaged to check on native title issues on land which Cook Shire Council is building six aged care units. This is a part of a \$1 million project through the Federal Economic Stimulus Plan Social Housing Initiative. With no identified extinguishing tenure on the May St reserve, adjacent to the 12 existing Coral Sea Units, native title rights could exist and need be addressed, said a report to last month's council meeting. *Cooktown Local News* (Cooktown QLD, 19 May 2010), 7.

**19/05/2010**

**Fritz Creek camp lost in native title deal; timber lot confuses**

Reserves for camping and timber between the Black Mountain and Cedar Bay national parks have been revoked as part of the ongoing implementation of a native title agreement finalised 2½ years ago.

The Department of Environment and Resource Management recently advised the Cook Shire Council that the camping reserve on Fritz Creek, south of Auravale, as well as parts of Monkhouse timber reserve, which borders Black Mountain and Cedar Bay national parks, had become protected area estate under the Eastern Kuku Yalanji Indigenous Land Use Agreements.

The Fritz Creek land, outside the World Heritage Area, was not in the original 1994 native title claim area – but the council consented in the ILUAs to the camping reserve becoming a national park 'green zone'. *Cooktown Local News* (Cooktown QLD, 19 May 2010), 7.

**3/06/2010**

**Native title deal finalised**

The Girramay people have completed the registration of four Indigenous land use agreements (ILUAs) in Far North Queensland. The registration of the ILUAs brought into effect the native title determination made by the Federal Court of Australia on December 10, 2009. The determination recognised the Girramay people's non-exclusive rights over 16 parcels of unallocated state land,

from Cardwell to Bilyana and Murray Upper area. The four ILUAs accompanied the determination and were developed to establish how respective rights will be carried out on the ground. *Tully Times* (Tully QLD, 3rd June 2010), 5.

**12/06/2010**

**Cape Alumina in legal review**

Cape Alumina has abandoned its \$400 million Pisolite Hills project. The move comes after the QLD Government last week announced the Wenlock River Basin would be declared under Wild Rivers legislation, giving it special environmental protection. The protection means mining will be outlawed in a 500 metre radius around the streams that flow into the Wenlock River.

Cape Alumina chairman, George Lloyd, said the Government's decision to declare the Wennlock River a wild river had made the project unviable. 'The decision has been taken on purely political grounds and with no consideration for the future economic wealth of Queensland, the welfare of the Aboriginal people of Mapoon and Traditional Owners' he said. *Business News* (QLD 12<sup>th</sup> June 2010), 117. *North West Star* (Mount Isa QLD, 14<sup>th</sup> June 2010), 12. *Townsville Bulletin* (Townsville QLD, 12<sup>th</sup> June 2010), 81. *Border Mail*(Albury-Wodonga 12<sup>th</sup> June 2010), 42. *Weekend Post* ( Cairns QLD, 12<sup>th</sup> June 2010), 3. *Weekend Gold Coast Bulletin* (QLD 12<sup>th</sup> June 2010), 117. *Canberra Times* (Canberra ACT, 12<sup>th</sup> June 2010), 7. *Australian* (Australia 9<sup>th</sup> June 2010), 3. *Sunshine Coast Daily* (Maroochydore QLD, 9<sup>th</sup> June 2010), 7. *Western Cape Bulletin* ( Weipa QLD, 9<sup>th</sup> June 2010), 3.

**21/06/2010**

**Sands of time tick down to save North Straddie**

Queensland Premier, Anna Bligh, announced that most of North Stradbroke Island will be turned into national park and mining will be phased out by 2027. Two percent of the island is currently national park, with mining leases controlling at least half. The only areas outside the proposed national park will be the existing townships, some areas of land set aside specifically for the Quandamooka people and a recreation precinct. There is an agreement with the Quandamooka people to negotiate an Indigenous land use agreement over the next 12 months. *Northern Star*, (Lismore NSW, 21 June 2010), 14. *Australian*, (Australia, 21 June 2010), 7. *Gold Coast Bulletin*, (Gold Coast QLD, 21 June 2010), 25. *Courier Mail*, (Brisbane QLD, 19 June 2010), 81. *Bayside Bulletin*, (Brisbane QLD, 22 June 2010), 1.

**23/06/2010****Traditional owners of local land recognised**

Isaac Regional Council has signed a Memorandum of Understanding (MoU) with the Barada Barna people, which covers nearly a third of the council's local government area. The MoU also covers sections of land in the Central Highlands Regional Council and Mackay Regional Council areas. The MoU is the first step towards finalising an Indigenous land use agreement (ILUA). *Miners Midweek*, (Mackay QLD, 23 June 2010), 3.

**23/06/2010****Torres Straits Sea Claim decision to be handed down**

The decision regarding the Torres Strait Regional Sea Claim will be handed down in Cairns by Justice Finn of the Federal Court of Australia. The claim was made on the basis that Torres Strait Islanders are one people; one society, whose members between them hold all the native title rights and interests in the seas of the Torres Strait according to traditional laws and customs. The claim is over a large area of sea, covering most of the waters in the Torres Strait. *Torres News* (Thursday Island QLD, 23 June 2010), 1. *National Indigenous Times*, (24 June 2010), 6.

**24/06/2010****Native title win**

The Ganalidda and Garawa Peoples have been acknowledged as native title holders of Burketown during a Federal Court hearing. They will now be able to practise their traditional customs in some areas of the 5810 square kilometres of land and waters in Far North Queensland. The Traditional Owners negotiated with parties to develop two agreements which allow native title holders to practise their traditional customs whilst pastoralists continue to work on the same country. Carpentaria Land Council Aboriginal Corporation Chairperson, Thomas Wilson, said yesterday's determination represented an important milestone for the Ganalidda and Garawa Peoples. *North West Star*, (Mount Isa QLD, 24 June 2010), 5. *North West Country*, (Charters Towers QLD, July 2010), 13.

**South Australia****19/05/2010****Mabo ruling 'set bar too low'**

Sean Berg, an Adelaide barrister, has challenged the legal profession to abandon its 'innate conservatism' and address the tough land title issues arising from Aboriginal sovereignty. Delivering the Elliott Johnston Memorial Lecture, as part of South Australia's Law Week, Mr. Berg said

Aborigines had never ceded their sovereignty in Australia and no fair legal system could sustain forever the 'fiction of extinguished predecessor title'.

Mr. Berg said the Mabo decision had 'set the bar too low' by failing to recognise any existing or residual forms of Aboriginal sovereignty for fear of fracturing the internal consistency of the law. He said Mabo 'overwhelmed' broader discussions about the flow-on effects of Aboriginal predecessor title. 'This is not justice as I understand or imagine it,' he said. 'If we have a legal system that does not allow society to explore and protect rights, then we should throw it out and start again.' *Australian* (National AU, 19 May 2010), 7.

**Victoria****27/06/2010****In a battle that's far from black and white, a town's 'backyard' is to become a national park**

One hundred and fifty thousand hectares of new national park and reserve has been declared along the Murray River in Northern Victoria. The Barmah State Forest is the southern section of Australia's biggest red gum forest. It will become one of four new national parks and will be jointly managed by the traditional owners of the area. For the Yorta Yorta, who lost a long-running native title battle in 2002, the new deal is not just about connections to the land. It is also a social justice package that will bring about a huge shift in the people's social and economic status. *Sunday Age*, (Melbourne VIC, 27 June 2010), 1. *Shepparton News*, (Shepparton VIC, 30 June 2010), 1.

**Western Australia****04/05/2010****Bokelund hopes to break down cultural barriers**

The Goldfields Land and Sea Council has appointed a new chief executive following the departure of the long serving Brian Wyatt to the National Native Title Council. Hans Bokelund has more than 15 years' experience in private sector management, including five years in law, and the past three years with the Victorian Bar. Mr. Bokelund hopes to be the first port of call for all people regarding native title issues. 'I will try to break down barriers and misunderstandings along with the fear and prejudice that come from these,' he said. *Kalgoorlie Miner* (Kalgoorlie WA, 4 May 2010), 5.

**19/05/2010****Test case on native title land offences**

Police investigations into offences such as disorderly conduct and indecent exposure on properties covered by native title could be compromised under a landmark test of the laws in the Broome Magistrate's Court. The case revolves around five Lombadina men who were charged with disorderly conduct after they were accused of verbally harassing a group of off-duty police officers at a beach at Djarindjin-Lombadina, 200km north-west of Broome, in September 2008. Mr. McIntyre, senior Counsel for defence, argued for the men's case to be thrown out, saying the beach was on native title land and not in a public place. Therefore, disorderly conduct could not have occurred, he said. Magistrate Greg Smith is due to hand down his decision in September. *West Australian* (Perth WA, 19 May 2010), 18.

**27/05/2010****Miner starts on pit tests**

Toro Energy has started work on a uranium resource test pit. The pit is being developed over the next eight weeks at Toro's uranium project in Wiluna. The site, just south of Wiluna, is a component of the project's bankable feasibility study. Native title claimants and the state government have approved the pit. The on-site work will involve the movement of 45,000 tonnes of barren and ore material for sampling, with all material then returned to the pit to allow for full site rehabilitation. *Geraldton Guardian* (Geraldton WA, 28 May 2010), 3. *Kalgoorlie Miner* (Kalgoorlie WA, 27 May 2010), 18.

**2/06/2010**

**Environmental groups attacked by Kimberly Land Council Chief** Kimberly Land Council CEO, Wayne Bergmann, has accused environmental groups of racism, accusing them of trying to turn Indigenous people and their land into museum exhibits. At the National Native Title Conference in Canberra, Mr Bergmann said that environmentalists were guilty of a 'new paternalism' by denying them the right to develop their landholdings. *West Australian* (Perth WA, 2<sup>nd</sup> June 2010), 32. *Australian* (Australia, 2<sup>nd</sup> June 2010), 5.

**10/06/2010****Native title agreement signed**

Pilbara Traditional Owners and Fortescue Metals Group (FMG) have signed a land access

agreement covering the entirety of the Puuti Kunti Kurrama and Pinikura (PKKP) native title claim area after more than 2 years of litigations and ongoing negotiations. PKKP Country covers approximately 6,567 square kilometres of land south of Karratha, WA. *National Indigenous Times* (Malua Bay 10<sup>th</sup> June 2010), 7. *North West Telegraph*, (South Hedland WA, 16 June 2010), 22. *North West Telegraph*, (South Hedland WA, 23 June 2010), 26. *Pilbara Echo*, (Pilbara WA, 19 June 2010), 16.

**15/06/2010****Native title dispute**

A native title dispute in WA has delayed a Woodside-led gas processing centre being developed. Woodside, the WA government, Kimberly Land Council and a group representing Traditional Owners of the Kimberly region have been negotiating for over a year. Negotiations with Traditional Owners and Woodside were stopped last Friday as advised by the KLC due to legal action brought against it by rival native title claimants, the Goolarabooloo Jabirr Jabbir people. A documentary entitled 'Momentum', produced by National Indigenous TV (NITV), premiered on Goolarri TV in June. The film explores the continuous fight over the proposed James Price Point LNG centre.

*Northern Territory News* (Darwin NT, 15<sup>th</sup> June 2010), 15. *West Australian* (Perth WA, 12<sup>th</sup> June 2010), 4. *Broome Advertiser* (Broome WA, 10<sup>th</sup> June 2010), 3. *Broome Advertiser*, (Broome WA, 17 June 2010), 1. *West Australian*, (Perth WA, 19 June 2010), 17.

**18/06/2010****Native title claim progresses**

The Esperance Nyungar native title claim has progressed forward after the Goldfields Land and Sea Council (GLSC) held a meeting with claimants to discuss a settlement offer from the Western Australia Government. If the offer is accepted it will mean that the claim, which was first lodged in 1996, will be negotiated with a view to obtaining a consent determination of native title without the need for litigation. The claim mainly affects Crown Land, also includes the town of Esperance and stretches to some land in the Shire of Ravensthorpe. *Esperance Express*, (Esperance WA, 18 June 2010), 3.

## Indigenous Land Use Agreements (ILUAs)

| NAME   | TRIBUNAL<br>FILE NO. | TYPE                        | STATE OR<br>TERRITORY | REGISTRATION<br>DATE | SUBJECT-<br>MATTER                         |
|--|----------------------|-----------------------------|-----------------------|----------------------|--|
| Burringurrah Multi<br>Function Police Facility   | WI2010/001           | Area agreement              | Western<br>Australia  | 29/06/2010           | Infrastructure                             |
| Injinoo Pre-Prep Facility<br>ILUA  | QI2010/002           | Area agreement              | Queensland            | 28/06/2010           | Development<br>Infrastructure              |
| Gawler Ranges -<br>Moonaree Pastoral<br>ILUA   | SI2009/003           | Area agreement              | South<br>Australia    | 13/06/2010           | Access                                     |
| Gawler Ranges -<br>Coondambo Pastoral<br>ILUA  | SI2009/004           | Area agreement              | South<br>Australia    | 13/06/2010           | Access                                     |
| Gawler Ranges -<br>Kokatha Pastoral ILUA   | SI2009/005           | Area agreement              | South<br>Australia    | 13/06/2010           | Access                                     |
| Girramay People and<br>State of Qld and Brazier<br>ILUA  | QI2009/066           | Area agreement              | Queensland            | 27/05/2010           | Consultation<br>protocol<br>Government     |
| Ergon Energy/Girramay<br>People ILUA   | QI2009/065           | Area agreement              | Queensland            | 27/05/2010           | Consultation<br>protocol<br>Government     |
| Mining Licence 5503<br>(Dja Dja Wurrung<br>Peoples and Stephen P.<br>Glasson & Russell L.<br>Sanderson) ILUA | VI2009/007           | Area agreement              | Victoria              | 27/05/2010           | Mining                                     |
| Girramay<br>People/Cassowary<br>Coast Regional Council<br>and State of<br>Queensland                         | QI2009/067           | Area agreement              | Queensland            | 25/05/2010           | Consultation<br>protocol<br>Government     |
| Girramay/Cassowary<br>Coast Regional Council   | QI2009/064           | Area agreement              | Queensland            | 25/05/2010           | Consultation<br>protocol                   |
| Kowanyama People -<br>Child Safe House ILUA  | QI2008/032           | Area agreement              | Queensland            | 25/05/2010           | Infrastructure                             |
| Yawuru Prescribed<br>Body Corporate ILUA -<br>Broome   | WI2010/003           | Body corporate<br>agreement | Western<br>Australia  | 24/05/2010           | Development                                |
| Croydon Shire<br>Council/Tagalaka<br>People True Blue<br>Tourist Facility                                    | QI2009/068           | Area agreement              | Queensland            | 14/05/2010           | Consultation<br>protocol<br>Infrastructure |
| Santos Petronas<br>Karingbal ILUA  | QI2009/061           | Area agreement              | Queensland            | 11/05/2010           | Petroleum/Gas<br>Pipeline                  |

This information has been extracted from the Native Title Research Unit ILUA summary:

[http://ntru.aiatsis.gov.au/research/ilua\\_summary.html](http://ntru.aiatsis.gov.au/research/ilua_summary.html), 1 July 2010. For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit [www.nntt.gov.au](http://www.nntt.gov.au).

## Determinations

| SHORT NAME                    | CASE NAME   | DATE       | STATE OR TERRITORY | OUTCOME  | LEGAL PROCESS         |
|-------------------------------|---|------------|--------------------|--|-----------------------|
| Gangalidda and Garawa Peoples | Gangalidda and Garawa People v State of Queensland [2010] FCA 646   | 23/06/2010 | Queensland         | Native title exists in the entire determination area | Consent determination |
| Gangalidda & Garawa People #2 | Gangalidda and Garawa People v State of Queensland [2010] FCA 646   | 23/06/2010 | Queensland         | Native title exists in the entire determination area | Consent determination |
| Girramay People               | Abraham Muriata on behalf of the Girramay People v State of Queensland & Ors (unreported, FCA, 10 December 2009, Dowsett J) | 27/05/2010 | Queensland         | Native title exists in the entire determination area | Consent determination |

This information has been extracted from the Native Title Research Unit Determinations summary: [http://ntru.aiatsis.gov.au/research/determinations\\_summary.html](http://ntru.aiatsis.gov.au/research/determinations_summary.html) , 1 July 2010. For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit [www.nntt.gov.au](http://www.nntt.gov.au).

## 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.

At the time of the last issue, annotation of *Native Title in the News* (Butterworth's) had commenced, and the most recent citations were included in the March-April *Native Title Newsletter*. Earlier listings from *Native Title in the News* will be included in the listings below. You will be able to find annotated entries on all articles and listings of determinations for each volume in the AIATSIS MURA catalogue.

The Tom Austen Brown collection in the AIATSIS Library contains many books, pamphlets, and selected early journals with material on Australian Aboriginal and Torres Strait Islander culture. Although the articles in the journals have not been annotated, there may be some information relevant to native title. Some of the most recently listed journals appear below:

- *The Geelong Naturalist*. [Geelong, Vic.] : Deller & Whitfield., (1880) (selected issues from 1904 to 1906.)
- *The Illustrated London news*. London : William Little, for The Illustrated London. (selected issues from 1929 to 1964).
- *The journal of the Ethnological Society of London*. London : Trübner, 1869-1870. (only Vol. 2 July 1870).
- *Journal of the Natural History and Science Society of Western Australia*. Perth, W.A. : V.K. Jones, 1910-1914. (only Vol 5, 1914)
- *Transactions of the Royal Society of Victoria*. Melbourne : Published for the Royal Society by Stillwell & Co., 1888-1914. (only Vol. 6 (1861 to 1864)-v. 24 pt. 2 (July 1888).
- *News & and Sketch Ltd*, 1842. Selected issues from 1929 to 1964.
- *The Popular magazine of anthropology*. London : Trübner, 1866-1866. (only Vols. 1 and 2 1866).
- *Victorian Geographical Journal*. Melbourne: Royal Geographical Society of Australasia (Victoria), 1902-1918. (only Vols. 25 -27 (1907-1909).
- *Queensland Geographical Journal*. Brisbane : Royal Geographical Society of Australasia, Queensland, 1900-1993. (only Vols. 16-59).
- *The colonial magazine and commercial-maritime journal*. [London] : Fisher, Son and Co. for the proprietors, 1841. (only Vol. 5 no. 17 1841).

Audiovisual material of interest to native title includes:

### Video and film:

Aboriginal Law Centre University of New South Wales. *Cross-cultural communication: lawyers, Aborigines and the law*. 1995. (PVM00217\_1)

James Cook University.  
*Gugu Badhun digital history project*. 2006. NOTE: A series of interviews with Gugu-Badhun people recording history of their land. (PMV00222\_1-6).

New South Wales Aboriginal Land Council.  
*Justice will be done [videorecording] : celebrating 25 years of land rights legislation in NSW*. Parramatta, N.S.W: NSWALC, c2009.

Stocker, E.O. and University of Adelaide. Board for Anthropological Research.  
*Natives of the Warburton Range [Reel Two]* 1935. (DAC00073\_8)

### Photographs:

Birtles, Francis. Landscape and farming activities in Queensland and Northern Territory. 82 glass plate negatives. 1912-1920s. BIRTLES.F1.CD.

Meehan, Betty and Rhys Jones. A collection of sites located across Arnhem Land and Tasmania. 212 colour slides. 1972-1999. MEEHAN\_JONES.6.CS

Meehan, Betty and Rhys Jones. Betty Meehan and Rhys Jones in the field at Blyth River. 116 colour slides. 1972-1986. MEEHAN\_JONES.5.CS

Read, Herbert Edward. Goulburn Island: Mission scenes and material culture. 20 glass plate negatives. 1925. READ.H4.CD

**Sound recordings:**

A series of sound collections lodged by Wangkamaya Pilbara Aboriginal Language Centre include stories by Allan Crusoe, Amy Dalbon, Amy French, and Henry Fraser. WANGKAMAYA\_31 – 46.

**Anthropology**

Dalley, Cameo.  
'Domains and the intercultural: understanding Aboriginal and missionary engagement at the Mornington Island Mission, Gulf of Carpentaria, Australia, from 1914 to 1942.' *International journal of archaeology* Vol. 14 2010: p.112-135.

Glaskin, Katie.  
'Death and the person: reflections on mortuary rituals, transformation and ontology in an Aboriginal society.' *Paideuma: mitteilungen zur Kulturkunde* no. 52 (2006): p. 107-126.

Sansom, Basil.  
'The refusal of holy engagement: how man-making can fail.' *Oceania* Vol. 80, no. 1 (March 2010), p. 24-57.

**Archaeology**

Brockwell, C. J. et al.  
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AIATSIS acknowledges the funding support of the Indigenous Programs Branch of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).

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