



## WHAT'S NEW IN NATIVE TITLE

APRIL 2016

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### 1. Case Summaries

#### [Ward v State of Western Australia \(No 4\) \[2016\] FCA 358](#)

**13 April 2016, Costs Order, Federal Court of Australia, Western Australia, Barker J**

In this matter, Barker J considered a costs application brought by the native title compensation applicants against the State of Western Australia (the State) regarding their withdrawal of admissions of exclusive possession native title and their conduct of the matter. The principal issue for determination was whether, having regard to s 85A(2) of the NTA, the Court, in its discretion, should award to the claimants the costs of the proceeding on an indemnity basis or party-party basis.

When the proceeding was commenced, both the claimants and the State proceeded on a shared understanding that, but for the creation of the Gibson Desert *Nature Reserve* in 1977 by the State, the claimants and their predecessors would have held exclusive possession native title over that area. Indeed, in October 2012, the State admitted as much in their defence in the proceeding (*original defence*).

Ultimately, however, in *Ward and Others v Western Australia and Another (No 3)* (2015) 233 FCR 1; [2015] FCA 658 (*Ward (No 3)*), the Court ruled that a presumed exclusive possession native title had, in effect, been reduced to a non-exclusive possession native title by virtue of the grant of an oil prospecting licence under State

mining legislation in 1921. This tenure was not discovered until May 2014, at which time the State sought to withdraw their admission that exclusive possession native title had previously existed. After the decision, the claimants decided to withdraw their compensation claim. The claimants now seek the costs of the proceedings against the State caused by the withdrawn admissions.

The Claimants submit that the State acted unreasonably in two circumstances. Firstly, by not performing a full tenure search prior to filing its original defence in the matter and secondly, by withdrawing its admissions late in the proceedings when a hearing was imminent. The Court found that neither of these acts could be characterised as unreasonable acts or omissions that should give rise to an award of costs under s 85(2) of the NTA.

### **Woosup on behalf of the Ankamuthi People v State of Queensland [2016] FCA 351**

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#### **5 April, Interlocutory Application, Federal Court of Australia, Queensland, Greenwood J**

In this matter, Greenwood J considered issues relating to an applicant under s 66B of the *Native Title Act 1993* (Cth) (NTA) and whether an order of costs should be made under s 85A of the NTA.

The hearing was set to determine whether Larry Woosup, Beverley Mamoose and Richard Woosup would be removed as applicants to the native title determination. Larry Woosup sought an adjournment of the determination of this matter so that he could provide affidavit evidence relevant to whether an order should be made under s 66B. Greenwood J determined that Larry Woosup ought to be given the opportunity to provide such evidence and be heard on those issues. The matter relating to s 66B was adjourned.

In relation to costs, Greenwood J stated that Larry Woosup had acted unreasonably as he had plenty of time to file the affidavit but did not do so. As the hearing could not proceed, Larry Woosup and Beverley Mamoose were ordered to pay the costs of all parties. Greenwood J stated that costs had been 'literally thrown away... in an area where the provision of funds for advancing the interests of native title people in this country are precious and can never be wasted.'

## *Pwerle v Northern Territory* [2016] FCA 304

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**7 April, Consent Determination Federal Court of Australia, Northern Territory, Reeves J**

In this decision, Reeves J recognised the native title rights and interests in land and waters covering approximately 10,000 square kilometres of land situated approximately 300 kilometres north of Alice Springs. The determination area is located in Kaytetye, Anmatyerr and Warumungu territory. Two perpetual pastoral leases exist over a large part of the claim area. The claim was first filed on 19 July 2011, and was amended on 19 September 2013. The respondents in this case are the Northern Territory government and two pastoralists.

The non-exclusive native title rights and interests recognised include the right to: access and travel over any part of the land and waters; live on the land, to camp, and to erect shelters and other structures; hunt, gather and fish on the land and waters; take and use natural resources; access, take and use natural water on or in the land, except water captured by the holders of Perpetual Pastoral Lease 969 and Perpetual Pastoral Lease 1103 respectively; light fires for domestic purposes; access and to maintain and protect sites and places; conduct cultural activities, ceremonies, meetings, teaching the physical and spiritual attributes of sites and places and, the right to privacy in the exercise and enjoyment of those activities.

Other non-exclusive rights and interests include the right to speak for and make decisions about the use and enjoyment of the land and waters; share or exchange natural and be accompanied on the land and waters by persons who, though not native title holders have connections to country.

Greenwood J noted that native title holders who hold common or group rights may do so by virtue of descent or non-descent connection.

Greenwood J made the orders agreed upon by the parties to recognise native title rights and interests. The prescribed body corporate is the Eynewantheyne Aboriginal Corporation.

## 2. Legislation

### **South Australia**

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#### *Planning, Development and Infrastructure Act 2016*

**Status:** This Act was passed on 12 April 2016.

**Stated purpose:** This Act replaces the *Development Act 1993* (SA) and becomes the principle Act for matters related to the use, management, and development of land and buildings.

**Native title implications:** Any activities regulated by this Act could constitute future acts on native title land.

## Northern Territory

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### [Fisheries Legislation Amendment Bill 2016](#)

**Status:** This Bill was introduced on 20 April 2016.

**Stated purpose:** This Bill compliments various Blue Mud Bay settlement agreements to allow permit-free fishing in intertidal waters overlying Aboriginal Land. The Bill also increases the efficiency of fisheries licencing and infringement and confiscation notices for minor offences. The Bill also provides powers to deal with biosecurity threats.

**Native title implications:** Native title holders should be aware of the new licensing and permits regimes, and the use of infringement or confiscation notices for minor offences. However, this Bill should not affect native title rights and interests.

For further information please see the [Explanatory Statement](#).

### [Bushfires Management Bill 2016](#)

**Status:** This Bill was introduced on 21 April 2016.

**Stated purpose:** This Bill replaces the *Bushfires Act*. The purpose of the Bill is to improve bushfire management leading to increased public safety.

**Native title implications:** The Bill clarifies the role of stakeholders in bushfire management and puts in place fire management zones that define fire management planning and mitigation. Native title holders, particularly those engaging in fire management or abatement programs should be aware that they may have to comply with this Act. Native title holders should particularly be aware of the powers of a Fire Control Officer to enter land and to require a person to extinguish a fire, as well as the offences related to contravention of those powers.

For further information please see the [Explanatory Statement](#).

## Queensland

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### [Environmental Protection \(Chain of Responsibility\) Amendment Act 2016](#)

**Status:** The Bill was introduced on 15 March 2016 and the Act received assent on 27 April 2016.

**Stated purpose:** The purpose of the Act is to ensure that mine sites are properly rehabilitated and environmental obligations are complied with in circumstances where site operators are facing financial difficulty. A chain of responsibility is created

to ensure that the companies and their related parties bear the cost of managing and rehabilitating sites.

**Native title implications:** Native title holders should be aware that multiple or different parties may be undertaking rehabilitation works on mine sites. The party with whom native title holders may be dealing with or assisting in rehabilitation processes may change if the site operator is facing financial difficulty.

For further information please see the [Explanatory Note](#).

### 3. Native Title Determinations

In April 2016, the NNTT website listed 1 native title determination.

| Short Name (NNTT)                        | Case Name                                   | Date (NNTT) | State | Outcome  | Legal Process | Type     | RNTBC/ PBC                           |
|--|---|-------------|-------|--|---------------|----------|--------------------------------------|
| Stirling/Neutral Junction Pastoral Lease | <a href="#">Pwerle v Northern Territory</a> | 7/04/2016   | NT    | Native title exists in parts of the determination area | Consent       | Claimant | Eynewantheyne Aboriginal Corporation |

### 4. Registered Native Title Bodies Corporate & Prescribed Bodies Corporate

[The Native Title Research Unit](#) within AIATSIS maintains a [RNTBC summary document](#) which provides details about RNTBCs and PBCs in each state/territory including the RNTBC name, RNTBC type (agent or trustee) and relevant native title determination information. The statistics for RNTBCs as of DD Month YYYY can be found in the table below.

Information on RNTBCs and PBCs including training and support, news and events, research and publications and external links can be found at [nativetitle.org.au](http://nativetitle.org.au). For a detailed summary of individual RNTBCs and PBCs see [PBC Profiles](#).

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

**Table 1: National Registered Native Title Bodies Corporate (RNTBCs) Statistics**

| State/Territory              | RNTBCs | No. of successful (& conditional) claimant determinations for which RNTBC to be advised |
|------------------------------|--------|---|
| Australian Capital Territory | 0      | 0   |
| New South Wales              | 6      | 0   |

| State/Territory       | RNTBCs     | No. of successful (& conditional) claimant determinations for which RNTBC to be advised |
|-----------------------|------------|---|
| Northern Territory    | 20         | 21  |
| Queensland            | 74         | 1   |
| South Australia       | 15         | 0   |
| Tasmania              | 0          | 0   |
| Victoria              | 4          | 0   |
| Western Australia     | 35         | 2   |
| <b>NATIONAL TOTAL</b> | <b>154</b> | <b>24</b>   |

**Note** some RNTBCs relate to more than one native title determination and some determinations result in more than one RNTBC. Where a RNTBC operates for more than one determination it is only counted once, as it is one organisation.

**Source:** <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx> and Registered Determinations of Native Title and RNTBCs as at 27 April 2016.

## 5. Indigenous Land Use Agreements

In April 2016, 2 ILUAs were registered with the National Native Title Tribunal.

| Registration date | Name   | Tribunal file no. | Type           | State or Territory | Subject matter   |
|-------------------|--|-------------------|----------------|--------------------|--|
| 21/04/2016        | <a href="#">RTA Weipa Pty Ltd and Ngan Aak-Kunch Aboriginal Corporation RNTBC ILUA</a> | QI2016/002        | Body Corporate | QLD                | Access, Terms of Access                                |
| 01/04/2016        | <a href="#">Yandruwandha/Yawarrawarrka Claim Settlement ILUA</a>                       | SI2016/001        | Body Corporate | QLD                | Petroleum/Gas, Extinguishment, Native Title Settlement |

For more information about ILUAs, see the [NNTT website](#) and the [ATNS Database](#).

## 6. Future Acts Determinations

In April 2016, 6 Future Acts Determinations were handed down.

| Date       | Parties   | Coverage | Tribunal file no.   | State or Territory | Determination                                  | Reasons for the Determination   |
|------------|---|----------|---|--------------------|--|---|
| 26/04/2016 | <u>Billy Atkins and Others on behalf of Gingirana (WC2006/002) (native title party)</u><br>- and -<br><u>Drillabit Pty Ltd (grantee party)</u><br>- and -<br><u>The State of Western Australia (Government party)</u>                 | -        | WO2015/0005   | WA                 | Objection - Expedited Procedure Does Not Apply | Member Shurven was not satisfied the grant of the licence would be likely to directly or substantially interfere with the community or social activities carried out on the licence. Ms Shurven found no evidence that the grant of the licence, or the exercise of any rights created by the grant, would be likely to involve major disturbance to the land or waters concerned.  |
| 12/04/2016 | <u>Tjurabalan Native Title Lands Aboriginal Corporation RNTBC (native title party)</u><br>- and -<br><u>Rich Resources Investments Pty Ltd (grantee party)</u><br>- and -<br><u>The State of Western Australia (Government party)</u> | 100%     | WO2015/0023,<br>WO2015/0289,<br>WO2015/0290,<br>WO2015/0291 | WA                 | Objection – Expedited Procedure Applies        | Member Shurven was not satisfied the grant of the licences would be likely to interfere with areas or sites of particular significance in accordance with the traditions of the native title holders. Ms Shurven found no evidence regarding the likely effect of the grants on the community or social activities of the native title holders or whether the licences are likely to involve, or create rights whose exercise are likely to involve, major disturbance to the land or waters. |

| Date      | Parties   | Coverage | Tribunal file no. | State or Territory | Determination         | Reasons for the Determination  |
|-----------|---|----------|-------------------|--------------------|-----------------------|--|
| 8/04/2016 | <u>Raymond William Ashwin (dec) &amp; Others on behalf of Wutha (WC1999/010) (native title party)</u><br>-and-<br><u>The State of Western Australia (Government party)</u><br>-and-<br><u>Bruce Robert Legendre (grantee party)</u> | -        | WO2015/0464       | WA                 | Objection – Dismissed | Member Shurven noted that as at the date of the determination, no response has been received from the Wutha claim group as to why the objection should not be dismissed, nor has any request for extension of directions been received, nor any reason for non-compliance. Ms Shurven found that in the circumstances the Wutha claim group have been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays. |
| 4/04/2016 | <u>Raymond William Ashwin (dec) &amp; Others on behalf of Wutha (WC1999/010) (native title party)</u><br>-and-<br><u>The State of Western Australia (Government party)</u><br>-and-<br><u>Desmond John Roper (grantee party)</u>    | -        | WO2015/0684       | WA                 | Objection – Dismissed | Member Shurven noted that as at the date of the determination, no response has been received from the Wutha claim group as to why the objection should not be dismissed, nor has any request for extension of directions been received, nor any reason for non-compliance. Ms Shurven found that in the circumstances the Wutha claim group have been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays. |

| Date      | Parties   | Coverage | Tribunal file no.          | State or Territory | Determination                                  | Reasons for the Determination   |
|-----------|---|----------|----------------------------|--------------------|--|---|
| 4/04/2016 | <u>Gooniyandi Combined #2 (Gooniyandi native title party)</u><br>- and -<br><u>Yarrangi Riwi Yoowarni Gooniyandi (Yarrangi Riwi Yoowarni Gooniyandi native title party)</u><br>- and -<br><u>The State of Western Australia (Government party)</u><br>- and -<br><u>Callum Baxter (grantee party)</u> | 87.77%   | WO2015/0099,<br>WO2015/011 | WA                 | Objection – Expedited Procedure Does Not Apply | Member Shurven was not satisfied that the native title parties had established that the social or community activities occur on the proposed licence to such an extent that they would be interfered with. Ms Shurven concluded that some sites of particular significance to the native title holders were at risk of interference, and so the expedited procedure should not apply. Ms Shurven found no evidence that the licences are likely to involve, or create, rights whose exercise are likely to involve major disturbance to the land or waters. |
| 1/04/2016 | <u>Raymond William Ashwin (dec) &amp; Others on behalf of Wutha (WC1999/010) (native title party)</u><br>-and-<br><u>The State of Western Australia (Government party)</u><br>-and-<br><u>Kym Anthony McClaren (grantee party)</u>  |          | WO2015/0846                | WA                 | Objection – Dismissed                          | Member Shurven noted that as at the date of the determination, no response has been received from the Wutha claim group as to why the objection should not be dismissed, nor has any request for extension of directions been received, nor any reason for non-compliance. Ms Shurven found that in the circumstances the Wutha claim group have been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.  |

## 7. Native Title in the News

The [Native Title Research Unit](#) with AIATSIS published the [Native Title in the News](#) which contains summaries of newspaper articles and media releases relevant to the native title sector.

## 8. Publications

**Australian Government – Department of the Prime Minister and Cabinet**

### **Indigenous Protected Areas getting positive results**

A recent report on five Indigenous Protected Areas (IPAs) and associated ranger programmes found success across a broad range of outcomes, including improving Indigenous disadvantage. See link above for access to report.

**ANU – Centre for Aboriginal Economic Policy Research**

### **Working Paper 107**

#### **Translating Aboriginal Land Rights into Development Outcomes: Factors Contributing to a Successful Program in Central Australia**

By Janet Hunt and Danielle Campbell

### **Working Paper 109**

#### **Let's talk about success: exploring factors behind positive change in Aboriginal communities**

By Janet Hunt

### **Research Monograph 35**

#### **Engaging Indigenous Economy - Debating Diverse Approaches**

William Sanders(Ed.)

### **Queensland South Native Title Services**

Queensland South Native Title Service's [Annual](#) Report for 2014-2015 is now available for download. For further information, [please visit the QSNTS website](#)

### **WCPA Specialist Group on Governance of Protected and Conserved Areas Enhancing the diversity, quality and vitality of governance of protected and conserved areas' at IUCN World Parks Congress, Sydney 2014**

The proceedings from the WCPA Specialist Group on Governance of Protected and Conserved Areas from the IUCN Parks Congress have now been released.

## 9. Events

### **AASNet Survey on genealogical research and information management in native title**

For those involved in native title work in Australia, could you please spare approximately 10 minutes of your time to complete a [survey on Genealogical Research and Information Management in Native Title?](#)

Research conducted during the native title and land rights era has generated (and continues to generate) a huge body of information about Aboriginal and Torres Strait Islander people and their genealogical relationships. These data are held in the collections of various organisations around the country; in Native Title Representative Bodies and Native Title Service Providers, and in some cases in Prescribed Bodies Corporate and other Aboriginal Corporations. The AIATSIS [Report on Managing Information in Native Title \(MINT\)](#), released in November 2015, highlights issues of resourcing and capacity impacting on native title organisations' abilities to appropriately manage research collections, including genealogical materials.

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

