



WHAT'S NEW IN NATIVE TITLE

MARCH 2017

1. Case Summaries _____	1
2. Legislation _____	5
3. Native Title Determinations _____	7
4. Registered Native Title Bodies Corporate & Prescribed Bodies Corporate ____	7
5. Indigenous Land Use Agreements _____	8
6. Future Acts Determinations _____	9
7. Publications _____	10
8. Training and Professional Development Opportunities _____	11
9. Events _____	12

1. Case Summaries

[Wilson v State of Australia](#) [2017] FCA 219

9 March 2017, Application for Leave to Appeal, Federal Court of Australia, South Australia, Charlesworth J

In this matter, Charlesworth J considered whether to grant the applicant an extension of time to appeal the decision to replace deceased native title applicants in [Wilson v State of South Australia \(No 2\)](#) [2016] FCA 812 (*Wilson (No 2)*). His Honour found that Paul Wilson did not have standing to commence the proposed appeal, and was not authorised to prosecute the proposed appeal, in his capacity as his mother's agent or otherwise.

Paul Wilson's deceased mother, Neva Wilson, was an applicant in the original decision of *Wilson (No 2)*. Paul Wilson filed his application for leave to appeal that judgement, which removed Ms Wilson as an applicant on the native title claim, four months after the time allowed to file an appeal. Mr Wilson claimed he was an agent for Neva Wilson.

Competency

Paul Wilson cited s 24(1)(a) of the *Federal Court Act 1976* (Cth) (FCA) as conferring the right to appeal relied on. In rejecting his argument, Charlesworth J held that s 24(1AA) of the FCA provided that an appeal must not be brought from a judgement referred to in s 24(1)(a) of the FCA if the decision is to join or remove a party. His Honour concluded that s 24(1AA)(b)(i) of the FCA did not apply to the proceedings, as the provision did not encompass a decision to substitute a party, as requested by Mr Wilson.

Standing

Paul Wilson submitted that he had standing to bring these applications by virtue of his status as his mother's agent. Charlesworth J agreed with the reasoning of White J in *Wilson (No 2)* that s 84B permits only the appointment of a 'society, organisation association or other body' to act as agent of the party in relation to a proceeding. Furthermore, Charlesworth J stated that regardless of whether there was a previous agency agreement between Ms Wilson and her son, the relationship of principal and agent could not survive death of Ms Wilson as principal, unless his appointment was expressly stated to continue irrespective of death or otherwise irrevocable, of which was not evident in these proceedings.

[Ngan Aak-Kunch Aboriginal Corporation RNTBC v Glencore Bauxite Resources Pty Ltd](#) [2017] FCA 265

17 March 2017, Application to Amend Originating Application, Federal Court of Australia, Queensland, Reeves J

In this matter, Reeves J dismissed the Ngan Aak-Kunch Aboriginal Corporation RNTBC's application to have a decision of the National Native Tribunal judicially reviewed. The Ngan Aak-Kunch PBC holds exclusive native title rights and interests over an area of land near Aurukun in North Queensland which includes the site of the proposed mineral development licence, the grant of which, the Tribunal had determined attracted the expedited procedure. The first respondent was Glencore Bauxite Resources.

In January 2015, Glencore lodged an application under the [Mineral Resources Act 1989 \(Qld\)](#) for a licence to study the bauxite resources at the site and to assess its mining development potential with the Queensland State Government. The Tribunal determined that the grant of the proposed license to Glencore was an act that attracted the expenditure procedure as it was not likely to interfere with the community or social activities of, or areas or sites of particular significance to, the native title holders, or involve major disturbance to any land or waters concerned.

The Ngan Aak-Kunch PBC filed a Federal Court application for judicial review of the Tribunal's decision on two grounds: 1. that the Tribunal made an error of law in

concluding that a future variation of the conditions of the proposed license would involve the creation of a right to mine to which the right to negotiate process in Subdivision P of the NTA would apply; 2. the Tribunal's failure to take into account the mandatory consideration of the likelihood of interference to the area concerned. As such, the group sought to have the Tribunal's decision set aside.

Protection conditions ground

The applicant submitted that protection conditions were omitted from the s 29 notice, contrary to the normal practice followed by the State. The State attempted to rectify this by notifying Ngan Aak-Kunch that the proposed licence would be granted subject to protection orders. Ngan Aak-Kunch contended that even if the protection orders were to apply, the Minister would be able to amend the tenement conditions as per s194AC of the [Mineral Resources Act 1989 \(Qld\)](#), without the need to give notice under s 29 of the NTA. The group submitted that if this were to occur, they would be unable to control Glencore's activities at the site, because the 'right to negotiate process' in Subdivision P would not apply to any variation to the protection conditions the Minister may permit. The Minister's discretion to vary the protection conditions was unlimited and it was therefore 'impossible to exclude the possibility that the protection conditions would be altered during the life of the proposed licence'. Consequently, Ngan Aak Kunch contended that the Tribunal should make its assessment under s 237 of the NTA on the basis that the protection conditions would not apply to the proposed licence as granted.

Reeves J found that the Tribunal had examined the regulatory regime that governed the proposed licence and affirmed the discretion of the issuing Minister to impose conditions on the grant of the proposed licence during the life of the licence. Furthermore, his Honour agreed with the Tribunal's finding that it was 'highly unlikely' that those conditions would be varied in the future to remove them or to otherwise alter the conditions of the proposed licence as granted. In dismissing the application, Reeves J relied on the High Court decision in [Minister for Immigration and Ethnic Affairs v WuShan Liang \[1996\] HCA 6](#) at [272]: '[t]he reasons [of a decision maker] are not to be construed minutely and finely with an eye keenly attuned to the perception of error'.

Major disturbance ground

Ngan Aak-Kunch sought to rely on the protection conditions argument in relation to the second ground of review. As the first ground was dismissed, the Court found the second must also be dismissed. Reeves J found that even if the protection conditions did not apply to the proposed licence, there was not likely to be any major disturbance to the area concerned.

Hill on behalf of the Yirendali People v State of Queensland [2017] FCA 273

20 March 2017, Negative Consent Determination, Federal Court of Australia, Queensland, Reeves J

In this matter, Reeves J decided it was appropriate to make a negative native title determination in relation to an area located in central Queensland. The first applicant was James Hill on behalf of the Yirendali people and the first respondent was the State of Queensland.

A native title claim was lodged in 2006. In 2014, the State advised the applicant that it did not accept that the Yirendali claim group would be able to establish the necessary connection with the claim area under the relevant provisions of the *Native Title Act*, based on the expert anthropological evidence compiled in relation to the claim. Consequently, the application was set down for trial commencing in June 2015. Prior to this date, the State made an offer to the applicant to enter into negotiations for the settlement of the matter.

Thereafter, the applicant and the State held negotiations directed to settling the terms of an Indigenous Land Use Agreement (ILUA) to resolve the claim. An ILUA was subsequently authorised by the Yirendali claim group, executed and entered on to the Register of Indigenous Land Use Agreements. The ILUA provided for the surrender of native title in relation to the whole of the claim area, in exchange for certain benefits including land exchange and revenue sharing. In December 2016, the applicant filed an agreement under s 87 of the NTA, duly executed by all the parties to the proceeding, together with a set of submissions in support of its application for a consent determination in the terms of that agreement.

In considering whether a negative determination was appropriate, Reeves J referred to the discretionary considerations outlined in [*CG v Western Australia \(2016\) 240 FCR 466*](#). Reeves J found those considerations to be satisfied and acknowledged that the existence of the ILUA was highly relevant in exercising his Honour's discretion to order a negative determination. In making the determination of no native title, Reeves J affirmed that conformity with s 225(a) to (e) of the NTA was only required for a positive determination.

Peterson on behalf of the Wunna Nyiyaparli people v State of Western Australia (No 2) [2017] FCA 289

23 March 2017, Application for Costs, Federal Court of Australia, Western Australia, White J

In this matter, White J considered an application for a costs award brought by one native title applicant against another in relation to the conduct of its claim for a determination of native title. His Honour ultimately ordered that the Wunna Nyiyaparli

applicant pay the costs of Niyaparli applicant incurred through the hearing of a separate question in relation to the membership of an apical ancestor.

The Niyaparli applicant contended that a costs order was appropriate because the Wunna Niyaparli applicant acted unreasonably within the meaning of s 85A(2) of the *Native Title Act 1993* (Cth) in two respects: by making a claim that their ancestor was a Niyaparli person when there was no reasonable basis for such a claim; and by maintaining the claim, and therefore putting the Niyaparli applicant to the expense of participating in the separate question hearing, in circumstances in which the applicant did not substantively participate in and prosecute the claim.

Members of the Wunna Niyaparli claim group had been included in the Niyaparli claim group between 2001 and 2010. His Honour considered that the approach taken by the Wunna Niyaparli applicant was understandable having regard to evidence indicating that, at least in some respects, Bill Coffin Snr and his descendants had been treated as Niyaparli until the issue became acute in the context of native title proceedings. White J found it inappropriate to make a costs order in respect of this ground of the costs application.

On the second ground, White J held that the Wunna Niyaparli applicant did not participate cooperatively in the arrangements for the hearing of the separate question, did not attend directions hearings and ignored correspondence from the court and agents acting on behalf of the Niyaparli claim group. Furthermore, the Court found that the Wunna Niyaparli applicant failed to attend directions hearings, failed to attend case management conferences, failed to comply with the Courts orders, and did not advance any proper justification for this conduct.

On that basis, White J ordered that the Wunna Niyaparli applicant pay the costs which the Niyaparli incurred in relation to the hearing of the separate question which they would not have incurred had the Wunna Niyaparli applicant informed the Court that they did not wish to participate in the hearing of the separate question.

2. Legislation

Commonwealth

[Native Title Amendment \(Indigenous Land Use Agreements\) Bill 2017](#)

Status: The Senate referred an inquiry into the Bill to the Senate Legal and Constitutional Affairs Legislation Committee on 16 February. The Committee reported on 20 March, recommending the Bill be passed subject to amendments.

Stated purpose: The Bill is to amend the *Native Title Act 1993* (Cth) to resolve the uncertainty arising from the decision of the Full Federal Court in [McGlade v Native Title Registrar \[2017\] FCAFC 10](#), regarding the authorisation and registration of Indigenous Land Use Agreements (ILUAs).

Native title implications: The Bill aims to amend ss 24CD, 24CG, 251A, 251B and 253 of the NTA. An implication of these amendments is that existing ILUAs registered with the Native Title Registrar will remain enforceable without the signature of all members of the registered native title claimant.

The amendment will act to enable the registration of ILUAs which have been made but are not yet registered in the Register of Indigenous Land Use Agreements.

The amendment will in effect, reinstate the precedent on ILUA registration in [QGC Pty Ltd v Bygrave \(No 2\) \[2010\] FCA 1019](#), which did not require all members of the applicant to sign an ILUA for an ILUA to be registrable. The amendments to ss 24CD and the insertion of 251A(2) have the effect that the native title claim group can nominate for one or more of the persons who comprise the applicant to be party to an agreement, rather than all members of that group. In the absence of such a nomination, the signing of the agreement by a majority of the applicant is sufficient to authorise an ILUA. The amendment to s 251A(1)(b) will give native title claim groups the power to specify the decision-making process by which ILUAs are to be authorised.

The amendments would validate ILUAs which would have been invalidated by the *McGlade* decision. For otherwise invalid agreements made, registered, or subject to an application for registration on or before 2 February 2017, they are taken to have been valid ILUAs.

The amendment provides that if its operation results in the acquisition of property other than upon just terms, then the Commonwealth is to pay a reasonable amount of compensation to the person deprived of property. This compensation is to come from the Consolidated Revenue Fund.

For further information, please see the [Second Reading Speech](#) and the [Committee Report](#).

New South Wales

[Aboriginal Land Rights Amendment \(Local Aboriginal Land Councils\) Bill 2016](#)

Status: This Bill was assented to on 1 March 2017.

Stated purpose: The amendments contained in the Bill aim to enable the intention and purpose of the Aboriginal Land Rights Act to be further realised. This Bill is said to provide for the making of performance improvement orders by the NSW Aboriginal Land Council.

Native title implications: This Bill introduces improvements to the Aboriginal Land Rights Act that aim to refine and enhance the regulatory structures and mechanisms of the Act and provide better means to build the capacity and strength of local Aboriginal land councils, and the staff and elected officials who run them. The Bill provides that the NSW Aboriginal Land Council will be provided the authority to issue

a performance improvement order to a local Aboriginal land council if it is satisfied that action must be taken to improve the performance of the local Aboriginal land council.

The Bill empowers the land council network to address governance and capacity-building issues and has the potential to prevent the need for more direct interventions in the affairs of local Aboriginal land councils.

For further information please see the [Second Reading Speech](#).

3. Native Title Determinations

In March 2017, the NNTT website listed one native title determination.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC/PBC
Yirendali People Core Country Claim	Hill on behalf of the Yirendali People v State of Queensland	20/03/2017	QLD	Native title does not exist	Consent	Claimant	N/A

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 10 March 2017 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. 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.

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
Northern Territory	22	2

State/Territory	RNTBCs	No. of successful (& conditional) claimant determinations for which RNTBC to be advised
Queensland	80	2
South Australia	15	1
Tasmania	0	0
Victoria	4	0
Western Australia	39	2
NATIONAL TOTAL	166	7

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 10 March 2017.

5. Indigenous Land Use Agreements

In March 2017, 7 ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
24/03/2017	Bigambul People and Local Governments ILUA	QI2016/053	Area Agreement	Qld	Government, Infrastructure
22/03/2017	Bigambul People and Ergon Energy ILUA	QI2016/054	Area Agreement	Qld	Energy, Community
22/03/2017	Eromanga Township Tenure Resolution ILUA	QI2016/052	Area Agreement	Qld	Native Title Settlement, Government
22/03/2017	NKAC KSCS Eighty Mile Beach ILUA	WI2017/002	Body Corporate	WA	Access, Co-Management
17/03/2017	Yungngora Aboriginal Corporation RNTBC, Buru Energy Limited and Diamond Resources (Canning) Pty Ltd ILUA	WI2016/011	Body Corporate	WA	Exploration, Access
16/03/2017	Indjalandji-Dhidhanu and Jemena Northern Gas Pipeline Project ILUA	QI2017/001	Body Corporate	Qld	Pipeline, Petroleum/Gas
10/03/2017	Birriah People and Castle Hill Exotics Pty Ltd ILUA	QI2016/046	Area Agreement	Qld	Extinguishment

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

6. Future Acts Determinations

In March 2017, 4 Future Acts Determinations were handed down.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
21/03/2017	<u>Yarnangu Ngaanyatjaraku Parna (Aboriginal Corporation) RNTBC and ACN 159 782 537 Pty Ltd and Western Australia</u>	WO2016/0038	WA	Objection- Expedited Procedure Does Not Apply	Member Shruven found that the grant of licence is not an act attracting the expedited procedure as the grant of the licence would have a real chance or risk of interfering with a site or area of particular significance.
21/03/2017	<u>IS (name withheld for cultural reasons) & Others on behalf of Wajarri Yamatji and Cosmopolitan Minerals Limited and Western Australia</u>	WO2016/0438 WO2016/0439 WO2016/0440	WA	Objection - Dismissed	Member Shruven granted the Wajarri Yamatji claim group an extension of time to file contentions in relation to their objection applications filed against the grant of the exploration licenses. A springing order was applied to the extension order to prevent any further delays. As no materials were received from the group, the springing order had the effect of dismissing the objections.
20/03/2017	<u>Raymond William Ashwin (dec) & Others on behalf of Wutha and Western Australia and Gregory David Wilson</u>	WO2016/0553	WA	Objection - Dismissed	Member Shruven dismissed the objection application against the grant of the exploration licence initiated by the Wutha claim group, as the claim group failed to submit any response as to why the objection should not be dismissed after being given sufficient opportunity to comply with the Tribunal's directions.
14/03/2017	<u>Raymond William Ashwin (dec) & Others on behalf of Wutha and Western Australia and Raymond Arthur Thorns</u>	WO2016/0956	WA	Objection - Dismissed	Member Shruven dismissed the objection of the Wutha claim group to the grant of the prospecting license, as the claim group failed to submit contentions and evidence after being given sufficient opportunity to comply with the Tribunal's directions.

7. Publications

Ashurst

Native Title – Year in Review 2016

Ashurst's review of Indigenous land law developments over the last 12 months is now available online. The review looks back at recent cases and discusses their implications for proponents.

To view, please [visit the Ashurst website](#).

Carpentaria Land Council Aboriginal Corporation (CLCAC)

Newsletter

The January–March 2017 edition of CLCAC's newsletter is now available.

To view or download, [please visit the CLCAC website](#).

Central Land Council

Land Rights News Central Australia

The April 2017 edition of Land Rights News is now available.

To view or download, [please visit the CLC website](#).

Kimberley Land Council

Newsletter

The April edition of KLC's newsletter is now available.

To view or download, [please visit the KLC website](#).

National Native Title Tribunal (NNTT)

25 Years of Native Title Recognition

The NNTT is celebrating the 25th Anniversary of the recognition of native title with the launch of www.nativetitle25.gov.au. The website provides stories, images and videos discussing native title over the last 25 years and the benefits it has supported.

Native Title Vision

The NNTT has announced the launch of Native Title Vision (NTV). NTV is the improved online visualisation, mapping and query tool, for all geospatial native title needs.

To view NTV, [visit the NNTT website](#).

North Queensland Land Council

Message Stick

The March 2017 edition of NQLC's quarterly newsletter is now available. It covers important developments within native title, including native title consent determinations, the outcomes and opportunities that have been achieved through native title recognition, as well as information on past and future events.

To download, please [visit the NQLC website](#).

Oceania

Oceania journal has published 'Mother's Blood, Father's Land: Native Title and Comparative Land Tenure Modelling for Claims in 'Settled' Australia' by anthropologist, John Morton.

The article is available to [view or download here](#).

Yamatji Marlpa Aboriginal Corporation (YMAC)

News

The February edition of YMAC's newsletter is now available.

To view or download, [visit YMAC's website](#).

8. Training and Professional Development Opportunities

AIATSIS

Australian Aboriginal Studies

Australian Aboriginal Studies (AAS) is inviting papers for coming issues. AAS is a quality multidisciplinary journal that exemplifies the vision where the world's Indigenous knowledge and cultures are recognised, respected and valued. Send your manuscript to the Editor by emailing aasjournal@aiatsis.gov.au. For more information, [visit the journal page of the AIATSIS website](#).

ORIC

ORIC provides a range of training for Aboriginal and Torres Strait Islander corporations about the [Corporations \(Aboriginal and Torres Strait Islander\) Act 2006 \(CATSI Act\)](#), the corporations rule book and other aspects of good corporate governance. For further information on training courses, [visit the ORIC website](#).

National Library of Australia

Community Heritage Grants Program 2017

Applications for the 2017 Community Heritage Grants program are now open. The grant round closes on Monday 8 May 2017 at 5pm (EST).

For more information or to apply, [please visit the NLA website](#).

The Cairns Institute – James Cook University

Native Title Workshop for Mid-Career Anthropologists

Facilitated by the Cairns Institute (JCU) and the Centre for Native Title Anthropology (ANU), this workshop aims to enhance attendee's professional skills in the native title arena. The workshop will cover data management, communication strategies and writing skills, PBC management and governance, and developing skills for engaging with legal culture.

Generous scholarship grants, including fee waiver, food and accommodation for the 5 days are available to mid-career anthropologists on application. Places are strictly limited.

Date: 18-22 September 2017

Location: James Cook University, Cairns

For more information or to pre-register your interest, please email Jennifer.gabriel@jcu.edu.au.

9. Events

AIATSIS

National Native Title Conference 2017 – Our land is our birth right: MABO25 & Beyond

Registrations are now open for the 2017 National Native Title Conference to be held on the traditional lands of the Gurambilbarra Wulgurukaba people, in Townsville, Queensland. Co-convened by AIATSIS and the North Queensland Land Council, this year's program will celebrate 25 years since the High Court of Australia's momentous *Mabo* decision.

Date: 5-7 June 2017

Location: Townsville Entertainment Centre, Townsville Qld

Applications are now open for Aboriginal and Torres Strait Islander peoples' who would like to attend the National Native Title Conference 2017. To complete a sponsored delegate application, register or for more information, please [visit the AIATSIS website](#).

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 @AIATSIS on Twitter](#) or ['Like' AIATSIS on Facebook](#).

