



WHAT'S NEW IN NATIVE TITLE

NOVEMBER 2016

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1. Case Summaries

[Miller on behalf of the Birriah People v State of Queensland \(No 2\)](#) [2016] FCA 1434

29 November 2016, Consent Determination, Federal Court of Australia, Queensland, Reeves J

In this matter, Reeves J recognised the exclusive and non-exclusive native title rights and interests of the Birriah people over one parcel of land in north Queensland that was the remainder of a previous native title determination. The respondents to the application were the State of Queensland, Ergon Energy Corporation Limited and Castle Hill Exotics Pty Ltd.

The application was first lodged in April 1998 and has been amended several times since then. In February 2015, the proceeding was divided into Birriah Part A and Birriah Part B due to a dispute over the operation of s 47B of the *Native Title Act 1993* (Cth) (NTA) over a parcel of land. Part B covered the disputed lot while Part A covered the remaining area of the claim. Part A was determined in [Miller on behalf of the Birriah People v State of Queensland \[2016\] FCA 271](#). This determination gives effect to the agreement reached between the parties in relation to Part B in March 2016.

Reeves J recognised that the Birriah people hold the exclusive native title rights and interests to possession, occupation, use and enjoyment of the area. In relation to

water, his Honour recognised the non-exclusive rights to hunt, fish and gather; take and use the natural resources; and take and use the water of the area for personal, domestic and non-commercial communal purposes.

The Birriah Aboriginal Corporation RNTBC is the nominated prescribed body corporate.

[Agius v State of South Australia \(No 3\) \[2016\] FCA 1416](#)

11 November 2016, Application to Remove Applicants, Federal Court of Australia, South Australia, White J

In this matter White J removed four deceased claim group members, Phillip Davies, Marlene McArthur, Val Power and Timothy Williams, from the Kurna people's native title application, which covers the Adelaide Plains. The respondents were the State of South Australia, fishing and water licence holders, local government entities, South Australian Native Title Services, Epic Energy Pty Ltd, the Corporation of the Town of Walkerville and the Commonwealth of Australia.

White J held that the remaining applicants could apply to remove the deceased persons as a party to the application under s 62A of the NTA and r 9.08 of the *Federal Court Rules 2011* (Cth). His Honour followed Mansfield J's reasoning in [Lennon v State of Australia \[2010\] FCA 743](#) where it was found that the authority to bring such an application was implicit in the original authorisation and fresh authorisation under s 251B or s 66B of the NTA was not required. As none of the respondents held it was inappropriate to do so, White J ordered that the names of the four deceased applicants be removed from the claim.

[Finlay on behalf of the Kuruma Marthudunera People v State of Western Australia \(No 2\) \[2016\] FCA 1260](#)

1 November 2016, Consent Determination, Federal Court of Australia, Western Australia, Barker J

In this matter, Barker J recognised the exclusive and non-exclusive native title rights and interests of the Robe River Kuruma people over 4,123 square kilometres of land in the Pilbara region of Western Australia near the town of Pannawonica. The respondents to the application were the State of Western Australia, the Commonwealth of Australia, the Shire of Ashburton, Yamatji Marlpa Aboriginal Corporation and various mining and exploration companies.

Two separate applications were lodged in the National Native Title Tribunal, one in May 1996 in response to a proposed future act, and the other in June 1996 expanding the claim area. Those applications were joined together in April 1999. The parties reached agreement as to the terms of the determination in relation to 'KM Part A' of the claim. No determination was made in relation to the additional claimed land and waters, designated 'KM Part B'.

Barker J recognised that the Robe River Kuruma people hold the exclusive rights and interests to possession, occupation, use and enjoyment of the 'exclusive area'. In relation to flowing and underground waters, the Robe River Kuruma people hold the right to use and enjoy the waters, including the right to hunt, fish, take from and use the traditional resources. Barker J recognised that the Robe River Kuruma people hold the non-exclusive rights and interests to live, hunt, fish, gather and use traditional resources for personal, domestic and non-commercial communal purposes; to take and use water; and to engage in cultural activities and the transmission of cultural knowledge. His Honour held that there were no native title rights in relation to minerals, petroleum, geothermal energy resources and water lawfully captured by the holders of other interests.

The Kuruma Marthudunera Aboriginal Corporation is the nominated prescribed body corporate.

2. Legislation

New South Wales

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

Status: This Bill was introduced in the Legislative Assembly on 8 November 2016 and read for the first and second time on the same date.

Stated purpose: The purpose of this Bill is to amend the [Aboriginal Land Rights Act 1983](#) (ALRA) to provide for improved compliance with the ALRA. The Bill gives the New South Wales Aboriginal Land Council the authority to issue performance improvement orders to local Aboriginal land councils if satisfied that action needs to be taken to improve their performance. Performance improvement orders are designed to give council members greater oversight of the performance of their elected boards and provide greater transparency. It is an early intervention option to support local land councils before the need for punitive action for non-compliance with the ALRA.

Native title implications: The Bill aims to enhance the regulatory structures and mechanisms of the ALRA and to improve compliance by Aboriginal land councils.

For further information please see the [Explanatory Statement](#) and the [Second Reading Speech](#) from the Legislative Assembly.

[Biodiversity Conservation Act 2016](#)

Status: This Act was introduced in the Legislative Council on 9 November 2016, passed on 16 November and assented to on 23 November 2016.

Stated purpose: The purpose of this Act is to repeal the [Threatened Species Conservation Act 1995](#), the [Nature Conservation Trust Act 2001](#) and parts of the [National Parks and Wildlife Act 1974](#) to facilitate sustainable development and biodiversity conservation in New South Wales.

Native title implications: The Act provides Aboriginal people with defences to prosecution for domestic use of plants and animals.

For further information please see the [Explanatory Statement](#) and the [Second Reading Speech](#) from the Legislative Council.

[Crown Land Management Act 2016](#)

Status: This Act was introduced in the Legislative Council on 18 October 2016, passed both the Legislative Council and the Legislative Assembly on 9 November and was assented to on 14 November 2016.

Stated purpose: The purpose of this Act is to consolidate statutory provisions dealing with the ownership, use and management of Crown land into one Act. The objects of the Act include facilitating Aboriginal people's use of Crown land and emphasising co-management of Crown land where appropriate.

Native title implications: The Act introduces a number of reforms including special provisions to protect native title rights and interests. Division 1.9 clarifies that native title rights and interests are preserved even where land is vested in the Crown. Although, Division 8.2 enables the Minister to issue a certificate for specified Crown land or former Crown land stating that, after investigation, there is evidence to show that native title rights and interests do not exist or have been extinguished. The certificates deem the relevant as 'excluded land' which is subject to different management requirements to 'relevant land'.

Any requirements of native title legislation are not affected by the issuing of a certificate and a certificate must be revoked if the land becomes subject to a native title determination. Division 8.3 requires responsible persons for relevant land to engage native title managers to provide advice on actions that may affect native title rights and interests. Division 8.4 creates compensation responsibilities for persons engaged in relevant conduct (conduct of a local council or non-council manager in connection with any dedicated or reserved Crown land for which it is or was a Crown land manager) concerning native title rights and interests.

For further information please see the [Explanatory Statement](#), the [Second Reading Speech](#) from the Legislative Assembly and the [Second Reading Speech](#) from the Legislative Council.

Queensland

[Land and Other Legislation Amendment Bill 2016](#)

Status: This Bill was introduced on 29 November 2016 and referred to Committee on the same day.

Stated purpose: The purpose of this Bill is to improve administration of the [Land Act 1994](#) and the [Land Title Act 1994](#) to improve their operation and reduce

inconsistencies, redundant requirements and duplication. As part of this the subdivision of Indigenous deeds of grant in trust (DOGITs) will be streamlined.

Native title implications: Section 34P will be amended to remove the requirement for Ministerial approval under the *Land Act* for subdivisions of DOGIT land. DOGIT land will be managed solely under the [Aboriginal Land Act 1991](#) and [Torres Strait Island Land Act 1991](#).

3. Native Title Determinations

In November 2016, the NNTT website listed 2 native title determinations.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC/PBC
Birriah People Part B	Miller on behalf of the Birriah People v State of Queensland (No 2)	29/11/2016	Qld	Native title exists in parts of the determination area	Consent	Claimant	Not registered
Kuruma Marthudunera (Part A)	Finlay on behalf of the Kuruma Marthudunera People v State of Western Australia (No 2)	01/11/2016	WA	Native title exists in parts of the determination area	Consent	Claimant	Kuruma Marthudunera 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 14 November 2016 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	3
Queensland	78	2
South Australia	15	1
Tasmania	0	0
Victoria	4	0
Western Australia	37	3
NATIONAL TOTAL	162	9

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 14 November 2016.

5. Indigenous Land Use Agreements

In November 2016, 4 ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
11/11/2016	Iman People #2 Glenleigh ILUA	QI2016/027	Area Agreement	QLD	Pastoral, Access
04/11/2016	Neutral Junction Locality ILUA	DI2016/001	Area Agreement	NT	Extinguishment
04/11/2016	AACAP (Laura) ILUA	QI2016/026	Area Agreement	QLD	Tenure resolution, Access, Community living area, Infrastructure
01/11/2016	Banjima & RTIO Participation Agreement ILUA (Body Corporate Agreement)	WI2016/002	Body Corporate	WA	Mining, Large mining

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

6. Future Acts Determinations

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

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
30/11/2016	<u>Yanunijarra Aboriginal Corporation</u> v <u>Canning Potash Pty Ltd and Western Australia</u>	WO2015/0757 WO2015/0758	WA	Objection - Expedited Procedure Applies	Member Shurven found that the grant of the exploration licences are unlikely to directly or substantially interfere with the community or social activities carried on by the Ngurrara people. Based on the evidence Member Shurven was not satisfied that areas or sites of particular significance existed in the licence areas, or that the grant of the licences would involve a major disturbance to the land and waters concerned.
29/11/2016	<u>Kevin Allen and Others (Njamal)</u> v <u>Western Australia and Warren John Ayres</u>	WO2016/0480	WA	Objection - Expedited Procedure Applies	Member Shurven found that the grant of this exploration licence is unlikely to interfere directly with the community or social activities carried on by the Njamal people, interfere with areas or sites of particular significance or involve a major disturbance to the land and waters concerned. Member Shurven reached this decision based on the limited evidence provided by the Njamal people and the inability to establish sites of particular rather than general significance in the licence area.
21/11/2016	<u>Kevin Allen and Others (Njamal)</u> v <u>Western Australia and Abeh Pty Ltd</u>	WO2016/0336	WA	Objection - Expedited Procedure Applies	Member Shurven found that the grant of this exploration licence is unlikely to interfere directly with the community or social activities carried on by the Njamal people, interfere with areas or sites of particular significance or involve a major disturbance to the land and waters concerned. Member Shurven reached this decision based on the limited evidence provided by the Njamal people and the inability to establish sites of particular rather than general significance in the licence area.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
17/11/2016	<u>Keith Narrier and Others on behalf of Tjiwarl</u> v <u>Justin Charles Cavallaro</u> v <u>Western Australia</u>	WO2015/0260	WA	Objection - Expedited Procedure Does Not Apply	Member Shurven found that the grant of the exploration licence was unlikely to directly or substantially interfere with the community or social activities of the Tjiwarl people or that it would likely involve any major disturbance to the land or waters concerned. Member Shurven found that two sites of particular significance existed on the licence area and that the granting of the licence is likely to interfere with the wutha (wild potato) plant sites and the expedited procedure does not apply as a result.
11/11/2016	<u>Evelyn Gilla and Others on behalf of the Yugunga-Nya People</u> v <u>Monument Murchison Pty Ltd and Western Australia</u>	WO2015/0156 WO2015/0157	WA	Objection - Expedited Procedure Does Not Apply	Member McNamara found that the granting of two prospecting licences was unlikely to directly or substantially interfere with the community or social activities of the Yugunga-Nya people or that it would likely involve any major disturbance to the land or waters concerned. Member McNamara found that the grants did not attract the expedited procedure as there is a real risk they will interfere with Yagahong Hill and other sites in the area that are of particular significance to the Yugunga-Nya people.
09/11/2016	<u>Kallenia Mines Pty Ltd and Pilbara Chemical Corporation NL</u> and <u>Walalakoo Aboriginal Corporation RNTBC and Yawuru Native Title Holders Aboriginal Corporation RNTBC</u> and <u>Western Australia</u>	WF2015/0012 WF2015/0013 WF2015/0017 WF2015/0018 WF2015/0021	WA	Future Act – May be done	Member McNamara found that all five exploration licences could be granted with no additional conditions. Member McNamara found that none of the licences were likely to significantly impact, effect or interfere the factors listed in s 39(1)(a) of the NTA and in considering the other factors in s 39 found that the grant of the licences may be done.

7. Publications

Australian Government Productivity Commission

Overcoming Indigenous Disadvantage: Key Indicators 2016

The Overcoming Indigenous Disadvantage report measures the wellbeing of Aboriginal and Torres Strait Islander Australians against 52 indicators.

The 2016 report is available for [download](#).

Australian Human Rights Commission

Social Justice and Native Title Report 2016

The Aboriginal and Torres Strait Islander Social Justice Commissioner reports annually on the enjoyment and exercise of Aboriginal and Torres Strait Islander human rights, including the operation of the *Native Title Act 1993* (Cth).

The 2016 report is available for [download](#).

South Australian Native Title Services

Annual Report

The SANTS Annual Report 2016 is available for [download](#).

Indigenous Law Centre

Indigenous Law Bulletin

This issue collates the work of presenters from the Indigenous Peoples and Saltwater/Freshwater Governance for a Sustainable Future Workshop held on the land and waters of the Mouheneenner people in Hobart, Tasmania.

For more information, visit the [Indigenous Law Centre website](#).

8. Training and Professional Development Opportunities

AIATSIS

Aboriginal Studies Press

Sponsored by AIATSIS, the biennial Stanner Award is open to all aspiring Indigenous authors of academic works. The author of the winning submission will receive \$5000 in prize money, mentoring and editorial support to turn their manuscript into a publication, and publication by the award-winning publishing arm of AIATSIS, Aboriginal Studies Press.

Entries close at 5pm (EST) Tuesday 31 January 2017.

For more information, [visit the AIATSIS website](#).

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 [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 corporation's rule book and other aspects of good corporate governance. More information on upcoming training is outlined below.

Upcoming training courses

Course: Two-day governance workshop

Location: Port Augusta

Dates: 31 January – 1 February

Email training@oric.gov.au to apply.

For further information on training courses and dates, [visit the ORIC website](#).

9. Events

AIATSIS

National Indigenous Research Conference

AIATSIS and the University of Canberra will be co-convening the AIATSIS National Indigenous Research Conference 2017. The Conference 'Impact, Engagement, Transformation' will draw together researchers, policymakers, cultural and collecting institutions, the corporate sector and Indigenous organisations and communities. The Conference will examine how we can more effectively target research efforts to achieve better policy outcomes and practice with lasting impact through transformative change.

The call for papers and registrations are now open. The deadline for submission is 16 December 2016.

Date: 21-23 March 2017

Location: Hotel Realm, Canberra

For further information, [visit the website](#).

NTRB Legal Workshop

Registrations are now open for the NTRB Legal Workshop to be held at AIATSIS in Canberra in February 2017.

NTRB/NTSP lawyers are at the forefront of native title law, policy and practice. We aim to further NTRB knowledge of contemporary native title legal issues through a sector designed and led workshop. A range of issues will be covered, including compensation, PBC set up and development, agreement making innovation, the acceptance of connection, the rights and roles of interveners and costs.

Expressions of interest for presenters and chairs close on 20 December 2016.

Registrations close on 27 January 2017.

This is a CPD event. Registration is free and catering will be provided.

Date: 7-8 February 2017

Location: AIATSIS, Canberra

For further information and to register, [visit the AIATSIS website](#).

Australian Anthropological Society

Australian Anthropological Society Conference 2016: Anthropocene Transitions

The 2016 conference of the Australian Anthropological Society (AAS) will be hosted by the Department of Anthropology at the University of Sydney in partnership with the AAS.

Date: 12-15 December 2016

Location: University of Sydney, New South Wales

For further information, including the conference program, [visit the conference 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](#).

