



WHAT'S NEW IN NATIVE TITLE OCTOBER 2016

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1. Case Summaries

[Street on behalf of the Yarrangi Riwi Yoowarni Gooniyandi People v State of Western Australia \[2016\] FCA 1250](#)

25 October 2016, Consent Determination, Federal Court of Australia, Western Australia, Barker J

In this case, Barker J recognised the native title rights and interests of the Gooniyandi people over 184.37 square kilometres of land in the Shire of Derby/West Kimberley and Shire of Halls Creek in the Kimberley region of Western Australia, an area abutting the group's previous determination in [Sharpe v State of Western Australia \[2013\] FCA 599](#). The application was lodged on 10 October 2012. The respondents to the application are the State of Western Australia, the Shire of Derby/West Kimberley, the Shire of Halls Creek, Sterling Jack Buntine, W.N.M. McDonald Pty Ltd and Yougawalla Pty Ltd as trustee for the Yougawalla Unit Trust.

The application covers 2396.27 square kilometres and is divided into an area A and B; however the determination area concerns only area B. The parties have agreed that no determination be made in respect of area A at this time.

The non-exclusive native title rights and interests recognised include rights to: access and move freely within the determination area; camp and erect shelters and other structures; hunt, gather and fish; take flora and fauna; take, share and

exchange other natural resources; light fires; engage in cultural activities; conduct ceremonies; conduct burials and burial rites; hold meetings; visit, maintain and protect places and sites of importance; and access and take water and its resources.

The Gooniyandi Aboriginal Corporation is the nominated prescribed body corporate.

Frank on behalf of the Mayala People v State of Western Australia (No 3) **[2016] FCA 1255**

21 October 2016, Application to Replace Applicant, Federal Court of Australia, Western Australia, Barker J

This matter concerned an application to replace the current applicant under s 66B of the [Native Title Act 1993 \(Cth\)](#) (NTA). The replacement applicant (Yankui Frank, Max Ejai, Janella Isaac, Jodi Humphries and Valarie Wiggan) sought to replace the current applicant (Yankui Frank, Mr Ejai (deceased), Janella Isaac, Jodi Humphries and Valarie Wiggan) as Mr Ejai is now deceased. The respondents did not oppose the application. The Commonwealth of Australia, the Shire of Derby/West Kimberley, Clipper Holdings Pty Ltd T/A Clipper Pearls and Maxima Pearlring Co Pty Ltd consented to the proposed orders. The State of Western Australia indicated it neither consented nor opposed the proposed orders and no response was received from the other respondents.

Barker J exercised the Court's discretion to replace an applicant under s 66B(2). His Honour ordered that the current applicant be replaced as the replacement applicant comprised of members of the claim group, the relevant member had deceased, the replacement applicant is authorised by the claim group in accordance with s 251B of the NTA, and there was no reason why the orders should not be made.

Fulton v Northern Territory of Australia [2016] FCA 1236

18 October 2016, Hearing to Determine Membership of Native Title Claim Group, Federal Court of Australia, Northern Territory, White J

In this matter, White J determined that Kevin John Kingston, a respondent to the native title claim brought on behalf of the Mambali Amaling-Gan, Murungun Igalumba, Murungun Milgawirri, Budal Yuwaran and Guyal Bardi Bardi Dumnyun-Ngatanyana Estate Group, was not a member of that claim group. The application over the Nutwood Downs pastoral lease in the Northern Territory was filed in November 2013 on behalf of the 'the Primary Native Title Holders' – members who descend from one or more of five estate groups of the Alawa people - and the 'other Native Title Holders' – other Aboriginal people who have rights and interests in respect of the determination area. The applicant for native title disputes Mr Kingston's claim that he is a member of an estate group. The respondents are the

Northern Territory Government, Minerals Australia Pty Ltd, Lexcray Pty Ltd, and Mr Kingston. White J held that Mr Kingston was not a member of the claim group and ordered that Mr Kingston cease to be a respondent to the proceeding.

White J relied upon the evidence provided by Ms English, an anthropologist who has researched and worked extensively with the Alawa people, in finding that membership of the claim group could be established either through descent from an apical ancestor, adoption, succession or concept affiliation. White J held that on the evidence, Mr Kingston could not establish his membership through any of these means. Alternatively, White J considered whether Mr Kingston could be a member of the native title group as an 'other Native Title Holder', however Mr Kingston did not claim to be a member of that group, nor did the evidence support such a conclusion. While White J recognised that Mr Kingston felt a connection to Nutwood Downs and that some of the Alawa people welcomed him as 'family', his Honour held at [82] that 'more than such an acceptance would be required in order for Mr Kingston to be a member of an estate group in accordance with the laws and customs of the Alawa People'.

[Taylor v State of Western Australia \[2016\] FCA 1191](#)

12 October 2016, Consent Determination, Federal Court of Australia, Western Australia, McKerracher J

In this decision, McKerracher J recognised the native title rights and interests of the Kulyakartu people over 3,550 square kilometres of land in the Great Sandy Desert in the East Pilbara region of Western Australia. The applicants filed the Kulyakartu application on 11 October 2005. Another application, Kulyakartu #2, was filed on 4 December 2015 and entirely covers the Kulyakartu claim area. The second application was filed in order to seek the benefit of s 47B of the NTA and allow for a determination of exclusive native title rights and interests. The respondents to both applications are the State of Western Australia and the Yamatji Marlpa Aboriginal Corporation, with the Commonwealth as intervener.

The applications were separated into part A and part B due to an issue regarding the applicability of s 47B of the NTA to part of the area subject to a petroleum exploration permit. This consent determination covers only part A of the applications, the area not covered by the petroleum exploration permit. Part B will be heard later this year.

McKerracher J recognised the right of the Kulyakartu people to possess, occupy, use and enjoy the determination area to the exclusion of all others. The rights recognised in relation to water include the non-exclusive rights to take, use and enjoy that water.

The determination will take effect upon the applicants nominating a prescribed body corporate.

[Mortimer v Auswide Services Ltd T/as Caloola Farm \(In Liquidation\) \[2016\]](#)
ACTSC 282

6 October 2016, Application to Discontinue Proceedings, ACT Supreme Court, ACT, Refshauge ACJ

In this matter, Refshauge ACJ granted the applicant leave to discontinue the proceedings he had commenced against the respondent. The applicant, Mr Mortimer, is a self-represented litigant and in April 2016 had commenced proceedings to prevent the respondent, Auswide Services Limited (trading as Caloola Farm) from selling certain property in the ACT and ‘to reinstate the said property to the original common law native title holder’. Refshauge ACJ granted an interim injunction in May 2016 while Mr Mortimer obtained legal advice.

Refshauge ACJ considered that Mr Mortimer was seeking to challenge the system of land title itself, and determined that this would conflict with the decision in [Mabo v Queensland \(No. 2\) \[1992\] HCA 23](#). His Honour held that Mr Mortimer could use these proceedings to challenge the decision of the High Court through the appellate process, but that if Mr Mortimer wished to do so he would need to restructure the current proceedings and join with the ACT government and probably the Commonwealth, as well as release the defendant from the proceedings. Refshauge ACJ dissolved the injunction, finding that the current proceedings were not the appropriate forum for challenging the right of any non-Indigenous person to the parcel of land. Mr Mortimer sought to discontinue the proceedings and Refshauge ACJ gave him leave to do so.

Mr Mortimer then sought an order that each party pay their own costs. His Honour held however that the usual rule that the plaintiff pay the defendant’s costs on discontinuance should apply. His Honour reasoned that, following [ACT Fire Brigade v Ken Nester \[2004\] ACTSC 125](#), the fact that a costs order would be onerous is not, of itself, a factor to be taken into consideration if costs are otherwise appropriately payable. Further, Refshauge ACJ held that this case should not be considered public interest litigation following the factors outlined in [Oschlack v Richmond River Council \[1998\] HCA 11](#).

Another Indigenous elder, Gary Robert Caines, sought to be substituted as plaintiff if leave were granted to Mr Mortimer to discontinue the proceedings. Refshauge ACJ rejected this request and held that Mr Caines can commence new proceedings.

2. Legislation

South Australia

[National Parks and Wildlife Act \(Co-managed Parks\) Amendment Bill 2016](#)

Status: This Bill was introduced into the House of Assembly on 19 October 2016 and was read for a second time on the same date.

Stated purpose: This Bill provides for amendments to the *National Parks and Wildlife Act 1972* and related amendments to the *Wilderness Protection Act 1992*.

Native title implications: The Bill provides for the establishment of a co-management advisory committee as an alternative to a co-management board over a national or conservation park. A co-management advisory committee will be able to advise the Minister and Director in relation to the park. Both co-management advisory committees and co-management boards can cover one or more parks.

The Bill inserts s 43AC which allows for the exercise of mining rights in the Ikara-Flinders Ranges National Park, subject to the approval of the Minister and the *Mining Act 1971*.

The Bill also amends the *Wilderness Protection Act 1992* to substitute 'co-management committees' with 'co-management advisory committees'.

Western Australia

[Licensing Provisions Amendment Bill 2015](#)

Status: This Bill passed the Legislative Assembly on 17 November 2015 and was introduced and read for a second time in the Legislative Council on 13 October 2016.

Stated purpose: This Bill amends eight acts related to commerce, transport, mining and petroleum to remove out-dated requirements and reduce the regulatory burden on businesses.

Native title implications: The Bill amends the *Mining Act 1978*. It will create a single point of contact for mining tenements, allow miner's rights to be issued to any person including corporations, and removes the requirement to seek authorisation for mining iron ore.

3. Native Title Determinations

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

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC/PBC
Yarrangi Riwi Yoowarni Gooniyandi People	Street on behalf of the Yarrangi Riwi Yoowarni Gooniyandi People v State of Western Australia	25/10/2016	WA	Native title exists in the entire determination area	Consent	Claimant	Gooniyandi Aboriginal Corporation RNTBC
Kulyakartu and Kulyakartu #2	Taylor v State of Western Australia	12/10/2016	WA	Native title exists in the entire determination area	Consent	Claimant	Not registered

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 25 October 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	9
Queensland	77	3
South Australia	15	1

State/Territory	RNTBCs	No. of successful (& conditional) claimant determinations for which RNTBC to be advised
Tasmania	0	0
Victoria	4	0
Western Australia	36	3
NATIONAL TOTAL	160	16

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 25 October 2016.

5. Indigenous Land Use Agreements

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

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
10/10/2016	Iman People #2 Comely and Mapala ILUA	QI2016/019	Area Agreement	QLD	Pastoral, Access
10/10/2016	Iman People #2 Coorada ILUA	QI2016/020	Area Agreement	QLD	Pastoral, Access
10/10/2016	Iman People #2 Woodine ILUA	QI2016/021	Area Agreement	QLD	Pastoral, Access
10/10/2016	Iman People #2 Korcha ILUA	QI2016/022	Area Agreement	QLD	Pastoral, Access

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

6. Future Acts Determinations

In October 2016, 7 Future Acts Determinations were handed down.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
31/10/2016	<u>Raymond William Ashwin (dec) & Others on behalf of Wutha and Western Australia and Evanton Ross Harris</u>	WO2016/0401	WA	Objection-Dismissed	Member Shurven did not receive any contentions from the Wutha claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had 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.
19/10/2016	<u>Reg Yarran (Jnr) and Others on behalf of the Ballardong People v Lake Hillman Mining Pty Ltd and Western Australia</u>	WF2016/0007	WA	Future Act – May be done	The parties agreed the lease could be granted, but had not met the formal requirements of s 31(1)(b) of the NTA and therefore the Tribunal was able to make a determination.
14/10/2016	<u>Puutu Kunti Kurrama and Pinikura People v Western Australia and Brockman Exploration Pty Ltd</u>	WO2015/0798 WO2015/0799	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the Puutu Kunti Kurrama and Pinikura people as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Member Shurven considered the group had 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. The applications were dismissed by operation of a springing order as per s 148(b) of the NTA.
11/10/2016	<u>FMG Pilbara Pty Ltd v The PKKP Aboriginal Corporation and Western Australia</u>	WF2016/0010 WF2016/0011	WA	Future Act - Dismissed	Member McNamara found that the Tribunal was not entitled to deal with the application under s 148(a) of the NTA. FMG Pilbara Pty Ltd initially lodged the two applications as no agreement could be reached between the parties under s 31(1)(b) of the NTA, however agreements have since been made and lodged with the Tribunal.

Date	Parties	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
11/10/2016	<u>Bernard Stretch & Others on behalf of the Purnululu Native Title Claimants v Western Australia and Tremjones Pty Ltd</u>	WO2015/0908	WA	Objection – Expedited Procedure Applies	Member Shurven found that the proposed licence is unlikely to interfere with the Purnululu’s community or social activities under s 237(a). Member Shurven found that the evidence established only one site of particular significance, Fish Hole, but that the portion of the licence covering that area is to be excised upon the grant of the licence, and therefore there is unlikely to be any interference to sites of particular significance under s 237(b). Member Shurven further found that the proposed licence is unlikely to involve a major disturbance to the land or waters concerned as per s 237(c).
10/10/2016	<u>Leedham Papertalk & Ors on behalf Mullewa Wadjari v Western Australia and XServ Pty Ltd</u>	WO2016/0147	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the Mullewa Wadjari claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had 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.
04/10/2016	<u>Raymond William Ashwin (dec) & Others on behalf of Wutha v Western Australia and Blue Thunder Resources Pty Ltd</u>	WO2016/0275	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the Wutha claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had 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. Publications

AIATSIS

National Native Title Conference 2016 Youth Forum Report

A report on the NNTC 2016 Youth Forum is available for [download](#).

Australian Government Solicitor

Magazine

The first issue of the Australian Government Solicitor magazine is now available for [download](#).

The magazine contains articles on confidentiality and the impact of non-disclosure obligations on pre-trial processes.

Central Land Council

Annual Report

The 2015-2016 Annual Report of the CLC is available for [download](#).

Goldfields Land and Sea Council

Annual Report

The 2015-2016 Annual Report of the GLSC is available for [download](#).

KPMG

Report

KPMG's report 'Igniting the Indigenous Economy' is available for [download](#).

The report looks at Indigenous business, employment, investment, taxation and education and makes recommendations to improve the economic position of Indigenous Australians.

Yamatji Marlpa Aboriginal Corporation

Annual Report

The 2015-2016 Annual Report of YMAC is available for [download](#).

Newsletter

Issue 31 of the YMAC *Newsletter* is available for [download](#).

8. Training and Professional Development Opportunities

AIATSIS

Aboriginal Studies Press

Entries for the 2017 Stanner Award close at 5pm (EST) Tuesday 31 January 2017.

Sponsored by AIATSIS, the biennial 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.

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

Upcoming training courses

Course	Location	Dates	Applications Close	Details
Introduction to Corporate Governance workshop	Brisbane	6-8 December	Applications close: 20 November	Apply online Download the application form
Two-day governance workshop	Port Augusta	31 January - 1 February	Applications close: when full	Email training@oric.gov.au to apply

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

Victorian Department of Premier and Cabinet

Traditional Owner Agreement Making Support

The Right People for Country program is currently calling for expressions of interest from traditional owner groups interested in accessing agreement making support. Support is tailored to the needs of traditional owner groups and is available to prepare for and to make agreements within and between traditional owner groups.

Expressions of interest close on 21 November 2016.

For more information, [visit the 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

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.

We are seeking potential speakers and chairs and invite your input into the program.

This is a CPD event.

Date: 7-8 February 2017

Location: AIATSIS, Canberra

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

University of Western Australia

Indigenous Business, Enterprise and Corporations Conference (IBECC)

The IBECC will be held at the University of Western Australia Business School and will cover a broad range of areas including business, community, enterprise, innovation, health, corporations, native title, the arts, education, research and Indigenous knowledge. The Conference will provide an exciting forum for dialogue and exchange on how to best foster the growth of Indigenous businesses, enterprises and corporations.

Date: 1-2 December 2016

Location: University of Western Australia, Western Australia

For more information, [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](#).

