AIATSIS
AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES
NATIVE TITLE RESEARCH UNIT

WHAT'S NEW IN NATIVE TITLE
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1. Case Summaries

Lander v State of South Australia [2014] FCA 125

26 February 2014, Consent Determination, Federal Court of Australia, Port August, South Australia

White J

This matter involves the resolution of overlapping claims in the north-eastern region of South Australia, between the Dieri People and the Adnyamathanha People, for native title in respect to an area of land located to the north and north-west of the northern end of the Flinders Ranges. The Dieri and the Adnyamathanha agreed to recognise the traditional rights of the other in the area over which they will not hold native title.

In this matter, the Court recognised that named Dieri people (identified in Schedule 3 of the decision) are the native title holders for the determination area. This decision has the effect of determining finally the whole of the Dieri No 2 Claim.

On 26 February 2014, the Court made a determination in favor of the Adnyamathanha (*Adnyamathanha No 1* and *Adnyamathanha No 1 Stage Three*). The land subject to this matter relates to a relatively small portion of the Adnyamathanha No 1 Claim, but comprises the entirety of the Adnyamathanha No 1 Stage Three Claim.

White J made this consent determination together with a consent determination over the remaining part of the Dieri No 2 claim in favor of the Adnyamathanha People, based on a Memorandum of Understanding between the Dieri Native Title Claim Group and the Adnyamathanha Native Title Claim Group.

White J made the determination of part of an area, pursuant to s 87A of the *Native Title Act 1993* (Cth) (NTA). His Honour concluded the following procedural conditions were met:

a) there is agreement by all parties to the proceedings at the time the agreement is made on a proposed determination of native title in respect of a claim area (s 87A(1)(b)-(c));
b) the period specified in the Registrar's notice under s 66 has ended (s 87A(1)(b));

c) the terms of the proposed determination are in writing and have been signed by, or on behalf of, each of the parties (s 87A(1)(d)) and a copy has been filed with the Court (s 87A(2));
d) the Registrar has given notice to the other parties to the proceedings of the filing of the proposed determination (s 87A(3));
e) an order in, or consistent with, the terms of the proposed determination would be within its power (s 87A(4)(a)); and
f) it is appropriate to make the determination (s 87A(4)(b)).

Section s 87A of the NTA allows the Court to give effect to the parties' agreement without hearing and determining the merits of an application. However, the Court must be satisfied that the determination is supportable and in accordance with the law.

White J followed the decisions in *Lovett on behalf of the Gunditjmara People v State of Victoria* [2007] FCA 474 and *Nelson v Northern Territory of Australia* (2010) 190 FCR 344, placing importance on the following statements:

- The focus is on the making of an agreement by the parties, reflecting the importance placed by the Act on mediation.
- The Act does not intend to substitute a trial, conducted by the State, for a trial before the Court. Therefore, something significantly less than the material necessary to justify a judicial determination is sufficient to satisfy a State party.
- The Court must determine whether there is an agreement entered into on an informed basis.
- The Court must be satisfied that the State party has taken steps to satisfy itself that there is a credible basis for an application.

Also, in following *Smith v Western Australia* (2000) 104 FCR 494 and *King v State of South Australia* (2011) 285 ALR 454, White J discussed the obligation of the State to scrutinise claims on behalf of all its citizens, perhaps as the balance to the State's obligations to investigate claims to a lesser degree than would be required to satisfy a Court.

Smith J considered important the rigorous process that the State has developed, and outlined in policy documents, for assessing the evidence in native title claims. His Honour identified the considerations undertaken by the State, which included reviewing an extensive range of material such as expert anthropologist reports, as well as the processes undertaken during the passage of the matter.

Smith J then undertook a detailed examination of the requirements to prove native title under the NTA and whether the evidence before the State supported such a conclusion. His Honour concluded:

> I am satisfied that the proposed determination is appropriate and should be made. I will make orders in the terms proposed by the parties.

Smith J also made Orders that the Dieri Aboriginal Corporation would hold the native title as agent under s 57(3) of the NTA.

Sullivan on behalf of the Yulluna People #3 v State of Queensland [2014] FCA 659

28 March 2014, Federal Court of Australia, Osborne Mine Village, Queensland

Dowsett J

In this matter, Dowsett J determined that the Yulluna People hold non-exclusive native title rights in relation to the determination area, set out in Part 1 of Schedule 1A of the decision. His Honour determined that native title does not exist in relation to another part of the determination area, described in Part 2 of Schedule 1A of the decision. These orders were consistent with the terms agreed by the consenting parties.

On 1 June 2010, the Yulluna People applied for a determination of native title over an area of about 10,027 km^2 in northwest Queensland, located south of Mt Isa and Cloncurry and to the west of Dajarra. The respondents to the application were the State of Queensland, the Boulia, Cloncurry and McKinlay Shire Councils, various mining and exploration companies and 12 pastoralists.

On 21 February 2014, the parties filed an agreement pursuant to s 87 of the NTA seeking a consent determination. Section 87 requires the Court to consider whether it is appropriate to make a native title determination that reflects the terms of the agreement, though considering the interests of the parties, the efficient use of resources and the public interest. Dowsett J noted, at [4], that even though this was a consent determination, because the proceedings may have significance for people other than the parties, the Court must give special consideration to making consent orders.

Dowsett J said that a native title determination may only be made in favour of a claim group if:

- It demonstrates it is the successor to the group which, pursuant to traditional laws and customs, held rights and interests over the claimed lands and waters at the time of the first assertion of British sovereignty.
- over the intervening period, connection to the claim area has been maintained; and
- the group must identify itself (often this is done by identifying those recognised by the group as being its members, and then describing them by reference to identified ancestors);
- then explain how those ancestors were related to the area, going back to the first contact with European people.

Dowsett J examined a recent report by anthropologist Mr Peter Blackwood, evidence from several members of the claim group and other anthropological materials. His Honour concluded that the claim group demonstrated it is the successor of the Yulluna People which held rights and interests over the claimed lands and waters at the time of the first assertion of British Sovereignty in 1861. The claim group is identifiable by reference to their identified ancestors and its members are recognised as members of the Yulluna people by other Yulluna People. The Yulluna People have shown that they have maintained a continuous physical connection to the claim area from the date of sovereignty to present day. They continue to observe and acknowledge Yulluna traditional law and custom and to exercise their rights and interests. Dowsett J concluded that the application satisfies the test for a native title determination.

The Court determined the Yulluna People's non-exclusive rights include:

(a) access;
(b) camp and build temporary shelters for camping;
(c) hunt, fish and gather on the land and waters for personal, domestic and non-commercial communal purposes;
(d) take and use natural resources from the land and waters for personal, domestic and non-commercial communal purposes;
(e) take and use the water for personal, domestic and non-commercial communal purposes;
(f) conduct ceremonies;
(g) maintain and protect places of importance and areas of significance;
(h) teach on the area the physical and spiritual attributes of the area;
(i) light fires for domestic purposes including cooking, but not for hunting or clearing vegetation.

Dowsett J made the orders sought by the parties, thereby recognising the rights and interests of the Yulluna People derived from their traditional laws and customs. His Honour also ordered that the Yulluna Aboriginal Corporation be the prescribed body corporate for the purpose of ss 56(2)(b) and 56(3) of the NTA and that the native title rights and interests be held on trust.

***Watson on behalf of the Nyikina Mangala People v State of Western Australia (No 5)* [2014] FCA 650**

20 May 2014, Removal of Party, Federal Court of Australia, Perth, Western Australia

Gilmour J

In this decision, Gilmour J made an order to remove Oil Basins Limited (Oil Basins) as a party to the native title application by the Nyikina Mangala claim group.

Oil Basin holds a petroleum exploration permit (the Permit) which overlaps part of the Nyikina Mangala claim area. Oil Basins was joined as a respondent party in February 2013. Since then, counsel for Oil Basins has been actively involved in the proceedings and case management conferences.

On 27 September 2013, Deputy Registrar Trott made an order that the matter be provisionally listed for a consent determination hearing on 29 May 2014. At the case management conference on 20 May 2014, Mr Kavenage, counsel for Oil Basins, stated that his client had instructed him that it would not consent to the proposed consent determination for two reasons. First, the client asserted it had not been properly informed about the basis on which it should consent. Second, the client asserted it was aware of a dispute with the Warrwa claimants in the northern end of the determination area.

Gilmour J called an urgent hearing on the basis that the matter has been moving towards at consent determination, at considerable expense and effort. At the hearing, Mr Kavenagh was unable to give further details about what information his client claimed to have not been given. Gilmour J reasoned that if Oil Basins had a substantive basis to argue that it did not receive certain information, it would have been put before the Court. Gilmour J also viewed that any dispute with the Warrwa claimants was irrelevant to the present application because the Warrwa claimants are not a party to the application. His Honour described this as 'a spurious assertion on the part of Oil Basins' and rejected it.

Section 84(8) of the NTA gives the Federal Court the power to remove a party from proceedings, while s 84(9) sets out certain conditions for the Court to consider when making an order to remove a party, such as where the person's interests are properly represented by another party. Gilmour J considered that the power to dismiss under s 84(8) is not constrained by the

circumstances referred to in s 84(9). This position is in line with the conclusions of Logan J in *Butterworth v Queensland* (2010) 184 FCR 397 at [39]. In that case, Logan J noted that s 84(9) provides particular circumstances where removal will be considered, but considered that s 84(9) is not an exhaustive list of situations where the power to remove can be exercised.

Gilmour J noted several relevant considerations to the exercise of the Court's discretion:

(a) the purpose of the NTA is to encourage parties to resolve claims through reconciliation and negotiation;
(b) the overarching purpose of the *Federal Court of Australia Act 1979* (Cth) (and particularly s 37M) is to facilitate the just determination of proceedings in the most inexpensive and efficient way possible;
(c) the significant time, money and other resources which have been invested in this application and the mediation and negotiations;
(d) the additional significant time, money and other resources (including judicial resources) which would be needed to delay the determination hearing;
(e) the significant and non-compensable inconvenience, anxiety and stress to members of the claimant group if the determination hearing does not go ahead;
(f) the parties (other than Oil Basins) are very close to reaching a consent determination;
(g) the applicant does not challenge the validity of the Permit and accepts that, to the extent of any inconsistency, native title rights and interests must yield to the rights and interests of the Permit holder.

For these reasons, Gilmour J ordered that Oil Basins should be removed as a party to this proceeding.

Dempsey on behalf of the Bularnu, Waluwarra and Wangkayujuru People v State of Queensland (No 2) [2014] FCA 528

23 May 2013, Determination, Federal Court of Australia, Brisbane.

Mortimer J

In this matter the Court considers an application for a determination of native title pursuant to the *Native Title Act* 1993 (cth). The applicants are descendants of named ancestors who identify as members of the Bularnu, Walluwara and Wangkayujuru People. The respondents are the State of Queensland and 18 other parties. The land on which determination is sought is the central-western region of Queensland, between Lake Nash and Dajarra, adjacent to the border within the Northern Territory and South West of the town of Mount Isa. The area to the north of Toby Creek is associated with the Bularnu people, the area between Toby Creek and Mangala waterhole is identified with the Walluwara people, and the area to the south of Mangala Waterhole, extending beyond the claim area down to Cottonbush Creek, is identified with Wangkayujuru people.

The application and the terms of the native title determination sought in the present case by the applicants recognise the extinguishment of native title in whole or in part over a large proportion of the claim area, as well as recognising a range of rights and interests in land that now exist in the claim area. It is worth noting that the area of land over which exclusive native title rights is sought is small. Also there are portions of the claim area for which a determination of non-exclusive use is sought, and there are very substantial parts of the claim area (mostly those parts occupied by permanent improvements and pursuant to pastoral leases) where the proposed determination recognises that native title does not exist and has been extinguished. It follows that all interested parties consented to a determination of native title in the form sought, except for a group of people represented by Lorna Bogdanek.

Mortimer J recognised native title rights on behalf of the applicants. His reasoning is explained in the rest of the summary.

Ms Bogdanek was joined to the proceeding as a Respondent in September 2011 after her initial efforts to be part of the Wangkayujuru claimant group had been unsuccessful. Mrs Bogdanek's extended family group are descendants of a Scottish pastoralist called James Craigie and an indigenous woman known as 'Bunny'. James Craigie owned and operated Roxborough Station, which is in the south of the claim area. Ms Bogdanek asserts that the descendants of James Craigie and Bunny are entitled to be part of the claim group. She asserts that both the Wangkayujurru people and the Wankgkajutjuru people around Roxborough are part of the larger Wangkamadhla group to which she belongs and that thus she holds rights to the identified area of Wangkayujurru country, which is in the south of the claim area. Ms Bogdanek's role in the proceeding is of an individual respondent who articulates either a right to be part of the claim group, or a claim to country which could be seen as negating the native title claim made by the applicants. She cannot through this proceeding obtain a determination of native title herself.

It is important to note that Ms Bogdanek was not legally represented throughout the proceeding.

The native title claim

The application identifies six apical ancestors who are said to have held native title rights in the determination area at the time of sovereignty. The native title rights and interests claimed are as follows:

1. over areas where a claim to exclusive possession can be recognised (such as areas where there has been no prior extinguishment of native title or where s.238 and/or ss.47, 47A and 47B apply), the Bularnu, Waluwarra and Wangkayujuru Peoples claim the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world, pursuant to the traditional laws and customs of the claim group.
2. over areas where a claim to exclusive possession cannot be recognised, the following rights and interests are claimed:
    a) the right to access the application area
    b) the right to camp on the application area
    c) the right to erect shelters on the application area
    d) the right to live on the application area
    e) the right to move about the application area
    f) the right to hold meetings on the application area
    g) the right to hunt on the application area
    h) the right to fish on the application area
    i) the right to cook on the application area
    j) the right to have access to and use the natural water resources of the application area
    k) the right to gather and use the natural products of the application area (including food, medicinal plants, timber, stone, ochre and resin) according to traditional laws and customs
    l) the right to conduct ceremonies on the application area
    m) the right to participate in cultural activities on the application area
    n) the right to maintain and protect places of importance under traditional laws, customs and practices in the application area
    o) the right to conduct burials on the application area
    p) the right to speak authoritatively about the application area among other Aboriginal People in accordance with traditional laws and customs
    q) the right to make decisions about the use and enjoyment of the area by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged and observed by the native title holders
    r) the right to transmit the cultural heritage of the native title claim group including knowledge of particular sites;
    s) the right to take and use, share and exchange the traditional resources of the application area

Issues to be determined

1) Whether native title exists for the applicants;
2) Whether Ms Bogdanek's argument that the Wangkayujuru language group is connected with the Wangkamanha language group (to which she belongs) and that they share the same country is true.
3) Whether Bunny Craigie (Ms Bogdanek's ancestor) should be an apical ancestor;
4) Whether Ted and Artie Major, as claimed by Ms Bognadek are Waluwarra, and therefore their descendants should form part of the claim group; and/or
5) Whether Belia Toby, Deemera and Joe Rose should be included in the claim group. Ms Bogdanek had argued that that these three men were brothers, and also rainmakers along the Georgina River and should be part of the claim group.

Issue1:

Section 223 of the *Native Title Act* 1993 (Cth) (NTA) requires the identification of the rights and interests said to constitute native title, and the area of land or waters in respect of which such native title rights exists. In applying this section to the facts in this case, Mortimer J considered the importance of demonstrating connection as a key element in the recognition of native title. He referred to the Full Court explanation in *Northern Territory of Australia v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group* (2005) 145 FCR 442; [2005] FCAFC 135 at [88], where they stated:

> From the preceding it can be seen that 'connection' is descriptive of the relationship to the land and waters which is, in effect, declared or asserted by the acknowledgment of laws and observance of customs which concern the land and waters in various ways. To observe laws and acknowledge customs which tell the stories of the land and define the rules for its protection and use in ways spiritual and material is to keep the relevant connection to the land. There is inescapably an element of continuity involved which derives from the necessary character of the relevant laws and customs as 'traditional'. The acknowledgment and observance, and thereby the connection, is not transient but continuing.

In para [39] his Honour applied the analysis to the facts stating that families in the native title claim group have traditional links to the land and waters covered by pastoral stations within the claim area under the traditional laws and customs observed by them. Each of the descent groups have been able to maintain their traditional laws and customs despite white settlement in the

area by remaining on their traditional country through working on the stations since the stations were first established in the late 19th century. During the late 19th and throughout the 20th century most members of each family group worked in the pastoral industry. By being able to remain on their traditional country as pastoral workers they maintained and passed on to succeeding generations traditional knowledge and skills concerning their country. The traditional laws acknowledged and traditional customs observed by the claim group govern their conduct on their country and in relation to each other and their neighbours and give rise to the claimed native title rights and interests.

In para [40] Mortimer J stated that "the applicants had demonstrated connection with the land by referring to the fact that a major residential location for claimants within the claim boundary is Urandangie. Other major residential centres are just outside the present claim boundaries being Dajarra near the south eastern edge of the claim area, Lake Nash (Alpurrurulam) in the northwest, and Mount Isa in the north east. This continuing proximity to the claim area means ongoing observation of laws, customs, practices and activities that connect members of the claim group to the claim area are easily part of the lives of claim group members. Those laws and customs continue to be observed as members of the claim group continue to undertake activities in the claim area which are governed by the traditional laws and customs by which they are bound to the land."

Mortimer J also referred to the importance of the concept of 'traditional laws and customs'. In explaining this concept, Mortimer J referred to the reasoning of Gleeson CJ, Gummow and Hayne JJ at [88]-[89] in Yorta Yorta 214 CLR 422; [2002] HCA 58: where it was stated that a change in traditional law is not fatal to a native title claim, but the important aspect is whether at the time of sovereignty there existed a normative system out of which the claimed rights and interests arise. This normative system, he states exists in the present case.

His Honour went on to consider s225 of the NTA, which requires the identification of the person, or group of persons, holding the communal, group or individual rights comprising the native title. He went on to state that in *Ngadju* 305 ALR 452; [2013] FCAFC 143, the Full Court recognised (at [91]) that, in some cases, identification by reference to a language group might be appropriate. However the Court went on to emphasise that, in circumstances where genealogical issues are raised, and there is debate about the identification of apical ancestors, it will be part of the Court's functions under s 225 to identify the apical ancestors that the Court finds, on the evidence, hold the native title: see *Ngadju* 305 ALR 452; [2013] FCAFC 143 at [92]. The present proceeding is such a case.

His honour considered evidence from anthropologist Dr Palmer, members of the Bularnu people, the Waluwarra people and the Wangkayujuru people, together with the State's evidence to conclude that the groups shared traditional laws and customs, and the applicant witnesses had a clear understanding of an underlying unity about the traditional laws and customs, which connected people within the claim area to the land. Hence, the applicants were able to demonstrate that they were the group of persons, through their apical ancestors, who have native title rights over the claimed area of land.

Issue 2: in resolving this issue, Mortimer J relied on evidence from the claim group members and focused on the content of law and custom and the commonalities in content. He concluded that the Balurna, Waluwarra and Wangkayujury people share the observance of laws and customs which are fundamental to their connections to their country. He went on to state that Mrs Bogdanek did not establish that the Wangkayujuru people have traditional laws and customs concerning their country which are in their content different from those of Bularnu and Waluwarra people. However, he went on to state that it did not mean that she had failed to establish there is a society, of which her family may well be members, that includes Wangkayujuru and other groups (such as Wangkamadla and Wangkamanha) who share traditional laws and customs in a way that unite them in connection to country, so as to enable a finding of native title to be made. However, he pointed out that that kind of analysis must await a different proceeding.

Issue 3: in relation to this issue, Mortimer J found that there was not enough evidence to conclude that Bunny Craigie (Mrs Bogdanek's great grandmother) should be included in the claim as an apical ancestor. In para [848] Mortimer J states that it was in his opinion that Bunny Craigie was a Wangkamadla woman, whose country is well to the south of the claim area. How she came to live on Roxborough Station may be an account which is lost to history: whether she was born there, came voluntarily to be with James Craigie, or was working on the station, or was brought there, cannot be determined on the evidence before him.

Issue 4: in determining this issue Mortimer J relied heavily on Dr Palmer's report and the evidence of Enid Hill, who stated that Ted and Artie in accordance with traditional Waluwarra laws and customs were adopted. His Honour was satisfied that it was appropriate to treat them as having been adopted in accordance with traditional law and custom. He also considered and relied on the tentative view expressed by Dr Palmer in his 2009 report that Jinny Major (the wife of Jimmy Major and the mother of Ted and Artie) originated from Waluwarra country.

Issue 5: In relation to this issue, Mortimer J relying on the evidence before him concluded that although Belia and Deemera lived much of their lives within the claim area, neither the men themselves nor the Bularnu, Waluwarra and Wangkayujuru people

regarded them as having rights to the country in the claim area. Rather the evidence suggests Belia's and Deemera's country to be to the south and to the west of the claim area.

Conclusion: Mortimer J ordered that native title rights of the applicants should be recognised. This was subject to some amendments to be made to the form of determination attached to the statement of claim. Mortimer J in his orders directed the parties to file an agreed form of final determination. As a respondent Mrs Bognadek is required to participate in the process.

Sumner v State of South Australia [2014] FCA 534

23 May 2014, Application for Joinder as a Respondent, Federal Court of Australia – Adelaide

Mansfield J

This matter concerned the Ngarrindjeri Native Title Claim and three applications by Mr Mark Koolmatrie and the Tribal Council Elders of the Coorong, Lower Lakes and Sea (the Koolmatrie applications) seeking Orders that:

1. the Ngarrindjeri Native Title Claim be struck out; or
2. the Ngarrindjeri claimants establish connection to country, or that the Ngarrindjeri claimants prove "lineage" (i.e. genealogy), or
3. the Koolmatrie applicants be joined as a respondent to the Ngarrindjeri Native Title Claim.

Manfield J also considered and found unnecessary to answer an application by Mr Darrell Sumner and others, seeking Orders that the first Koolmatrie application be dismissed.

Mansfield J refused the three Koolmatrie applications on the basis that Mr Koolmatrie did not have standing to make the submissions. Mansfield J then provided reasons why Court would refuse to make the Orders sought, regardless of the issue of standing.

The first Koolmatrie application

Mansfield J considered this application to amount to a submission impugning the sovereignty of South Australia, the sovereignty of the Commonwealth and the jurisdiction of the Federal Court to determine native title. In deciding this submission could not succeed, Mansfield J relied on, but did not repeat, the reasons in *Walker v South Australia (No 2)* (2013) 215 FCR 254.

The second Koolmatrie application

This application was accompanied by extracts from published sources concerning the origins of the use of the term "Ngarrindjeri": a guide to the meaning of the word "Ngarrindjeri", a list of native title rights and interests asserted by the Tribal Council of Elders of the Coorong, an assertion of connection, information about various "sites of significance", journal records of Norman Tindale, a transcript of information in relation to Apical Ancestors of the Ngarrindjeri, a text identifying traditional food sources, a text about Aboriginal language terms and a letter objecting to the use of certain apical ancestors in the Ngarrindjeri Native Title Claim.

Mansfield J stated, at [25], that it is not the function of the Court to undertake an assessment of contested questions of fact or make an assessment of where the merits lie. However, he found that the material accompanying the second Koolmatrie application did not have the necessary probative quality to show an arguable interest in the claim area to constitute a competing native title claim.

The third Koolmatrie application

Section 84(5) of the *Native Title Act 1993* (Cth) (NTA) sets out that the Court may join a person to proceedings, if the court is satisfied that the person's interests may be affected by a determination and it is in the interests of justice to do so.

In refusing the third Koolmatrie application, Mansfield J largely adopted the submissions of the State. At [11], Mansfield J considered the words "and it is in the interests of justice to do so" and stated:

> as Gilmour J noted at [163] of *Barunga v State of Western Australia (No 2)* [2011] FCA 755 (*Barunga*), the addition of those words added nothing to the matters that the Court must consider in the exercise of the discretion conferred to join a party to a proceeding under the NT Act.

Manfield J accepted that an application for joinder must establish:

a. whether the person has an interest;
b. whether the interest may be affected by a determination in the proceedings; and
c. whether, in any event, in the exercise of its discretion the Court should join the person as a party.

In considering the nature of a relevant 'interest', Mansfield J applied 'the *Byron* test'[1], which sets out that:

> the "interest" in (a) and (b) "need [not] be properly or even legal or equitable in nature" but must be "genuine", ... not indirect, remote or lacking substance ... [and] capable of clear definition" and "be affected in a *demonstrable way.*

Mansfield J found that the Tribal Council of Elders of the Coorong as an entity could not be joined as respondents to the Ngarrindjeri claim because they failed to meet this test. Citing *Byron* and his later application of that decision in *Far West Coast Native Title Claim v South Australia* (2011) 191 FCR 381 at [386]-[38], Mansfield J stated, at [14], that:

> an entity who represents members with relevant interests do not, by that reason alone, have interests of the sort contemplated by s 84(5) of the NTA. … An entity whose members are capable of asserting a direct interest capable of being affected by a determination of native title can only, by its nature, have an indirect interest and thus would fail to meet the *Byron* test.

Mansfield J also found that Mr Koolmatrie (and any other individual) failed to meet this test because he was not pursuing a claim as a dissentient member of the Ngarrindjeri Native Title Claim group, but rather advancing a competing native title claim only on the basis of his submission stated, at [18], that:

> the Ngarrindjeri Native Title Claim group cannot succeed in their claim because a different group of which he and the Tribal Elders on whose behalf he brings his applications are the persons who hold native title over the claim area.

Mansfield J was unable to conclude, on the evidence, that Mr Koolmatrie held a genuine interest as a member of, and representative of, a competing claim group. The basis for this was discussed by Mansfield J at [19]. Mansfield considered it important that, although persons representing a differently constituted claim group may be joined as respondent parties, the joinder will inform the determination of native title of the principal native title claim. The joinder cannot result in a positive determination in favor of the joinder party.

In deciding that the Court should not exercise its discretion and join the party, Mansfield J referred to Mr Koolmatrie's reasons for delaying 16 years before making the application were not considered reasonable by Mansfield J. These reasons were that Mr Koolmatrie expected the claim to be struck out by now and that he wished to avoid using the Court to assert his interests. Also, Mansfield considered that the Koolmatrie application would adversely impact the finalisation of and Indigenous Land Use Agreement and Co-Management Agreement over the Coorong National Park.

Butterworth on behalf of the Wiri Core Country Claim v State of Queensland (No 2) [2014] FCA 590

5 June 2014, Authorisation effective for removal of members from applicant group, Federal Court of Australia- Brisbane, Queensland

COLLIER J

An interlocutory application was filed on 27 September 2014 by the Native Title Applicant (the applicant) to remove reference to 'James Henry Butterworth and Others on behalf of the Wiri Core Country claim' and replace it with 'Eileen Beryl Pegler and Others on behalf of the Widi People of the Nebo Estate #1'.

The Respondent in this matter was the State of Queensland and joinder respondents Ms Hunter and Ms Johnson, who are currently members of the Native Title claim group. Ms Hunter and Ms Johnson are the descendants of an apical ancestor whose name is sought to be removed from the application. Removal of the apical ancestor would mean both Ms Hunter and Ms Johnson would no longer be members of the Native Title claim group.

At issue was whether the Native Title claim group had agreed to a decision-making process within the meaning of s 251B of the *Native Title Act 1993* (Cth) (NTA) and, if so, whether that decision-making process had been followed in the relevant meetings.

The Court noted that 177 people were registered to attend the claim group's first authorisation meeting had the meeting, but the attendance sheet on the day showed 73 persons from the claim group had attended.

At that meeting the following issues were considered and passed:

1. The decision making process for the purpose of authorising the removal of members from the claim group are:

[1] From *Byron Environment Centre Inc v Arakwal People* (1997) 78 FCR 1, per Black CJ, at 7E-G, 8A.

a) Each person in each group of people descended from a particular apical ancestor or the union of two apical ancestors ("lineage") must have a reasonable opportunity to participate in the decision-making process;
b) The proposed resolution will be put in the form of a clearly worded written motion;
c) The motion will be displayed and read out to the meeting;
d) The motion must be moved and seconded by a member of the Native Title Claim Group however, it must be decided upon in the following manner:
    i. There shall be a reasonable time for discussion and debate upon the motion before the motion is settled upon;
    ii. Each lineage may meet separately today to agree upon the terms of the proposed resolution according to its own processes;
    iii. A lineage is taken to have agreed upon the terms of the proposed resolution when its decision to agree is reported to the meeting of the Native Title claim Group through a lineage representative;
    iv. The Native Title Claim Group is taken to have agreed upon the terms of the proposed resolution when there is a consensus;
    v. No one person or lineage has a right of veto; and
    vi. If any person publicly disagrees the name and lineage of the person shall be noted for the record.

Nine lineages agreed to the decision making process, three disagreed and four lineages were not in attendance.

2. A resolution to remove certain apical ancestors from the claim group because anthropological research provided evidence that there is no known descendant of these apical ancestors. The apical ancestors to be removed from the list include Mary Johnson, who is the ancestor of Ms Hunter and Ms Johnson. Seven lineages agreed with the proposed resolution, four disagreed and five were not in attendance for the decision to remove the apical ancestors. It was agreed by a majority that this proposition to remove some apical ancestors be passed.

After the propositions listed above were passed, the meeting was closed by agreement and a second authorisation meeting commenced. Only descendants whose apical ancestors' names were not removed were allowed to attend the second authorisation meeting. In the second meeting the group resolved that the name of the application be amended to remove reference to "James Henry Butterworth and Others on behalf of the Wiri Core Country claim" so as to read, "Eileen Beryl Pegler and Others on behalf of the Widi People of the Nebo Estate."

The two issues for determination before the court were:

a) whether the native title claim group had agreed to a decision making process within the meaning of s251B of the *Native Title Act (1993)* at the first authorisation meeting.
b) whether the decision making process was followed at the first and second authorisation meeting.

A decision is deemed to be made according to s 251B of the NTA if it follows a process of decision making that must be complied with in relation to authorising things of that kind. If there is no such process, then the decision complies with a decision making process agreed to and adopted by persons in the native title claim group.

There was no dispute that there was no relevant traditional decision making process. The question was whether a process of decision making was adopted and whether each person was given reasonable opportunity to participate in the decision making process.

Collier J concluded that a decision making process existed and members of the claim group were given a reasonable opportunity to participate in the decision making process on the basis that sufficient notice in relation to the meeting was provided to the members of the claim group. Collier J noted that evidence presented suggested that the purpose of the authorisation meeting and the business to be discussed was advertised widely and in detail in the Courier Mail and Mercury newspapers. Also, all members were invited to the authorisation meetings, where each family was represented sufficiently. He concluded that the agreed decision making process adopted was followed in the first authorisation meeting where nine lineages agreed with the proposed resolution, three were against and four lineages were not in attendance. The same decision process was also followed in the second authorisation meeting where there was no objection to the resolution to change the applicant.

Collier J acknowledged there had been strong disagreement within the claim group, but considered that the strong agreement within the majority of the claim group constituted "general agreement" of the claim group. Collier J also accepted evidence showing that the claim group agreed that majority decision would constitute consensus.

***Coconut on behalf of the Northern Cape York #2 Native Title Claim Group v State of Queensland* [2014] FCA 629**

20 June 2014, Conditional Consent Determination, Federal Court of Australia, Weipa, Queensland.

Greenwood J

The applicants in this case were the Northern Cape York # 2 Native Title Claim Group (composed of persons who identify as members of six language affiliated groups described as the Yupungathi, Tjungundji, Taepadhighi, Mbakwithi, Thankakwithi and Anathangay) and the respondents were the State of Queensland and nine other respondent parties: the Shire Councils of Cook and Mapoon; the Old Mapoon Aboriginal Corporation; the Australian Maritime Safety Authority, Telstra Corporation; Ergon Energy; Alcan South Pacific Pty; RTA Weipa Pty Ltd (an assignee from Rio Tinto Aluminium Ltd, formerly Comalco Aluminium Ltd); and Sunrise Minerals Pty Ltd. The Commonwealth was a party to these proceedings, but was not a party at the time of the determination.

The court recognised that the applicants held exclusive native title rights over an area described in the case as Schedule 1, Part 1 and that the applicants held non-exclusive native title rights over an area described in the case as Schedule 1, Part 2. The determination area includes land and waters in the north west of the Cape York Peninsula, lying to the north between the Ducie and Wenlock Rivers and Cox Creek and Mission River and Myall Creek in the south.

Consistent with the agreement between the parties, Greenwood J ordered that the determination will take effect only upon the registration of Indigenous Land Use Agreements (ILUAs) between:

1. the applicants and the Mapoon Aboriginal Shire Council;
2. the applicants and Napranum Aboriginal Shire Council; and
3. the applicants and Ergon Energy Corporation.

The area is already subject to an existing ILUAs between:

1. the applicants and RTA Weipa Pty Ltd and Rio Tinto Aluminium Ltd (the Comalco agreement), over Mining Lease No 7024; and
2. the applicants and Alcan South Pacific Pty Ltd.

The exclusive native title rights were to possession, occupation, use and enjoyment of the area to the exclusion of all others, and in relation to water, the non-exclusive rights to:

a. hunt, fish and gather from the Water of the area;
b. take and use the Natural Resources of the Water in the area; and
c. take and use the Water of the area,

for cultural, personal, domestic and communal purposes.

The non-exclusive native title rights were to:

a. access, be present on, move about on and travel over the area;
b. hunt and fish in or on, and gather from, the area;
c. take, use, share and exchange Natural Resources on the area;
d. take and use Water from the area for cultural, personal, domestic and communal purposes;
e. live and camp on the area and for those purposes to erect shelters and other structures;
f. light fires on the area for cultural, spiritual or domestic purposes, including cooking, but not for the purpose of hunting or clearing vegetation;
g. be buried and to bury native title holders within the area;
h. conduct ceremonies on the area;
i. hold meetings on the area;
j. teach on the area the physical and spiritual attributes of the area;
k. maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and to protect those places and areas from harm;
l. be accompanied on to the area by those persons who, though not native title holders, are:
    i. spouses or partners of native title holders;
    ii. people who are members of the immediate family of a spouse or partner of a native title holder; or
    iii. people reasonably required by the native title holders under traditional law and custom for the performance of ceremonies or cultural activities on the area.

Greenwood J noted, in the determination at [14], that other interests continue to have effect, despite the existence of native title rights. However, where the other rights are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in the determination area, the native title rights continue to exist in its entirety but the other rights will prevail to the extent of the inconsistency.

Section 87 of the *Native Title Act 1993* (Cth) (NTA) allows the Court to make orders consistent with an agreement, if the Court is satisfied that doing so is within its power and it appears appropriate to do so. In determining whether it is appropriate to make orders, Greenwood J considered whether the agreement between the parties has 'been genuinely and freely made on an

informed basis by all parties' and whether the agreement itself was "rooted in reality".[2] This required *some material* to be before the Court.

Greenwood J considered these requirements were met (see reasons for judgment at [15]) through evidence of:

- the degree of participation in the processes by the parties;
- the State's questions were answered within a supplementary expert anthropological report;
- the history of the State in determining the legal status of particular land and water;
- the State's legal advisers are in a strong position to examine content; and
- the fact that the parties were represented by experienced lawyers.

Greenwood J referred to anthropological evidence provided by Dr Redmond and Dr Corrigan to determine that the statutory elements of s 223 of the NTA were met in this case. His Honour referenced *Yorta Yorta*[3] and said, at [20], that the rights and interests must 'find their *origin* in traditional laws and customs acknowledged and observed by aboriginal people'. Also, at [19] that it is mandatory that the native title rights and interests be:

- communal, group or individual;
- in relation to land or waters;
- possessed under the traditional laws acknowledged, and the traditional customs observed, by Aboriginal peoples;
- Aboriginal peoples by their law and customs must have a connection with the land or waters; and
- The rights and interests must be recognised by the common law of Australia.

Greenwood J referred to anthropological evidence provided by Dr Redmond and Dr Corrigan reports to conclude that the applicants' traditional laws and customs had existed since effective sovereignty and observance of those traditional laws and customs had been acknowledged by the applicants since that time without substantial interruption.

It was held that pursuant to s 56 of the NTA, the native title rights and interests would be held in trust by Mokwiri Aboriginal Corporation as a prescribed body corporate.

Weatherall on behalf of the Kooma People #4 Part A v State of Queensland [2014] FCA 662

25 June 2014

Federal Court of Australia – Consent determination, Bollon, Queensland

Rangiah J

In this matter, the Court recognised that the Kooma People held native title with respect to the land and waters located in the southwest of Queensland, covering approximately 31,856 square kilometres and including between the towns of Cunnamulla in the west, Charleville in the north, St George to the east and the New South Wales border; and also including in the claim area the towns of Dirranbandi, Hebel and Bollon.

Rangiah J had previously determined an application, Kooma People #4 Part B, which had been divided from this application in April 2014. Previously, a number of native title determination applications had been filed over the Part A determination area, however, those previous claims had been dismissed and so Part A was free from any overlapping claims. Rangiah J noted that this case was proceeding on the basis of an amended native title application in relation to the claim area described in Kooma People #4 Part A, which was filed on 11 June 2014.

There were 18 respondents to the application, including included The State of Queensland, Telstra Corporation, the Balonne Shire Council, the Murweh Shire Council, the Maranoa Regional Council and various pastoralists.

Evidence in relation to the Kooma people, their society and history presented to Rangiah J consisted of 10 affidavits sworn by the members of Kooma People and various historical records, ethnographic accounts and anthropological reports. Other expert reports for submission included a linguistic report and an archaeology report. Rangiah J noted that the evidence was substantial and thorough, and deserved to be read in full as they were important records of the history of the Kooma People.

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[2] Chief Justice French, *Native Title – A Constitutional Shift?*, University of Melbourne Law School, JD Lecture Series, French CJ, 24 March 2009; *Kerindun v Queensland* (2009) 258 ALR 306 at [16]; *Kuuku Ya'u People v State of Queensland* [2009] FCA 679 at [12] – [15].

[3] *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422 at [76].

Historical evidentiary material presented established that, since the time of first European contact, the Kooma People are the holders of the native title rights and interests; descended from a list of one or more identified ancestors; having a distinct dialect and territory and in relationship with neighbouring groups through language and social and cultural practices, yet being recognised as the exclusive occupants of their own territory under the laws and customs of the region. The evidence further established that the Kooma People have occupied the land in the claim area since before sovereignty and a thriving society of Kooma People continues.

The nature and extent of native title rights and interests were described in Schedule 1 of the decision. Part 1 of Schedule 1 sets out the areas over which the Kooma People hold exclusive native title and Part 2 and Part 3 of Schedule 1 set out the areas over which the Kooma People hold non-exclusive native title, including town areas and pastoral properties.

Rangiah J noted that the non-exclusive native title rights and interests did not confer possession, occupation, use or enjoyment to the exclusion of all others, and were subject to and exercisable in accordance with the laws of the State and the Commonwealth and the traditional laws acknowledged and traditional customs observed by the native title holders. In particular, there were no native title rights granted in, or in relation to, minerals as defined by the *Mineral Resources Act 1989* (Qld) and petroleum as defined by the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

Rangiah J made the determination of part of an area, pursuant to s 87A of the *Native Title Act 1993* (Cth) (NTA). His Honour concluded the following procedural conditions were met and noted each accordingly:

- each of the parties to the proceeding have reached agreement on a proposed determination of native title in respect of the claim area: ss 87A(1)(b) and 87A(1)(c) NTA;
- the period specified in the notice given under s 66 of the Act has ended: s 87A(1)(b) NTA ;
- the terms of the proposed determination agreement are in writing and have been signed by or on behalf of each of those parties, and a copy filed with the Court: ss 87A(1)(d) and 87A(2) NTA;
- the Registrar has given notice of the filing of the proposed determination to the other parties to the proceeding: s 87A(3) NTA;
- the Court is satisfied that an order in, or consistent with, those terms would be within its power: s 87A(4)(a) NTA; and
- the Court considers that making such an order would be appropriate: s 87A(4)(b) NTA.

In relation to the evidence before the State, Rangiah J considered the protection of the community's interests to be the general responsibility of the State and Territory governments and seen by involving themselves in a process which can assess the underlying evidence as to the existence of native title. His Honour followed *De Rose v State of South Australia* [2013] FCA 988 in that:

> The Court is not required to embark upon an inquiry as to the merits of the claim to be itself satisfied that the orders are supported and in accordance with law. However, the Court will consider evidence for the limited purpose of determining whether the State has made a rational decision and is acting in good faith.

Rangiah J considered it was appropriate that the Court make a determination in terms of the parties' agreement because:

- each party was legally represented;
- the State of Queensland, acting on behalf of the community generally, had played an active role in the negotiation of the proposed determination and was satisfied that the determination is justified in all the circumstances; and
- the parties have agreed upon the nature and extent of native title rights and interests in relation to Part A of the claim area.

Rangiah J determined that the Kooma Aboriginal Corporation be the PBC and hold the native title on trust for the purposes of s 56(1) of the NTA and for reasons summarised above, made orders in terms of the agreement reached by the parties.

Lewis v State of Western Australia [2014] FCA 690

27 June 2014, Application for Joinder as a Respondent, Federal Court of Australia – Perth

Barker J

In this matter, Origin Energy Developments Pty Limited (Origin) sought to be joined, under s 84(5) of the *Native Title Act 1993* (Cth) (NTA), as a respondent party to the following two applications for determination of native title by the Amangu People:

1. *Frederick Taylor Senior v State of Western Australia* - WAD 6002 of 2004 (1st Application), and
2. *Irwin Tasman Lewis v State of Western Australia* - WAD 6193 of 1998 (2nd Application).

Origin was joined to the 1st Application in September 2005 and removed in September 2009, for failing to confirm its intention to remain a party. Origin sought to be joined to the 2nd Application for the first time during these proceedings.

Barker J allowed that Origin be joined to both matters under s 84(5) of the NTA. That provision sets out that the Court may join a person to proceedings, if the court is satisfied that the person's interests may be affected by a determination and it is in the interests of justice to do so.

Barker J considered in some detail whether the joinder should be limited, noting at [5], that:

> native title proceedings often involve numerous respondent parties, some of which have quite limited interests, which would otherwise seem to be protected under the provisions of the *Native Title Act*.

Barker J made Orders that Origin be joined without limitation.

In making those Orders, Barker J rejected the State's argument, expressed at [33]-[34], that the Court did not have the discretion under the NTA to limit joinder. However, Barker J accepted the arguments presented by Origin, at [24]-[29], that its joinder should not be limited, including on the basis that:

- Origin was undertaking searches in the claim area, pursuant to licences granted under the *Petroleum and Geothermal Energy Resources Act 1967* (WA) and the *Petroleum Pipelines Act 1969* (WA) and these searches are not complete, so that it may be found that it holds additional interests; and
- Origin had applied for a petroleum licence in respect of two graticular blocks within one of the exploration permits and other applications might flow, which could alter the precise nature of its interests in the area.

In deciding not to impose any limitation on the joinder of Origin, Barker J also considered the State's submissions, at [31]-[32], distinguishing the recent decision in *Watson v Western Australia (No 3)* [2014] FCA 127 in the following terms:

1. Oil Basins Ltd (the party in question in the *Watson* decision) had received the applicant's anthropological report … and had… accepted (or elected not to contest) the applicant's claim …;
2. … it was only Oil Basins Ltd that sought to contest connection in circumstances where it, *inter alia*, did not propose to lead expert evidence-in-chief;
3. … Oil Basins Ltd never sought to explain to the Court why it took issue with the issue of connection; and
4. … the issue before the Court was whether Oil Basins Ltd should be removed as a party entirely or whether the proposed limitations would be appropriate.

International Case Summary

Tsilhquot'in Nation v British Columbia 2014 SCC 44

26 June 2014, Rights and limitations of Aboriginal title, Supreme Court of Canada

McLachlin CJ with LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ concurring

It may be surprising to Australian audiences that the decision in the Tsilhquot'in case is the first time that a Canadian Court has made a positive declaration of Aboriginal title. In the past the court has fallen short of declaring that title exists on some technicality preferring to see cases resolved through negotiation. The case began in 2002 and in this decision, the Canadian Supreme Court allowed an appeal from the Court of Appeal for British Columbia and granted a declaration of Aboriginal title in relation to approximately 4,380km^2 of land claimed by the Tsilhquot'in Nation.

The Tsilhquot'in case is one of the most significant Aboriginal rights cases in Canadian history; the Court held, like *Mabo*, that terra nullius did not form part of the law of Canada (although the understanding of terra nullius is somewhat limited). Perhaps most importantly, the Court took an expansive view of Aboriginal title, akin in some ways to Australian native title law, although there are aspects of the formulation of the recognition that could provide a useful point of comparison. The Canadian Supreme Court also declared that British Columbia breached the duty to consult that it owed to the Tsilhquot'in Nation.

Background

This matter has a long history, beginning with the centuries that the Tsilhquot'in Nation had lived in in a remote valley bounded by rivers and mountains in what would come to be known as central British Columbia. The Tsilhquot'in Nation is a grouping of six bands sharing common culture and history, living in villages and who managed and defended their lands from settlers, including setting terms for European traders to come onto their lands.

In 1983, the Province granted a forest licence to cut trees, under the British Columbia Forest Act. One of the Tsilhquot bands sought a declaration of prohibition to stop the commercial logging, which led to a blockade that was lifted only after the Premier

promised no further logging without consent. In 1998 the claim was amended to include a claim for Aboriginal title for all Tsilhquot'in territory.

The federal and provincial governments opposed the claim and in 2002, the matter went to Court. Following five years of hearings, Justice Vickers of the Supreme Court of British Columbia found that the Tsilhquot'in people were in principle entitled to a declaration of Aboriginal title. However, in 2012, the British Columbia court of Appeal held that the Tsilhquot'in might be able to prove title to specific sites within the area claimed, but for the rest, were confined to Aboriginal rights to hunt, trap and harvest.

Jurisprudence

The Supreme Court followed a long line of authority in coming to the decision in this case, including *Calder*, *Guerin, Sparrow, Delgamuukw* and *Haida Nation* to establish the following propositions:[4]

- Aboriginal land rights survived European settlement, unless extinguished by treaty or otherwise.[5]
- The radical title acquired by the Crown upon sovereignty was burdened by pre-existing legal rights held by Aboriginal people,.[6]
- Content of Aboriginal title includes the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes, which need not be aspects of those Aboriginal practices, customs and traditions which are integral to distinctive Aboriginal cultures; and it is group title and cannot be alienated in a way that deprives future generations of the control and benefit of the land.[7]
- All existing Aboriginal rights were recognised and affirmed in s 35 of the Constitution Act 1982.[8]
- a fiduciary duty is owed by the Crown with respect to those rights
- Aboriginal title can only be infringed by governments if they establish a 'compelling and substantial' public interest purpose and fulfil the fiduciary obligation imposed on the Crown requires involvement of the affected Aboriginal group in decisions about its land.[9]
- Involvement of the affected Aboriginal group in decisions about its land is extended to situations where development is proposed on land over which Aboriginal title is asserted but has not yet been established. And, the Crown has a legal duty to negotiate in good faith to resolve land claims.[10]

The Test for Aboriginal Title

In overwhelming support for the reasons provided by the trial judge, the full bench of the Canadian Supreme Court affirmed the test for recognising Aboriginal title. Their Honours reiterated that Aboriginal title:

- flows from occupation in the sense of regular and exclusive use of land; and
- 'occupation' must be sufficient, continuous (where present occupation is relied on) and exclusive.

At issue on appeal was what would constitute sufficiency of occupation. The Supreme Court preferred the trial judge's finding that regular and exclusive use established title to village sites, to areas maintained for harvesting of roots and berries and to larger territories which ancestors had used regularly and exclusively for hunting, fishing and other activities.

Also at issue on appeal was the issue of exclusivity of occupation. The Supreme Court stated, at [59]:

> Most of the Province's criticisms of the trial judge's findings on the facts are rooted in its erroneous thesis that only specific, intensively occupied areas can support Aboriginal title.

The Supreme Court affirmed the trial judge's finding of continuity of occupation, based on evidence of more recent occupation alongside archaeological evidence, historical evidence and oral evidence from Aboriginal elders about their legal traditions and relationship to their traditional territories, through legal title, use and occupation.

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[4] *Tsilhqot'in Nation v British Columbia* 2014 SCC 44, [18]

[5] *Calder v. Attorney General of British Columbia*, [1973] SCR 313.

[6] *Guerin v. The Queen*, [1984] 2 S.C.R. 335.

[7] *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010.

[8] Section 35 of the *Constitution Act 1982,* being Schedule B to the *Canada Act 1982* (UK) 1982, c 11.

[9] *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

[10] *Haida Nation v. British Columbia (Minister of Forests)* [2004] 3 S.C.R. 511.

Content of Rights

The Supreme Court affirmed that Aboriginal title is *sui generis* or unique. The title holders have the right to the benefits associated with the land — to use it, enjoy it and profit from its economic development. Following the line of precedent discussed above, the Supreme Court, at [73]-[74], affirmed that Aboriginal title is similar to fee simple, except it is collective title held for all succeeding generations. Therefore, the land must not be used, encumbered or developed in ways that would substantially deprive future generations of its benefit.

Crown encroachment on Aboriginal title

The consequence of the finding that Aboriginal rights to lands survive colonisation is that the Crown does not retain a beneficial interest in Aboriginal title land. The content of the Crown's underlying title is what is left when Aboriginal title is subtracted from it, and what remains is:

- a fiduciary duty owed by the Crown to Aboriginal people when dealing with Aboriginal lands; and
- the right to encroach on Aboriginal title, but only if the government can justify this in the broader public interest.

While the Court declared that terra nullius was not part of the Canadian law of Aboriginal title because the land rights of the Indigenous inhabitants survived; like Australia, the vestiges of the Doctrine of Discovery remain firmly in place in this decision. The Court recognised that the Crown retained the right to 'encroach' on Aboriginal lands (what we would call extinguishment) based on their underlying or radical title. Unlike Australian courts, however, the Canadian Courts have recognised that this power to encroach gives rise to a fiduciary duty. The Supreme Court ruled that the fiduciary obligation owed by the Crown required the government to:

1. respect the nature of Aboriginal title, in that the beneficial interest in the land held by the Aboriginal group vests communally in the title-holding group. This means that incursions on Aboriginal title cannot be justified if they would substantially deprive future generations of the benefit of the land (at [86]); and
2. ensure the incursion is necessary, goes no further than necessary, and that any benefit is not outweighed by the adverse effect on the Aboriginal interest (at [87]).

Failure to Consult

The Court held that the Crown is required to consult in good faith about proposed uses of the land with any Aboriginal groups asserting title to the land and, if appropriate, accommodate the interests of such claimant groups. The Supreme Court discussed, at [91]-[92], that the extent of the duty corresponds to the extent of the interest. Therefore, the duty to consult increases as the strength of the claim increases.

Although the strong *prima facie* claim to the land held by the Tsilhquot'in meant the Province had a duty to consult that fell at the high end of the spectrum, the Province did not consult and breached its duty to consult when it granted licences allowing forestry activities on Tsilhquot'in land.

Provincial Laws – Application of the Forest Act to Aboriginal Title

The Court considered, at [98]-[148], whether the *Forests Act,* under which the licences had been granted, and which were of general application, had force with respect to Tsilhquot'in land. This included an examination of the power to regulate, the limitation imposed by s 35 of the Constitution Act 1982, and whether the *Forest Act* is ousted from Aboriginal lands by operation of the Federal Constitution.

Provincial governments may regulate with respect to all land within the province, including lands held under Aboriginal title. However, s 35 of the Constitution Act 1982 requires any limitations or impact on Aboriginal title to be undertaken only pursuant to compelling and substantial government objectives, consistent with the Crown's fiduciary relationship with title holders.

The Court held that all three factors of the following test must be applied in order to determine whether a law of general application results in a meaningful diminution of an Aboriginal right, giving rise to a breach:

1) whether the limitation imposed by the legislation is unreasonable; and
2) whether the legislation imposes undue hardship; and
3) whether the legislation denies the holders of the right their preferred means of exercising the right.

It is interesting to note that, at [105], the Court considered that laws of general application aimed at protecting the environment or assuring the continued health of the forests of British Columbia will normally meet this test. However, spurious claims to environmental purposes, such as were argued by the Province, would not be entertained. The finding was, therefore, that:

> granting rights to third parties to harvest timber on Tsilhquot'in land is a serious infringement that will not lightly be justified.

The Court's reasoning with respect to the application of the Provincial laws were somewhat inconsistent with the principles of Aboriginal title. The Court, at [116], expressed a view that the land remained Crown land until such time as it was confirmed aboriginal land by agreement of Court order; only then was the beneficial title vested in the Aboriginal group rather than the Crown. This reasoning is inconsistent with the notion that aboriginal peoples' right to land survives the acquisition of sovereignty and Aboriginal title is not dependent on Crown recognition. On this view, the Court found that the *Forest Act* did apply to lands under claim, up to the time title is confirmed by agreement or court order. In Australian law we understand that where native title still exists to be determined by the Court, it has always existed. As such, the burden on the Crown underlying title was enlivened at the point at which sovereignty was asserted.

The Federal Government's constitutional power with respect to 'Indians, and Lands reserved for the Indians', under s 91(24) of the Constitution Act 1867 also has application to this matter. With Federal Indian powers and state land management powers both at play, forestry on Aboriginal title lands falls under both the provincial and the federal jurisdiction. Where there is a jurisdictional conflict, the doctrine of paramountcy and the doctrine of interjurisdictional immunity may apply to ensure the two levels of government can operate without interference in their core areas of exclusive jurisdiction. Like Australian constitutional law, where there is a conflict or inconsistency between two laws, federal law prevails. The Court found there was no inconsistency in this case and thus there was no paramountcy consideration.

The Court did, however, look to whether provincial legislation such as the *Forest Act* is ousted pursuant to interjurisdictional immunity. The purpose of the doctrine and that it is designed to deal with conflict between provincial and federal powers generally, rather than in relation to any particular conflicting legislation. The Supreme Court overturned the findings in *Delgamuukw* as applied by the trial judge that interjurisdictional immunity applied to Aboriginal title and thus no provincial jurisdiction applies. They argued that this was a practical compromise:

> The result of its [the Forest Act's] application is a protection of Aboriginal and treaty rights while also allowing the reconciliation of Aboriginal interests with those of the broader society. (at [139]).

This limitation under s 35 of the Constitution Act applies to both levels of government. Therefore, in this case, the powers were held not to be competing. Rather, the Court found there is a tension between the right of Aboriginal title holders to use their land and the province in regulating that land. The Court suggested, at [147], that to apply the doctrine of interjurisductional immunity could produce 'a legal vacuum'. This view clearly disregards previous Supreme Court decisions that have recognised that where Aboriginal title exists so too does a form of Indigenous jurisdiction. This a step backward in the jurisprudence of Canadian Aboriginal title.

Conclusion

The Appeal from the decision by the Court of Appeal for British Columbia was upheld, the Court granted a declaration of Aboriginal title over the area and the Court declared that British Columbia breached its duty to consult.

The Court also created precedent by determining that provincial governments are constitutionally permitted to infringe Aboriginal rights where such infringement is justified pursuant to s 35 of the Constitution Act 1982 and, where s 35 of the Constitution Act 1982 applies, there will be no application of interjurisdictional immunity.

The Courts promise that terra nullius is not a part of Canadian law is only partially fulfilled by this decision. Canadian Indigenous peoples have much to look to in the Tsilhquot'in decision, but the adherence to the Doctrine of Discovery and the power of Provincial governments to encroach on Aboriginal lands and jurisdiction, with its resonance with Australian native title jurisprudence, continue to hold back the reconciliation of Aboriginal peoples pre-existing rights and the assertion of Canadian sovereignty.

2. Legislation

Queensland

The Mineral and Energy Resources (Common Provisions) Bill 2014, introduced on 5/6/14 by AP Cripps MP.

- **The Bill** intends to provide for the first step in creating a simplified common framework for managing resource authorities in order to optimise development and use of Queensland's mineral and energy resources and to manage overlapping coal and petroleum resource authorities for coal seam gas, and further to repeal the Coal and Oil Shale Mine Workers' Superannuation Act 1989, and to amend this Act, **the Aboriginal Cultural Heritage Act 2003**, the

Environmental Protection Act 1994, the Geothermal Energy Act 2010, the Greenhouse Gas Storage Act 2009, the Land Court Act 2000, the Mineral Resources Act 1989, the Mount Isa Mines Limited Agreement Act 1985, the Petroleum Act 1923, the Petroleum and Gas (Production and Safety) Act 2004, the Property Law Act 1974, the State Development and Public Works Organisation Act 1971, **the Torres Strait Islander Cultural Heritage Act 2003** and the Mineral Resources Regulation 2013 for particular purposes

The State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014, introduced on 03/06/2014 by JW Seeney MP

- The Bill intends to repeal legislation to support and contribute to the Government's election commitment to reduce red tape and amend legislation to drive economic development in Qld.
- The Bill amends s 3 (Definitions) to include in the definition of a protected area a national park (Cape York Peninsula Aboriginal Land) and an area of regional interest under the RPI Act.

  Also See discussion re Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014 provided in May 2014 edition of What's News.

South Australia

Pastoral Land Management and Conservation (Renewable Energy) Amendment Bill 2014

- This Bill intends to amend the Pastoral Land Management and Conservation Act 1989—Part 2.
- The Bill describes a "prescribed interested party" to activities relating to Wind Farms, that may be carried out on pastoral land, to include:
  - if there is a native title declaration for the land—the registered representative of the native title holders and the relevant representative Aboriginal body;
  - if there is no native title declaration for the land—all persons who hold, or may hold, native title in the land

Tasmania

Forestry (Rebuilding the Forest Industry) Bill 2014 6 of 2014

- Schedule 3 provides objectives for management of future potential production forest land (Sections 4(7) and 6(4)), which includes
  - to encourage cooperative management programs with Aboriginal people in areas of significance to them in a manner consistent with the purposes of reservation and the other management objectives;

Western Australia

Constitution Amendment (Recognition of Aboriginal People) Bill 2014

- Introduced on 11/06/2014, This Western Australian Bill recognises that Aboriginal people are the original custodians of Western Australia and that the settlement by European people was done without consultation with those original inhabitants.
  - Included in the Explanatory Memorandum is the following statement:
    Advice was sought from the Solicitor General in 2004 as to whether any legal consequences flowed from inserting these words into the Preamble of the Constitution Act 1889 and the advice was as follows:

    "I do not believe that an amendment to the preamble in these terms would have any significant legal consequences. I would see it as principally a statement of historical fact."

    The advice from the Solicitor General of 2004 goes further:

    "In terms of its constitutional significance, it could only be relevant to the extent that it might be the foundation for some implied limitation on the legislative power of the Parliament. However, I find it difficult to see how any limitation of substance could be constructed from such a provision."

Draft Aboriginal Heritage Amendment Bill 2014

- The WA State Government released the draft Aboriginal Heritage Amendment Bill 2014 (the Bill) on 11 June 2014. For more information on the draft bill plese refer to the Department of Aboriginal Affairs (DAA) website.
- The DAA states that 'the pace of economic development in recent years, particularly within the resources and construction sectors, has highlighted inadequacies with the current legislation and modest changes are now required to ensure that our Aboriginal heritage can continue to be protected in an efficient and effective way.'
- The DAA invites submissions on the proposed amendments by COB of 6 August 2014. Submissions may be faxed to 08 6551 8088, emailed to aha.reform@daa.wa.gov.au or mailed to: Chief Heritage Officer, Department of Aboriginal Affairs, PO Box 3153, EAST PERTH WA 6892

Federal Parliament:

Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014

24 Jun 2014, before the Senate

Summary

Amends the Aboriginal and Torres Strait Islander Act 2005 to:

clarify the purpose of the Aboriginal and Torres Strait Islander Land Account; provide for excess returns from Land Account investments to be equally shared between the Account and the Indigenous Land Corporation (ILC); provide that the minister may have regard to advice provided by the ILC about its financial requirements; provide for parliamentary review of any proposed changes to the ILC and the Land Account; provide for the establishment of a Nomination Committee to make recommendations about appointments to the ILC Board; require the ILC Board to establish a Risk and Audit Management Committee; limit the tenure and reappointments of directors; require the chair and directors to disclose all pecuniary interests; and require the ILC Board to determine a code of conduct.

3. Indigenous Land Use Agreements

The Native Title Research Unit within AIATSIS maintains an ILUA summary which provides hyperlinks to information on the National Native Title Tribunal (NNTT) and the Agreements, Treaties, and Negotiated Settlements (ATNS) websites.

In June 2014, 5 ILUAs were registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
30/06/2014	APLNG and Gaangalu Nation People ILUA	QI2014/006	Area agreement	QLD	Access Petroleum/ Gas Pipeline
17/06/2014	Ewamian People and Ergon Energy ILUA	QI2014/023	Body corporate agreement	QLD	Energy Infrastructure
16/06/2014	Hopevale Congress Aboriginal Corporation - Social Housing ILUA	QI2014/027	Body corporate agreement	QLD	Community living area Infrastructure
16/06/2014	Hopevale Congress Body Corporate ILUA - Blockholder Leases	QI2014/028	Body corporate agreement	QLD	Tenure resolution
06/06/2014	Seven National Parks Bama-Bi Bubu ILUA	QI2014/005	Area agreement	QLD	Access Co-management

For more information about ILUAs, see the NNTT Website and the ATNS Database.

4. Native Title Determinations

The Native Title Research Unit within AIATSIS maintains a determinations summary which provides hyperlinks to determination information on the Austlii, NNTT and ATNS websites.

In June 2014, 3 native title determinations were handed down. We would also like to make note of a determination which was missing from the May edition.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC /PBC
Kooma People #4 Part A	Weatherall on behalf of the Kooma People #4 Part A v State of Queensland [2014] FCA 662	25/06/2014	QLD	Native Title exists in the entire determination area	Consent determination	claimant	Kooma Aboriginal Corporation
Northern Cape York #2 Native Title Claim Group	Coconut on behalf of the Northern Cape York #2 Native Title Claim Group v State of Queensland [2014] FCA 629	20/06/2014	QLD	Native Title exists in the entire determination area	Consent determination (conditional)	claimant	nil
Kulkalgal People #2	Mosby on behalf of the Kulkalgal People v State of Queensland [2014] FCA 628	19/06/2014	QLD	Native Title exists in the entire determination area	Consent determination	claimant	Kulkalgal (Torres Strait Islanders) Corporation RNTBC
Bularnu Waluwarra & Wangkayujuru People	Elizabeth Dempsey & Ors on behalf of the Bularnu Waluwarra & Wangkayujuru People v State of Queensland & Ors (unreported, FCA, 27 May 2014, Mortimer J)	27/05/2014	QLD	Native Title exists in the entire determination area	Litigated determination	claimant	Bularnu Waluwarra Wangkayujuru Aboriginal Corporation

5. Future Acts Determinations

In June 2013, 9 Future Acts Determinations were handed down.

Determination date	Parties	NNTTA number	State or Territory	Decision/Determination
20/06/2014	Peregrine Resources Pty Ltd (grantee party/applicant) - and - Raymond Ashwin and Others on behalf of Wutha (WC1999/010) (first native title party) - and - Evelyn Gilla and Others on behalf of the Yugunga-Nya People (WC1999/046) (second native title party) - and - The State of Western Australia (Government party)	NNTTA 59	WA	Future Act – Can be done
17/06/2014	Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and – Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 58	WA	Objection - Dismissed

10/06/2014	Tigan and Others on behalf of the Mayala Native Title Claimants (WC1998/039) (native title party) - and - The State of Western Australia (Government party) - and - William Robert Richmond (grantee party)	NNTTA 55	WA	Objection - Expedited Procedure Applies
10/06/2014	Western Desert Lands Aboriginal Corporation (Jamukurnu Yapalinkunu) RNTBC (native title party) - and - The State of Western Australia (Government party) - and - Teck Australia Pty Ltd (grantee party)	NNTTA 56	WA	Objection - Expedited Procedure Does Not Apply
10/06/2014	Ike Simpson & Ors on behalf of Wajarri Yamatji (native title party) (WC2004/010) -and- The State of Western Australia (Government party) -and- Anthony Charles Wilton & Paul Murphy Tonkin (grantee party)	NNTTA 51	WA	Objection - Dismissed
10/06/2014	WF (deceased) & Ors on behalf of Wiluna (native title party) - and - The State of Western Australia (Government party) - and - Verona Capital Pty Ltd (grantee party)	NNTTA 57	WA	Objection - Dismissed
10/06/2014	Native title parties as listed in the attached schedule (native title parties) - and - State of Western Australia (Government party) - and – Grantee parties as listed in the attached schedule (grantee parties)	NNTTA 54	WA	Objection – Dismissed
10/06/2014	Ronald Crowe & Ors on behalf of Gnulli (native title party) - and - The State of Western Australia (Government party) - and - Gascoyne Metals Pty Ltd (first grantee party) - and - Dynasty Metals Australia Ltd (second grantee party)	NNTTA 53	WA	Objection - Dismissed
10/06/2014	Annie Milgin & Others on behalf of the Nyikina & Mangala Native Title Claimants (WC1999/025) (native title party) - and - The State of Western Australia (Government party) - and - 142 East Pty Ltd (grantee party)	NNTTA 52	WA	Objection - Dismissed

6. 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.

Information on RNTBCs and PBCs including training and support, news and events, research and publications and external links can be found at nativetitle.org. 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.

7. Native Title in the News

The Native Title Research Unit within AIATSIS publishes *Native Title in the News* which contains summaries of newspaper articles and media releases relevant to the native title sector.

8. Related Publications

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)

Duff, Nick 2014 'What's needed to prove native title? Finding flexibility within the law of connection.'* AIATSIS Research Discussion Paper, *No 3 –June 2014

This paper presents a summary of case law on particular aspects of section 223(1) of the Native Title Act. It seeks to identify the 'minimum' legal requirements for a court to make a determination of native title. The purpose is to locate the points of flexibility within the law on native title 'connection', which can in turn inform discussions about the circumstances in which governments may (as opposed to must) enter into consent determinations.

For further information and a free download visit the Research Publications and Native Title Research Unit webpages on the AIATSIS website

Central Land Council

Land Rights News Central Australia Volume 4, No 1 –June 2014

The winter edition of the Central Land Council's 'Land Rights News Central Australia' is now available. Articles feature the lastest news, sports and events for Central Australian communities.

For further information, visit the CLC website

COAG Reform Council

Indigenous Reform 2012-13: Five years of Performance – 22 May 2014

This report focuses on whether COAG's six Closing the Gap targets have improved over five years. The COAG Reform Council found gains in primary education, Year 12 attainment and post school qualifications—but employment is not improving. In the health findings, they found that faster progress is needed to close the life expectancy gap by 2031. A clear positive is that COAG is on target to halve the gap in child deaths by 2018. communities.

For further information, visit the COAG Reform Council's website

NIRAKN

International Journal of Critical Indigenous Studies Volume 7, No 1 – June 2014

The latest edition of the journal is now available. Articles show the the broadening interest in critical Indigenous studies, with both Indigenous and non-Indigenous contributors seeking critical engagement with Indigeneity in a variety of striking ways.

For further information, visit the NIRAKN website

Yamatji Marlpa Aboriginal Corporation

YMAC News issue 24 – 16 June 2014

The June edition of the Yamatji Marlpa Aboriginal Corporation's Newsletter is now available.

For further information, visit the YMAC website

Media Releases, News Broadcasts and Podcasts

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)

Prof. Richard Mackay, AM, Occasional Seminar: Could do it better: An Indigenous Heritage Report Card –14 May 2014

In this seminar Prof. Richard Mackay discussed the Indigenous Heritage Report Card in the context of the 2011 State of the Environment Report. In his abstract he states that the report wryly observes that Australia is recognised internationally for leadership in heritage management, but also sounds a note of warning that Australia's heritage is threatened by natural and human processes and a lack of public sector resourcing which does not reflect the true of value of heritage to the community. Indigenous heritage in Australia remains under pressure from loss of knowledge and tradition. This loss is manifest in social disconnection, extinction of language and discontinuation of cultural practices. Indigenous sites are subject to an ongoing process of incremental destruction associated with urban and industrial development, as well as large-scale resource extraction – projects that are often approved despite the identification of indigenous heritage impacts. Drawing on the findings of the 2011 State of the Environment Report, this presentation will draw conclusions about the condition and prognosis for Indigenous heritage in Australia, in the context of the Commonwealth Government's recently-stated commitment to a national heritage strategy.

For further information and to watch a video or read a transcript of the seminar, visit the AIATSIS website

Central Land Council

Throwing out the Land Rights Act not the key – 17 June 2014

The Director of the Central Land Council, Mr David Ross, has urged the Member for Stuart , NT Minister Bess Price to reconsider and think of the implications that throwing out the Land Rights Act out would have.

For further information, visit the CLC website

Courage and conviction at heart of Muckaty win – 20 June 2014

The Central Land Council (CLC) congratulated the Traditional Owners for Muckaty following their strong campaign to end the plan for a national radioactive waste dump at Muckaty Station, north of Tennant Creek.

For further information, visit the CLC website

Federal Minister for Indigenous Affairs, Senator the Honourable Nigel Scullion

Traditional owners congratulated on Federal Court win against development restrictions– 17 June 2014

Nigel Scullion congratulated the Wik, Lama Lama and Umpila traditional owner groups who had a Federal Court win against development restrictions imposed under the former Queensland Labor Government's Wild Rivers laws.

For further information, visit the Minister's website

Part of Maralinga Lands excised for traditional owners at Woomera– 4 June 2014

In a joint media release with Minister for Defence Senator The Hon David Johnston, Minister Scullion announced that the traditional owners of the Maralinga Tjarutja Lands will now have unrestricted access to the area after it was excised from the Woomera Prohibited Area (WPA) by the Australian Government.

For further information, visit the Minister's website

2014 National Native Title Conference Speech– 2 June 2014

The Federal Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, gave a key note address at this years' National Native Title Conference in Coffs Harbour.

To read a transcript of the speech, visit the Minister's website

Northern Land Council

NLC settles on Muckaty – 19 June 2014

The Northern Land Council has agreed to settle the Federal Court challenge to the Commonwealth Government's proposal to establish a nuclear waste facility at Muckaty, out of concern for relations among the Aboriginal clans which comprise the Muckaty Aboriginal Land Trust.

For further information, visit the NLC website

CEO on Northern Development – 30 June 2014

The Northern Land Council's Chief Executive Officer, Joe Morrison, speaking at the Northern Development Summit, has called for the creation of a sovereign wealth fund to benefit Indigenous people in northern Australia.

For further information, visit the NLC website

Northern Development: Embracing the Indigenous Difference – 30 June 2014

Transcript of the speech given by Joe Morrison at James Cook University's Northern Development Summit.

For further information, visit the NLC website

North Queensland Land Council

Native Title Organisations Review Released – 17 June

Minister for Indigenous Affairs, Nigel Scullion, released the Deloitte Access Economics' Review of roles and functions of Native Title Organisations at a meeting of the Native Title Representative Body Forum in Canberra. The review examined the role and functions of native title organisations, 20 years after the establishment of the native title system.

For further information and to download the Review, visit the NQLC website

Torres Straight Regional Authority

Mabo Day Celebrations call for national day of recognition – 1 June 2014

The Chairman of the Torres Strait Regional Authority (TSRA), Joseph Elu, has called for a national day of recognition and public holiday to acknowledge the landmark Mabo decision of the High Court of Australia.

For further information, visit the TSRA website

Rangers take control of seagrass monitoring program – 11 June 2014

A recent workshop for TSRA Rangers from Badu, Mer, Lama, Moa and Mabuiag has equipped them to take greater control over their seagrass monitoring program in the Torres Strait to ensure sound management of these important near shore areas.

For further information, visit the TSRA website

TSRA Board holds historic 90th meeting on Mer –6 June 2014

The Torres Strait Regional Authority (TSRA) has held its 90th board meeting on Mer this week to coincide with Mabo Day celebrations. It is the first board meeting to be held on an outer island in the organisation's 20-year history.

For further information, visit the TSRA website

Yamatji Marlpa Aboriginal Corporation

Traditional Owners lose out in proposed reforms to the WA Aboriginal Heritage Act – 13 June 2014

The long-awaited draft amendments to the Aboriginal Heritage Act 1972 have been released by the Western Australian Government. These amendments come two years after the last round of public consultation.

For further information, visit the YMAC website

9. Training and Professional Development Opportunities

ABC

Indigenous Marketing Assistant – Triple J

Australia's national youth network is looking for the right person to help grow and profile the triple j brand. If you're seeking a unique role in a busy and dynamic environment and meet the selection criteria, please apply. Applications close 12 August 2014.

For further information, visit the ABC website.

Indigenous Cataloguer / Researcher – News Library

The ABC offers an exciting opportunity for a keen researcher to join the News Library in Sydney.This is an awesome opportunity to work for a dynamic and iconic media organisation and build your research and cataloguing experience. Applications close 13 August 2014.

For further information, visit the ABC website.

Indigenous HR Administrative Assistant – ABC People

The ABC has an exciting entry-level opportunity for an Indigenous HR Admin Assistant. This is an awesome opportunity to develop your administrative skills and you'll be provided with support, training and career development opportunities. Applications close 13 August 2014.

For further information, visit the ABC website.

The Aurora Project

See the Aurora Project: 2014 Program Calendar for information on training and personal development for staff of native title representative bodies, native title service providers, RNTBCs and PBCs.

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.

For further information on training courses visit the ORIC website.

Australian-American Fulbright Commission

Fulbright Scholarships are available to Australian citizens from all fields to undertake research or study in the United States across a range of scholarship categories. The 2015 Fulbright Scholarships opened 1 May and close 1 August 2014 midnight AEST.

For further information visit the Fulbright website.

10. Events

Liquid Learning

Liquid Learning is delighted to present the Indigenous Women's Leadership Summit 2014, an uplifting and inspirational leadership development opportunity designed for emerging and established leaders across all sectors.

Date: 19 – 20 August 2014 & 26 -27 August 2014
Time: 8.30 a.m. – 5.00 p.m.
Location: Perth & Sydney

Further information can be found on the Liquid Learning website.

Engaging Indigenous Economy Conference and Dinner

The Centre for Aboriginal Economic Policy Research (CAEPR) is pleased to announce that registrations are now open for the Engaging Indigenous Economy: Debating Diverse Approaches Conference.

Date: 4 – 5 September 2014

Location: ANU Commons, Canberra

Futher information can be found on the CAEPR website

Strehlow Conference

Where do we go from here?

Australia is currently going through an unprecedented period of change in its attitude to its Indigenous peoples and their cultures, opening up new possibilities for everyone. The quality of this change, and the extent to which it is embraced by the population at large, will depend in the first instance upon reliable information about what has been attempted in the past, both what has succeeded and what has failed.

For further information please contact the Strehlow Centre on Tel: (08) 8951 1111 Fax (08) 8951 1110 Email: strehlow@nt.gov.au

Date: 24-26 September 2014
Location: Araluen Centre, Alice Springs, Northern Territory

NIRAKN

2014 Scopus Young Research of the Year Award (SYRA)

The Australasian Research Management Society (ARMS) and Elsevier are proud to announce the 2014 Scopus Young Researcher Award (SYRA). The SYRA awards are part of an Elsevier global initiative to recognise outstanding young scientists and researchers in Australasia who have made significant contributions in their areas of research. The awards ceremonty will be held at the ARMS 2014 Conference in Canberra.

Date: 19 September 2014
Location: National Convention Centre, Canberra

Further Information can be found on the ARMS website.

National Climate Change Adaptation Research Facility (NNCARF)

Future Challenges

The National Climate Change Adaptation Research Facility invites you to its annual conference, **Climate Adaptation 2014: Future Challenges.** This is a national conference focused on the information needed to ensure Australia is adapting well to climate change.

Date: 30 September to 2 October 2014
Location: Gold Coast Convention and Exhibition Centre, Gold Coast, Queensland

Further Information can be found on their website.

Australian Network of Student Anthropologists (ANSA)

AAS/ANSA Postgraduate Travel Grants

The Australian Network of Student Anthropologists (ANSA), in conjunction with the Australian Anthropological Society (AAS), offers a number of travel grants for current and recent postgraduate by research students, to assist them with meeting costs incurred in travelling to the annual AAS conference. In 2014, the conference will be held jointly with the Association of Social Anthropologists of Aotearoa / New Zealand (ASAA/NZ).

Date: 10 -13 November 2014
Location: Millenium & Copthorne Hotels, Queenstown, New Zealand

Further Information can be found on their website

ACRAWSA Conference 2014

ACRAWSA is calling for scholars working on any aspect of critical race or whiteness studies to submit papers for our annual conference. This year's conference has an open theme, and we encourage scholars working in relevant areas to attend and reflect upon the field. This conference aims to reinstate the importance of the study of race

Date: 4-5 December 2014
Location: Brisbane

Further Information can be found on the ACRAWSA website.

World Indigenous Health Conference

There are more than 50 speakers confirmed to attend the World Indigenous Health Conference. Registration is filling quickly and conference organisers has recommended interested delegates should register as soon as possible for the conference.

Date: 15-17 December 2014
Location: Pullman Cairns International Hotel

Further Information can be found on the Indigenous Conferences 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 @NTRU_AIATSIS on Twitter or 'Like' NTRU on Facebook.