AIATSIS
AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

WHAT'S NEW IN NATIVE TITLE

MARCH 2016

1. Case Summaries

TJ (on behalf of the Yindjibarndi People) v State of Western Australia (No 4) [2016] FCA 231

9 March 2016, Interlocutory Application, Federal Court of Australia, Western Australia, McKerracher J

In this matter, McKerracher J considered whether subpoenas filed by the Yindjibarndi people were oppressive, whether non-parties to the native title proceedings could access subpoenaed material, and whether the subpoenaed material attracted legal professional privilege.

In February 2016, the Yindjibarndi people sought materials from Dr Edward McDonald, the consultant anthropologist engaged by the East Guruma people. The Yindjibarndi people sought the materials in relation to the application brought by the East Guruma people to join the native title proceedings brought by the Yindjibarndi people to be heard on 8-9 March 2016.

The first of the subpoenas was served on 12 February 2016 and the revised subpoena narrowing the materials requested was brought on 24 February 2016. By interlocutory application, filed on 29 February 2016, Dr Edward McDonald sought orders that the subpoenas be set aside because they were oppressive in their scope.

The subpoenas required Dr McDonald to produce in a short amount of time, a large amount of material spanning 17 years. Given the breadth of the material requested, the short timeframe and a failure by the applicants to adequately particularise the material requested in the subpoena, McKerracher J held that the subpoenas were oppressive and they were set aside.

The East Guruma people sought to access the documents produced pursuant to the remaining subpoenas issued against other sources by the Yindjibarndi people in relation to their application to strike out the joinder application brought by the East Guruma. McKerracher J considered that despite the East Guruma not yet being a party to the proceeding, they should have access to the documents in order to ensure that the joinder application be resolved as efficiently as possible in the interests of the Court, the parties and the public. His Honour rejected the Yindjibarndi's argument that access to the materials may give a benefit to the witnesses to be cross-examined at the hearing of the two applications to be held four days after the hearing of the present matter. It was considered that any benefit to be gained in that short timeframe would be limited. McKerracher J ordered for all parties to have access to the subpoenaed materials.

The East Guruma people claimed legal professional privilege over some of the documents they produced under subpoena. The Yindjibarndi people asked the Court to examine the documents in order to form a view as to the privilege claims. Applying the established legal principles on this issue, his Honour required that a small number of documents be produced as they did not fall under legal professional privilege.

State of Western Australia v Banjima People **[2016] FCAFC 46**

29 March 2016, Costs Hearing, Full Federal Court, Perth, Mansfield, Kenny, Rares, Jagot and Mortimer JJ

In this matter, the Full Federal Court considered how costs were to be paid for the State's unsuccessful appeal to the native title determination in *Banjima People v State of Western Australia* [2015] FCAFC 84. The Court ordered that each party bear their own costs of the appeals.

The Banjima people contended that the State should pay its costs in relation to the appeal on the basis that the State was unsuccessful, the appeal was against a determination of native title, several of the grounds of appeal required the hearing of a large portion of the evidence given at hearing, grounds 1 and 3 of the appeal were unmeritorious, ground two was abandoned at the hearing and ground five was withdrawn after the Banjima people had filed submissions.

The Court considered the relevant principles on the award of costs set out in the decision of *Cheedy on behalf of the Yindjibarndi People v State of Western Australia (No 2)* [2011] FCAFC 163. The Full Court did not consider those factors sufficient to exercise their discretion to make a costs order against the State. The Banjima

people had failed to take account of the fact that both parties, the Banjima people and the State, had challenged the native title determination, in two appeals heard together. Their Honours considered there was no principled basis identified by the Banjima people to displace the usual position set out in s 85A(1) of the *Native Title Act 1993* (Cth) that each party bear their own costs.

State of Western Australia v Graham on behalf of the Ngadju People [2016] FCAFC 47

29 March 2016, Appeals, Full Federal Court, Perth, Mansfield, Dowsett, Jagot JJ

In this matter, various appeals, cross-appeals, notices of objection to competency, and a notice of contention were considered by the Full Court, all arising from three decisions of the primary judge concerning the extinguishment of native title in *Graham on behalf of the Ngadju People v State of Western Australia* [2014] FCA 516 (the May reasons), *Graham on behalf of the Ngadju People v State of Western Australia* [2014] FCA 700 (the July reasons), and *Graham on behalf of the Ngadju People v State of Western Australia* [2014] FCA 1247 (the November reasons). The parties to the three appeals included St Ives Gold Mining Company Pty Ltd and BHP Billiton Nickel West Pty Ltd (the miners), the Ngadju people, the State of Western Australia and the Commonwealth.

The first of the appeals concerned the terms of paragraph 8A of the determination of native title contained in the November reasons, which stated as follows:

a) To the extent that the Other Interests described at Schedule 5A cover areas of land and waters where the Ngadju People's native title rights and interests exist, those native title rights and interests are as described in [3] above.

b) The Other Interests described at Schedule 5A do not cover areas of land and waters where the native title rights and interests described at [4] above exist.

c) The relationship between the native title rights described in [3] above and the Other Interests identified in Schedule 5A is that to the extent that one or more of those Other Interests is inconsistent with the continued existence, enjoyment or exercise of those native title rights and interests, the Other Interest is invalid as against those native title rights or interests so that it does not affect the continued existence, enjoyment or exercise of those native title rights and interests.

The primary judge concluded that the mining leases listed in Schedule 5A to the determination were not valid future acts within the meaning of Part 2, Division 3 of the *Native Title Act 1993* (Cth) (NTA).

Miners' Appeal

The miners considered that the primary judge erred in finding that the mining leases were not valid future acts. The Ngadju people filed a notice of contention, stating that in any event, the leases had not been granted in compliance with the right to negotiate provisions contained in Subdivision P of Part 2, Division 3 of the NTA, which constitutes a pre-condition to the satisfaction of s 24IC of the NTA.

The present decision concerned three groups of leases:

- The 2004/2006 leases, which were granted, renewed, and then re-granted
- The 73 leases, which were granted, renewed, and then further renewed
- Leases ML 15/150 and ML 15/151, which were dealt with by the primary judge but were outside the parameters of the determination.

The parties filed extensive submissions on the construction and applicability to the relevant mining leases of the *Mining Act 1904* (WA) (1904 Act), *Mining Act 1978* (WA) (1978 Act), Nickel Refinery (Western Mining Corporation Limited) Agreement (1968 Agreement) and the *Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968* (WA) (Agreement Act). The parties were in dispute as to whether the relevant mining leases had been granted pursuant to the *Mining Act 1904* or the 1968 Agreement and Agreement Act, an issue which then affected the interpretation and application of the *Mining Act 1978*, which came into force in 1982.

The Miners' argued that the 1904 Act was the source of power for the grant of the leases, not the 1968 Agreement, as was held by the primary judge. They considered that the 1968 Agreement was created contractual rights and obligations, but did not, as the Ngadju people contended, contain any source of power to grant mining leases.

The Full Court accepted the Miners' submissions as being consistent with legal authority, which states that dealings with minerals by the Crown can only be authorised by statutory authority, not contractual arrangements. The Full Court rejected the Ngadju people's reliance on *Brown on behalf of the Ngarla People v Western Australia* [2012] FCAFC 154 as authority for their contentions, holding that it was also consistent with established authority, because the relevant leases in that case had been granted under the relevant agreement with the authority of the ratifying legislation. The Court emphasised the critical difference between a government agreement which, by statute, is approved and operates and takes effect according to its terms, notwithstanding any other Act or law, and a government agreement which, by statute, is itself enacted. The former situation is of contractual force and effect only, as states cannot give to itself a right to deal with Crown land through contract. As such, the Court held that the government agreement could not be the source of the power to grant the mining leases. In the present case, the

leases were granted contractually under the 1968 Agreement, and as matter of power, under the 1904 Act.

The Court accepted the miners' contention that the 1978 Act applied to all mining leases subject to the 1968 Agreement and had the effect of removing from those leases the limitation that only Nickel could be mined.

The remaining arguments brought by the Ngadju people in relation to the impact of the 1978 Act were dismissed on the basis that they were based on the incorrect notion that the source of power was the 1968 Agreement. The Court reiterated that the statutory rights granted to the miners under the leases were in addition to those in that agreement, and were not inconsistent with each other.

Submissions were filed as to whether the 2004/2006 leases and the 73 leases were invalid future acts as was found by the primary judge. The leases were initially granted under the 1904 Act and subject to the 1968 Agreement. The 2004/2006 leases were excised from that agreement with the amendments made to it in 2001 and 2002. The 73 leases were no longer subject to the 1968 Agreement after its termination in 2008. The primary judge held in his Honour's July reasons that the leases were invalid as far as they affected native title by virtue of their renewal, which he considered had created new rights and interests, and brought them outside of the ambit of Category C past act provisions of the NTA.

The Full Court held that s 24IB (pre-existing right-based acts) of the NTA did not apply to the 2004/2006 leases, but s 24IC (permissible lease etc. renewals) was satisfied, making the leases valid future acts. In doing so, the Court rejected the notion that the re-granted leases constituted a larger proprietary interest than the original leases, in ruling that mining leases under Western Australian statutes do not create a proprietary interest. The Full Court also reiterated that the mining leases created under statute, and the amendments or cessation of the contractual rights and obligations created under the 1968 Agreement effected no changes to the leases themselves.

It followed that the Full Court held that the primary judge had erred, and the miners' appeal should be allowed.

Paragraph 8A(c) Appeal

The terms of paragraph 8A(c) formed the basis of another appeal involving the miners, the Ngadju people as well as the State of Western Australia (the State) and the Commonwealth. The appeal concerned whether that paragraph complies with the requirements of ss 94A and 225(d) of the NTA. Section 94A requires that an order making a determination of native title must include the details of the matters listed in s 225, which defines 'determination of native title'. Section 225 requires the

determination to outline the relationship between the native title rights and interests and the other interests in relation to the determination area.

The Ngadju people contended that paragraph 8A(c) should be amended to reflect the phrasing of s 227 of the NTA. In response, the miners and the Commonwealth argued that s 94 requires that the determination give details of the matters in s 225, not merely repeat the language of that section, and the details should include both the invalidity of the other interests to the extent to which native title is affected and the validity of those interests to the extent that native title rights and interests are not affected. Those parties argued that the paragraph only dealt with the former. Their Honours held that the arguments put by the parties (the State contended that the primary judge had not erred in respect of the paragraph), did not express anything more than drafting preferences and did not warrant the level of error warranting appellate review. The cross-appeal brought by the Ngadju people was dismissed on that basis.

Paragraph 12 Appeal

A dispute arose between the Ngadju people and State about the terms of paragraph 12 of the determination, which held that the historical mining tenements that were granted 'subject to survey' were invalid because there was no evidence that that pre-condition had been satisfied. Both parties argued that the paragraph should be deleted, but disagreed about the basis for the deletion and the method for removing it. The State contended that the judge erred because a lack of a survey does not invalidate the leases, whereas the Ngadju people alleged that the issue was not argued before the judge and therefore a determination should not have been made on that issue. A consent order was not agreed upon in response to the State's appeal, but rather the Ngadju people filed a notice of objection to competency.

In rejecting the submissions of the Ngadju people, the Full Court relied on the High Court's decision in *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355 in which it was held that the issue of validity should be determined by asking whether it was the purpose of the legislation that an act that breaches a provision of the legislation should be invalid. The Court held that the primary judge did not conduct such an inquiry, nor did the submissions filed on behalf of the Ngadju people establish that the carrying out of a survey was a condition precedent to the granting of the lease. To the contrary, it was clear from their Honour's interpretation of the 1904 statute that a survey was not a pre-condition to a grant and there was no indication that a failure to carry out a survey invalidates a grant. The Court allowed the State's appeal on this issue on that basis.

Lander v State of South Australia [2016] FCA 307

30 March 2016, Application to Remove Parties, Federal Court, South Australia, White J

In this matter, the Court considered an application seeking the removal of two respondent parties to the native title proceedings referred to as Dieri No. 3, pursuant to s 84(8) of the *Native Title Act 1993* (Cth) (NTA). In response to an application for native title made by the Dieri Native Title Group, Raelene Warren and her son Gregory Warren (the Warrens) filed notices of intention to become parties to the application, claiming an interest in the claim area and on the basis of an agreement made between the Dieri Mitha Native Title Claim Group and the Edward Landers Dieri Native Title Claim Group. The Court ultimately made an order removing the Warrens as the Fourth and Fifth Respondents to the proceeding.

It was accepted that the Warrens are members of the Dieri Native Title Claim Group which authorised the applicants to bring the proceedings. The submissions filed by both the applicants and the Warrens proceeded on the basis that the Warrens were already respondents to the proceedings by virtue of the operation of s 84(3) of the NTA, which defines the parties to native title proceedings. His Honour considered the existing principles regarding parties to native title proceedings, questioning whether s 84(3) is applicable to members of an applicant claim group. His Honour referred to *Starkey v State of South Australia* [2011] FCA 456 (*Starkey*) and *Drury on behalf of the Nanda People Native Title Claim Group v State of Western Australia* [2016] FCA 52 (*Drury*) in which the judges considered that the provision refers to persons other than members of the claim group, who assert an interest other than a native title interest. His Honour rejected the Warrens' reliance on Logan J's judgement in *Butterworth on behalf of the Wiri Core Country Claim v State of Queensland* [2010] FCA 325, noting that his Honour had not considered the issues mentioned in *Starkey* and *Drury* in that case.

His Honour considered the authorisation provisions of the NTA, and held that the seeming incongruity of members of a claim group having authorised the applicant to bring proceedings on their behalf becoming independent parties to the proceedings and in therefore in a position to oppose the application they authorised, is at odds with the purpose of the NTA. His Honour considered that consistent with construction of s 84(3) in *Starkey* and *Drury*, the incongruity is avoided if the term 'another person' in s 84(3) is taken to mean a person other than the applicant or other claim group members to the application.

The Warrens contended that there were three matters in support of their remaining as respondents to the proceedings:

1. The 2003 Agreement

In 1998 native title applications were brought over the present claim area by both the Edward Lander Dieri Claim Group and the other by the Dieri Mitha Claim Group. The claims were struck out in 2003 and mediation ordered. The two claim groups entered into an agreement to lodge a joint claim over the area then claimed made on behalf of the Dieri People, which was to be pursued in the Edward Lander Dieri Native Title Claim, Dieri No. 1. In their submissions in relation to the application for their removal as respondent parties, the Warrens sought to rely on clauses 1.4 and 1.5 of that agreement, which guaranteed that two positions on the Committee of the registered PBC for the claim area would be permanently reserved for members of the Dieri Mitha Claimant Group, and reserved the right of that group to make future native title applications over areas not covered by the joint claim, respectively. The PBC constitution was amended to give effect to clause 1.4. The joint claim was finalised by a consent determination on 1 May 2012 in which the native title of all the Dieri People over the claimed area was recognised: *Lander v State of South Australia* [2012] FCA 427. Dieri No. 2 involved a consent determination in respect of an area adjoining the area of the Dieri No. 1 claim: *Lander v State of South Australia* [2014] FCA 125.

The PBC constitution was later amended to remove the guarantee of two positions for members of the Dieri Witha Claim Group. A subcommittee consisting of one general member from the general Dieri group and one Dieri Mitha had been set up to review the rules of the PBC. The Dieri Mitha representative agreed that the Dieri Aboriginal Corporation should proceed without the reservation of two positions for the Dieri Mitha as all relevant Dieri Mitha members had been incorporated into the General Dieri Group and were members of the PBC.

His Honour did not consider there was a plausible basis for which the alleged breach of clause 1.4 of the agreement could give rise to an interest in the proceedings as was asserted by the Warrens. His Honour noted that the determination of the present application did not provide an appropriate occasion for the Court to hear and determine a breach of contract claim.

It was accepted by the parties that the present proceedings concerned an area of the kind referred to in clause 1.5, being one outside of the areas subject to the Dieri no. 1 and no. 2 consent determinations. The Warrens contended that the clause created an obligation on the part of the Edward Lander Claim Group to allow the interests of the Dieri Mitha to be heard in relation to land outside of the Edward Landers claim. Alternatively, it was argued that there was an implied term in the contract to give it efficacy that the Edward Lander Claim Group would not interfere with the ability of the Dieri Mitha to have their interests heard where they arise in court proceedings. It was further argued that the contract properly construed gave the Edward Lander claim group first right to make a further claim.

His Honour held that the terms of clause 1.5 did not provide for the first of these arguments, and even so, the clause would bind only the parties to the agreement, not the State, any other respondent parties or the Court. White J did not consider that the Warrens had developed any argument in support of the implied term to which they referred, nor did his Honour consider that the circumstances satisfied the principles required to establish an implied term. His Honour rejected the construction put by the Warrens, further stating that it is difficult to see how the construction, if valid, would give rise to an interest making it appropriate for the Warrens to remain as parties to the present proceedings, given there was no evidence that the first right had been denied to them, bearing in mind the period of more than 12 years which has now lapsed since the 2003 Agreement was made, it is reasonable to suppose that they have had ample opportunity to exercise the asserted right.

His Honour rejected the submission made by Counsel for the Warrens that clause 1.5 should be interpreted as requiring the Dieri applicants to consult with them in relation to the present claim. White J did not consider the terms of that provision could support such a construction, and furthermore, there was no evidence establishing that the applicants had declined to consult with the Dieri Mitha. His Honour concluded that there was no apparent connection between the claimed obligation to consult, on the one hand, and the retention of the Warrens as parties to the present proceedings, on the other.

2. Connection to land

The Warrens disputed the connection of the applicants to the Claim Area, claiming they are Wongkangurru, rather than Dieri people. The Warrens asserted that they are descended from an apical ancestor who had a strong connection with the claimed land prior to 1788 and are therefore traditional owners, which made it appropriate for them to remain as respondent parties.

His Honour rejected this argument, taking into account that the applicants for the present proceeding were also the applicants in both the Dieri No. 1 and Dieri No. 2 native title determinations. The claim groups, which included the Warrens, were also the same in each case. The Warrens did not dispute this, or bring any anthropological evidence that established a distinction between Dieri No. 1 and Dieri No. 2, on the one hand, and Dieri No. 3, on the other. His Honour held again that the proceedings were not an appropriate forum to address connection, and the assertion was seemingly inconsistent with the 2003 Agreement signed by the Warrens, which provided that the two claim groups were ‘now a stable and united group who acknowledge that they are the Dieri People’.

White J held that an assertion that the connection to the claim area of the applicants was weaker than their own, did not satisfy the authorities, which indicate that the circumstances in which a dissentient member of a native title claim group will be permitted to become, or remain, a respondent party to native title are rare.

3. Interests of justice

Counsel for the Warrens submitted that the interests of justice would be served by permitting the Warrens to remain as respondents on three bases: that the expeditious resolution of the proceedings would be facilitated if the Warrens remained as respondents; that they had faced 'real difficulty' in representing their interest within the claim group; and that it would be unjust if they were 'denied a voice' in the determination of the claim. His Honour rejected this argument, ruling that no evidence had been adduced in support of the assertions. White J considered that the applicants had shown in Dieri No. 2 and Dieri No. 3 that they are able to, and do, bring claims on behalf of the Dieri claim group appropriately. In line with Mansfield J's judgement in Starkey, his Honour held that dissatisfaction with the conduct of the claim should not be addressed by the Warrens remaining as respondent parties, but rather through the other avenues that exist within the provisions of the NTA, including s 66B (the ability of the dissatisfied claim group member to apply to the Court to have the applicant in the proceedings replaced), s 251B (the requirement for the applicants to be authorised) and s 203BE(1)(a) (requiring the certification of the authorisation of the applicants).

The Warrens' Purpose

Raelene Warren stated that her purpose in seeking to remain a party to the proceedings as follows:

1. The Dieri Mitha have different traditions and customs to the Dieri.
2. There is Dieri Mitha clan with direct connection to the claim area. This land is not Dieri land but only Dieri Mitha.
3. I therefore seek to remain a respondent party to this application in order to ensure that the differing views of the Dieri Mitha are properly considered in this matter.

His Honour considered that Ms Warren sought a determination of native title on behalf of the Dieri Mitha. His Honour rejected this position on several grounds. His Honour stated that this position was inconsistent with the 2003 Agreement, that no evidence was brought to substantiate the claims, and to seek such a determination by remaining as a respondent party was contrary to the provisions of the NTA. Persons seeking to be joined, or to remain as, a respondent to native title proceedings on the basis that they have native title rights and interests in the claim area which may be affected by a determination in the proceedings, are permitted to pursue a personal claim in those rights and interests only.

Miller on behalf of the Birriah People v State of Queensland [2016] FCA 271

23 March 2016, Consent Determination, Federal Court, Queensland, Logan J

In this matter, Logan J recognised the native title rights and interests of the Birriah people in relation to land and waters situated in north eastern Queensland around the township of Collinsville, including parts of Lake Dalrymple on the south western boundary and parts of the catchments of the Broken River and Bowen River in the south east, Mount Weight in the north and Mount Black Jack in the south. The application was lodged in 1998, and was amended a number of times up until 2015 to change the name of the claim and authorise amendments to the claim group description. There were 36 respondent parties, including the State of Queensland, the Burdekin Shire, Charters Towers Regional, Isaac Regional, Mackay Regional and Whitsundays Regional Councils representing the local governments within the claim area as well as energy, mining and infrastructure companies and various pastoralists. The Birriah Aboriginal Corporation was appointed as the prescribed body corporate to hold the native title rights and interests on trust for the native title holders.

The Court found that the Birriah people hold exclusive rights to possession, occupation, use and enjoyment of the area to the exclusion of all others in relation to those areas set out in Schedule 1, Part 1 of the determination.

In relation to those areas listed in Schedule 1, Part 2 to the determination, the Court recognised non-exclusive native title rights and interests including rights to access and move freely through and within the area; to camp; light fires for domestic purposes; engage and participate in cultural activities; maintain and protect sites of cultural significance; hunt, fish, gather and use natural resources within the area.

The native title rights and interests recognised are subject to the Other Interests listed in Schedule 4 of the determination. Those interests, including mining and pastoral leases, continue to have effect and prevail over the native title rights and interests. The native title rights and interests continue to exist where an inconsistency in rights arises, but cannot be exercised to the extent of the inconsistency for as long as the other interests exist. Schedule 5 to the determination outlines the arrangements by which the native title holders must exercise their non-exclusive rights on land subject to pastoral leases.

2. Legislation

South Australia

Aboriginal Heritage (Miscellaneous) Amendment Bill 2016

Status: The bill passed the Legislative Council on 10 March 2016 and the House of Assembly on 22 March 2016. The bill received assent on 12 April 2016.

Stated purpose: The Bill amends the *Aboriginal Heritage Act 1988* (SA) to recognise direct agreements between traditional owners and government, as well as developers and mining operators, regarding the use of sites protected under the Act. It will resolve discrepancies between current land access agreements.

Native Title Implications: Section 9 of the Bill inserts Part 2B, establishing a process for registering Aboriginal and native title representative groups as 'recognised Aboriginal representative bodies' (RARBs), therefore allowing them to negotiate with land use proponents. All native title claimant body corporates will become official RARBs upon the act becoming law, unless these bodies specifically opt out. Section 10 of the Bill inserts Part 3 Division A2 outlining the process for negotiating agreements with RARBs. Part 3 Division A2 enables the Minister to approve agreements affecting Aboriginal heritage under other Acts, such as the *Native Title Act 1993* (Cth), after consulting with the Committee.

Section 6(2) of the Act, which stipulates that the minster must delegate their powers under ss 21, 23, 29 and 35 to the traditional owners of the site or object at their request, will be deleted. Currently, the delegation can only be made to individuals, not groups or native title prescribed bodies corporate. The delegation is one of ministerial power, and considered at the Committee stage to mean that the people to whom it is delegated must act as if they were the minister, not as a traditional owner, when making any decision. It was noted that the operation of the section is difficult due to the unsatisfactory drafting creating internal inconsistencies within the subsections.

The Bill will not affect the operation of the *APY Land Rights Act 1981* (SA).

For further information please see the Hansard extracts of the Second Reading and Committee Stage in the Legislative Council and the Introduction and First Reading in the Legislative Assembly.

Victoria

Aboriginal Heritage Amendment Bill 2015

Status: This bill passed both Houses on 22 March 2016, and received royal assent on 5 April 2016.

Stated purpose: The bill amends the *Aboriginal Heritage Act 2006* to improve reporting requirements in relation to Aboriginal cultural heritage, to introduce provisions regarding Aboriginal intangible heritage, and to establish an Aboriginal Cultural Heritage Fund. The bill includes hundreds of amendments with five broad aims:to increase Aboriginal self-determination, make improvements for history, improve Aboriginal cultural heritage management and protection, improve enforcement and compliance, and increase focus on Aboriginal intangible heritage.

Native title implications: Many definitions and terms are amended by this bill to bring them closer in line with Aboriginal conceptions and common use and understanding of those terms.

Aboriginal parties will be given the power to evaluate cultural heritage permit applications. Public institutions such as museums and universities will have to declare to the Victorian Aboriginal Heritage Council what ancestral remains they possess and the Council will be in control of determining what happens to those ancestral remains. To protect sites, Aboriginal heritage officers will be empowered to stop works for 24 hours if they believe an offence has occurred or is likely to occur.

The bill clarifies for industry when a cultural heritage management plan is required, and allows for the creation of an Aboriginal advisory group where there is no registered Aboriginal party to consult with. To increase the deterrent effect of offence provisions and to enable greater enforceability, a new strict liability offence will be introduced. It will also now be an offence to commence an activity without a management plan where one was required, to fail to comply with a management plan, to misuse information obtained from the Aboriginal Heritage Register, or to fail to report ancestral remains to the Council.

Lastly, the bill increases focus on intangible Aboriginal cultural heritage. The bill allows for registered Aboriginal parties or Traditional Owners to nominate particular intangible heritage for registration. Once registered, anyone wishing to use that intangible heritage for their own purpose will require a formal agreement with the relevant traditional owner organisation.

For further information see the Explanatory Memorandum or Second Reading Speech.

3. Native Title Determinations

In March 2016, the NNTT website listed one native title determination.

Short Name (NNTT)	Case Name	Date (NNTT)	State	Outcome	Legal Process	Type	RNTBC/ PBC
Birriah People	Miller in behalf of the Birriah People v State of Queensland	23/03/2016	Qld	Native title exists in the entire determination area	Consent	Claimant	Birriah Aboriginal Corporation

4. Registered Native Title Bodies Corporate & Prescribed Bodies Corporate

The Native Title Research Unit within AIATSIS maintains a RNTBC summary document which provides details about RNTBCs and PBCs in each state/territory including the RNTBC name, RNTBC type (agent or trustee) and relevant native title determination information. The statistics for RNTBCs as of 24 February 2016 can be found in the table below, as of the last update from the NNTT.

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

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

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

State/Territory	RNTBCs	No. of successful (& conditional) claimant determinations for which RNTBC to be advised
Australian Capital Territory	0	0
New South Wales	6	0
Northern Territory	19	40
Queensland	73	1
South Australia	15	0
Tasmania	0	0
Victoria	4	0
Western Australia	35	2
NATIONAL TOTAL	**152**	**43**

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

Source: http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx and Registered Determinations of Native Title and RNTBCs as at 24 February 2016.

5. Indigenous Land Use Agreements

In March 2016, one ILUA was registered with the National Native Title Tribunal.

Registration date	Name	Tribunal file no.	Type	State or Territory	Subject matter
10/03/2016	RTIO and Nyiyaparli People Additional ILUA (Area Agreement) for Nyiyaparli People's Native Title Claim #3	WI2015/013	Area Agreement	WA	Mining, Access, Commerical, Development, Exploration, Large mining

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

6. Future Acts Determinations

In March 2016, 2 Future Acts Determinations were handed down.

Date	Parties	Coverage	Tribunal file no.	State or Territory	Determination	Reasons for the Determination
16/03/2016	Raymond Ashwin (dec) & Ors on behalf of Wutha (WC1999/010) – and – State of Western Australia – and – Venus Metals Corporation Ltd – and- Bruce Robert Legendre	-	WO2015/0300	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the Wutha claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.
02/03/2016	Raymond Ashwin (dec) & Ors on behalf of Wutha (WC1999/010) - and – State of Western Australia - and – Frederick William Spindler	100%	WO2015/1010	WA	Objection - Dismissed	Member Shurven did not receive any contentions from the Wutha claim group as to why the objection to the expedited procedure application should not be dismissed, nor was a request for extension of time made in order to comply with directions. Ms Shurven considered the group had been given sufficient opportunity to comply with directions set by the Tribunal, and it would be unfair to prejudice the other parties with further delays.

7. Native Title in the News

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

8. Publications

Yamatji Marlpa Aboriginal Corporation

YMAC Newsletter

The latest edition of YMAC's newsletter is now available. For further information, please see the YMAC website.

9. Training and Professional Development Opportunities

AIATSIS

Australian Aboriginal Studies

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

For more information, visit the journal page of the AIATSIS website.

Australian Government – Department of the Prime Minister and Cabinet

Funding under the Indigenous Advancement Strategy

The Department of the Prime Minister and Cabinet has recently revised the guidelines for applying for grants under the Indigenous Advancement Strategy following consultation with stakeholders. The changes are intended to simplify the application process, and applications for funding can now be submitted via an online form and at any time.

For more information visit the Department of the Prime Minister and Cabinet website.

Western Australian Government – Department of the Premier and Cabinet

Expert Anthropologists to advise the State of Western Australia on native title claims

The Land, Approvals and Native Title Unit is inviting expressions of interest from suitably qualified and experienced anthropologists to provide advice on the review of connection materials on an as required basis.

Interested parties are asked to respond in writing with their contact details and a short outline of previous related work, qualifications and experience.

For more information and to express your interest contact Heather Kay at heather.kay@dpc.wa.gov.au or (08) 6552 6321.

Desart

Vincent Lingiari Art Award

Peak Central Australian Aboriginal art body Desart is teaming up with the Central Land Council to celebrate 40 years since the passage of the Aboriginal Land Rights Act and 50 years since the Wave Hill Walk Off with the Vincent Lingiari Art Award.

All Aboriginal artists with strong links to Aboriginal land in the CLC region are eligible for the $15,000 award. The work can be on any medium and collaboration is encouraged. The winning piece will be chosen by a panel of Aboriginal art industry luminaries at the launch of the 'Our Land – Our Life – Our Future' exhibition.

Date: 7 September 2016

Location: Tangentyere Artists Gallery, Alice Springs

For more information see the Desart website.

Ark Group Australia

Information Governance Australia 2016: The People, Processes and Technology

Ark Group Australia is partnering with Charles Sturt University to present a two-day forum and a day of pre-forum workshops on information governance. Each day is separately bookable and covers different aspects of creating and sustaining an information governance strategy for your organisation.

Date: 5-7 July 2016,

Location: Rydges Sydney Central, Sydney

For further information visit the Ark Group website.

10. Events

AIATSIS

National Native Conference 2016

Register now for the National Native Title Conference 2016. The conference is co-convened by AIATSIS and the Northern Land Council (NLC), and hosted by the Larrakia people - the traditional owners of Darwin.

The 2016 conference title 'strong culture, strong country, strong future' is reflected in the following themes: Being on Country, Practising and Learning Culture, Holding

Title, Being Sovereign, Community and Commerce, and Just Recognition; Just Settlement.

The conference also aims to highlight the challenges and opportunities that native title can create in the broader context of Indigenous people's aspirations for their lands, waters and communities.

Date: 1-3 June 2016

Location: Darwin Convention Centre, NT

For further information and to register visit the AIATSIS website

The Cairns Institute

Native Title and the Northern Development Agenda

This panel discussion on native title and development includes:

- Prof. Nicolas Peterson: Director, Centre for Native Title Anthropology, ANU
- Prof. David Trigger: Professor of Anthropology, UQ
- Dr David Martin: Director, Anthropos Consulting
- Dr Julie Finlayson: Research Fellow, Centre for Native Title Anthropology, ANU
- Mr Bruce Martin: Deputy Chair for the Indigenous Advisory Committee for the Department of Environment

Date: 16 June 2016, 6pm

Location: JCU Townsville Campus, Building 009, Room 001

This is a free event, but the organisers request that you register beforehand. For more information and to register visit the JCU 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.

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