Native Title Newsletter

September / October, No. 5/2011

WHAT'S NEW

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If you have any questions or concerns, please contact Matt O'Rourke at the Native Title Research Unit on (02) 6246 1158 or morourke@aiatsis.gov.au

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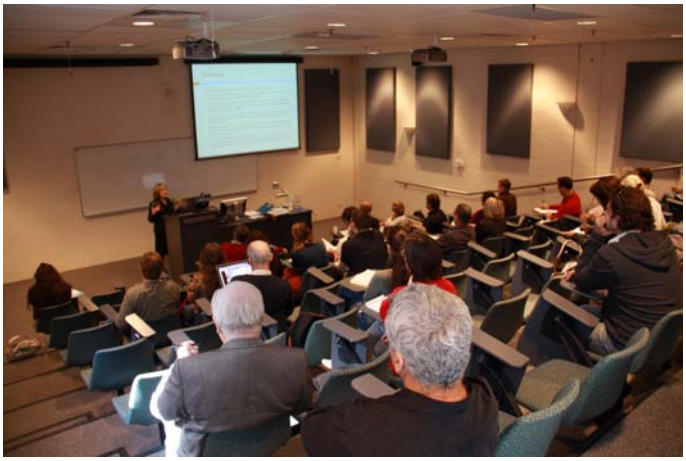
Two Suggestions About How To Make Cultural Heritage Materials Available

Nicolas Peterson, ANU
Grace Koch, AIATSIS

In the last five years or so there has been a great upsurge of interest in and requests for copies of maps, genealogies and connection reports compiled for land and native title claims from Aboriginal people. For good reasons ranging from privacy issues to protecting Aboriginal interests in mining and other negotiations the various bodies holding these and other materials have found it difficult to meet these requests.



Grace Koch speaking at the 2011 AIATSIS Conference

On 22 September, the last day of the AIATSIS conference, Grace Koch and Nic Peterson organised a workshop to discuss some of the issues preventing the distribution of these materials and how they could be dealt with, in order to go some way towards meeting these requests. There was a wide range of participants including staff from universities, land councils, site protection authorities, representative bodies and the Federal Court of Australia's Native Title Registry and records section. A number of short but very informative papers were given outlining a range of problems and some suggested solutions.

The background to this recent upsurge in requests for the consolidated materials produced for reports about land, sites, family relationships, historical connections to country and the like, are the substantial demographic and social transformations taking place across Australia, but particularly in remote regions. These transformations, which are seeing an increase in the ratio of young to old and a decline in the health of old people, are important factors having a large impact on the transmission of cultural information between generations. As a consequence these kinds of reports now comprise the repository of a huge body of rich cultural information about sites, land, people and their history that are central to the Aboriginal heritage of the regions they relate to. For many Indigenous groups it is no longer possible to get additional information on some of these topics, so that these reports have a crucial part to play in reproducing cultural knowledge and assisting senior people in transmitting it to the upcoming generations.

The issues around making all of this material available are complex and will not be completely resolved for a long time, but at least two things could be done immediately by representative bodies, land councils and other institutions that would start things off.

Connection and land claim reports

These reports often contain very interesting, well and expensively researched information, particularly, but not exclusively, in the historical sections, that would be an enormous resource for community organisations and schools. In the past some claim books prepared by the Northern Territory land councils were freely available for purchase by any member of the public. Limitations on the availability of reports like these arose partly because of the inclusion of small amounts of restricted information in the reports or because they included genealogies.

Thus people at the workshop were agreed that it would be a very important contribution if land council and native title representative bodies could ensure that the main reports are free of restricted information, so that once proceedings have been completed, the main reports can be made freely available especially to the relevant communities. But it is also important that they are available more generally, to assist other researchers to draw upon each other's experiences so that they might prepare better reports. At present this is very difficult, especially between organisations. To get these kinds of reports more freely available could be easily organised by raising the issue at the final authorization meeting. It would also require the legal representatives for the various bodies not to automatically seek to make all material submitted to the courts, tribunals etc restricted, except within the period when the claim is being heard. Unrestricting material is nearly always an extremely difficult and protracted process.

Maps

Considerable discussion was held around the issue of making the maps created for claims and reports more widely available. This complex topic is affected by factors ranging from the requirements of legislation, as in the case of the Aboriginal Areas Protection Authority in the Northern Territory, to strategic considerations in negotiating with non-Aboriginal interests and a range of matters in between. While some maps have been supplied to individuals and families in a few areas, this was relatively uncommon. Yet such maps are enormously important not just in helping reproduce knowledge about country between the generations, especially about country that is hard to access, but just as importantly to remind non-Aboriginal people that they are living in rich Aboriginal cultural landscapes. Without such maps it's all undifferentiated bush but with the many place names that are still part of people's everyday knowledge the extent to which the bush is in fact a highly domesticated cultural environment becomes immediately obvious. This can only work to the benefit of Aboriginal people.

The workshop heard about an interesting new approach being trialed by the Central Land Council (CLC). In response to requests for a regional site map from residents at Lajamanu a meeting of senior people was held to work out what sites should be shown on a map that could be made freely available. Interestingly this was achieved without great difficulty and the CLC produced one of its highly professional maps for display in their office at Lajamanu in large format. Small versions of the map, such as might be distributed in the school and elsewhere have not been produced as yet but it is important that they will be.

This idea of abridged maps is really an excellent way to meet most of the problems associated with the circulation of very detailed maps. Again, it seems that it would not require much extra time or effort at the proofing stage of a map, to work on a version for public release and to have that agreed to at an authorization meeting. The map should be clearly labelled as an 'Abridged Map showing selected places' and it was generally agreed that it was probably not appropriate to show dreaming tracks on the maps. Over time, of course, what can and cannot be shown, and how comprehensive the maps become in depicting a wide range of spatial information, will undoubtedly change.

Conclusion

A great deal of money, time, skill and energy has gone into recording and consolidating huge bodies of Aboriginal cultural information across the continent. Much of this material is no longer part of living knowledge, or where it is the holders of the knowledge are often frail and unwell. It is of huge cultural significance and now is the time to begin to find ways to provide access to it, recognising the very real problems and difficulties involved. The two suggestions above, building on what has already been shown to be possible, seem very doable and could be immediately implemented by a wide range of organisations. We urge active consideration and adoption of these as soon as possible.

Workshop Series: Thresholds for Traditional Owner Settlements in Victoria

Lara Wiseman, AIATSIS

The Native Title Research Unit at AIATSIS, represented by Toni Bauman, facilitated a series of three workshops involving native title stakeholders in Victoria including representatives/staff of the Victorian Traditional Owner Land Justice Group, the Victorian Aboriginal Heritage Council, Native Title Services Victoria, the Native Title Unit in the Department of Justice, the Victorian Government Solicitor's Office, the Right People for Country Project and Aboriginal Affairs Victoria. The workshops were co-ordinated by a working group comprising representatives of the Department of Justice, the Victorian Government Solicitor's Office and Native Title Services Victoria.

The overall aims of this collaborative workshop series were to facilitate dialogue around the nature and processing of the threshold statement as required in order to enter negotiations under the *Traditional Owner Settlement Act 2010*; to work towards a model for demonstrating thresholds in Victoria; to identify easily agreed issues and those that need further clarification, how and by whom; and to identify the process for arriving at shared definitions.

Workshop 3 Participants (August 2011, University College, Parkville). Photo courtesy Native Title Services Victoria

Workshop 1: Setting the Scene was held in May and commenced with a review of the past and present context for processing 'connection' in Victoria within the context of moving from the *Native Title Act 1993* to the *Traditional Owner Settlement Act 2010*. This workshop brought native title stakeholders together to identify terms in Appendix 7 of the 2008 Report of the Steering Committee for the Development of a Victorian Native Title Settlement Framework requiring further clarification and development and set the agenda for future workshops in the series. During this workshop participants identified elements of the threshold statement requiring further consideration. Following the workshop the Working Group established cross-agency discussion groups to examine five elements of the threshold statement in more detail, outcomes from these discussions were then considered at Workshop 2.

Workshop 2: Exploring Terms and Concepts was held in July and examined the key concepts, terms and issues relevant to creating a Traditional Owner threshold statement. In particular discussion focused on five elements of the statement: description of the Traditional Owner group, description of the area, statement of association, negotiation capacity and the research process overview. The Victorian Aboriginal Heritage Council also produced a discussion paper entitled *Threshold statement or threshold process? Creating an alternative path towards land justice* to inform these discussions.

Workshop 3: Shared processes was held in August and provided an opportunity to discuss process issues which had been identified throughout the previous two workshops. The aims of this workshop were to discuss and explore staged processes for preparing, presenting, notifying and assessing threshold statements; to explore the roles, responsibilities and priorities of agencies and stakeholders in the various stages of the threshold process; to explore opportunities for collaboration, build relationships and promote communication between stakeholders with regard to threshold processes; to clearly identify issues which require further discussion and consideration, and to identify future processes to continue to work on these issues. A Right People for Country paper, *What is the role of agreement-making in the threshold process?* also informed this workshop.

Workshop 3 participants discussed various aspects of the threshold statement process including: community education and capacity building; agreement making between Traditional Owner groups and the potential role of the Right People for Country project; authorisation processes; prioritisation principles; shared, collaborative and Traditional Owner-led research processes; and the notification process following submission of a threshold statement.

Outcomes from the workshop series will inform further collaboration between native title stakeholders in Victoria to develop a *Towards Threshold Guidelines* document articulating the requirements of a Traditional Owner threshold statement.

Foundations of the Kimberley Aboriginal Caring for Country Plan — Bungarun and the Kimberley Aboriginal Reference Group

Bruce Gorring, Research Coordinator Nulungu Centre for Indigenous Studies of the University of Notre Dame

Steve Kinnane, Senior Reseacher Nulungu Centre for Indigenous Studies of the University of Notre Dame

The idea of a Kimberley Aboriginal Caring for Country Plan came from Kimberley Traditional Owners at a meeting held at Bungarun in 2004. It was at this meeting that Traditional Owners identified how particular areas of country would be separated into categories that represented how people related to different regions and different types of Country; Fresh Water, Salt Water, Desert and Cattle and Rangelands. They also decided on what principles would guide Caring for Country in the Kimberley. These 13 core principles have guided the creation of the Caring for Country Plan;

1. Aboriginal people are committed to caring for Country.
2. The diversity of Aboriginal land, law language and culture is highly valued.
3. Land, law, language and culture are totally connected and underpin Aboriginal peoples' perspectives of 'healthy country'.
4. Aboriginal Knowledge must be maintained, protected and valued.
5. The transmission of language, cultural skills and practices from elders to younger generations is vital.
6. Improved collaboration requires appropriate consultation, engagement and communication processes.
7. The ways that Kimberley Aboriginal people like to do business must be adopted and maintained.
8. Creating employment and building empowerment in businesses, especially on Country, is essential.
9. Recognising Aboriginal ownership of land and the need for people to be on Country is critical to achieving Healthy Country and Healthy people.
10. Language is a critical part of Aboriginal engagement with the landscape.
11. Aboriginal livelihoods and community capacity can be encouraged and empowered by caring for Country.
12. Caring for Country has a vital role in building leadership and instilling cultural, political and social values in younger generations.
13. Kimberley Aboriginal people need to establish ways to get control over their future by improving social, cultural, environmental, language and economic positions.

Traditional Owners called for a plan to:

- help government and non-government agencies understand Aboriginal priorities and values;
- show the work already being done; and
- build relationships through agreements and protocols to work together.

It was from this meeting that the Kimberley Aboriginal Reference Group (KARG) was created, comprising four representatives from each of the four types of Country, and also each of the four peak regional Aboriginal organisations; the Kimberley Land Council (KLC), the Kimberley Aboriginal Law and Culture Centre (KALACC), the Kimberley Language Resource Centre (KLRC) and Kimberley Aboriginal Pastoralists Incorporated (KAPI). KARG's role was to; represent Indigenous interests on the Kimberley NRM Board, seek secure funding for Aboriginal people to participate in NRM activities, engage with Kimberley Aboriginal

NRM stakeholders, and, develop a Kimberley Aboriginal Caring for Country Plan.

Kimberley Rangers monitoring Turtle and Dugong

The Aboriginal Chapter and the Collaboration Working Agreement

In 2005, KARG prepared the Aboriginal Chapter of the Kimberley NRM Plan under the guidance of the Kimberley Indigenous Land Management Facilitator (ILMF). In 2006 the Aboriginal Chapter was revised by the AIATSIS Visiting Research fellow in Land, Law and Country, Steve Kinnane. Between 2006 and 2008 the landscape of NRM funding was changing with an emphasis toward developing Rangers and the Working on Country Program. The Kimberley ILMF and KARG used this opportunity to develop a Collaboration Working Agreement between the peak regional Aboriginal organisations.

The Collaboration Working Agreement outlined key values and principles for Caring for Country peak regional Aboriginal organisations. The Agreement was signed in May 2008 by the Chairpersons of the KLC and KLRC, KALACC Executives, and by the Chair of KAPI. It is a seminal document for any future collaboration to Care for Country in the Kimberley.

The Collaboration Working Agreement defined how the four peak Aboriginal organisations in the Kimberley would work to create the Kimberley Aboriginal Caring for Country Plan.

The aims of the Plan from the Collaboration Working Agreement were;

- to 'respond to environmental, social, cultural, language and economic priorities for Aboriginal people by focusing on outcomes delivered through appropriate management strategies in the natural and cultural resource management sector.'[1]
- to 'coordinate a strategic regional approach for Aboriginal land, sea and water management,[2]
- to be based in, 'Aboriginal perspectives of sustainability...in relation to the opportunities of Aboriginal management of land, sea and water'.[3]
- to 'be underpinned by local and sub-regional country-based plans, and,
- to 'actively engage young people and old people together for the future'.[4]

In December 2008 the KARG approached the Nulungu Centre for Indigenous Studies (Nulungu) at the Broome campus of the University of Notre Dame Australia to undertake the research, facilitation and writing of the *Kimberley Aboriginal Caring for Country Plan*. Funding was allocated from transitional funds from the National Heritage Trust (NHT) II Program to the National Caring for Our Country Program of the Department of Environment, Water, Heritage and the Arts (DEWHA) through Rangelands NRM.

Making the Plan

The *Kimberley Aboriginal Caring for Country Plan* then developed into a major collaborative research project undertaken by Nulungu between January 2009 and February 2011.

The key project partners were the KLRC, KALACC, the KLC and KAPI. These four peak regional Aboriginal organisations represent the rights and interests of the majority of Kimberley Traditional Owners and land managers.

Following extensive community consultation with Kimberley Traditional Owners and key regional stakeholders, Nulungu successfully delivered a *Kimberley Aboriginal Caring for Country Plan*. This plan is now being implemented by the peak regional Aboriginal organisations across the Kimberley.

Under the direction of Bruce Gorring, Research Coordinator for the Nulungu Centre for Indigenous Studies, the community consultation team comprising Erica Spry (Researcher), Anna Dwyer

[1] Rangelands NRM Coordinating Group Project Brief 2008/2009, p 1.
[2] Caring for Country in the Kimberley, Collaboration Working Agreement,' KLC, KALACC, KLRC, and KAPI, May 2008, p 2.
[3] *Ibid*.
[4] *Ibid*.

(Community Consultation Specialist), Sharon Griffiths (Specialist Community Researcher) and Lilly Cox (Community Consultation Specialist) criss-crossed the Kimberley completing consultation through dozens of community meetings with over four hundred Traditional Owners throughout the region.

Kimberley Aboriginal Pastoralists

Working with the support of the KLC's Land and Sea Management Unit, the consultation process engaged with reaffirmed cultural blocs based on formations of Aboriginal cultural governance.

This process has since become the foundation of a range of new models of community engagement across the Kimberley by Traditional Owners, Aboriginal organisations, government agencies and non-government organisations and shows that if done properly, appropriate and respectful consultation leads to outcomes that are owned and valued by community members.

An important value of the *Kimberley Aboriginal Caring for Country Plan* is: 'Right People, Right Country, Right Way'. This sums up Aboriginal approaches to managing specific rights and responsibilities to Country within a complex and inter-linked system of cultural governance, Indigenous knowledge and values.

At the completion of the extensive community consultation process, Sharon Griffiths and Steve Kinnane (Senior Researcher) completed the writing of the plan with direct involvement of the KARG.

Elders working with young people – the Yiriman Project

How the Plan will be used

The final plan was accepted at an Annual General Meeting of the peak regional Aboriginal organisations in 2011. It has also been accepted and adopted as a blueprint for a ground-breaking partnership between Aboriginal community organisations and government agencies known as the Kimberley Futures Forum. Within this process, the portfolio of Cultural and Natural Resource Management will now oversee the implementation of the *Kimberley Aboriginal Caring for Country Plan*.

A copy of the *Kimberley Aboriginal Caring for Country Plan* can be located at: http://www.klrc.org.au/index.php?option=com_content&view=article&id=75&Itemid=68

‘Anthropologies of Change: Theoretical and Methodological Challenges’ Workshop

Lydia Glick, AIATSIS
Toni Bauman, AIATSIS
Gaynor Macdonald, University of Sydney

On 25–26 August 2011, the University of Sydney’s Department of Anthropology and the NTRU at AIATSIS, ran a workshop for native title anthropologists on the ‘Anthropologies of Change’. Following last year’s ‘Turning the Tide’ workshop, also a partnership between AIATSIS and the University of Sydney, anthropologists from the academy, NTRBs and consultant anthropologists again met to discuss native title anthropology. Facilitated by Toni Bauman and Gaynor Macdonald, the aims of this year’s workshop were to consider approaches to continuity and change in the academy and how these might translate into the native title context. A number of papers were pre-circulated providing a focus over the two days.

Day 1 included three presentations. Gaynor Macdonald provided an overview of ‘change’ and ‘continuity’ in Western intellectual history, visiting Hegel, Freud, Weber and the relatively modern innovation of the discipline of anthropology and why it had tended to ignore change. She noted that an earlier lack of methodological self-awareness led to the relative tardiness of anthropology in coming to terms with ‘continuity’ and ‘change’, setting these within broader historical frameworks. Her presentation gave pause to reflect on how often the discipline strays from basic foundational questions guiding inquiry, noting the influence of ethnohistory in forcing the discipline to re-address these theoretical questions.

Diane Austin Broos provided a summary of her extensive field work with the Central Arrernte people which had led her to identify three broad types of change: ontological change, socio-historical change and symbolic-imaginary change. She linked these to continuity through notions of ellipsis and augmentation, hegemony and transformation as these had been elaborated in her pre-circulated paper.

Bob Tonkinson drew on his long-term fieldwork with the Mardu Desert people to develop an understanding of tradition that might serve as an important bridge between change and continuity challenging their depiction as oppositional. He reminded participants that the blurring of boundaries between local and global needs to be addressed, suggesting there has been a return of unproductive classic concepts of culture and that there is a need to be wary of ‘collapse theories’ that represent small communities as fragile and susceptible to change in ways that peremptorily dissolve continuity. Tonkinson emphasized the importance of sensitivity to adaptation and careful attention to the retention of cultural logic that carries forth its own ‘transformative potential’, one ‘built into frontier interaction’. He highlighted the challenges that modernity poses to the cohesiveness of Aboriginal communities, and presented challenges for anthropology to revisit notions of tradition.

Jimmy Weiner was the discussant for these panels and his nuanced comments skillfully contributed to the cohesiveness of the workshop. He emphasised the manner in which anthropologists are restricted by the practical and legal aspects of native title. He encouraged discussion on the relevance (or otherwise) of models of change for native title practitioners.

Day 2 continued to explore the focus question for the Workshop: ‘What is the anthropological paradigm change that is required to represent native title holders as capable of producing cultural meanings out of changing conditions of possibility?’ A conversation between anthropologist Gaynor Macdonald and native title lawyer Simon Blackshield led to a plenary discussion about kinds of contexts which might provide evidence of continuity in unusual ways including social media, funerals and festivals.

A primary challenge is for native title practitioners to integrate notions of continuity and change from academic debates into connection reports in subtle ways which require careful attention to wording. Participants discussed how this is not the same as including anthropological theoretical discussions about the meanings of continuity and change in a connection report which those assessing connection may find unhelpful or irrelevant.

There was consensus that a path toward the improvement of native title anthropology must tread carefully for anthropology to avoid losing relevance and become marginalised. Native title anthropology

needs to be responsive and resourceful to the native title legal community, the academy and local communities and able to defend itself in professional anthropological contexts. Participants agreed that encouraging dialogue and strengthening ties across the various native title sectors, can help anthropologists to avoid talking past one another, and can foster an awareness of the limitations that are built in to the connection report process.

The workshop provided an opportunity for practitioners to share their experiences and insights into the challenges of working in a native title setting. Concerns about limited resources, including sufficient funds for more comprehensive connection research and the scarcity of experienced anthropologists to write connection reports were expressed.

Specific recommendations emerging from the workshop concerned the following:

- Participants agreed that the email list of workshop participants should be amalgamated with other email lists from the 'Turning the Tide' workshop and the ANU Centre for Native title Anthropology's list from the workshop at the AAS Conference in Perth in July 2011
- There was acknowledgement of the need for senior anthropologists to mentor those in their early career stages. A critical finding of the Anthropos 2007 report on mentoring was that mentors and mentorees should be based in the same location rather than communicating by telephone as was the case in the earlier pilot. It was also noted that mentoring is a skill and that custom designed mentoring training sessions for anthropologists would be useful.
- The need for better dialogue between lawyers and anthropologists working in native title was repeatedly expressed.

Conference papers and selected reading assigned to attendees before the conference is available on request by emailing the NTRU at ntru@aiatsis.gov.au. A special thanks goes to Diane, Bob, Simon, and Jimmy, for their generosity in sharing their time, support and insights that made this year's workshop a success.

From Mississippi to Broome – Creating Transformative Indigenous Economic Opportunity

Jane O'Dwyer, Counsellor (ANU), Embassy of Australia, Washington DC.

Self-determination is the single most important ingredient for the prosperity and success of Indigenous communities—be they in Broome, Mississippi or Nova Scotia, a distinguished panel of speakers led by ANU Professor Mick Dodson told a capacity audience of close to 100 people at the Australian Embassy in Washington on 29 September.

Professor Dodson was speaking at the invitation of Australia's Ambassador to the United States, Kim Beazley as part of the 2011 Ambassador's Lecture Series. Professor Dodson is in the United States as the current Gough Whitlam Malcolm Fraser Chair in Australian Studies at Harvard University.

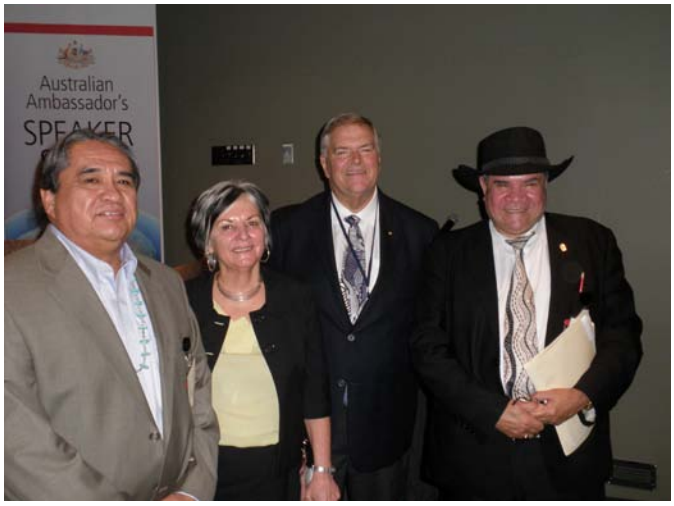
He was joined in the discussion, which compared the Australian and North American experience of economic development in Indigenous communities, by Professor Manley Begay, a Navajo man who is a social scientist with the American Indian Studies Program at the University of Arizona and Co-director of the Harvard Project on American Indian Economic Development.

Rounding out the discussion was anthropologist and mediator Toni Bauman, a Research Fellow from the Australian Institute of Aboriginal and Torres Strait Islander Studies and a current Visiting Fellow at the Kennedy School of Government in the Harvard University program on American Indian Economic Development.

In examining the common thread in prosperous Indigenous communities, the panel looked at success stories in North America, such as the Choctaws of Mississippi who run a portfolio of businesses, can boast zero percent unemployment, and employ some 7000 people from surrounding towns. Their story is not unique, with numerous Indigenous communities transforming into large employers and drivers of economic endeavour not only for their community, but the surrounding non-Indigenous communities.

'Indigenous country [in North America] has changed very quickly', Professor Begay said. 'We are in an incredible era, moving from self-determination to nation building'. Professor Begay compared the experience of Native American communities moving to self-rule, which began occurring in the 1970's, to the transformations of Eastern European communities at the end of the Cold War.

He said that current action in North America has shifted to questions of governance—how indigenous nations organise themselves, how they make decisions, how they develop culturally appropriate institutions to endure the long term sustainability of their communities. 'However, to get to those questions, you first need self-rule'.



From left: Professor Manley Begay, Toni Bauman, His Excellency the Hon Kim Beazley, Ambassador to the United States of America and Professor Mick Dodson.

But in Australia, 'self-determination' has become a whispered word, according to Ms Bauman. 'We now talk about 'normalization', which could be seen as code for assimilation', she said.

Ms Bauman described the native title agreement-making landscape in Australia, noting a contradiction between Commonwealth policies of more flexible, less technical and streamlined approaches and the ways in which connection materials are being assessed. She argued that without more long-term consistency in policy settings from all governments, Australia's Indigenous communities would struggle to emulate the success of their North American cousins.

One community grappling with turning its native title into economic development is Professor Dodson's

own Yawuru peoples, the traditional Aboriginal owners of land and waters in the Broome area of the southern Kimberley region of Western Australia. In March 2010 the Yawuru people signed an historic agreement worth some $200 million with the State of Western Australia and the Shire of Broome to finally settle the long running Rubibi native title claim, allowing the community to progress their plans for land management, care and development in the Broome area.

'The challenge now', Professor Dodson said, 'is to look at development models that will work. The government approach is too narrow for Yawuru people. We need all four sectors of our economy to come together—the private sector, the public sector, the not-for-profit sector, and the cultural sector'. Professor Dodson said the community was spending a great deal of time on the institutions and capacity for governance, seeking to ensure self-sufficiency, self-reliance and cultural preservation.

'The lessons we can take from the North American experience is that governments must let people make their own decisions', he said.

Professor Begay summed up the lesson from the US, 'the only Federal Government policy that has ever worked [to improve the prosperity of Native American peoples] is enabling Indigenous communities to make their own decisions. And when they do, they prosper. The self-rule policy supports the Indigenous community, it supports the broader regional community, and it supports the state community, and it contributes to the nation as a whole'.

What's New

Recent Cases

***Dunghutti Elders Council (Aboriginal Corporation) RNTBC v Registrar of Aboriginal and Torres Strait Islander Corporations (No 3)* [2011] FCA 1019**

25 August 2011

Federal Court of Australia, Sydney NSW

Keane CJ, Lander and Foster JJ

Dunghutti Elders Council had challenged the validity of a notice issued by the Registrar of Aboriginal and Torres Strait Islander Corporations (now known as the registrar of Indigenous Corporations), which had required the Council to 'show cause' why it should not be put under special administration. That challenge, heard by Flick J, was unsuccessful, and an appeal against Flick J's decision was dismissed by the Full Court. The Full Court ordered that this dismissal would not take effect for 3 weeks, and the Registrar undertook not to put the Council under special administration for that period. The Council has applied to the High Court for special leave to appeal against the Full Court's dismissal.

In the current judgment, by Foster J, the Council had applied for orders that would prevent the Full Court's dismissal from taking effect until the Council's application for special leave had been decided. The Council also applied for an injunction preventing the Registrar from putting it under special administration during that time. Foster J held that a stay of the Full Court's decision (which only had the effect of putting Flick J's orders back on track) was not the appropriate remedy to seek in any case, and concentrated on whether an injunction should be granted. His Honour considered that an injunction was not appropriate for the following reasons:

- The prospects of the High Court granting special leave to appeal are slim, since the Council's substantive arguments are weak and further the special leave application does not raise any point of general importance applicable beyond the facts of this single case.
- The grounds for the Registrar's original 'show cause' notice involve quite serious allegations, and there is a significant public interest in ensuring that the native title compensation funds paid to the Council are spent wisely and in the interests of the people for whose benefit they were to aid.
- There is an ongoing risk, if an injunction were granted, that the Council's assets will be further dissipated in litigation that will not benefit its members.
- His Honour did not consider the prospect of further damage to the reputation of the incumbent directors to be a matter of much weight in favour of an injunction when compared with these other matters.

***Cashmere on behalf of the Jirrbal People 1 v State of Queensland* [2010] FCA 1090**

12 September 2011

Federal Court of Australia, Ravenshoe QLD

Dowsett J

In October 2010, Dowsett J made consent determinations recognising native title held by the Jirrbal people over land and waters in the vicinity of

Herberton, Ravenshoe and Lake Koombooloomba, to the south-east of Cairns. The determinations were conditional on the registration of certain Indigenous land use agreements, which were registered in February 2011. The reasons for his Honour's decision were published this month.

Dowsett J had read a summary of the applicants' connection report, as well as affidavits by members of the claim group, and referred to extensive genealogical material. All of this material clearly demonstrated a long-standing association between families in the claim group and the determination areas (and beyond), as well as evidence of a system of normative laws and customs observed and acknowledged by the Jirrbal people at least from the time of first contact with Europeans. His Honour was satisfied that there was continued acknowledgement and observance of the traditional laws and customs, and continued connection.

In relation to unallocated Crown land (not including water) in one of the applications, the determination recognised the rights to possession, occupation, use and enjoyment thereof, to the exclusion of all others, subject to certain qualifications. In relation to the balance of the claimed land, non-exclusive rights were recognised to be present on the land; to take and use traditional natural resources for personal, domestic and non-commercial communal purposes; to conduct ceremonies; to maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas, by lawful means, from physical harm; and to teach the physical and spiritual attributes of the land. In relation to waters, the non-exclusive rights were recognised to hunt, fish, and gather; and to take and use the water; for personal, domestic and non-commercial communal purposes. The native title is not to be held in trust, and Wabubadda Aboriginal Corporation will be the prescribed body corporate.

Weld Range Metals Limited/Western Australia/Ike Simpson and Others on behalf of Wajarri Yamatji, [2011] NNTTA 172
21 September 2011
National Native Title Tribunal, Perth WA
Hon CJ Sumner
This future act determination is a decision by the National Native Title Tribunal which prohibits the Western Australian government from granting four mining leases to Weld Range Metals Limited (WRML) in an area over which the Wajarri Yamatji people have made a native title application.

Under the *Native Title Act 1993* (Cth), applicants for mining leases must negotiate in good faith with any registered native title claimants or recognised native title holders in the proposed area of the mining lease. If an agreement is reached, then the leases may be granted on whatever conditions are agreed between the parties. If no agreement is reached within 6 months, then a party can apply to the Tribunal for an arbitral decision as to whether the leases may be granted or not, and (if the leases are to be granted) any conditions to which the grant will be subject. The Tribunal's decision must take into account certain considerations listed in the *Native Title Act 1993* (Cth), including the effect of the proposed acts on the native title parties; the interests, opinions and wishes of the native title parties; the economic or other significance of the proposed acts to various groups of stakeholders; and the public interest.

In this case, negotiations between WRML and the Wajarri Yamatji people did not result in any agreement, and so WRML applied to the Tribunal for a determination that the grant of the mining leases could go ahead. The Tribunal's Deputy President Christopher Sumner determined that the required negotiations in good faith had taken place, and so went on to consider whether the proposed acts should be allowed, and if so on what conditions. The Wajarri Yamatji representative argued that the leases should not be granted, or alternatively that they should be allowed only on certain conditions. WRML and the State government argued that the leases should be allowed without any further conditions, or alternatively they should be allowed on the conditions suggested by the State.

The Tribunal's decision-making process included an on-country hearing at sites in the Weld Range, and a town-hall hearing where evidence was given by members of the Wajarri Yamatji people, an anthropologist, an archaeologist, and WRML's Chief Geologist and Managing Director. The Tribunal found on the evidence that the area to be affected by the proposed leases is connected to a number of important Dreaming stories, is historically an area of intense occupation and ceremony, and contains a number of highly significant sites including quarries, rock holes, grinding stones and caves with rock art. WRML's and the State's evidence related mainly to the economic benefits and public interest in the mining projects going ahead. Deputy President Sumner decided that the Weld Range area is of such significance to the Wajarri Yamatji people in accordance with their traditions that mining in that

area should only be allowed with their agreement. Accordingly, he determined that the proposed mining leases must not be granted. This decision does not prevent the Wajarri Yamatji people from continuing to negotiate with WRML if they choose, but does allow them the final say over the proposal. To date no appeal has been filed by WRML.

***Weribone on behalf of the Mandandanji People v State of Queensland* [2011] FCA 1169**
6 October 2011
Federal Court of Australia, Brisbane QLD
Logan J
This judgment deals with similar (but not identical) issues to those in *Anderson on behalf of the Wulli Wulli People v State of Queensland* [2011] FCA 1158 (see below). The outcome, however, is the opposite; namely, it was held in this case that the applicants could not validly act by majority.

Six out of the ten named applicants for the Mandandanji native title claim signed a letter terminating the instructions of Queensland South Native Title Services (QSNTS) and directing QSNTS to release their files to their new solicitors, Just Us Lawyers. Unlike the situation in *Anderson* (Wulli Wulli people), the claim group authorisation document in this case did not expressly authorise the applicants to act by majority.

Logan J considered the case law, though mentioned that he did not have the benefit of reading Collier J's decision in *Anderson*. His Honour referred to s 61(2)(c) of the NTA, which specifies that in the case of 'a native title determination application made by a person or persons authorised to make the application by a native title claim group … the person is, or the persons are jointly, the applicant'. His Honour held that this provision played a role in indicating the way in which the persons who comprise the applicant must act: 'They must act "jointly", and "jointly" does not mean by majority'. Where they disagree, a new authorisation meeting under s 66B must be held.

Logan J distinguished this legal question from that of whether a fresh authorisation meeting is required when one of the named applicants dies or expresses an intention no longer to act as applicant. His Honour drew attention to the divergence in the case law on that question, and indicated his preference for the view that where the authority document impliedly authorises the remaining applicants to continue without an additional authorisation meeting, then no such meeting is necessary.

Logan J does not explicitly state how he would have decided the matter if there had been, as there was in *Anderson*, a condition of the claim group's authorisation of the applicants which purported to allow majority decision-making. It is by no means clear, however, that his interpretation of s 61(2)(c) would lead him to come to the same conclusion as Collier J did, should similar facts come before him. Therefore, there appears to be a divergence in the case law on this issue that will require an appeal to the Full Court to resolve.

***Anderson on behalf of the Wulli Wulli People v State of Queensland* [2011] FCA 1158**
11 October 2011
Federal Court of Australia, Brisbane QLD
Collier J
This judgment deals with the question of whether all of the named applicants in a native title application must unanimously agree on decisions in the conduct of the claim, or whether a majority decision is enough. In this case, where the claim group had specifically authorised the applicants to act by majority, the decision to engage a new solicitor did not require unanimous agreement among the named applicants.

The Wulli Wulli claim group, in an authorisation meeting in February 2009, resolved to authorise 15 people as applicants in their native title claim. That resolution stated that the authorisation was subject to terms and conditions, one of which specified that 'Decisions of the Applicant shall be on the basis of a majority vote and all Applicants shall abide by a majority decision'.

There was a further authorisation meeting in June 2011 at which the claim group resolved to authorise the applicants to withdraw the instructions for Queensland South Native Title Services (QSNTS) to act for them as solicitors on the record, and to retain Just Us Lawyers (or another firm acceptable to the applicants) instead. Three of the 15 named applicants did not agree with this decision, and in Court they challenged the right of the other 12 to make this decision without the unanimous agreement of all of the applicants.

Collier J found that the decision by 12 of the 15 named applicants to engage new legal representation was valid and effective.

- Previous cases establish that the named applicants are authorised by their claim group *personally*— the authorisation process does not create a new corporate legal entity capable of suing in its own right.

- While s 61(2)(c) of the NTA stipulates that the applicants authorised by the claim group together jointly constitute 'the applicant', there is nothing in the Act that requires that the applicants be granted *joint authority* in the sense of requiring unanimity in decision-making. This is reinforced by the wording of s 61(2).
- Drawing on previous cases, her Honour noted that the purpose of the legislative scheme for authorisation was 'to seek a workable and efficient method of prosecuting claims for native title determination, one which limits the potential for dispute which might stifle the progress of claims'. Interpreting the words of the Act in light of that purpose, her Honour determined that it would be contrary to the legislative intent to require a new authorisation meeting (with the associated expense and inconvenience) every time the named applicants could not agree. By contrast, it would be consistent with the Act's purpose to allow decision-making by majority.
- Critically, her Honour did not consider that the Act should be interpreted so as to remove the autonomy of the claim group itself to stipulate a method for the named applicants to make effective decisions.

Accordingly, since the authorisation of the applicants was made subject to the condition that their decisions would be by majority if unanimous agreement could not be reached, the majority decision to replace QSNTS with new legal representation was effective. Her Honour did not state expressly whether majority decision-making would be effective if the claim group's authorisation resolution had not contained such a condition.

Collier J also noted that the resolution of the claim group in June 2011 was not capable of compelling the applicants to replace their legal representatives. The claim group is not empowered by the Act to control the conduct of the application before the Court—that is up to the applicants, who are at liberty to accept or reject the directions of the claim group (noting that this may nevertheless result in their authority to act as applicants being revoked at a later authorisation meeting).

***Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100**
11 October 2011
Federal Court of Australia, Perth WA
Gilmour J

In August 2009 the National Native Title Tribunal decided that the State could grant certain mining leases to FMG Pilbara Pty Ltd. Mr Cheedy on behalf of the Yindjibarndi people challenged this decision before McKerracher J in the Federal Court, but his application was dismissed. Mr Cheedy sought to overturn McKerracher J's decision in the Full Court. In this judgment the Full Court rejected Mr Cheedy's appeal, with the result that the Tribunal's decision to allow the leases to be granted remains in place.

Mr Cheedy argued that the grant of the mining leases would interfere with Yindjibarndi people's religious practices around particular sites in the lease area. The Tribunal's decision (which would allow the State government to grant the leases) was made under ss 38 and 39 of the NTA and Mr Cheedy argued that, in making the Tribunal's decision possible, these sections were contrary to s 116 of the Commonwealth Constitution, which prohibits the Commonwealth from making any law 'for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion'.

This argument was unsuccessful for three main reasons:

- Only laws which have the *purpose* of prohibiting the free exercise of religion will contravene s 116— merely having that *effect* will be insufficient. Sections 38 and 39 do not have that purpose—indeed, some provisions of s 39 indicate a concern by the Parliament to protect religious freedom.
- The grant of the lease would not prevent Yindjibarndi people from accessing the relevant sites and materials or using them in ceremony—FMG had demonstrated a willingness to cooperate fully to that end, and four additional conditions were to be imposed on the leases to mitigate the impact of mining in the area. This meant that, as a factual matter, the grant of the licenses would not prevent or prohibit the free exercise of religion by Yindjibarndi people.
- The constitutional prohibition in s 116 applies only to the making of laws by the Commonwealth Parliament—it does not apply to the decision of the Tribunal, or to State legislation, or to actions of the State taken under State legislation.

The Court rejected an argument that the Tribunal's decision should have taken into account Australia's

international law obligations such as under the *International Covenant on Civil and Political Rights*. Where there is no ambiguity in the statutory language, where the meaning and parliamentary intention are clear, there is no reason to refer to international documents.

The Court dealt with other errors which Mr Cheedy claimed McKerracher J had made, but found that no error had been made. Accordingly McKerracher J's decision was not overturned, and so the Tribunal's decision to allow the grant of the leases was left in place.

***FMG Pilbara Pty Ltd v Yindjibarndi Aboriginal Corporation* [2011] WAMW 13; *FMG Pilbara Pty Ltd v Yindjibarndi Aboriginal Corporation (No 2)* [2011] WAMW 18**

18 August 2011; 18 October 2011
Warden's Court, Perth WA
Wilson M

In this proceeding, Yindjibarndi Aboriginal Corporation unsuccessfully attempted to prevent the grant of a mining lease and related licenses to FMG Pilbara. The Corporation also unsuccessfully attempted to impose further conditions on the grant of the lease and licenses.

FMG Pilbara applied for a mining lease and miscellaneous licences (for infrastructure related to the mining) on land which lies to the south of the land already recognised as Yindjibarndi native title land. The land of the lease and licences is subject to a native title claim, as yet unresolved. Two other mining leases have been granted in the same area, though their grant has been challenged by the Yindjibarndi people and that challenge is currently under appeal in the Full Court of the Federal Court. The appellant in that appeal applied for the grant of the leases to be suspended until the appeal was decided, but that application was refused.

Yindjibarndi Aboriginal Corporation, the body which holds the Yindjibarndi people's native title rights and interests, objected in the Mining Warden's Court to the grant of the further mining lease and miscellaneous licences on two grounds:

- It would be contrary to the public interest to grant miscellaneous licences for a purpose connected to mining lease applications which are subject to appeal, prior to the final determination of those appeals.
- The grant of the miscellaneous licences will prevent the Yindjibarndi people from freely carrying out their religious observances and exercising religious beliefs and is thus contrary to the public interest.

The Mining Warden rejected the first ground because 'it is not in the public interest, nor is there any lawful reason, why this court should not hear the objections to the applications' for the mining lease and miscellaneous licences. It does not appear that the Warden dealt specifically with the objection that the miscellaneous licences should not be granted while some of the mining leases to which the licences relate are still under appeal.

In respect of the second ground, Yindjibarndi Aboriginal Corporation argued that:

- the exercise of authority by Ned Cheedy and Michael Woodley, in protecting the spiritual welfare of Yindjibarndi people and country, is a religious observance;
- there was a religious requirement that mining not proceed on the land in the absence of an agreement with the Yindjibarndi people based upon reciprocity and respect;
- the grant of the lease and licences without proper agreement between Yindjibarndi people and FMG will deny the right of Yindjibarndi people to enjoy their own culture, to profess and practice their religion;
- Mr Woodley has a spiritual relationship with and responsibility for the part of country that would be affected by the lease and licences;
- the grant of the lease and licences would also prevent Yindjibarndi people from performing ritual observances associated with sites within the relevant areas—the *Aboriginal Heritage Act 1972* (WA) is inadequate to protect the exercise of religious ritual at sites of significance to traditional owners, and is only directed at the preservation of sites on behalf of the broader Western Australian community.

In support of their argument, Yindjibarndi Aboriginal Corporation referred to the rights of religious minorities referred to in the *International Covenant on Civil and Political Rights*.

FMG argued that international law obligations were not relevant to the question of public interest unless specifically incorporated into Australian law. They also argued that the concept of 'religion' was not broad enough to cover the kinds of relationships and authority described by Yindjibarndi Aboriginal Corporation. Further, FMG took issue with the argument that it was the absence of agreement which constituted a breach of religious

requirements, rather than the grant of the lease and licences *per se*. This, they argued, would amount to a veto power, something which they considered would be against the public interest.

The Warden held that:

- the argument about Australia's international obligations had been dismissed earlier in a separate proceeding, *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2010] FCA 690, and could not succeed here;
- the *Aboriginal Heritage Act* is, contrary to the Yindjibarndi submissions, directed to the protection and preservation of sites of religious or other significance to the traditional owners;
- the statutory framework is not intended to, and does not, create a veto power;
- the statutory framework does not have the purpose of denying Yindjibarndi from freely carrying out their religious observances, and indeed if the lease and licences are granted they will be subject to the NTA and *Aboriginal Heritage Act* whose purpose is to provide the relevant protection;
- FMG has proposed the lease and licences to be subject to conditions that would allow the native title claimants access to the area (subject to safety conditions).

In the first judgment, the Warden expressed an intention to recommend that the Minister grant the lease and licenses, after the parties had had an opportunity to put submissions regarding appropriate conditions to be attached to the lease and licenses. In the second judgment, the Warden rejected three conditions proposed by Yindjibarndi Aboriginal Corporation, which would have required:

- FMG not to disturb any ground in the lease/licence area without first conducting a field survey to ensure that places or objects protected under the *Aboriginal Heritage Act* are not altered, damaged or destroyed;
- FMG to conduct any such survey only with members of the Yindjibarndi people who are nominated by the native title applicants for that area; and
- if a protected place or object is altered, damaged or destroyed, and if the Yindjibarndi native title application over the area is successful, FMG to pay to the prescribed body corporate compensation as agreed, or if no agreement is reached, such compensation as is ordered by the Warden under Part VII of the *Mining Act 1978* (WA).

The Warden considered these proposed conditions to be inappropriate and unnecessary. The Warden imposed other conditions as proposed by FMG, which the Warden found to be appropriate and reasonable.

***QGC Pty Limited v Bygrave* [2011] FCA 1175**

18 October 2011
Federal Court of Australia, Brisbane QLD
Collier J

In this judgment, Collier J refused to join several individuals as parties to a judicial review proceeding.

In July 2010 QGC applied to the Native Title Registrar for the registration of an Indigenous land use agreement (ILUA) between QGC and the Bigambul people's registered native title claimants. In April 2011 Ms Bygrave, a delegate of the Native Title Registrar, refused registration of the ILUA. QGC applied for judicial review of Ms Bygrave's decision. Four individuals (the joinder applicants), who say that they represent the Gomeroi people and that they thereby have an interest in the land subject to the ILUA, applied to be joined as parties to that judicial review application.

Collier J noted that a person cannot be joined as a party unless they have an 'interest' in the application, but that even where a person has an interest, the Court retains a discretion whether or not to join the person as a party. Her Honour found that there would be no utility in the joinder applicants becoming parties to the judicial review application, as their interests are already represented in the proceedings by third and fourth respondents, Mr Bob Weatherall and NTSCorp. The joinder applicants' draft defence was in identical terms to the defence filed by the third and fourth respondents, and they would be relying on the submissions of the third and fourth respondents at the hearing of the judicial review application. Therefore the joinder of the four Gomeroi individuals would add nothing to the proceedings.

In addition, the joinder applicants had waited until a very late stage to seek to join the proceedings, and appeared to raise fresh grievances. Ordinarily there is no reason, in a case involving judicial review, for any evidence to be placed before the court, apart from evidence of what was before the decision-maker at the time of the decision. Finally, in light of the directive in s 37 *Federal Court Act* 1976 (Cth) to resolve litigation as quickly, inexpensively and

efficiently as possible, Collier J considered that joining the joinder applications would unnecessarily complicate and delay the judicial review proceedings, and potentially increase the costs of all other parties.

Legislation and Policy

Commonwealth

Native Title Amendment (Reform) Bill 2011

The Native Title Amendment (Reform) Bill 2011 reforms the *Native Title Act 1993* (Cth). The measures in the Bill are reforms that have been promoted for a number of years by relevant stakeholders, most notably in submissions to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Native Title Amendment Bill 2009 and the 2009 *Native Title Report* from the Aboriginal and Torres Strait Islander Social Justice Commissioner.

The reforms in the Bill address two key areas:

- the barriers claimants face in making the case for a determination of native title rights and interests; and
- procedural issues relating to the future act regime

Further information is available at: http://www.aph.gov.au/senate/committee/legcon_ctte/native_title_three/index.htm

Explanatory Memorandum Wild Rivers (Environmental Management) Bill 2011

This is a Bill for an Act to protect the interests of Aboriginal people in the management, development and use of native title land situated in wild river areas, and for related purposes. A private members Bill, sponsored by Tony Abbott MP, it was introduced into the House of Representatives on 12 September 2011.

Further information is available at: http://www.comlaw.gov.au/Details/C2011B00164

***Indigenous Affairs Legislation Amendment Act 2011* Explanatory Memorandum**

The following Act was assented on 15 September 2011. The Act is to amend the law relating to Aboriginal land rights and the Torres Strait Regional Authority, and for related purposes.

Further information is available at: http://www.comlaw.gov.au/Details/C2011A00097

Native Title (Provision of Financial Assistance) Amendment Guidelines 2011 (No. 1)

Further information is available at: http://www.comlaw.gov.au/Details/F2011L02042/Download

Proposals for the carbon farming positive and negative lists

The Commonwealth Government has released guidelines to propose activities for the Positive and Negative Lists of the Carbon Farming Initiative (CFI). These guidelines explain how proposed activities will be assessed and how communities can have their say on whether particular activities should be included.

Activities proposed using these guidelines will be in addition to those currently listed in draft Regulations that have been released for public consultation. The Government's press release on the publication of these guidelines can be found here.

Further information on the CFI is available on the Department of Climate Change and Energy Efficiency website at: www.climatechange.gov.au/cfi.

Indigenous Economic Development Strategy

The Indigenous Economic Development Strategy 2011–2018 is an Australian Government policy framework that aims to support the increased personal and economic wellbeing of Indigenous Australians through greater participation in the economy.

The Strategy has five priorities: to strengthen foundations to create an environment that supports economic development; to invest in education; to encourage participation and improve access to skills development and jobs; to support the growth of Indigenous business and entrepreneurship; and to assist individuals and communities to achieve financial security and independence by increasing their ability to identify, build and make the most of economic assets.

- Find out more about the Indigenous Economic Development Strategy.
- Read the joint ministerial media release.

Northern Territory

Kenbi Land Trust Bill 2011

This Bill facilitates the grant of land identified for possible future development of the northwest area of Cox Peninsula to the Kenbi Land Trust.

Further information is available at: http://www.austlii.edu.au/au/legis/nt/bill_es/kltb2011187/es.html

Northern Territory Aboriginal Sacred Sites Amendment Regulations 2011 (SL No. 31, 2011)

This subordinate legislation commenced on 3 August 2011.

Northern Territory Acts, Bills and Subordinate Legislation are available from Department of the Chief Minister website: http://www.dcm.nt.gov.au

Queensland

Subordinate Legislation

The following subordinate legislation commenced on 29 July 2011:

Aboriginal Land Amendment Regulation (No. 4) 2011 (No. 142 of 2011)

The following subordinate legislation commenced on 19 August 2011:

Aboriginal Land Amendment Regulation (No. 5) 2011 (No. 158 of 2011)

The following subordinate legislation commenced on 9 September 2011:

Proclamation commencing remaining provisions - Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011 (No. 173 of 2011)

Torres Strait Islander Land Regulation 2011 (No. 174 of 2011)

Aboriginal Land Regulation 2011 (No. 175 of 2011)

Queensland Acts and subordinate legislation are available from Queensland Legislation website: http://www.legislation.qld.gov.au

Western Australia

Western Australia Conservation Legislation Amendment Bill 2010

The Western Australia Conservation Legislation Amendment Bill 2010, which was introduced into Parliament on 17 November 2010, aims to fulfill long standing aspirations of Aboriginal people to be involved in the management of land, and to be able to carry out traditional activities 'on country' on areas which are in conservation reserves.

The Bill has two purposes:

- It proposes amendments to the Conservation and Land Management Act 1984 (CALM Act) to enable joint management of lands and waters between the Department of Environment and Conservation (DEC) and other landowners, or those with a vested or other interest in the land, including Aboriginal people.
- It proposes amendments to the CALM Act and the Wildlife Conservation Act 1950 that will enable Aboriginal people to undertake customary activities on reserves and other land.

The Bill provides for increased opportunities for Aboriginal people to be actively involved in, and contribute their knowledge to, the management of land. It also allows for Aboriginal people to undertake customary activities on reserves and other land, including for medicinal, ceremonial and artistic purposes.

The Conservation Legislation Amendment Bill 2010 is available on the Western Australian Parliament's website. A copy of the explanatory memorandum for the Bill, as well as a marked-up version of the CALM Act showing the proposed amendments, are also available from Parliament's website. Download the fact sheets to find out more about joint management and Aboriginal customary activities provided for by the Bill. For more information on the Conservation Legislation Amendment Bill 2010 contact DEC on (08) 9334 0362 or info@dec.wa.gov.au.

Invitation for submissions on the proposed Eighty Mile Beach Marine Park

The WA Department of Environment and Conservation is inviting submissions on the Proposed Eighty Mile Beach Marine Park indicative management plan 2011

The closing date for submissions is Friday 20 January 2012.

Further information is available here: http://www.dec.wa.gov.au/content/view/6717/2323/

Proposal to change and declare coastal management districts

Coastal management districts are established under the *Coastal Protection and Management Act 1995* (Coastal Act). They are used to identify and declare coastal areas requiring special development controls and management

practices. Coastal management districts are also referenced under the Sustainable Planning Regulation 2009 to trigger assessable development and the referral of certain development applications to the Department of Environment and Resource Management.

The coastal management districts under the Coastal Act are proposed to be changed by abolishing existing coastal management districts and declaring new coastal management districts under section 54 (proposal).

Before the Minister for Environment declares the new coastal management districts, submissions on the proposal are invited. **The closing date for written submissions is 5pm on Friday 23 December 2011.**

Further information is available here: http://www.derm.qld.gov.au/environmental_management/coast_and_oceans/coastal_management/district-maps.php

Native Title Publications

AIATSIS Publications:

Brennan S, 'Constitutional reform and its relationship to land justice', Vol. 5, No. 2, Native Title Research Unit, AIATSIS, 2011, p. 1-16.

Abstract:
While many key legal settings for native title are already in place, recent history tells us that important legislative and judicial choices about Indigenous land justice will continue to be made in coming years and that constitutional arrangements will exert a significant shaping influence on the outcome. A range of viable proposals for constitutional reform are presently under consideration for a 2013 referendum which could materially affect the future pursuit of land justice for first peoples in Australia. These include, in particular, a non-discrimination clause with respect to race, which allows for positive Indigenous-specific laws, including ones enacted under a revised power in section 51(xxvi) of the Constitution, and a constitutional provision to support agreement-making between governments and Aboriginal and Torres Strait Islander people.

Other Publications:

Mansfield, Justice J, 'The 2009 amendments to the Native Title Act 1993: The extended powers of the Federal Court', *Public Law Review* (Volume 22 Part 3), September 2011.

Western Australian Auditor General's Report, *Ensuring Compliance with Conditions on Mining*, Report 8, September 2011. Available at: http://www.audit.wa.gov.au/reports/pdfreports/report2011_08.pdf

Department of Regional Development and Lands, 'Rangelands Tenure Options', September 2011. Available at: http://www.rdl.wa.gov.au/newsandevents/Pages/SummaryRangelandstenureOptions.aspx

Dr Fadwa Al-Yaman and Dr Daryl Higgins, *What works to overcome Indigenous disadvantage: key learnings and gaps in the evidence*, Australian Institute of Health and Welfare Studies, 2011. Available at: http://www.aihw.gov.au/closingthegap/documents/annual_papers/what_works_to_overcome_disadvantage.pdf

Attorney-General's Department, *Consolidation of Commonwealth anti-discrimination laws,* Discussion paper, 2011.

The Caroline Tennant-Kelly Ethnographic Collection: Fieldwork Accounts of Aboriginal Culture in the 1930s [DVD] David Trigger, Kim De Wilde, Tony Jefferies, Charmaine Jones and Michael Williams, The University of Queensland, 2011.

Jordan, K, 'Work, welfare and CDEP on the Anangu Pitjantjatjara Yankunytjatjara Lands: First stage assessment', Working Paper No. 78, 2011. Available at: http://caepr.anu.edu.au/sites/default/files/Publications/WP/WP78%20Jordan%202011.pdf

Asche W & Trigger D, 'Special Issue: Native Title Research in Australian Anthropology', *Anthropological Forum*, Vol 21, Issue 3, 2011, pp 219-232. Available at: http://www.tandfonline.com/doi/abs/10.1080/00664677.2011.617674

Native Title in the News

National

15/09/11
Land rights news
Australia's longest running Indigenous newspaper is undergoing a major overhaul with the Northern Land Council (NLC) set to publish its first *Land*

Rights News – Northern Edition. *Land Rights News* has long been co-published by the NLC and Central Land Council, but the organisations will now produce independent newspapers, putting greater focus on news from within their regions. *National Indigenous Times* (Malua Bay NSW, 15 September 2011) 37.

05/10/11
Mabo telemovie
The ABC's telemovie, *Mabo,* will begin filming at various far north Queensland locations in early November. The telemovie tells the story of Eddie Mabo's challenges and his determination in a landmark decision from the High Court which recognised the native title rights of the Indigenous people of Murray (Mer) Island; it was the beginning of native title claims throughout Australia. *National Indigenous Times* (Malua Bay NSW, 5 October 2011) 4. *Sunday Examiner* (Launceston TAS, 23 October 2011) 14.

05/10/11
Carbon trading boost
The Federal government welcomed the passage of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, which ensures that native title holders will benefit from Carbon Farming projects on their land. The Carbon Farming Initiative is a carbon offset scheme that will reward farmers, forest growers and Indigenous landholders for putting in place projects that reduce carbon pollution. Landholders will be able to generate credits that can then be sold to other businesses, like those currently participating in the National Carbon Offset Standard. *National Indigenous Times* (Malua Bay NSW, 5 October 2011) 4.

New South Wales

06/09/11
Dunghutti Elders Council
The Dunghutti Elders Council (Aboriginal Corporation) has been placed under special administration. The Registrar of Indigenous Corporations (ORIC) Anthony Bevan acted after the High Court rejected an appeal by the Elders Council to prevent the Registrar from placing it under special administration. Tim Gumbleton and Andrew Bowcher from the firm RSM Bird were appointed administrators on 2 September, 2011. *Macleay Argus* (Kempsey NSW, 6 September 2011) 2.

07/09/11
Land claim refused
The Awabakal Land Council has lost a native title claim over an area of land including the old Newcastle post office. The NSW Aboriginal Land Council, which made the claim on behalf of the Awabakal people has not yet said whether it would appeal the decision. *Newcastle Star* (Newcastle NSW, 7 September 2011) 8. *Newcastle Herald* (Newcastle NSW, 5 September 2011) 9. *Newcastle Herald* (Newcastle NSW, 3 September 2011) 1.

12/10/11
Braidwood Literary Institute
The Braidwood Council became aware of a native title claim over the Crown land on which the Braidwood Literary Institute sits in early October. This was just prior to the council meeting which was to pass the advertised works planned for the upgrade of the building. The claim over the site was lodged on behalf of the Batemans Bay Aboriginal Land Council (BBALC). Palerang General Manager Peter Bascomb spoke with the Executive Officer of the Batemans Bay Aboriginal Land Council and said that he could 'see no problem with providing Council with a letter agreeing to the renovations proceeding'. However there would be a delay as the matter must be determined by the BBALC Board which will meet next on 31 October. *Braidwood Times* (Braidwood NSW, 12 October 2011) 1.

13/10/11
ILUA's 10th anniversary
On 22 October, the Bundjalung people of Byron Bay (Arakwal) celebrated the tenth anniversary of the Indigenous land use agreement (ILUA), which led to the creation of Arakwal National Park.

Byron Shire News (Byron Bay NSW, 13 October 2011) 3. *Byron Shire* (Byron Bay NSW, 26 October 2011) 1. *Byron Shire News* (Byron Bay NSW, 26 October 2011) 4.

Northern Territory

07/09/11
Park threaten mines
Miners fear the tens of millions of dollars they have spent on exploration will be lost if the Northern Territory government declares an exclusive national park. Environment Minister Karl Hampton said Limmen National Park would be declared soon, but Minerals Council of Australia said the NT Government had not said if mining would be allowed inside the park. NT Director Peter Stewart said mining firms were in talks with traditional owners about future jobs and economic

opportunities for the region. *Northern Territory News* (Darwin NT, 7 September 2011) 27.

28/09/11
Bank deal
The Northern Land Council has made an agreement with the National Australia Bank in Darwin to assist Indigenous communities to establish commercial enterprises in coastal areas. The 2008 Blue Mud Bay High Court decision ruled that traditional owners controlled 85 percent of the Territory coastline and Northern Land Council chief executive Kim Hill has said the agreement was the first step towards commercialising the outcome of the 2008 Blue Mud Bay High Court decision. *National Indigenous Times* (Malua Bay NSW, 28 September 2011) 17.

12/10/11
Cattle station owned
Environment groups in conjunction with the Federal government and the Indigenous Land Council (ILC) have bought the cattle station which fronts the Daly River for $13 million. Traditional owners intend to turn the 18,000 hectare Fish River Station into a conservation zone. *National Indigenous Times* (Malua Bay NSW, 12 October 2011) 12. *Koori Mail* (Lismore NSW, 19 October 2011) 35.

21/10/11
Cox Peninsula
Independent MLA Gerry Wood has said that he won't support the Kenbi Land Trust Bill until he gets more information. Wood's decision comes after Julia Gillard announced in Darwin that the deal between the Northern Territory government and Kenbi land claimants was acceptable. The Kenbi Land Trust Bill will hand much of the land to traditional owners and will also open the way for building a large new suburb on another part of the peninsula. *Northern Territory News* (Darwin NT, 21 October 2011) 10.

Queensland

06/09/11
Royalty revenues
The Western Cape Communities Trust has recently developed a 'visionary plan' to ensure the long term sustainability of mining royalty revenues for the communities and traditional owners of the Western Cape York region of Queensland. The inaugural Western Cape Communities Trust (WCCT) Investment Strategy outlines the direction for the Trust's Royalty Investments. *Mining Chronicle* (Australia, 6 September 2011) 16.

07/09/11
Native title rights recognised
The Federal Court of Australia has recognised the Wanyurr Majay People's native title rights and interests on more than 200sq of land near Babinda. Minister for Aboriginal and Torres Strait Islander Partnerships and Member for Mulgrave Curtis Pitt attended the declaration on behalf of Natural Resources Minister Rachel Nolan. *Innisfail Advocate* (Innisfail Qld, 7 September 2011) 11. *Cairns Sun* (Cairns QLD, 7 September 2011) 5.

07/09/11
New native title claim
An authorisation meeting will be held for a proposed native title claim by the Yugara, Yugambeh and Yugarapul people. The claim area would include a large part of south-east Queensland, including parts of the Scenic Rim mountain range. Nominations are being sought for elders from within the claimants to represent their people in the proposed claim. *Beaudesert Times* (Beaudesert QLD, 7 September 2011) 10.

08/09/11
Djiru people
Generations of Djiru people were present at Wongaling Beach for the official acknowledgement of the Djiru people's native title rights and interests over areas of land around Mission Beach, Wongaling Beach, South Mission Beach and El Arish. The application for native title rights was lodged in 2003.*Tully Times* (Tully QLD, 8 September 2011) 5.

12/09/11
Trustee over Cape York land
Hope Vale Aboriginal Shire Council Mayor Greg McLean will continue to fight a government decision to make a native title group trustee of the land over which they hold native title, arguing it would favour traditional owners over the wider community. The Cape York land is a 110,000ha parcel of land which comes with a $5.2 million compensation for lost mining royalties. *Cairns Post* (Cairns QLD, 12 September 2011) 9.

21/09/11
Lack of resources
Bob Wetherall and Ray Robinson have claimed mining companies were using their financial might in Queensland to steamroll Indigenous people over land use agreements. The pair said traditional owners were being disadvantaged because they did not have the resources to access the appropriate legal advice when approached by mining companies about entering into agreements.

Mr. Robinson said 99 per cent of the traditional owners in Queensland did not have the money to fight legal battles with mining companies when negotiating Indigenous land use agreements (ILUAs). *National Indigenous Times* (Malua Bay NSW, 21 September 2011) 3.

12/10/11
Djiru recognised as native title holders
The Djiru people have been recognised as native title holders of 9440ha of land and waters in Mission Beach and surrounding areas, including areas of national parks, reserves, unallocated State land and other leases. *Cairns Sun* (Cairns QLD, 12 October 2011) 2.

15/10/11; 20/10/11
Land handover
The final handover of 65,000 hectares of land to the Eastern Kuku Yalanji people described as Queensland's most significant land agreement has been postponed due to heavy rains. The land agreement will see around 15,000 ha of land between Mossman and Cooktown, which mostly adjoins the Daintree and Ngalba Bulal (Cedar Bay) National Parks, declared as new national parks. *Weekend Post* (Cairns QLD, 15 October 2011) 27. *Port Douglas* (Port Douglas QLD, 20 October 2011) 3.

15/10/11
Torres Strait Island secession from Queensland
Torres Strait Islands elder George Mye made a promise to Eddie Mabo four years before his passing that he would lead their people to secession from Queensland. Now 85 years old, Mr Mye also known on the archipelago as the modern godfather of independence believes he is finally fulfilling that vow after Queensland Premier Anna Bligh wrote to Julia Gillard supporting the Torres Strait Islanders' long held desire for secession from Queensland. *Weekend Australian* (Australia, 15 October 2011) 1.

19/10/11
Kalkadoon native title
The Kalkadoon native title claim group is one step closer to a native title determination after the applicant group along with traditional elders and claimants agreed to a number of initiatives that will guide the holding of native title and the proper governance of Kalkadoon community activities such as cultural heritage preservation and commercial ventures. *National Indigenous Times* (Malua Bay NSW, 19 October 2011) *35. Koori Mail* (Lismore NSW, 19 October 2011) 37.

South Australia

13/09/11
Tasman Resources
Tasman Resources is ready to advance exploration of a key target area of its Vulcan project in South Australia's far north. This follows the company entering a new mining agreement—the first step to accessing huge mineral deposits—with the Kokatha Uwankara group, whose native title claim covers most of the exploration license. *Advertiser* (Adelaide SA, 13 September 2011) 40. *National Indigenous Times* (Malua Bay NSW, 28 September 2011) 17.

12/10/11
Traditional owners to manage national park
The South Australian government has signed two agreements, an Indigenous land use agreement and a co-management agreement with the Chairman of the Adnyamathanha Traditional Lands Association. These agreements will give traditional owners of the Flinders Ranges National Park a greater role in its management. Environment Minister Paul Caica, said the agreements recognised the rights of the traditional owners, offered better protection of Aboriginal heritage and would allow the Adnyamathanha people to carry out traditional activities on the land. *Port Augusta* (Port Augusta SA, 12 October 2011) 3.

16/10/11
Fishers in court
The SA Department of Fisheries and Aquaculture has appealed Magistrate Derek Sprod's acquittal of two Aboriginal men who took 24 undersize abalone from Yorke Peninsula waters. The Department of Fisheries and Aquaculture has appealed the aquittal by Magistrate Derek Spord in an action now being viewed as a possible test for the use of native title as a defence. The current case is considered so significant that the Solicitor-General, Martin Hinton QC, led the appeal team in the Supreme Court. *Sunday Mail* (Adelaide SA, 16 October 2011) 5. *Sunday Territorian* (Darwin NT, 16 October 2011) 7. *National Indigenous Times* (Malua Bay NSW, 19 October 2011) 5.

20/10/11
Explorations
Following government approval for Olympic Dam a number of mining companies have been enticed to explore the area near the massive BHP Billiton Mine. Fortescue has applied for almost a dozen tenements in the Woomera Protected Area and Rio Tinto is investing millions of dollars in nearby exploration. Rio Tinto Exploration last week

announced it had signed an agreement with Tasman Resources to explore for similar mineralisation to Olympic Dam on land which contains the Vulcan prospects. The agreement comes just four weeks after Tasman entered into a Native Title Mining Agreement for exploration with native title claimants for that area. *Roxby Downs Sun* (Port Augusta SA, 20 October 2011) 5. *Monitor Roxby Downs* (Roxby Downs SA, 19 October 2011) 2.

24/09/11
Olympic Dam
Mining contractor Macmahon Holdings has embarked on a partnership with Indigenous people in the state's mid-north to tender for work on the Olympic Dam and other mining projects on the extensive Stuart Shelf. The joint venture to pursue new resource sector work is between the company's subsidiary Doorn-Djil Yoordaning Mining and Construction and the Kokatha people, native title claimants over the area around Roxby Downs. *Advertiser* (Adelaide SA, 24 September 2011) 76.

25/10/11
Punt Hill mining project
A native title mining agreement signed by representatives of the Kokatha Uwankara native title claim has been registered by the South Australian government. This has given approval to Monax Mining to begin exploration of its Punt Hill copper-gold project. *Adelaide Advertiser* (Adelaide SA, 25 October 2011) 4.

Victoria

27/10/11
Indigenous name for State Park
The Gunaikurnai people have had native title rights recognised over the new Lake Tyers State Park as well as Raymond Island, which will be jointly managed with the State government. The St Arnaud Range National Park would be renamed Kara Kara National Park under new legislation introduced by State parliament to give it an Indigenous name. *Herald Sun* (Melbourne VIC, 27 October 2011) 15.

Western Australia

01/09/11
Heritage listing for Kimberley
In a landmark decision an area of West Kimberley wilderness has been given national heritage protection recognising its significant environmental, cultural and Indigenous values. The protection excludes the site of a proposed $35 billion gas hub. The decision is the largest land based heritage listing in Australian history. *Sydney Morning Herald* (Sydney NSW, 1 September 2011) 5. *Canberra Times* (Canberra ACT, 1 September 2011) 4. *West Australian* (Perth WA, 1 September 2011) 4. *Age* (Melbourne VIC, 1 September 2011) 5. *Western Advocate* (Bathurst NSW, 1 September 2011) 13. *Cairns Post* (Cairns QLD, 1st September 2011) 5. *Broome Advertiser* (Broome WA, 1 September 2011) 1. *Farm Weekly* (Perth WA, 8 September 2011) 3. *North West Telegraph* (South Hedland WA, 7 September 2011) 15.

03/09/11
Yindjibarndi Aboriginal Corporation appeal dismissed
The full bench of the Federal Court has dismissed an appeal by the Yindjibarndi Aboriginal Corporation (YAC) against mining leases held by Fortescue Metals Groups as part of its Solomon Hub operation in WA's Pilbara region. Justice John Gilmour handed down the judgment on August 12. *Australian Mining Review* (Australia, 3 September 2011). *Mining Chronicle* (Australia, 7 September 2011) 7. *Australian Mining* (Australia, 3 September 2011) 8. *National Indigenous Times* (Malua Bay NSW, 21 September 2011) 18.

26/09/11
Weld Range
Weld Range Metals' mining operations hit a legal brick wall last week after four mining leases in the Weld Range vicinity were denied to WRM after negotiations between the company and the Wajarrii Yamatji native title group broke down over heritage issues. The decision ruled under section 38 of the *Native Title Act 1993* (Cth) now protects significant Aboriginal sites but does not rule out further negotiations or appeals. *Geraldton Guardian* (Geraldton WA, 26 September 2011) 3. *The Weekend Post* (Perth WA, 24 September 2011) 73. *Weekend Australia* (Australia, 24 September 2011) 6.

28/09/11
Deal with Rio
The Gnulli native title group signed an agreement with Rio's Dampier to protect Indigenous heritage near the company's Lake Macleod operation near Carnarvon in Western Australia. The agreement establishes guidelines for the protection of Indigenous culture and consultations with traditional owners. *National Indigenous Times* (Malua Bay NSW, 28 September 2011) 17.

28/09/11
New bill passed
A new bill passed by the WA Parliament gives Indigenous people a greater role in managing and using conservation reserves. The *Conservation Legislation Amendment Act 2011* provides for increased opportunities for Aboriginal people to be actively involved in, and contribute their knowledge to, the management of land. It also allows for Aboriginal people to undertake customary activities on reserves and other land, including for medicinal, ceremonial and artistic purposes. Environment Minister Bill Marmion said it will allow the State to deliver on commitments under native title agreements, such as the Burrup and Maitland Industrial Estates Agreement; Ord Final Agreement; and Yawuru Indigenous Land Use Agreement, as well as the agreements for the proposed Browse LNG precinct. *North West Telegraph* (South Hedland WA, 28 September 2011) 31.

15/10/11
Return of land to traditional owners
Fremantle city council is considering returning a parcel of land to the area's traditional owners. Fremantle councillor Josh Wilson said this could be a powerful symbol for reconciliation and acknowledgement of the Indigenous peoples that were dispossessed during colonisation. *Fremantle Herald* (Perth WA, 15 October 2011) 1.

17/10/11
Minors voting in Woodside poll
The Kimberley Land Council's chief executive Nolan Hunter has confirmed to *The Australian* that minors as young as 15 were among the 276 Goolarabooloo Jabirr Jabirr traditional owners who voted in the poll allowing Woodside's $30 billion gas hub. The group voted 168-108 in favour of the gas hub in exchange for a $1.3bn social benefits package for Indigenous people across the Kimberley. *Australian* (Australia, 17 October 2011) 6.

19/10/11
Yindjibarndi sacred sites
Yindjibarndi Aboriginal Corporation has called on Western Australia's Indigenous Affairs Minister Peter Collier to recognise all heritage sites in the area where Fortescue Metals Groups is seeking to establish its Solomon Mines project in the Pilbara region. They are also seeking a guarantee that Yindjibarndi traditional owners would be consulted and their permission sought by Fortescue before any mining work is carried out. *National Indigenous Times* (Malua Bay NSW, 19 October 2011) 10. *The Saturday Age* (Melbourne VIC, 15 October 2011) 7.

20/10/11
Aboriginal Hostel
State Housing Minister Troy Buswell has threatened to discard the $12 million earmarked for a badly needed hostel in Broome unless the Shire Council allows it to be built at One Mile. This area of land is subject to Yawuru native title, but vested in the Aboriginal Lands Trust under a lease only recently signed with the Department of Indigenous Affairs. Nyamba Buru Yawuru chief operations officer Andy McGaw, said Yawuru people supported the hostel development at One Mile, as long as native title was not extinguished and existing lease holders' rights are respected. *Broome Advertiser* (Broome WA, 20 October 2011) 3.

31/10/11
Mining leases
The outcome for the Wajarri Yamatji people in achieving a determination pursuant to section 38 of the *Native Title Act 1993* (Cth), namely that the grant of four mining leases to Weld Range Metals Limited must not go ahead has been successful. *Yamaji News* (Geraldton WA, 31 October 2011) 7.

Indigenous Land Use Agreements (ILUAs)

Date	NNTT File No.	Name	Type	State/Territory	Subject Matter
05/09/2011	QI2011/009	Connors River Dam and Pipelines Project ILUA	AA	QLD	Pipeline
05/09/2011	QI2011/010	Santos Petronas Murribinbi GLNG ILUA	AA	QLD	Petroleum / Gas Pipeline

19/09/2011	QI2011/011	Hancock Alpha Coal Project - Wangan Jagalingou ILUA	AA	QLD	Extinguishment Infrastructure
30/09/2011	QI2011/012	Herberton Tin Fields ILUA	AA	QLD	Co-management
30/09/2011	QI2011/018	Munburra ILUA	AA	QLD	Co-management Government Mining
3/10/2011	QI2011/017	Combined Gunggandji People and Ergon Energy ILUA	AA	QLD	Energy Infrastructure
4/10/2011	QI2011/013	Yarrabah Blockholders ILUA	AA	QLD	Community living area Development Infrastructure Tenure resolution
4/10/2011	QI2011/014	Yarrabah DOGIT Transfer ILUA	AA	QLD	Tenure resolution
4/10/2011	QI2011/015	Yarrabah Towers ILUA	AA	QLD	Infrastructure Communication
4/10/2011	QI2011/016	Yarrabah Local Government ILUA	AA	QLD	Co-management Development Government Infrastructure
4/10/2011	QI2011/020	Yarrabah Protected Areas ILUA	AA	QLD	Co-management Government
21/10/2011	WI2011/007	Wingellina Project Agreement	BCA	WA	Mining
21/10/2011	QI2011/021	Birri People & Comerford ILUA	AA	QLD	Access
21/10/2011	QI2011/023	Birri People and Rea ILUA	AA	QLD	Access
28/10/2011	QI2011/045	Mura Badulgal (Torres Strait Islanders) Corporation - Badu Island Pre-Prep Facility ILUA	BCA	QLD	Government
28/10/2011	QI2011/046	Badu Island Police Station and Watchhouse ILUA	BCA	QLD	Infrastructure
28/10/2011	QI2011/024	Ewamian Renison Exploration ILUA	AA	QLD	Mining

This information has been extracted from the Native Title Research Unit ILUA summary: http://ntru.aiatsis.gov.au/research/ilua_summary.html, 2 November 2011. For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

Determinations

Date	Short Name	Case Name	State/ Territory	Outcome	Legal Process
01/09/2011	Djiru People #2	Dawn Hart & Ors on behalf of the Djiru People #2 v State of Queensland (unreported, FCA, 1 September 2011, Dowsett J)	QLD	Native title exists in the entire determination area	Consent determination
01/09/2011	Djiru People #3	Dawn Hart & Ors on behalf of the Djiru People #3 v State of Queensland (unreported, FCA, 1 September 2011, Dowsett J)	QLD	Native title exists in the entire determination area	Consent determination (conditional)

This information has been extracted from the Native Title Research Unit Determinations summary: http://ntru.aiatsis.gov.au/research/determinations_summary.html , 2 November 2011. For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

Featured items in the AIATSIS Catalogue

The following list contains either new or recently amended catalogue records relevant to Native Title issues. Please check MURA, the AIATSIS on-line catalogue, for more information on each entry. You will notice some items on MURA do not have a full citation because they are preliminary catalogue records.

The 2009 issue of *Reform*, the Australian Law Reform journal, is dedicated to Native Title. See http://www.austlii.edu.au/au/other/alrc/publications/reform/reform93/ All articles are available online, and authors include Lisa Strelein, Garth Nettheim, and Robert French.

Several sites for Native Title Representative Bodies and Local Land Councils are being included on MURA. You will find direct links to the Central Desert Land Council, the Darkinjung Local Aboriginal Land Council, and Yindjibarndi Aboriginal Corporation.

Check MURA for entries from *Land Rights News* from 2009 to 2011. Some relevant references are mentioned under the section on Native title claims and specific issues.

Audiovisual material of interest to native title includes:

Photographs
FREEMAN.D01.BW
Group portraits: Derek Freeman with artists from Mowanjum. 1960s – 1974. 2 negatives for black and white images.

GOODALE.J02.CS
The Jane Goodale Collection. Tiwi Community and School 1962. 197 colour slides.

HART.C01.BW
The C. W. M. Hart Collection: anthropological fieldwork with the Tiwi peoples. 1928-1929. 141 negatives for black and white prints.

Video

In 2007, Jessica Weir and Amy Williams in conjunction with the Gunditj Mirring Traditional Owners Corporation compiled a video of : The Gunditjmara land justice story.

V09275_1-12
Under the Cultural Gifts program, Rachel Perkins deposited 12 videos, made in of interviews with Arrernte elders.

Sound recordings
GRONEBERG_J01
Jurgen Groneberg deposited 11 hours of recordings made of ceremonies at Milingimbi in 1976.

DAR11/044

Practicalities of a land claim : an ABC Radio National broadcast aired on 23 September 1989.

Print and online material

Agreements and treaties

Commonwealth Ombudsman (Australia).
Administration of funding agreements with regional and remote Indigenous organisations. Canberra : Commonwealth Ombudsman, 2010.

Joint Working Group on Indigenous Land Settlements (Australia).
Guidelines for best practice flexible and sustainable agreement making.
http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(3273BD3F76A7A5DEDAE36942A54D7D90)~Guidelines_for_Best_Practice_in_Flexible_and_Sustainable_Agreement_Making.pdf/$file/Guidelines_for_Best_Practice_in_Flexible_and_Sustainable_Agreement_Making.pdf

Anthropology

Bauman, Toni and Gaynor MacDonald, eds.
Unsettling anthropology : the demands of native title on worn concepts and changing lives. Acton, A.C.T. : AIATSIS, 2011.

Clarke, Philip A.
'Aboriginal healing practices and Australian bush medicine.' *Journal of the Anthropological Society of South Australia* Vol. 33 (Aug. 2008), p. 3-38.

Eickelkamp, Ute, ed.
Growing up in Central Australia : new anthropological studies of Aboriginal childhood and adolescence.
New York : Berghahn Books, 2011.

Molnar, Helen.
Songlines to satellites : Indigenous communication in Australia, the South Pacific and Canada.
Annandale, N.S.W. : Pluto Press, 2001.

Archaeology

Bednarik, Robert G.
'The Dampier campaign.' *Rock Art Research* Vol. 28, no.1 (May 2011), p. 27-34.

Cole, Noelene.
'Rock paintings are stories' - rock art and ethnography in the Laura (Quinkan) region, Cape York Peninsula. *Rock Art Research* Vol. 28, no.1 (May 2011), p. 107-116.

Donaldson, Mike.
'Understanding the rocks: rock art and the geology of Murujuga (Burrup Peninsula).' *Rock Art Research* Vol. 28, no.1 (May 2011), p. 35-43.

Gunn, R. G. (Robert George).
'Twenty-five years of Australian rock art research.' *Rock Art Research* vol 28 no. 1 (May 2011), p.3-6.

Mulvaney, Ken.
'Dampier Archipelago: decades of development and destruction.' *Rock Art Research* Vol. 28, no.1 (May 2011), p. 17-25.

Smith, Mike.
Archaeological excavations at Puritjarra Rock Shelter, Central Australia 1986-1990.

Ward, Graeme.
'Rock paintings near Wadeye, Northern Territory: site management and educational aspects of research and tourism.' *Rock Art Research* Vol. 27, no.2 (Nov. 2010), p.229-237.

Watchman, Alan et al.
'Dating of rock paintings in the Wadeye-Fitzmaurice region, Northern Territory.' *Rock Art Research* Vol. 27, no.2 (Nov. 2010), p. 223-28.

Arts

Clegg, Humphrey.
'Depictions of Aboriginal people in colonial Australian art: settler and unsettling narratives in the works of Robert Dowling.' *Art Bulletin of Victoria* no. 48 (2008), p. [34]-45.

King, Andrew.
'?Black is beautiful?, and Indigenous: Aboriginality and authorship in Australian popular music.' *Continuum: Journal of Media and Cultural Studies* Vol. 24, no. 4 (August 2010), p. 533-542.

Neuenfeldt, Karl.
'Australian Indigenous choices of repertoire in community CDs / DVDs : recording and reclaiming Torres Strait Islander sacred and secular music.' *Austronesian soundscapes* edited by Birgit Abels.
Amsterdam : IIAS /Amsterdam University Press, 2011 p. 295-317.

Governance

Jeffries, Sam.
'Reconnecting government and Aboriginal and Torres Strait Islander people: implementing a new order of Indigenous governance.' *Journal of Indigenous policy*, Issue 11 (March 2011), p. viii – 97.

Government reports

Annual highlights report for Queensland's discrete Indigenous communities : July 2009 - June 2010. [Brisbane : Dept of Communities, 2010].

Australia. Human Rights and Equal Opportunity Commission.
Australia. Aboriginal and Torres Strait Islander Social Justice Commissioner. *Native Title Reports, 2009, 2010, 2011.*

Queensland.
Indigenous partnership agreement : an agreement between Queensland's 19 Aboriginal and mainland Torres Strait Islander communities and the Queensland Government. [Brisbane : Dept. of Communities], 2007.

Queensland. Dept. of Communities.
Partnerships Queensland : future directions framework for Aboriginal and Torres Strait Island policy in Queensland, 2005-2010 : baseline report 2006. Brisbane, Qld. : Department of Communities, Office for Aboriginal and Torres Strait Islander Partnerships,c2006.

Torres Strait & Northern Peninsula area regional plan : planning for our future 2009 to 2029. [Thursday Island, Qld : Torres Strait Regional Authority?, 2009].

History

Albrecht, Paul G. E.
Relhiperra : about Aborigines (incorporating the thoughts of a reluctant missionary). [Melbourne] : The Bennelong Society, 2008.

Brookman, Ivy.
Gungarlook : the story of the Aboriginal Riley family of Burragorang Valley. Wentworth Falls, N.S.W. : Den Fenella Press, c2010.

Crombie, Isobel.
'Australia Felix: Douglas T. Kilburn daguerreotype of Victorian Aborigines, 1847.' *Art Bulletin of Victoria* no. 32 (1991), p. 21-31.

Cruickshank, Joanna.
'A most lowering thing for a lady' : aspiring to respectable whiteness on Ramahyuck Mission, 1885-1900. *Creating White Australia* / edited by Jane Carey and Claire McLisky, Sydney : Sydney University Press, 2009, p. 85-102.

Ford, Geoffrey Eric 1939-
Darkinung recognition : an analysis of the historiography for the Aborigines from the Hawkesbury-Hunter Ranges to the Northwest of Sydney. 2010.

Gammage, Bill.
The biggest estate on earth : how Aborigines made Australia. Crows Nest, N.S.W. : Allen & Unwin, 2011.

Hattersley, Colleen and Robyne Bancroft.
Clarence Valley women - discover our way : the oral histories of nine fantastic and diverse women. [Grafton, N.S.W. : Clarence Valley Women Inc.], 2011.

Krichauff, Skye.
The Narungga and Europeans [electronic resource]: cross-cultural relations on Yorke Peninsula in the nineteenth century. 2008.
http://digital.library.adelaide.edu.au/dspace/bitstream/2440/50133/1/02whole.pdf

Mayne, Alan and Stephen Atkinson, eds.
Outside country : histories of inland Australia. Kent Town, S.Aust. : Wakefield Press, 2011.

Smith, Jim, ed.
The Six Foot Track : journeys 1887-2000. Wentworth Falls, N.S.W. : Den Fenella Press, 2011.

Smith, Robyn.
''Stuff at the core of land rights claims': the Strehlow Collection.' *Journal of Northern Territory History* no. 20 (2009), p. 69-86.

Steinhauer, Yvette.
'A. M. Duncan-Kemp: her life and work.' *Journal of Australian Studies* no. 67 (2001), p.[37]-43.

Tenison-Woods, J. E. (Julian Edmund), 1832-1889.
A history of the discovery and exploration of Australia, or, An account of the progress of geographical discovery in that continent, from the earliest period to the present day. London : Sampson Low, Son & Marston, 1865.

Trigger, David et al.
The Caroline Tennant-Kelly ethnographic collection : fieldwork accounts of the Aboriginal culture in the 1930s : a project by the University of Queensland, funded by the Australian Government Attorney-General's Department / David Trigger et al Brisbane : University of Queensland, 2011.

University of Sydney.

A history of Aboriginal Sydney [electronic resource] 2010 University of Sydney. Dept. of History. http://www.historyofaboriginalsydney.edu.au/

Wakefield, Edward Gibbon, 1796-1862. *A view of the art of colonization with present reference to the British Empire : in letters between a statesman and a colonist.* London : John W. Parker, 1849.

Indigenous rights

Central Land Council (Australia) *Aboriginal Land Rights Act + changes made simple. Central Land Council [electronic resource*] 2007 http://pandora.nla.gov.au/pan/60164/20110629-0005/www.clc.org.au/Media/publications/publications.html

Land acquisition and land management

Lane, Ruth. 'History, mobility and land-use interests of Aborigines and farmers in the east Kimberley in north-west Australia.' *Landscape, memory and history: anthropological perspectives'*/ edited by P.J. Stewart and A. Strathern, London : Pluto Press, 2003, p. 136-165.

Legal issues and legislation

Australia. Parliament. Senate. Standing Committee on Legal and Constitutional Affairs. *Inquiry into the Native Title Amendment (Reform) Bill 2011* [electronic resource] http://www.aph.gov.au/Senate/committee/legcon_ctte/native_title_three/index.htm

Biber, Katherine. 'Fact-finding, proof and Indigenous knowledge: teaching evidence in Australia.' *Alternative Law Journal*, Vol.35, no. 4 (2010), p. 208-212.

Ellinghaus, Katherine. 'Regulating Koori marriages: the 1886 Victorian Aborigines Protection Act.' *Journal of Australian Studies* no. 67 (2001), p.[22]-29.

Reynolds, Henry. 'The Wik debate, human rights and Australia's international obligations.' *Becoming Australia: the Woodford Forum* / edited by Richard Nile and Michael Peterson, St Lucia : University of Queensland Press, 1998, p. [26]-35.

Native Title claims and specific issues

Central Land Council (Australia). *Native Title Act made simple*. Central Land Council [electronic resource]. http://pandora.nla.gov.au/pan/60164/20110629-0005/www.clc.org.au/Media/publications/publications.html

'Djelk mark out sacred sea country.' *Land rights news*, Vol. 8 No. 3 (Dec. 2009), p. 10.
'Gregory goes back to its owners.' *Land rights news*, (Sept. 2010), p. 9.

'Jabiru native title settled.' *Land rights news*, Vol. 8 No. 3 (Dec. 2009), p. 16.

'Juru people win native title claim.' *National Indigenous Times*, Vol. 10, No. 231, (2011), p. 24.

'Kaltukatjara rangers use cool season to burn off.' *Land rights news*, (Dec. 2010), p. 13.

'Leases for Ngukurr, Gapuwiyak and Milingimbi.' *Land rights news*, Vol. 8 No. 3 (Dec. 2009), p. 18.

'Making a stand on Indigenous water rights.' *Land rights news*, (April 2010), p. 10, ill.

O'Connor, Nigel. 'Kenbi: the Larrakia's long wait'. *Land rights news*, (April 2011), p. 12.
'Traditional owners hail historic native title ruling for Victoria's Eastern Maar and Gunditjmara peoples: 15 year battle is over.' *National Indigenous Times*, Vol. 10, No. 231, (2011), p. 24.

'Singleton native title claim consent determination.' *Land rights news*, (Dec. 2010), p. 9.

Procedures and protocols – Archives and Libraries

Ling, Ted. *Commonwealth government records about the Northern Territory*. Canberra Business Centre, A.C.T. : National Archives of Australia, 2011.

McKemmish, Sue et al. 'Resetting relationships: archives and Indigenous human rights in Australia.' *Archives and Manuscripts* Vol. 39, no. 1 (May 2011), p.[107]-144.

Timbery, Narissa. 'Archives and Indigenous communities can work together: one Koori's perspective.' *Archives and Manuscripts* Vol. 39, no. 1 (may 2011), p. [145]-178.

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