Further, reform in this area should be more extensive. Numerous problems exist in relation to the doctrine of extinguishment. These include the discriminatory nature of the doctrine, the unjust enrichment of the Crown, the inadequate justification for permanent extinguishment, the confusing and impractical piecemeal erosion caused by partial extinguishment, and the problem of the inconsistent approaches across jurisdictions.

While the addition of s 47C is certainly a positive step, the problems with the current law of extinguishment could be ameliorated by further reform to expand the circumstances in which historical extinguishment can be disregarded to include all Crown land.

The full submission can be accessed here: http://www.aiatsis.gov.au/ntru/docs/publications/submissions/s47.pdf

What's New?

Recent cases

Edwards v Santos Limited [2009] FCA 1532
(18 December 2009)
Logan J
Federal Court of Australia, Brisbane

The applicants, on behalf of the Wongkumara people, were 'registered native title claimants' over land in south-west Queensland and north-west New South Wales. There had not yet been a determination as to native title in that area.

The first and third respondents (Santos Ltd and Delhi Petroleum Pty Ltd) held an authority to prospect (under the *Petroleum Act 1923* (Qld)) in an area that included part of the claim area. The applicants sought to prevent the respondents seeking a petroleum lease on the basis that this was an impermissible future act.

Justice Logan found that, as the claimants did not hold native title at that time, they were effectively asking for an advisory opinion as to the outcome that would eventuate should native title be found to exist and the petroleum lease be sought by the respondents. His Honour considered that he was bound by *The Lardil People v Queensland* (2001) 108 FCR 298, which confirms the definition of 'future act' in s 223 of the *Native Title Act* as an act that 'affects' native title, not an act which, if native title existed, *might* affect it. He found that this application therefore had a hypothetical nature and that giving an advisory opinion was antithetical to the exercise of federal jurisdiction as this issue did not, in itself, constitute a 'matter'. Therefore the applicants' 'mere status' as registered native title claimants did not give them standing to claim any of the relief sought.

His Honour dismissed the application. The question of costs was not addressed, but scheduled for a later hearing.

Edwards v Santos Limited [2010] FCA 34
(4 February 2010)
Collier J
Federal Court of Australia, Brisbane

The applicants sought leave to appeal the dismissal of their claim (see above *Edwards v Santos* [2009] FCA 1532) before a Full Court.

Justice Collier considered that the submissions supporting the applicants' case held some potential merit, that the original judgment had resulted in important consequences for the parties and that the case raised issues of public importance. Her Honour found that the application involved issues that were suitable for consideration by the Full Court.

Justice Collier referred the application for leave to appeal to a Full Court of the Federal Court of Australia. The application for leave to appeal would be heard concurrently with or immediately before the appeal (subject to any contrary direction of the Full Court).

Edwards v Santos Limited (No 2) [2010] FCA 238
(17 March 2010)
Logan J
Federal Court of Australia, Brisbane

This proceeding concerned the awarding of costs in relation to the decision made in *Edwards v Santos Limited* [2009] FCA 1532 (see above). Logan J found that s 85A of the *Native Title Act 1993* (Cth) was inapplicable, relying on *The Lardil Peoples v Queensland* (2001) 108 FCR 453.

His Honour found that although the applicants' motivation in bringing the case was to resolve a negotiation dispute and there is a public importance in considering whether persons in the applicants' position have standing, this public interest is not greater than that of the respondents to be able to conduct their business without the burden of costs and unnecessary litigation. Neither was he convinced that

it was appropriate for the 'spirit' of s 85A to be taken into account (as some Federal Court Judges have been) and therefore found that discretion as to costs should be exercised in the usual way.

Justice Logan ordered that the applicants pay the first and third respondents' (Santos Ltd and Delhi Petroleum Pty Ltd) costs of and incidental to the application, including the summary judgment.

Sampi on behalf of the Bardi and Jawi People v State of Western Australia [2010] FCAFC 26

(18 March 2010)

Full Federal Court of Australia, Melbourne (via video link to Perth)
North & Mansfield JJ

The Full Federal Court found in favour of the Bardi and Jawi people in their appeal against the state of Western Australia. The successful native title claim concerns the Dampier Peninsula, the islands in the Buccaneer Archipelago and surrounding offshore areas in the Kimberley region, Western Australia. The decision marks a significant win for the Bardi and Jawi people 15 years after they initiated their native title claim.

The primary judge, Justice French in 2005,[3] recognised the interests of the Bardi people but not the Jawi people as his Honour considered the two groups were distinct societies at the time of colonisation. He held further that the remaining Jawi people had been absorbed by the Bardi society. As a result the claim to Jawi territory, in particular, offshore areas failed.

The appeal centred on two issues, firstly the conclusion reached by French J that the Bardi and Jawi people did not form a single society at sovereignty, and secondly, the rejected claim to rights and interests in offshore areas.

The appeal required consideration of the High Court decision of *Yorta Yorta*[4] and its application in subsequent cases. In particular, the Federal Court considered whether 'the rights and interest must originate in a normative system of traditional law and custom which existed at the time of the acquisition of sovereignty.[5]

One or Two societies

On appeal, Justices North & Mansfield held that the primary judge had erred in failing to draw the inference from the evidence that the Bardi and Jawi people formed a single society at sovereignty.[6]

The decision in *Yorta Yorta* was considered, and the central issue was whether the group acknowledged the same body of laws and customs relating to rights in interests in land and waters. The evidence given in the first and second trials by the majority of Aboriginal witnesses and the report by anthropologist Geoffrey Bagshaw were considered sufficient to confirm the unity of the Bardi and Jawi belief systems and system of law.

Specifically the Court held that the difference in language dialect, distinct territories and the existence of self-referents did not displace the notion that the Bardi and Jawi were one society or not inextricably linked by those normative rules which existed at sovereignty. Their Honours also confirmed that Aboriginal testimony is of the highest importance in the court's determination of native title.

Offshore areas

The Full Federal Court affirmed the tentative (not final) view of French J and held that the land and waters north east if the Dampier Peninsula were part of the Bardi and Jawi people's land.

The Court also removed the onerous proviso placed on the native title interests recognised in the intertidal zone, limiting the interests in water to seaward of the mean low water mark and to reefs within that area that are exposed or not covered by more than two metres of water. The Court commented that it has not been practice to impose temporal limitations of this nature in native title determinations and held in favour of the Bardi and Jawi people, lifting the limitations on the ground they were not envisaged by the Act.

The seaward extension of the existence of native title was expanded on appeal. Revisiting the evidence provided in the first and second trials, it was established that since sovereignty it has been customary for the Bardi and Jawi people to use the sea around the coast of the Dampier Peninsula for

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[3] *Sampi v State of Western Australia* [2005] FCA 777.
[4] *Yorta Yorta Aboriginal Community v Victoria* [2002] 214 CLR 422.
As a result the full Federal Court held that the primary judge should not have excluded the country of the Jawi people from the determination, representing a long-awaited success for the Bardi and Jawi peoples.
[5] *Sampi on behalf of the Bardi and Jawi People v State of Western Australia* [2010] FCAFC 26 at 15.
[6] The third judge, Branson J retired and the parties consented to North and Mansfield JJ as the remaining judges constituting the Full Court.

hunting, fishing and travelling. The evidence therefore supported the right to access, use and take resources of the sea from these areas thereby expanding the seaward boundary.

The Bardi and Jawi people were also successful in their appeal to gain the right to care for, maintain and protect offshore areas including 'Alarm Shoals'(raised seabed in the offshore area) and 'Lalariny' (rock feature in offshore area). The Court reversed the primary judge's decision, and recognised native title rights to exclude people from entering these areas. The responsibility to protect areas of spiritual significance includes the right to ensure people do not go there. Likewise with respect to islets in the offshore areas, it was held that land above the high water mark in offshore areas should not be treated differently from such areas on the mainland.

Cross appeal

The West Australian Fishing Industries Council supported by the Commonwealth lodged a cross appeal to limit the native title rights to non-commercial fishing. The primary judge's decision not to impose a limitation, on the grounds that there is no settled practice established, was affirmed on appeal.

Strickland v State of Western Australia [2010] FCA 272

(23 March 2010)
Federal Court of Australia, Perth
McKerracher J

Justice McKerracher of the Federal Court dismissed the application of Majorie May Strickland and Anne Joyce Nudding 23 March 2010. The reason for the dismissal was that the applicants did not amend their submission following their rejected application to the Native Title Register.

As part of amendments to the Native Title Act 1993 (Cth), his Honour referred to the explanatory memorandum of the Act in which it is noted that poor quality claims constitute a burden on the native title system and therefore greater emphasis must be placed on ensuring only high quality claims are considered. Therefore, the case was dismissed as no evidence or indication was provided that the application would be amended in a way that would lead to a different conclusion.

Butterworth on behalf of the Wiri Core Country Claim v State of Queensland [2010] FCA 325

(26 March 2010)
Federal Court of Australia, Brisbane
Logan J

Justice Logan ordered that Mr Norman Johnson and nine others be dismissed as parties to the native title claim. The case concerned the statutory inclusion of Johnson and others in the Wiri Core Country native title claim. Omitted from the claim, and without any authorisation to make amendments to the claim, the Deputy Registrar sought the engagement of anthropologist Dr Taylor to determine why Johnson and others should become parties to the proceeding. It was found that Mr Johnson and others fall within the terms of s 84(3)(a) of the *Native Title Act* and are therefore, by force of statute, members of the native title claim group

The issue for determination was whether a party joined as a right by force ought to be dismissed and his Honour determined that no direct precedent exists. In determining whether to grant the dismissal, his Honour considered the phrase, to "consult with a native title claim group". He held it to mean extending an opportunity to be heard on appropriate occasions but determined that it does not equate to being dictated to by a member of a native title claim group. He concluded that there may be circumstances where consultation of members of the claimant group is inadequate as it does not amount to an opportunity to be directly heard in the proceedings. Therefore those dissentient members ought properly to be joined as parties to the proceedings rather than remain represented by the native title claim group.

Justice Logan dismissed Johnson and others as parties to the proceeding and expressly granted them liberty to apply in respect of a joinder to the proceedings.

Ashwin on behalf of the Wutha People v State of Western Australia [2010] FCA 206

(11 March 2010)
Federal Court of Australia, Perth
Siopsis J

An area in the north-west goldfields of Western Australia was the site of overlapping native title claims. These claims had been made by the Wongatha People, the Yugunga People and the Wutha People.

In the Wongatha Peoples' native title determination, *Harrington-Smith on behalf of the Wongatha People v*

Western Australia (No 9) (2007) 238 ALR 1, Justice Lindgren found that the persons comprising the Wutha applicant were not authorised to make the application as required by s 61 of the *Native Title Act 1993* (Cth).

The applicant on behalf of the Yugunga-Nya People brought an application seeking orders under s 84D(1) of the *Native Title Act* requiring the Wutha applicant to produce evidence of authorisation. They were concerned they would have to prepare for and participate in a lengthy and expensive Wutha trial that would have been unnecessary if the Court then found that the applicant was not authorised. The Wutha applicant, however, argued that the Court should allow its application to go to trial notwithstanding the defect in authorisation found by Justice Lindgren.

Justice Siopsis rejected the Wutha's application, concluding that the defect in authorisation found by Justice Lindgren was a factor that weighed strongly against the Court using s 84D(4) to permit the matter to proceed to trial despite the defects. His Honour found that in the interests of justice, the question of authorisation should be determined as a preliminary matter, before trial. He found that, in the interests of the matter being determined fairly, the applicants should have the opportunity to advance any evidence they wished to rely on and illustrate that the application is lawfully authorised.

Justice Siopsis ordered that the Wuthu applicant file and serve further evidence to satisfy the statutory requirements that they are authorised to bring to the native title determination application.

Akiba on Behalf of the Torres Strait Regional Sea Claim Group v State of Queensland [2010] FCA 321

(1 April 2010)
Federal Court of Australia, Brisbane
Greenwood J

Justice Greenwood considered the application to set aside a subpoena issued to the Torres Strait Regional Authority (TSRA) compelling production of an anthropological report and the allocation of costs in relation to this matter. His Honour found that s 85A of the *Native Title Act*—concerning cost determinations—applies to the application for leave to issue the subpoena, service of the subpoena and the notice of a motion to set aside the subpoena.

The Court found that for the purposes of s 85A, 'the Court must be satisfied that the conduct of the party was so unreasonable that the other party should obtain the costs of the action'. Not satisfied that the respondent's conduct was so unreasonable, his Honour held that no basis was demonstrated for making an order as to costs in relation to the TSRA's notice of motion to set aside the subpoena

However, costs for compliance with the subpoena were awarded, as the TSRA 'ought not to be put to expense' in addressing a matter at the hands of the issuing party. Hence, the respondent was ordered to pay reasonable expenses incurred to the TSRA for compliance with the subpoena.

Tullock v State of Western Australia [2010] FCA 351

(13 April 2010)
Federal Court of Australia, Perth
Gilmour J

Justice Gilmour pursuant to s 85A of the Native Title Act awarded indemnity costs to the Tarlpa applicant (Tullock, Jones, Wonyabong and Bingham) for a discontinued motion, brought without merit by Mr Reynold Allison as the applicant (respondent State of Western Australia).

The basis of the claim for costs concerned Mr Allison's notice of motion, which sought to amend the Tarlpa application. The amendment was disputed by the Tarlpa applicants who claimed Mr Allison was not an appropriate person to be joined as a respondent. Mr Allison did not comply with orders to submit further affidavit evidence and consequently his representative advised the Tarlpa applicants of his intention to no longer proceed with the motion.

His Honour therefore applied the court's discretion under s 85A to order costs in favour of the Tarlpa applicant on an indemnity basis.

Legislation

COMMONWEALTH:

Wild Rivers (Environmental Management) Bill 2010 (Cth)

The Wild Rivers (Environmental Management) Bill 2010 (Cth) was tabled in the House of Representatives on 8 February 2010. The private member's bill is described as 'an Act to protect the interests of Aboriginal traditional owners in the management, development and use of native title land situated in wild river areas, and for related purposes'. The Bill is available for download at ComLaw

A public hearing was held in Canberra on 20 March 2010. A second public hearing took place on 13 April 2010 in Cairns. The transcripts of the hearings are available for download at http://www.aph.gov.au/senate/committee/legcon_ctte/wildrivers/hearings/index.htm

Submissions received by the Committee are available for viewing and download here: http://www.aph.gov.au/Senate/Committee/legcon_ctte/wildrivers/submissions.htm

NEW SOUTH WALES:

Acts
The following Act commenced on 31 March 2010:

Aboriginal Land Rights Amendment Act 2009

> An Act to amend the Aboriginal Land Rights Act 1983 with respect to land dealings by Aboriginal Land Councils and community development levies; and for other purposes.

Explanatory Notes are available by clicking here

Regulations
The following regulations commenced on 9 April 2010:

Aboriginal Land Rights Amendment Regulation 2010

The Act, Regulations and Explanatory Notes are available from the NSW Legislation website http://www.legislation.nsw.gov.au/

QUEENSLAND:

Regulations
The following regulations commenced on 9 April 2010:

Aboriginal Land Amendment Regulation (No. 1) 2010

The following regulations commenced on 24 April 2010:

Aboriginal Land Amendment Regulation (No. 2) 2010

Information regarding the regulations are available from the Queensland Legislation website http://www.legislation.qld.gov.au/

Native title publications

Books:

- L Godden and M Tehan (eds.), *Comparative Perspectives on Communal Lands and Individual Ownership: Sustainable Futures,* Routledge-Cavendish, Melbourne, 2010.
- AJ Connolly, *Cultural difference on trial: the nature and limits of judicial understanding.* Farnham: Ashgate, 2010.

Papers:

- *Indigenous cultural and natural resource management and the emerging role of the Working on Country program,* CAEPR Working Paper 65/2010, Canberra: Centre for Aboriginal Economic Policy Research, 2010.
- J Altman, Wild Rivers and Informed Consent on Cape York, CAEPR Topical Issue Paper 2/2010, April 2010.
  The paper can be viewed by clicking here (2.44Mb)

Toolkits:

- G Gibson and C O'Faircheallaigh, *IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements*, 2010.

  See the IBA Community Toolkit website for more details:
  http://www.ibacommunitytoolkit.ca/

Reports:

- **National Native Title Tribunal Report: Native Title, March 2010**

  The NNTT released the fourth in a continuing series of six monthly status reports on Australia's native title system. The latest report shows a slight increase in the rate of claim resolution and also in the number of claims lodged. Thirty-one applications were finalised and eight new claimant applications were made between July and December last year. The Tribunal's report includes national and state/territory statistics and graphs showing applications and trends since 1994, as well as analysis of the obstacles and ways to overcome them.
  The report can be viewed by clicking here.

Journal articles:

- J Creamer, 'We will mediate the gap closed: 2009 native title amendments', *Indigenous Law Bulletin* Vol. 7 Issue 16, 2010, pp. 21-23.

Native title on television:

- 'Talking Stick: Native Title', *Message Stick,* Australian Broadcasting Commission, Screened 7 March 2010

Guests include: Graeme Neate, President of the National Native Title Tribunal, Monica Morgan, Yorta Yorta spokeswoman and Elder, Yorta Yorta Nation and, Kim Hill, Chief Executive Officer of the Northern Land Council

Visit http://www.abc.net.au/tv/messagestick/stories/s2837732.htm to view the show online or to read the transcript.

Training and professional development opportunities

Also see the Aurora Project: Program Calendar for information about Learning and Development Opportunities for staff of native title representative bodies and native title service providers. Applications are now open for Aurora's NTRB Training Programs.

Native title in the news

National

3 March 2010
Abbott flags land rights overhaul
Federal Opposition Leader, Tony Abbott, has flagged changes to native title laws saying that power should be taken away from land councils and given back to traditional Indigenous family groups. 'If Aboriginal people want to be able to use their land as an economic asset, they must be able to do so. If they really are to have land rights, we can't say, "[h]ere are rights to your land but you can't use it."' They are not real land rights, they are just a sentimental version of Aboriginal land ownership', he said. Mr Abbott is to have further consultations with traditional owners and other groups before finalising the opposition's policy on native title reform. *Sydney Morning Herald* (Sydney NSW, 3 March 2010), 1. *The Age* (Melbourne VIC, 3 March 2010), 6.

31 March 2010
Coalition leads way on land rights, says Pearson
Noel Pearson says the Rudd and Bligh Labor governments have allowed the Coalition to take the lead in the defence of land rights. 'Queensland Premier Anna Bligh's Wild Rivers Act and [Prime Minister] Kevin Rudd's failure to repeal it showed they had abandoned Labor's commitment to land rights by blocking the economic development of Indigenous land', Mr Pearson said at the Public Hearing in Canberra for the Senate Inquiry into Wild Rivers (Environmental Management) Bill 2010 [No.2]. Mr Pearson said it was 'remarkable that this Bill which enhances native title is proposed by the conservative side of the Federal Parliament'. *Australian* (National AU, 31 March 2010), 7. *Canberra Times* (Canberra ACT, 31 March 2010), 4.

New South Wales

5 March 2010
Mine protestors found guilty of trespassing
Twenty-seven protesters have been found guilty of trespassing on Lake Cowal gold mine in Wagga Wagga Local Court by magistrate Geoff Hiatt. Sixteen people, represented by barrister Daniel Brezniak, pleaded not guilty on the grounds that they were invited on to the mine by Aboriginal man, Neville "Chappy" Williams, who has a native title claim over the mine area in the Federal Court. The other eleven people were not legally represented and indicated to

the court they did not accept its jurisdiction. They said they did not recognise Commonwealth law, only the customary law of the Wiradjuri people. Magistrate Hiatt rejected this stance and entered a plea of not guilty for each of them. *Area News* (Griffith, NSW, 5 March 2010), 3.

9 March 2010
Calling for details on 80 homes plan
The NSW state government will be asked to outline its plans for development of the Goolawah Estate at Crescent Head after some confusion about the lands' status. Finalisation of the native title claim is still pending. Minister Kelly has since advised the state government that development can proceed at Goolawah. *General News* (Kempsey NSW, 9 March 2010), 4.

12 March 2010
`Sad day' for Koompahtoo Local Aboriginal Land Council
After seven years in administration, Koompahtoo Local Aboriginal Land Council was dissolved by NSW Aboriginal Affairs Minister Paul Lynch. The council's assets, rights and liabilities will be transferred to the NSW Aboriginal Land Council, including 850 hectares on the shores of Lake Macquarie. *Newcastle Herald* (Newcastle NSW, 12 March 2010), 2. *National Indigenous Times* (Malua Bay NSW, 4 March 2010), 27.

3 April 2010
Protest at mine not on this year
Neville "Chappy" Williams, an Aboriginal elder who has a native title claim over a mine site near West Wyalong, confirmed there would be no Easter weekend official protest against the Lake Cowal gold mine for the first time since 2001. Mr Williams, claiming traditional ownership of the mine land, last year invited the protesters onto the property, where they were arrested and charged. In March 2010, Magistrate Geoff Hiatt ruled that Mr Williams' native title claim did not validate his invitation, and the protesters were found guilty of entering enclosed lands without consent. *Daily Advertiser,* (Wagga Wagga NSW, 3 April 2010), 3. *Daily Advertiser,* (Wagga Wagga NSW, 3 April 2010), 4.

Queensland

3 March 2010
CYLC claim FOI documents prove a secret deal was brokered re: Wild River declarations
A deal involving the Wilderness Society and miners concerning Wild River declarations has been uncovered in government documents obtained by Cape York Land Council (CYLC) through a Freedom of Information application. CYLC claim a deal that applies to Aboriginal freehold land was struck between the Department of Natural Resources and Water (NRW), the Department of Premier and Cabinet (DPC), the Queensland Resources Council (QRC), and The Wilderness Society (TWS). CYLC chairman Ritchie Ahmat said "traditional owners, who have successful or pending native title claims over the majority of the area affected by the declarations, should have been a part of the discussion". *Western Cape Bulletin* (Weipa QLD, 3 March 2010), 4. *National Indigenous Times* (Malua Bay NSW, 4 March 2010), 10.

4 March 2010
Native title application
The Indjalandji-Dhidhanu native title claim has moved into the notification stage of application. The claim covers about 19,730 square km, located about 25km north west of Mt Isa in the vicinity of Camooweal. *Queensland Country Life* (Rural Queensland, 4 March 2010), 25.

Negotiation leads to cultural and environment preservation: Agreement start of new understanding.
Mervyn and Colin Johnson of the Gooreng Gooreng people have witnessed the signing of a Memorandum of Understanding (MoU) between the Gurang People and the Department of Environment, Resource and Management (DERM). The agreement states that DERM Queensland Parks and Wildlife Service (QPWS) will train traditional owner groups in conducting prescribed burns and will work with them to ensure that cultural heritage continues to be protected. The MoU was signed at the Gidarjil Cultural Festival and applies to the Port Curtis Coral Coast native title area. The area runs from the Elliott River, north to Gladstone, and as far west as Monto. *News-Mail* (Bundaberg QLD, 4 March 2010), 5.

19 March 2010
Three-day battle for compensation
Gurang and Gooreng Gooreng traditional owners met with Santos, the Queensland Gas Company and Surat

Gladstone Pipeline over three days to negotiate terms of three Indigenous Land Use Agreements (ILUAs) in the Bundaberg region. The ILUAs relate to gas pipeline projects taking place near Gladstone. Although some Gurang and Gooreng Gooreng peoples were not entirely happy with the deals, the Port Curtis Coral Coast native title claim group authorised the ILUAs. The agreements are in the process of being registered by the National Native Title Tribunal. Interested parties can make objections to the deals for up to three months. *News-Mail (*Bundaberg QLD, 19 March 2010), 2. *News-Mail* (Bundaberg QLD, 23 March 2010), 5. *Advertiser* (Adelaide SA, 27 March 2010), 44.*Gladstone Observer* (Gladstone QLD, 30 March 2010), 5.

25 March 2010
Century searching for zinc
A north west Queensland mine has begun an exploration program to extend its life. The MMG Century mine near Lawn Hill has invested $6 million across the next 18 months to identify new zinc deposits to feed its processing operations. The mine operates under a unique three party agreement between the operators, the Queensland Government, and local native title groups.
North West Star (Mt Isa QLD, 25 March 2010), 3.

29 March 2010
North Queensland Indigenous groups sign marine conservation pact
Nine Indigenous groups from North Queensland are joining forces with conservationists to protect turtles, dugongs and dolphins in the Great Barrier Reef. The Girringun Aboriginal Corporation and World Wildlife Fund (WWF) Australia met in Townsville on Saturday and signed an agreement to advance the capacity of Traditional Owners to conserve and protect their living land and sea resources. The move is set to boost Indigenous employment in the region. *Sunday Canberra Times* (Canberra ACT, 28 March 2010), 4.*Townsville Bulletin* (Townsville QLD, 29 March 2010), 10. *Cairns Sun* (Cairns QLD, 31 March 2010), 3.

7 April 2010
Uni receives valuable research
Kim de Rijke and Tony Jefferies, PhD students at University of Queensland have discovered anthropologist Caroline Tennant-Kelly's field notes, photographs and slides originally thought missing or destroyed. The collection details daily Aboriginal life at Cherbourg Aboriginal Settlement in Queensland in 1934. *Richmond River Express,* (Casino NSW, 7 April 2010), 5. *Northern Star,* (Lismore NSW, 7 April 2010), 7.

27 April 2010
Land Use Agreement
Atherton representatives of the Tableland Yidinji people and the Tablelands Regional Council have signed an Indigenous Land Use Agreement (ILUA) which protects Aboriginal cultural heritage and establishes a consultation framework for development. The ILUA recognises the Yidinji as the traditional owners of 437sq km of land and waters around Atherton, where they have a registered native title claim. *Cairns Post* (Cairns QLD, 27 April 2010), 7. *Tablelander* (Atherton QLD, 27 April 2010), 9. *Cairns Sun* (Cairns QLD, 28 April 2010), 4. *Tablelander* (Alberton QLD, 13 April 2010), 6.

29 April 2010
Reserves returned
Cairns Regional Council's finance and administration committee last week endorsed management plans for nine reserves to be transferred to the Jabalbina Yalanji Aboriginal Corporation (Jabalbina), as well as a Wonga Beach reserve which will be jointly managed by council and Jabalbina. *Port Douglas & Mossman Gazette* (Port Douglas QLD, 29 April 2010), 11.

South Australia

17 March 2010
Construction to start on boat ramp
Construction of a new boat ramp at Middle Beach will begin within weeks. The $442,000 project has received native title clearance, making way for works to begin. It includes a concrete boat ramp, floating pontoon and a car park to be built by construction company Watpac. *Bunyip* (Gawler SA, 17 March 2010), 6. *Plains Producer* (Balaklava SA, 24 March 2010), 2.

14 April 2010
Port Augusta Transcontinental
Adnyamathanha people travelled to Nepabunna on March 30 to commemorate the first anniversary of the state's largest native title claim. In March 2009 the Federal Court formally granted the Adnyamathanha people non-exclusive rights to 41,000 square kilometres of land in the Flinders and Gammon ranges and surrounding areas, nearly a decade after the claim was lodged. *Port Augusta Transcontinental,* (Port Augusta SA, 14 April 2010), 2.

Western Australia

4 March 2010

$196 million Broome native title deal Australia's largest

A $196 million deal has been signed by the Western Australia state government and Broome's Yawuru people. It is the largest value native title agreement in Australian history. About 350 people witnessed the ratification that saw Yawuru native title rights and interests being extinguished in some areas in exchange for a $56 million package for capacity building, economic development, social housing and cultural management. The native title settlement includes land valued at $140 million. *Kimberly Echo* (Kunnunarra, WA, 4 March 2010), 7. *Broome Advertiser*, (Broome WA, 4 March 2010), 1*. Wagin Argus* (Wagin WA, 4 March 2010), 15. *Esperance Express* (Esperance WA, 3 March 2010), 8.

10 March 2010

Cashmere's bid from obscurity to $250 million

David Hendrie, who chairs Cashmere Iron claimed the company could be sitting on the Mid-Western Australia's biggest iron ore deposit and could play a 'key role' in the industry's emergence in the region. Mr. Hendrie said his company had already secured native title access, and environmental studies were well advanced. Cashmere Iron is planning a share market float this year. *West Australian* (Perth WA, 10 March 2010), 46.

22 March 2010

Federal Court case clears way for native title

More native title claims will be able to be resolved regionally, following a Federal Court settlement of a technical issue in relation to a claim by the Bardi Jawi people in the Kimberley. Executive director of the Kimberley Land Council Wayne Bergmann said 'a lot of claims were held up by government lawyers on this issue'.

In a unanimous decision, Justices John Mansfield and Tony North overturned a 2005 decision by Justice Robert French that said the Jawi people were not one society due to regional differences. The Bardi people, of the top end of Dampier Peninsula including Lombadina/Djarindjin and Cape Leveque, and the Jawi people, of island country around King Sound and the Buccaneer Archipelago have fought for native title rights for more than 15 years. *Australian Financial Review* (National AU, 22 March 2010), 7. *Broome Advertiser* (Broome WA, 25 March 2010), 6.

24 March 2010

Native title focus for community open day

Yamatji Marlpa Aboriginal Corporation's Tom Price has welcomed traditional owners from around the Pilbara during an open day on March 12. The day was also an opportunity for traditional owners from around the Pilbara to discuss native title claims and relevant matters such as mining, development and heritage in an informal setting. *Pilbara News* (Pilbara WA, 24 March 2010), 18. *North West Telegraph* (South Hedland WA, 24 March 2010), 23.

High cost of native title talks

Pilbara mining company, FMG, in its submission to the Department of Families, Housing, Community Services and Indigenous Affairs', 'Optimising Benefits from Native Title Agreements' discussion paper, states that it is forced to pay traditional owners more than $60,000 a day to talk about native title matters.

It states that '[n]ative title representative bodies employ a singular tactic in all negotiation matters, which is to delay the process in the hope that a proponent will be inclined to offer more substantial financial compensation in order to ameliorate the prospect of further delay'. It also states that deals under the *Native Title Act* were shrouded in secrecy, lacked accountability and rarely created jobs. *West Australian* (Perth WA, 24 March 2010), 16.

25 March 2010

Should Native title cash bring wider benefits?

WA state government estimates predict as much as $3 billion will be paid to Aboriginal groups from current iron ore projects. WA Regional Development Minister Brendon Grylls wants to unlock some of these funds for community projects and is offering access to matching funds from the Royalties for Regions scheme for Aboriginal groups. For this to happen, Mr Grylls needs to convince the Federal Government, which is in charge of the native title process, to make changes to ensure the system is transparent and real advances flow to the people most in need.

National Native Title Council chief executive Brian Wyatt disagrees with Mr. Grylls' call for payments to be used to provide greater community benefit. "Why is it that native title holders are expected to spread their entitlements to other groups and subsidise government services," Mr. Wyatt said. "Individual mining magnates worth billions of dollars receive five times the royalties that traditional owners get. Do they spend their billions on improving health, education and living conditions for the wider community? No they

don't, and nor should they - this is the responsibility of governments. *West Australian* (Perth WA, 20 March 2010), 23. *West Australian* (Perth WA, 22 March 2010), 1. *West Australian* (Perth WA, 23 March 2010), 16. *West Australian* (Perth WA, 25 March 2010), 20. *West Australian* (Perth WA, 27 March 2010), 32. *Australian Financial Review* (National AU, 29 March 2010), 6.

Gas region faces native title claim

Goolarabooloo and Jabirr Jabirr people are set to vote on whether to resubmit a native title claim lodged in the Federal Court more than a decade ago covering land that includes James Price Point. A meeting will be held between the Kimberley Land Council (KLC), Goolarabooloo and Jabirr Jabirr people on 7 April 2010. KLC deputy director Nolan Hunter said since the original claim was lodged, the pastoral lease over Water Bank station had been surrendered. This means the claimant group could now lodge a claim for exclusive native title over land covering more than three quarters of the claim area. *Broome Advertiser* (Broome WA, 25 March 2010), 6.

26 March 2010

Land talks welcomed

The Goldfields Land and Sea Council last night welcomed news that the State Government is prepared to start native title negotiation over parts of the Esperance region. The Esperance Nyungar claim was first lodged in 1996. 'I thank the Esperance Nyungar claimants for their hard work and commitment to the process. For everyone to stick together under such trying circumstances is testament to the strength and tenacity of the Esperance Nyungar community,' said Brian Wyatt, the CEO of the Goldfields Land and Sea Council. *Kalgoorlie Miner* (Kalgoorlie WA, 26 March 2010), 5. *West Australian* (Perth WA, 26 March 2010), 7. *Esperance Express* (Esperance WA, 30 March 2010), 4.

1 April 2010

Santos LNG project is economic rape and native title plunder says tribal leaders

Indigenous leaders have announced they will continue to renegotiate the terms of their compensation package under an Indigenous Land Use Agreement (ILUA) with Australian energy company Santos.

Gurang leader Shayne Blackman said the Company's proposed native title recompense deal under its multibillion-dollar Gladstone Liquefied Natural Gas (LNG) project fell well short of Indigenous and non-Indigenous people's expectations.

"Santos has a valuable opportunity to help Close the Gap by providing a package sufficient to not only provide real training, real jobs and ultimately a better community for Indigenous people but one that responds to Indigenous people's vision for the region, and that extends well beyond basic tokenism measures" said Mr. Blackman. *Coober Pedy Regional,* (Coober Pedy, 1 April 2010), 8.

6 April 2010

Port deal upsets Aboriginal group

Traditional owners of land earmarked for a new privately owned deepwater port 30km east of Karratha have criticised the State Government for putting its support behind the project without consulting them. Ngarluma Aboriginal Corporation chairwoman Jeannie Churnside said the corporation had written to Premier Colin Barnett raising its concerns.

Ms Churnside said the land and sea areas along the coast from the islands of the Burrup to Balla Balla near Whim Creek were of great importance from a spiritual point of view and also for sustenance and recreational use. *West Australian,* (Perth WA, 6 April 2010), 17.

7 April 2010

Indigenous split on gas project

Energy giant Woodside's plan to build a $30 billion gas plant in Western Australia's Kimberley is facing a major new threat with a Federal Court challenge to the validity of a compensation deal struck with Traditional Owners.

The process has been thrown into chaos after members of the Jabirr Jabirr people, who support Woodside's bid to build the gas plant at James Price Point, 60km north of Broome, split from the main claim group to lodge their own native title claim. It is unclear whether the emergence of the breakaway claimant group would jeopardise attempts by Woodside and the Barnett government to sign an ILUA by June to clear the way for the project. *West Australian*, (Perth WA, 7 April 2010), 19. *Australian,* (National AU, 8 April 2010), 7. *West Australian,* (Perth WA, 8 April 2010), 5. *National Indigenous Times,* (Malua Bay NSW, 1 April 2010), 11. *Australian,* (Australia AU, 7 April 2010), 7. *Australian*, (Australia AU, 6 April 2010), 5. *West Australian,* (Perth WA, 6 April 2010), 7. *The Australian,* (Australian AU, 6 April 2010), 5. *The Australian* (National AU, 12 April 2010), 7. *West Australian,* (Perth WA, 15 April 2010), 10. *Kalgoorlie Miner,* (Kalgoorlie Miner, 14 April 2010), 15. *Australian,* (Australia NA, 14 April 2010), 32. *Sunshine*

Coast Daily, (Maroochydore QLD, 14 April 2010), 38. *Northern Territory News,* (Darwin NT, 21 April 2010), 25. *Broome Advertiser,* (Broome WA, 15 April 2010), 1.

8 April 2010

Appeal to green groups

Kimberley Land Council director Wayne Bergmann has further distanced his organisation from green groups. Mr Bergmann informed the Broome Advertiser that Aboriginal people across Australia needed to reassess their traditional alliance with environmental groups, as an anti-development stance would not end the cycle of Indigenous disadvantage.
Broome Advertiser, (Broome WA, 8 April 2009), 9. *Kimberley Echo* (Kununarra WA, 15 April 2010), 6.

Heritage eyes on massive Kimberley pastoral area

The Australian Heritage Council (AHC) has shown interest on 20 million hectares of WA pastoral country in the Kimberley for heritage listing. Assessment of the heritage values of the west Kimberley is being undertaken at the request of Federal Environment and Heritage Minister Peter Garrett. A preliminary assessment has identified a large area which might qualify for National Heritage Listing (NHL). The next process is to consult owners, occupiers and Indigenous people with rights or interests in the area, to determine what areas the AHC will be recommended for the NHL. Any part of the area included in the NHL, would not affect current lawful use. For example, previously approved mining and exploration activities that are permitted, or recreation activities like fishing, camping or hiking, and any activities allowed under native title will not be affected. *Countryman,* (Western Australia, 8 April 2010), 15.

14 April 2010

Milestone Native Title Deal Signed

A milestone Native Title Mining Agreement has been signed between Palyku Native Tittle Claim Group signatory, for the Nullagine Iron Ore joint venture with Fortescue Metals Group. BC Iron is on track to begin operations at Warrigal later this year with an initial target of three million tonnes of high grade ore per anum. The agreement followed six months of close consultation with the Palyku people, recognising the importance of their culture and heritage in the commercial contract to ensure both parties benefit from the joint venture. *North West Telegraph,* (South Hedland WA, 14 April 2010), 1. *Age,* (Melbourne VIC, 12 April 2010), 6. *Ballarat Courier,* (Ballarat VIC, 12 April 2010), 12. *Summaries – Australian Financial Review,* (Australia NA, 12 April 2010), 17.

19 April 2010

Native title Payout plans uncovered

The Barnett Government will pay a Murchison Indigenous group around $10 million to drop their native title objections to the CSIRO's square kilometre array space telescope project. The State Government, the CSIRO and the Geraldton-based Yamatji Marlpa Land Council have previously released no details of the payments. *Geraldton Guardian,* (Geraldton WA, 19 April 2010), 1. *Geraldton Guardian* (Geraldton WA, 19 April 2010), 3. *West Australian* (Perth WA, 19 April 2010), 23.

27 April 2010

Native title investigation

Investigations into Aboriginal heritage issues at the planned construction site for a bridge to connect Australind and Eaton have revealed traditional cultural activities could be disturbed. Dardanup Shire Council planning services manager Robert Quinn said the investigation, being conducted by Dunsborough based archaeologist Brad Goode, was a legislative requirement under the Aboriginal Heritage Act.

"Shire officers intend to investigate whether native title exists on the proposed Collie River bridge area," Mr Quinn said. He also said a Noongar group that met with Mr Goode last month expressed concerns over the "cumulative negative environmental effects of urbanisation" on the Collie River and the impact on Noongar people being able to continue their traditional cultural activities in the area. *Bunbury Herald* (Bunbury WA, 27 April 2010), 9.