difference in terms of remote and non remote RNTBC experiences and that representation should account for the diversity of native title holders Australia wide. The balance between diversity and representativeness while ensuring that a peak organisation remains feasible requires further consideration and further consultation both on the community, regional or state and territory level.

> *It is important for Traditional Owners to take every opportunity to make comment. We do this to ensure that people know that we are here and more importantly our aspirations as the first peoples. We need to work together, understand the different perspectives we bring to the group and work out how we can work effectively to help ourselves. I think for us it would be a magic exercise to come together and talk, so we can have a coherent voice with a clear position on all the issues that impact on our business*
>
> - Ned David

However, despite the many views presented, all meeting participants agreed that it was not for representatives to speak on behalf of people and country rather their role is to address the many common issues that are faced by all RNTBCs. What was common throughout the discussion was that there has been little emphasis on the resilience of native title holders, organisations and communities to adapt and continue with often voluntary and unrecognised work. The RNTBC Working Group will be meeting again at the National Native Title Conference 2011 to present its work so far to the broader native title sector. The formation of the working group creates an opportunity for all RNTBCs to have a voice and focus on the collective innovation and resilience of RNTBCs as a way of moving forward.

Copies of the first meeting report have been distributed through the RNTBC email network. If you are interested in being a part of the working group or would like to be on the RNTBC email network please contact the PBC Project Officer Tran Tran, tran.tran@aiatsis.gov.au, (02) 6246 1181.

What's New?

Recent cases

Mangarrayi Aboriginal Land Trust v Banibi Pty Ltd (No 2) [2011] FCA 173

7 March 2011

Federal Court of Australia: Darwin Registry

Justice Mansfield

Decision concerning costs in the decision of *Mangarrayi Aboriginal Land Trust v Banibi Pty Ltd [2010]* FCA 1195. The matter concerned the Banibi Corporation who was licensed to use Elsey Station which was managed by the Northern Land Council (NLC) on behalf of the Mangarrayi Aboriginal Land Trust (the Land Trust). The Court considered the question of costs and noted that it has unfettered discretion to order costs under s.43 of the *Federal Court Act 1976* (Cth). Generally an order for costs follows the event and if the substantive issues have not been determined by the Court, it will usually make no order as to the costs of the proceeding (citing *L & A Maglio Pty Ltd v Commissioner of Taxation [2007]* FCA 1365). In this case, the corporation claimed that they were not liable for costs as the matter had not been concluded. Further, the sole shareholders of the corporation are traditional owners living around Elsey station. The Court also considered the fact that the land trust did not support the action taken by the NLC as its representatives. However it held that the Banibi Corporation pay the costs and that it was up to the parties to determine internally how they should be recovered.

FQM Australia Nickel Pty Ltd v Bullen [2011] FCAFC 30

9 March 2011

Full Federal Court of Australia: Perth Registry

Justices North, McKerracher and Jagot

Appeal by State of Western Australia and FQM Australia Nickel Pty Ltd that the primary judge had erred in holding that there were registered native title holders in the mining lease areas of M74/169 and M74/172 (see *Bullen v State of Western Australia* [2010] FCA 900). One of the registered claimants was deceased and the primary judge held that the applicant in relation to a claim to hold native title in relation to land or waters continues to be the 'registered native title claimant' after the death of that person or persons. The appellants relied on s. 28 of the NTA, which states that 'the right to negotiate' provisions apply is invalid to the extent

that it affects native title unless one of the conditions in that section is satisfied. They also include circumstances where (s. 28(1)):

1. By the end of the period of 4 months after the notification day for the act (see subsection 29(4)), there is no native title party in relation to any of the land or waters that will be affected by the act;
2. After the end of that period, but immediately before the act is done, there is no native title party in relation to any of the land or waters that will be affected by the act.

However, Justices North, McKerracher and Jagot noted that the decision involved reconciling the provisions of the NTA that assume that a registered native title claimant is a living person (s. 28(1)(b)) and other provisions that constitute a registered native title claimant as a representative or the native title claim group and can be replaced (s. 66B). They rejected the appellant's argument noting that 'the answer follows from the language of the statute construed in context.'

Jax Coal Pty Ltd/Birri People/Queensland [2011] NNTTA 46

17 March 2011

National Native Title Tribunal: Brisbane

Deputy President John Sosso

Application for a determination of a future act under s. 38 for a mining lease 12 km south of Collinsville within the boundaries of the Birri People's registered native title determination application (QUD 6244/98). Section 38 of the NTA that requires the National Native Title Tribunal (NNTT) to make a determination that a future act 'must not be done or may be done with or without conditions'. The parties did not contend that the grant of the lease should not go ahead only whether conditions should be placed on the grant. In considering the criteria for the making of a future act determination under s. 39, it was found that the 'parties had reached an accord in principle but due to circumstances beyond the control of (usually) the native title party, the execution of the s.31(1)(b) agreement is rendered impossible. The NNTT can make an agreed determination pursuant to s. 38(1) in order to give legal effect to the agreement in principle they have reached. In these circumstances an extensive evaluation of the s. 39(1) criteria is not required (citing *Claimants/Western Australia/Newmont Wiluna Gold Pty Ltd* [2008] NNTTA 114, *Simpson & Ors on behalf of Wajarri Yamatji/Western Australia/Dianna Austin Trigg* [2009] NNTTA 144 and *Webb & Ors on behalf of South West Boojarah #2/Peter Michael Johnson/Western Australia* [2010] NNTTA 130).

The issue in contention was the nature of the conditions imposed by the NNTT. The Birri People sought a determination of this nature including the sum of compensation money and employment positions that were initially agreed to. The state refused to grant its consent to the making of a consent determination so far as it related to the 'financial benefit' condition on the basis that the 'NNTT does not have power to make a determination containing a condition for payment of compensation'. Jax Coal agreed to recharacterise the payments and employment position as financial benefits but the state contended the issue on the basis that it is not open for the NNTT to make compensation payments a condition of granting a mining lease. Following *Western Australia v Thomas* (1996) 133 FLR 124 (at 193-202), the NNTT noted the primary issue was whether the benefit agreed to primarily or calculated solely on the basis that it was a fair payment for the likely injurious ramifications of the doing of the future act on the native title party's registered native title rights and interests? However after weighing up the evidence particularly the 'reluctance' of the native title party to accept the offer, the NNTT found that 'it would be entirely unrealistic and artificial to characterise what appear to be basic and less than amicable negotiations, as an attempt by them to rationally and objectively calculate a compensation package for the likely injurious affection to native title occasioned by the doing of the future act.'

Seven Star Investments Group Pty Ltd/Western Australia/Wilma Freddie and Others on behalf of Wiluna [2011] NNTTA 53

24 March 2011

National Native Title Tribunal: Perth

Deputy President Hon C J Sumner

Tribunal Deputy President Sumner described this future act determination as 'unique'. The proponent, Seven Star Investments Group P/L (SSIG), had applied for an exploration licence (EL) within the Wiluna native title claim area, WA. SSIG had marked out the area in the shape of a cross, based on a story of Constantine, and located by the 'mystical knowledge' of shareholder-director Mr Ghaneson. Negotiations over a heritage agreement took place but broke down.

SSIG asked the Tribunal to allow the granting of the EL under s.38 of the *Native Title Act 1993* (Cth)(NTA). The Wiluna people opposed the grant of the tenement primarily based on SSIG's conduct (through Mr Ghaneson) in negotiations with the Wiluna people and Central Desert Native Title Service (CDNTS) staff. They submitted that SSIG: had made remarks intended to intimidate the native title party, which escalated to threats of violence; had made inappropriate and disrespectful remarks about the native title party and the area of the tenement application; and 'appears to have substantive difficulty distinguishing the real world from a fictitious world'. Thus, they argued, it would be unconscionable to grant the tenement.

In listings hearings, Sumner proposed setting a condition by consent that Mr Ghaneson would not be involved with the Wiluna people or come onto the area. SSIG submitted that only Mr Ghaneson possesses the mystical knowledge required for the proposed exploration, so the parties could not consent.

The Tribunal accepted affidavit evidence from Wiluna man Robert Wongawol about the claimants' cultural obligations regarding their country, including ensuring that other parties coming onto the country understand those obligations. Sumner also considered the relevant factors in s.39 NTA, and found that granting the tenement would not, in normal circumstances, affect the Wiluna claimants' use and enjoyment of the area or sites of significance.

Sumner concluded that it was not in the public interest to grant the tenement for two reasons: firstly, the exploration methodology 'has no rational or scientific basis'; and secondly because Mr Ghaneson's prior conduct had caused an 'irretrievable breakdown in relations between CDNTS and SSIG... [with] real potential for further serious disputations... which will impact on the claimants' capacity to carry out their cultural obligations'.

***Noelene Margaret Edwards & Ors v Santos Limited & Ors* [2011] HCA 8**

30 March 2011

High Court of Australia

Chief Justice French; Justices Gummow, Hayne, Heydon, Crennan, Kiefel and Bell

This case considered whether the Wongkumara claimants can seek declarations in the Federal Court on whether the right to negotiate applies to a particular application for a petroleum licence, and an injunction restraining Queensland from granting such a licence unless the right to negotiate process has been completed.

The Wongkumara native title claimants had sought to negotiate a new Indigenous land use agreement (ILUA) with Santos (and a partner company) to supersede an earlier ILUA. The companies had held an Authority to Prospect for petroleum (ATP) in south-west Queensland since 1979, and intended to apply for a production licence. In negotiations for the new ILUA, the Wongkumara had requested a gift of two pastoral leases, to which the companies did not agree. The companies argued that, as they hold the ATP, a production licence would be granted automatically. As such, they said, the grant of a production licence would be a 'pre-existing right-based act' and the right to negotiate under the *Native Title Act 1993* (Cth) (NTA) does not apply.

The Wongkumara people went to the Federal Court seeking a declaration that the act was a future act requiring negotiation under the NTA. Justice Logan summarily dismissed the application (i.e. without a full hearing) on the grounds that the Wongkumara were seeking an advisory opinion from the Court, which courts do not provide. Logan J also found that the Wongkumara did not have standing (i.e. sufficient direct interest in the matter to seek relief in Court) regarding the petroleum licence, and made costs orders against Wongkumara.

The Full Federal Court of Stone, Greenwood and Jagot JJ refused leave to appeal. Section 33(4B)(a) of the *Federal Court of Australia Act* precluded an appeal to the High Court on this decision, so the Wongkumara applied to the High Court for judicial review in relation to errors of law made in the Federal Court rulings. This is within the High Court's 'original jurisdiction'.

The High Court held that the Federal Court (and Full Court) had made errors regarding its jurisdiction to hear the matter. The High Court ruled that there is 'a matter' of controversy between the parties and not merely a hypothetical question or request for advice. The Wongkumara do have standing regarding the petroleum licence based on their interests in negotiating an ILUA, and the matter is within Federal jurisdiction as it involves the NTA. So, the Federal Court had made errors about its jurisdiction, and the High Court quashed the two

lower rulings (by issuing the common law writ of *certiorari*). The Wongkumara are now entitled to have the matter heard and decided by the Federal Court. The High Court held that Santos (and the partner company) pay the costs of all proceedings.

***Banjo Wurrunmurra & Others on behalf of Bunuba Native Title Claimants/Western Australia/Thomson Aviation Pty Ltd* [2011] NNTTA 38**

8 March 2011

National Native Title Tribunal: Melbourne

Member Neville MacPherson

The WA Department of Mines and Petroleum notified the Bunuba people that it intended to grant an Exploration License (EL) 56km outside of Fitzroy Crossing. The Department stated that the proposed grant attracts the expedited procedure (s. 29 *Native Title Act 1993* (Cth)(NTA)), meaning that the Bunuba people would have no right to negotiate with the exploration company.

The Bunuba people objected to the expedited procedure in the National Native Title Tribunal (NNTT), and Bunuba man Kevin Oscar gave affidavit evidence. Member MacPherson considered (on the papers) whether it was likely that the EL would affect Bunuba community or social activities, or sites of significance.

Although Member MacPherson accepted Mr Oscar's evidence about the Bunuba people's activities on their country, he found that the evidence was not specific evidence in relation to the area of the proposed EL, and so it did not prove that exploration was likely to affect those activities. At paragraph [34] he described what details could have been provided.

However, he determined that the grant does not attract the expedited procedure because there are a large number of sites of significance within the proposed EL. As the explorer had failed to submit details of its intended activities, Member McPherson assumed it would explore the entire EL. This reasoning at [45] follows the decision of (*Silver v Northern Territory & Ors)*. He found that *'this is a case where compliance with the* (Aboriginal Heritage Act) *is not sufficient to make it unlikely that there will be interference with areas or sites of particular significance'.* The Bunuba people maintained their right to negotiate over the proposed EL.

***Straits Exploration (Australia) Pty Ltd & Anor v The Kokatha Uwankara Native Title Claimants & Ors* [2011] SASCFC 9**

8 March 2011

Supreme Court of South Australia

Chief Justice Doyle and Justices White and Peek

This was an application for permission to appeal a decision of the Environment, Resources and Development Court (ERD Court), which refused to allow exploration on claimed native title land where the native title party opposed the exploration: [2011] SAERDC 2. The Full Court of the Supreme Court of SA granted permission to appeal the ERD Court's decision.

Background – the case in the ERD Court

Straits Exploration and Kelaray (the companies) had planned to explore for minerals within their exploration permit at Lake Torrens in northern SA, in an area of great cultural significance to the Kokatha Uwankara people and also to Western Desert Peoples. The Kokatha Uwankara Native Title Claimants (Kokutha Uwankara) opposed any disturbance of this area and declined monetary compensation, and no agreement with the companies was reached.

Under s. 63S of the *Mining Act 1971* (SA), the companies had applied to the ERD Court, seeking a determination allowing the exploration to proceed. The ERD Court heard evidence from Kokutha Uwankara of the cultural and religious significance of the area (including some confidential men's evidence), the consequences they believed would follow if it was disturbed, and their history of opposing disturbances of this area regardless of offers of financial compensation.

The companies demonstrated that they had taken steps to avoid environmental degradation and argued that a potential mine was valuable to the local and broader economies. Following a ten-day hearing, the ERD Court found in favour of the Kokutha Uwankara and denied the companies permission to explore.

This application for permission to appeal

The companies appealed, according to the *ERD Court Act 1993* (SA), to the Full Court. The Full Court comprising Doyle CJ, White and Peek JJ considered the companies' arguments for an appeal, as appealing on factual grounds requires the Full Court's permission. The Full Court

considered whether those grounds were reasonably arguable, and whether this is an appropriate case for permitting an appeal on those grounds.

The Full Court ruled that it would not be appropriate to grant permission to appeal on two of the major grounds that the companies put forward. First, the companies argued that the finding that the Kokatha Uwankara had consistently opposed mining in the area was incorrect. The Full Court ruled that the ERD Court decision did not deny that they may have been some difference of opinion, and that it would be inappropriate for the Full Court to examine detailed evidence of this history.

The second argument that the Full Court rejected was that the ERD Court failed to recognise the economic significance of the companies' activities. The ERD Court had treated the exploration activities as a separate matter from any mining activity which could follow later, and did not assume that there was future value in the exploration itself. The Full Court agreed, and said it would be inappropriate for the appeal Court to 'make a different forecast' about any likely future mining value.

However, the Full Court granted permission to appeal on separate grounds. The ERD Court had criticised the companies' conduct in proceeding with their exploration program for two months after the Kokatha Uwankara reported that they did not give heritage clearance to the exploration. The ERD Court had also commented on the companies' senior officers' failure to explain this action in the course of the hearing. The Full Court noted that this conduct seems to have weighed heavily in the ERD Court's decision. The companies submitted that this was a factual error, but the Full Court suggested in its reasons that this is really a question of law: did the companies breach any legal obligation by proceeding with their program? The Full Court agreed that, if the ERD Court had made an error of law on this issue, the decision to deny the grant may have been made in error. For this reason, they permitted the appeal to proceed.

Roberts v State of Western Australia [2011] FCA 257

21 February 2011
Federal Court of Australia: Perth Registry
Justice North

The Court is supervising the resolution of a dispute between families currently comprising the Kariyarra native title claim, regarding which families are to be included in the claim group description as they approach consent determinations. Previously (9 December 2010), North J had made orders that the Court would use its discretion under Order 34 of the Federal Court Rules to appoint an independent anthropological expert to report on Kariyarra law, custom and genealogies. The applicant, state and respondent party BHP had all argued that the matter was of high enough importance to justify the Court retaining an expert at its own expense. By the time the parties came before North J on this occasion (21 February 2011), they had reached agreement on their preferred expert. The Court will now seek to engage that expert. Although North J heard that the expert's report may not necessarily resolve all the relevant disputes, he accepted that it was likely to assist towards resolution and, at least, produce evidence for any future trial. The reported decision contains the proposed terms of reference on which the expert will report.

Dale v State of Western Australia [2011] FCAFC 46

31 March 2011
Full Federal Court of Australia: Perth Registry
Justices Moore, North & Mansfield JJ

The Federal Court had previously dismissed part of the appellants' (the Wong-goo-tt-oo (WGTO) native title claimants) native title claim, which had been consolidated with overlapping claims. The Court had found that there was no continuous connection of the WGTO group to the claimed area since sovereignty, but that the members of the group might be native title holders within the groups whose claim areas overlapped (*Daniel v State of Western Australia* [2003] FCA 666).

In the present claim, the WGTO claimants asserted native title over three areas that were not part of the consolidated claim. The State of WA asked the court to dismiss this application without a hearing, on the basis that the applicants were bringing arguments on which that the court had previously ruled. The doctrine of *res judicata* (or issue estoppel) in the common law prevents parties from raising an issue that the court has already decided between those parties. The Court agreed with the State and dismissed the claim.

The WGTO appealed. In its decision, the Full Federal Court considered the law regarding abuse of process. At [111] of this appeal, the Court

decided: 'It is our view that, in substance, the WGTO essentially seek to have the same issue as determined in *Daniel* determined differently in the present WGTO claim. Its attempts to do so constituted, in our opinion, an abuse of process.' The appeal was dismissed.

Cheedy v State of Western Australia (No 2) [2011] FCA 305 on appeal from *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2010] FCA 690

1 April 2011
Federal Court of Australia: Perth Registry
Justice Gilmour

This was a decision on costs. The Court ordered that the Yindjibarndi people pay FMG Pilbara's costs of the two motions brought by the Yindjibarndi and dismissed by Gilmour J on 25 November 2010. The motions had sought to stay both the judgment of the Court and the determination of the Tribunal in the same matter until the Full Court decided the appeal: *Cheedy v State of Western Australia* [2010] FCA 1305. The Yindjibarndi were seeking judicial review, on administrative and constitutional grounds, of a Tribunal decision allowing mining tenure to be granted.

On the question of costs, Gilmour J followed the decision of the Full Court in *Murray v Registrar of the National Native Title Tribunal* (2003) 132 FCR 402. The approach from *Murray* is that costs in native title matters may be dealt with 'in the spirit of' s. 85A of the *Native Title Act 1993* (Cth) which provides that native title parties normally pay their own costs. However, the Court held in *Murray* that costs on appeal 'follow the event' according to normal appeal costs principles, and can be awarded against the unsuccessful party. Gilmour J noted that, although the dismissed motions were not appeals, they were made in appellate proceedings.

Smith v Marapikurrinya Pty Ltd [2011] FCA 330

6 April 2011
Federal Court of Australia: Perth Registry
Justice Gilmour

This was a claim brought under the misleading and deceptive conduct provisions of s. 52 of the *Trade Practices Act 1974* (TPA) (as it then was). The claim was brought by six persons listed on the Kariyarra people's native title claim (but not on behalf of the entire claim group), against a corporation (and its two Kariyarra directors who are also on the Kariyarra claim) which has provided consultant services to BHP Billiton Iron Ore and FMG Ltd in the Port Hedland area. The parties filed draft consent orders, but Gilmour J declined to endorse them, noting that he considered the main proposed order to be declaratory in nature.

He raised concerns over the standing of the applicants (i.e., their entitlement to litigate an issue based on a direct relationship to it). Gilmour J considered case law on the question of whether the native title determination applicants have exclusive standing to bring a claim like this one, as the TPA claim relies on the existence of the Kariyarra People's native title claim. His Honour particularly noted the similarity between the issues at hand and his judgment in *Roe v Kimberley Land Council Aboriginal Corporation* [2010] FCA 809. The Court ordered that documents in this matter be provided to the solicitors for the Kariyarra people's native title claim, inviting their submissions, on the question of standing particularly, and scheduled a further directions hearing for 3 May 2011.

Bonner on behalf of the Jagera People #2 v Queensland [2011] FCA 321

6 April 2011
Federal Court of Australia: Brisbane Registry
Justice Reeves

Two separate applications (one lodged by Kenneth Markwell and another by Ruth James and Myfanwy Locke – 'the joinder applicants') were lodged under s 84(5) of the *Native Title Act 1993* (Cth) to be joined as respondents to the Jagera #2 claim covering an area to the south east of Queensland. The joinder applicants claim that parts of the country in the Jagera #2 claim fall within their traditional country. However, the Jagera #2 applicants claim that a) allowing the joinder applicants to proceed would be inconsistent with the decision in *Commonwealth of Australia v Clifton* (2007) 164 FCR 355 and that the applicants do not have a 'sufficient interest'. After considering the affidavits outlining the interests of the joinder applicants in the contested area the Court noted hat they did 'have rights and interests in various parts of the land or waters covered by the Jagera #2 claim that may be affected by a determination of that claim, sufficient to allow them to be joined as respondents'.

The Court also considered the decision of *Clifton* and noted that the decision prevents the applicants from joining a claim in order to have a determination

made in their favour. However this was differentiated from the situation where the applicants are 'seeking to protect the native title rights and interests they claim to hold from erosion, dilution, or discount by the process of the Court determining the claims of the Jagera #2 claimants', that is, defensively asserting their native title rights and interests.

Blackwater Accommodation Village Pty Ltd v State of Queensland [2011] FCA 355

12 April 2011
Federal Court of Australia: Brisbane Registry
Collier J

This was a non-claimant application under s 61(1) of the *Native Title Act 1993* (Cth) (NTA), in relation to a parcel of land in the centre of the township of Blackwater in the Central Highlands region of Queensland. The applicant had a lease over the land and had developed it. Here, it sought replacement tenure, and the State of Queensland had indicated that native title issues needed to be resolved before any grant of tenure. The applicant notified the relevant parties and advertised its intentions to seek this declaration as required by the NTA. The Court was satisfied that there was no native title held or asserted over this parcel of land.

Thomas v State of Western Australia [2011] FCA 346

12 April 2011
Federal Court of Australia: Perth Registry
Justice McKerracher

The case considers the Court's discretionary power to dismiss an application under s. 190F (6) of the *Native Title Act 1993* (Cth). One of the elements that require consideration includes whether or not the application has been amended and whether it is likely to lead to a different outcome. Upon considering the evidence, Justice McKerracher did not dismiss the application and noted that: 'Much of the previous delay seems to have been, at least in some measure beyond the control of the applicant and there is a positive plan and strategy in train. It appears that there is a real chance that the shortcomings…are capable of being overcome and thus leading to registration.'

Champion v State of Western Australia (No 2) [2011] FCA 345

12 April 2011
Federal Court of Australia: Perth Registry
Justice McKerracher

The case considers the Court's discretionary power to dismiss an application under s. 190F(6) of the *Native Title Act 1993* (Cth) and considered *George v Queensland* [2008] FCA 1518 (which requires the Court to consider 'whether there is a real chance not a mere possibility that an application will be amended in a way that would lead to a different outcome once considered by the registrar'). The Court found that there was evidence that the application was amended and that work was progressing towards a claim. However it was further argued that the Court should be satisfied that there isn't 'any other reason' that the claim should be dismissed. The Court rejected this argument and noted that given the case is in mediation it is unlikely that s 86 B(referral to mediation) was intended to conflict with s 190F(6) since the act was designed to promote mediated outcomes.

Dunghutti Elders Council (Aboriginal Corporation) RNTBC v Registrar of Aboriginal and Torres Strait Islander Corporations [2011] FCA 370

14 April 2011
Federal Court of Australia: Sydney Registry
Justice Flick

The Dunghutti Elders Council (the Council) sought an injunction preventing the Registrar of Indigenous Corporations ('the Registrar') from making a determination under s 487-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act). In February 2011, the Council had received a notice requiring the Council to show cause as to why it should not be put under special administration which would lead to the removal of the director and secretary of the organisation. The Council made an application based on 'procedural points' including:

- a denial of procedural fairness
- a failure to afford a 'reasonable opportunity' to respond; and
- an apprehension of bias.

All these points were rejected and the injunction was refused. In considering whether procedural fairness applied Flick J noted that the real issue was there was a requirement for procedural fairness as opposed to whether that requirement

had been met. In particular it was argued by the Council that the requirements of disclosure had not been met but Flick J found that 'there is no requirement that the documents or other material relied upon need necessarily also be disclosed' [34]. Further Flick J found that there was contrary evidence indicating that examination reports were made available to the Council and that a failure to provide such documents 'did not occasion any procedural unfairness' [40]. Further the onus of establishing procedural unfairness fell on the Council but it failed to identify the specific documents required to be disclosed.

In terms of the time frame for a response, Flick J noted that the Council was required to show cause in a reasonable period and found that even though only two weeks were provided, the requirements of the notice 'were within a confined compass and were manageable and could have been the subject of submissions within the period permitted' and that the Council had not sought additional time. On the point of apprehended bias, the test applied by the Court was whether a hypothetical bystander would conclude that the delegate was biased. However it found that it was not reasonable for a person to know the facts that the delegate knew at the time of issuing the relevant notices.

Fortescue Metals Group Ltd/FMG North Pilbara Pty Ltd/Western Australia/Johnson Taylor and Others on behalf of Njamal [2011] NNTTA 66

15 April 2011

National Native Title Tribunal: Perth

Member Daniel O'Dea

FMG had applied for 5 mining leases in Njamal country, and the parties had not reached agreement under the right to negotiate process beyond the minimum 6 month period. FMG applied to the tribunal for a declaration that the mining leases could be granted, under s. 38 of the *Native Title Act 1993* (Cth). Njamal alleged that FMG had not negotiated in good faith. The main argument considered by Member O'Dea was that one of FMG's lawyers in this negotiation, Mr Sukhpal Singh, was acting under a conflict of duties, as he had previously been employed by the Pilbara Native Title Service as a lawyer for the Njamal People.

During the negotiations, the Njamal People had raised their objections to Mr Singh's involvement, but agreed to continue with the negotiation while reserving their rights to assert a conflict and retain confidentiality over any information Mr Singh possessed. Member O'Dea considered whether Mr Singh was ever acting as the Njamal people's lawyer, whether he had any confidential information about them, and ultimately whether any conflict of duty equates to a lack of good faith by FMG.

At [71] this decision cites *FMG Pilbara Pty Ltd v Cox* (2009) 255 ALR 229: 'It has been repeatedly recognised that the requirement for good faith is directed to the *quality of a party's conduct*. It is to be assessed by reference to *what a party has done or failed to do in the course of negotiations* and is directed to and is concerned with a party's state of mind as manifested by its conduct in the negotiations.'

Based on the evidence provided in relation to Mr Singh's previous involvement with Njamal, O'Dea concluded at [75] that FMG had not acted unreasonably by involving Mr Singh in the negotiations. Mr Singh's involvement did not amount to a failure to negotiate in good faith.

Njamal also argued that FMG failed to act in good faith by refusing to reveal the proposed joint venture party, and because they held negotiations at a preliminary stage of the project, before its scope was known. In relation to the first ground, O'Dea accepted evidence that FMG negotiators themselves did not know the identity of the joint venturer. On the second ground, O'Dea accepted FMG's arguments that the negotiations begin under the Act when the state gives notice of the proposed grant, and that the project was not in a preliminary stage. These were dealt with in much less detail than the question of conflict, and ultimately the decision was that FMG negotiated in good faith.

Gandangara Local Aboriginal Land Council v Minister for Lands for the State of NSW [2011] FCA 383

15 April 2011

Federal Court of Australia: Sydney Registry

Justice Perram

The Land Council was to receive a grant of freehold of a parcel of land on the edge of Sydney under the *Aboriginal Land Rights Act 1983* (NSW) (ALRA). Under the ALRA, land grants are subject to native title rights. In order to receive the land without any possible future native title questions attached, it sought a determination that no native title exists in that land. NTSCORP and the state did not oppose

the application. Notification was carried out to allow any persons believing there was native title in the land to make their claim.

Justice Perram held: 'There is no evidence before me that there is native title and, given the notification procedure, I infer that there are no persons who believe there is native title. Not without some hesitation I conclude that there are no native title interests in Lot 200. If there were, the Court would have been informed of them.'

***Roe on behalf of the Goolarabooloo and Jabirr Jabirr Peoples v State of Western Australia* [2011] FCA 421**
29 April 2011
Federal Court of Australia: Perth Registry
Justice Siopis

Application for leave to appeal a decision which replaced Joseph Roe (the applicant in the current decision) and Cyril Shaw as named applicants on the combined Goolarabooloo and Jabirr Jabirr claims (combined GJJ claim). The Court noted that the applicant was required to demonstrate that there 'the decision of the primary judge is attended with sufficient doubt to warrant the grant of leave to appeal': [18]. The applicant claimed that the primary judge had erred on two points:

- finding that it was premature to assert that there was no common interest between the Jabirr Jabirr and Goolarabooloo people; and
- finding that there was no conflict of interest and that the new applicants could represent the combined GJJ claim.

However, it was found that the primary judge had appropriately exercised his discretion and that applicant had not demonstrated sufficient doubt to warrant the grant of leave to appeal.

Legislation

Native Title Amendment (Reform) Bill 2011

The Native Title Amendment (Reform) Bill 2011 was introduced by Greens Senator Rachel Siewert on 21 March 2011.

The Bill amends the *Native Title Act 1993* (Cth) in relation to the application of the principles of the United Nations Declaration on the Rights of Indigenous Peoples to decision-making; heritage protection; the application of the non-extinguishment principle to the compulsory acquisition of land; the right to negotiate to apply to offshore areas; good faith negotiations; profit sharing and royalties in arbitration; enabling extinguishment to be disregarded; burden of proof; the definition of 'traditional'; and commercial rights and interests.

For further information see the Explanatory Memorandum or the Parliament of Australia Website.

Wild Rivers (Environmental Management) Bill 2011

On 24 March 2011 the Senate referred the Wild Rivers (Environmental Management) Bill 2011 for inquiry and report. The Bill, a private senator's Bill introduced by Senator Scullion, seeks to protect the interests of Indigenous people in the management, development and use of native title land situated in wild rivers areas in Queensland. Please note that the Senate agreed on 24 March 2011 that, in conducting this inquiry, the committee should only inquire into those provisions of the bill which have not been previously examined by the Legal and Constitutional Affairs Legislation Committee in its inquiry and report into the Wild Rivers (Environmental Management) Bill 2010 [No. 2].

Submissions closed on **12 April 2011**. The reporting date is **10 May 2011**. The inquiry has received 12 public submissions. These are available for viewing here. See the Committee website for further details.

Carbon Credits (Carbon Farming Initiative) Bill 2011

The draft *Carbon Credits (Carbon Farming Initiative) Bill 2011* and consultation paper outline how the Federal Government proposes to regulate the generation of tradeable carbon credits under the CFI by foresters, landholders and farmers.

According to the Parliament of Australia website the Bill provides for: the types of abatement projects eligible for Australian carbon credit units (ACCUs); requirements for recognition as an offsets entity; eligibility for offsets projects; participation by holders of Aboriginal and Torres Strait Islander land; characteristics of methodology determinations; permanence arrangements for sequestration projects; reporting requirements for offsets projects; a framework for auditing offset reports; the issue and exchange of ACCUs; monitoring and enforcement powers; merits review of decisions; the establishment and functions of the Domestic Offsets Integrity Committee and the Carbon Credits Administrator; and the publication of information and the treatment of confidential information.

Submissions closed on **Wednesday 13 April 2011**. The Bill was introduced and read a first time on 24 April 2011. On 25 March 2011 the Senate jointly referred the Australian National Registry of Emissions Units Bill 2011 and the Carbon Credits (Carbon Farming Initiative) Bill 2011 and the Carbon Credits (Consequential Amendments) Bill 2011 for inquiry and report. Submissions closed on 8 April 2011. The inquiry has received 63 public submissions. These are available for viewing here. The reporting date is 20 May 2011. Text of the Bill and the Explanatory Memorandum is available here:

- Text of Bill - First Reading
- Explanatory Memorandum

Publications

Native title publications:

National Native Title Tribunal, National Report: Native Title, February 2011

Stacey, C & Fardin, J., 'Housing on native title lands: responses to the housing amendments of the Native Title Act', *Land, Rights, Laws: Issues of Native Title*, (Vol. 4, No. 6), March 2011.

Other relevant publications:

Law Council of Australia, Discussion Paper: Constitutional Recognition of Indigenous Australians. This Discussion Paper has been prepared by the Law Council of Australia, in response to the announcement by the Federal Government, with bi-partisan support, that it will hold a referendum in the current term of government, or at the next election, to amend the Australian Constitution to recognise Aboriginal and Torres Strait Islander peoples as the First Australians. The Law Council invites further comments and submissions in response to the matters outlined in this Discussion Paper by 31 August 2011. The Discussion Paper is available for download here: Discussion Paper [PDF 300Kb]

Productivity Commission, Report on Government Services 2011: Indigenous CompendiumThis report was released on 21 April 2011. It was produced by the Steering Committee for the Review of Government Service Provision (SCRGSP). It contains all Indigenous data reported in the Report on Government Services 2011. The Report is available for download here: Compendium.

Native title in the news

National

25/03/2011
Greens introduce native title Bill
The Native Title Amendment (Reform) Bill 2011 was introduced by Greens Senator Rachel Siewert on 21 March 2011.The Bill aims to simplify the system for claimants and other key stakeholders by reversing the onus of proof in native title claims. If passed the Bill would constitute significant change from the current system, where claimants are required to demonstrate their ongoing connection to the land as a key part of any native title claim.

Senator Siewert stated the Greens aimed to make the native title process less complex and more certain for all parties involved. 'We hope that by introducing this Bill we can contribute constructively to native title reform that can ultimately lead to simpler, fairer and more effective legislation,' Senator Siewert said. *Kalgoorlie Miner* (Kalgoorlie WA, 25 March 2011), 5. *Pilbara News* (Pilbara WA, 23 March 2011), 1.

14/04/2011
500th Indigenous land use agreement hailed as a milestone
The Federal Government's Attorney-General, Robert McClelland and Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin have welcomed the 500th Indigenous Land Use Agreement (ILUA) registered with the National Native Title Tribunal. 'The 500th agreement represents another significant milestone in the history of native title in Australia,' Mr McClelland said. 'These agreements are providing sustainable outcomes for Indigenous people. They demonstrate the enduring benefits that can be achieved through native title when parties choose to negotiate, rather than litigate.' *National Indigenous Times* (Malua Bay NSW, 14 April 2011), 13.

18/04/2011
Bank to aid native title deals
The National Australia Bank unveiled its plan to form a partnership with Indigenous traditional owners and representative bodies, as it renews its commitment to sustainable economic and social development for Indigenous Australians, signing its third Reconciliation Action Plan. *The Australian* (National AU, 18 April 2011), 6.

23/04/2011
Aboriginal groups raise carbon fears
The Kimberley Land Council (KLC) has told a Senate Environment Committee Inquiry into the carbon farming scheme that native title property rights were 'being treated differently and less favourably' than other types of land ownership. In its submission, the KLC said the scheme 'fails to include a provision for the consent of native title holders as eligible interest holders' in cases where a carbon offset project is being planned on land subject to native title. The scheme's failure to include a consent requirement reduced the value of native title, placed Aboriginal communities 'in a disadvantageous position' and reduced their capacity to develop sustainable business partnerships with private enterprise.

Under the proposed carbon farming initiative, farmers and other landowners can create carbon credits from eligible greenhouse abatement activities and sell them on domestic and global markets. Centrefarm, an Indigenous horticulture group in Alice Springs, told the inquiry it has established the Aboriginal Carbon Fund to 'act as a safe haven' for groups wanting to participate in national and global carbon markets.

Centrefarm's general manager, Vin Lange, has also canvassed the possibility of carbon offsets on Indigenous land being 'sold under an official brand' as Australian Indigenous Credit Units, to differentiate them from Australian Carbon Credit Units under an emissions trading scheme. These would be sold at a premium 'due to the fact that there are cultural, social and environmental co-benefits'.

Click here to see a list of all submissions to the inquiry. *The Canberra Times* (Canberra ACT, 23 April 2011), 17.

Australian Capital Territory

16/04/2011
Revolve ordered to leave site and pay costs
The ACT Government has been trying to evict Revolve from its leased site in Hume since March 2010 and there have been protracted disputes over the eviction and the payment of $101,880 in rent. The Supreme Court had previously decided that the Territory should take vacant possession of the site, Revolve should pay outstanding rent and the recycler would stop taking donations of second-

hand goods. In February, Revolve filed an application to stop the eviction, arguing that the Territory had no right to grant the land at Hume in the first place because it had not addressed 'common law native title'. Revolve was represented in court by the organisation's president Gerry Gillespie.

The lack of any Aboriginal involvement was just one of the flaws in recycling operator Revolve's failed bid to avoid eviction with a native title claim, ACT Supreme Court Master David Harper said. Master Harper said the case, which attempted to prevent an eviction and did not involve any Aboriginal person or group, was 'scarcely a suitable vehicle' for determining native title. *The Canberra Times* (Canberra ACT, 16 April 2011), 2.

New South Wales

08/04/2011
Mine agreement ratified
Despite more than 300 complaints to the Federal Court regarding an agreement to sign a deal with Charbon Coal and SK Energy over a native title claim near Rylstone, the Wellington Valley Wiradjuri native title group has gone ahead and signed the agreement.

Solicitor Philip Teitzel working on behalf of the claim group issued a press release stating: 'The claimants from the Wellington Valley Wiradjuri native title claim met…in Wellington on Saturday, 2 April 2011 to consider and sign an agreement with Charbon Coal Pty Ltd and SK Energy Australia Pty Ltd.' *The Wellington Times* (Wellington NSW, 8 April 2011), 5.

11/04/2011
Claim made on parkland
The Gimbay Gatigaan Aboriginal Corporation plan to submit a native title claim on the former Newcastle Bowling Club site, King Edward Park. It opposes the planned function centre and kiosk and prefers the site to become public land. Gimbay Gatigaan Aboriginal Corporation secretary Jaye Quinlan said it would be a waste to see the land developed.

The native title claim could take five to ten years. However in the meantime the Gimbay Gatigaan Aboriginal Corporation plan to work with a local resident group 'Friends of King Edward Park' who also want the land returned to parkland. *The Newcastle Herald* (Newcastle NSW, 11 April 2011), 7. *The Newcastle Star* (Newcastle NSW, 20 April 2011), 8.

12/04/2011
Meeting to decide Dunghutti Elders Council Aboriginal Corporation future
The Dunghutti Elders Council Aboriginal Corporation (DECAC) general meeting will be held on 13 May 2011. The DECAC, which was incorporated in 1996 and has 295 members - is a registered native title body corporate which manages native title matters on behalf of the Dunghutti people.

The meeting will be chaired by the Registrar of Indigenous Corporations Anthony Beven and will move a motion that all 12 of the Council's board of directors be removed. A 50 per cent plus one majority vote will be required to pass the motion. Mr Beven called the meeting after a complaint was lodged by 32 members of the DECAC concerned about how the corporation's board was spending its money. *Macleay Argus* (Kempsey NSW, 12 April 2011), 2. *Port Macquarie News* (Port Macquarie NSW, 27 April 2011), 10.

Northern Territory

1/03/2011
Barkly Region mine agreement
The Central Land Council (CLC) has signed a mining agreement for a phosphate mine near Wonarah, 250km east of Tennant Creek. The agreement is between the CLC, the Arruwarra Aboriginal Corporation and Minemakers Australia Pty Ltd. David Ross, Director of the CLC said 'the agreement ensures opportunities for Aboriginal people in the region for enterprise development, employment and training, many of the traditional owners already work or have businesses in the mining industry in Western Australia and Queensland and they are very excited about the prospect of working on their own country.' The agreement is expected to generate 30 years of phosphate production and will protect sacred sites. *Central Advocate* (Alice Springs NT, 1 March 2011), 10.

06/04/2011
Confusion surrounding support for new land council
A group of traditional owners has applied to the Minister for Indigenous Affairs to form the Katherine

Regional Land Council. However, there appears to be some confusion about the level of support for the breakaway land council in the Northern Territory.

The Northern Land Council (NLC) who is responsible for land use issues in the region said there is vigorous opposition by traditional owners. In an opinion piece published in the National Indigenous Times (NIT) on 3 March 2011, NLC CEO Kim Hill said 'a series of meetings conducted by them have revealed a lack of support for a new land council'. This is a claim rejected by the Jawoyn Association who said it is not leading the push for a new land council and 'there is support from many Traditional Owners.'

The application for the new Katherine Regional Land Council was submitted to Jenny Macklin in late January. The Minister will decide whether to ask the Commonwealth Electoral Commission to hold a vote for Aboriginals in the relevant area on whether they support the application.

Minister Macklin has asked Commissioner Howard Olney to conduct an inquiry into whether the Katherine Regional Land Council should be established, and provide her with a report by 31 July 2011. The report will be made available to the public and interested parties will have the opportunity to provide written submissions. If Minister Macklin decides to support the new council after the report, the matter will be referred to the Australian Electoral Commission, and eligible people in the Katherine area will then be able to vote. The council will be established if 55 per cent of voters favour it. *The Katherine Times* (Katherine NT, 6 April 2011), 5. *The Katherine Times* (Katherine NT, 20 April 2011), 2. *Northern Territory News* (Darwin NT, 23 April 2011), 8. *The Katherine Times* (Katherine NT, 27 April 2011), 5.

Queensland

08/03/2011
Historic day for Kalkadoon people
Kalkadoon people have celebrated a milestone on the path to an official acknowledgement of their people being named as traditional owners of the Mount Isa region. The matter was listed for trial, however on 7 March 2011 at the Mount Isa Federal Court it was directed that a consent determination will be delivered on 12 December 2011. Kevin Smith, CEO of Queensland South Native Title Services, said 'there is still a lot of work to be done but this marks an important occasion for native title throughout the Queensland South region.' *North West Star* (Mount Isa QLD, 8 March 2011), 3.

17/03/2011
Munburra property handed back to JuunJu Warra people
At a ceremony at Cooktown's Gungarde, the JuunJu Warra people have been handed back the former Munburra property. The ceremony was officiated by Member for Cook, Jason O'Brien. It saw the almost 7000 hectare property of north of Hope Vale returned to its traditional owners through the signing of an Indigenous Land Use Agreement (ILUA). The ILUA also provides consent for 47 hectares of land on the property which has current mining leases and applications in place, to be transferred to the JuunJu Warra in future, when other agreements or conditions are completed. Mr. O'Brien said the high cultural significance of a number of places in the area made it a special moment for the JuunJu Warra people. *Cooktown Local News* (Cooktown QLD, 17 March 2011), 3.

17/03/2011
Butchella People
Butchella elders on the Fraser Coast, Queensland have welcomed an agreement with mining company Blue Energy Limited. The project is still in its early stages and elders have advised there was no assurance the project would proceed until the exploration project had been completed.

John Phillips, Blue Energy CEO stated specific details could not be released due to commercial sensitivity but also stated that compensation for the Indigenous owners of the land would be vital to helping those communities become self sufficient. *National Indigenous Times* (Malua Bay NSW, 17 March 2011), 15. *Fraser Coast Chronicle* (Hervey Bay QLD, 17 March 2011), 3.

12/04/2011
Stradbroke Island Bill passes
The North Stradbroke Island Protection and Sustainability Bill was passed, two weeks after Environment Minister Kate Jones first introduced it to Parliament. The Bill was put to the vote late on Thursday afternoon after its second reading that morning. The ALP voted in a block for it along with the Queensland Party's Aiden McLindon. The LNP voted in a block against it. The Bill now awaits assent from Governor Penny Wensley.

Under the legislation, sand mining on North Stradbroke Island would be phased out by 2027 with 94 per cent of the island's mining by 2019, eight years earlier than a 'vision' plan announced in June. Under the Bill, the remaining six per cent of mining operations would close in 2025, allowing for 80 per cent of the island to become national park by 2026.

The *North Stradbroke Island Protection and Sustainability Act 2011* is available for download here. *Bayside Bulletin* (Brisbane QLD, 12 April 2011), 4.

South Australia

03/03/2011
A right to fish
The South Australian State Government will need to negotiate with or compensate Eyre Peninsula native title claimants, if it goes ahead with proposed marine park no-take fishing zones.

The Executive Director of South Australia Native Title Claim Resolution Unit, Phillip Broderick said there have been applications made across Eyre Peninsula but the native title rights and interests are yet to be determined.

Mr Broderick said the claimants would be a 'fairly major player' in the marine park planning process. 'The Department of Environment and Natural Resources is required to consult not only with the broader community but specifically with the Aboriginal community where there are native title issues and claims.' *Port Lincoln Times* (Port Lincoln SA, 3 March 2011), 1.

23/03/2011
No sailing on Lake Eyre
Grace Portolesi, South Australia's Minister for Aboriginal Affairs, has warned that any person attempting to sail on Lake Eyre will face hefty fines of up to $50,000.

The Arabana people who currently hold a registered native title claim over part of the region, have refused sailing access to Lake Eyre due to the cultural and spiritual significance of the area and concerns of damage to this site. Native title chairperson for the Arabana people Aaron Stuart said his people have strong beliefs and many stories about the lake.

Controversy over the ban arose after the commodore of the Lake Eyre yachting club, Bob Backway, called for boaters to risk fines and sail on the normally dry desert lake without a permit. *Sunday Mail* (Brisbane QLD, 27 March 2011), 37. *Border Mail* (Albury-Wodonga NSW, 25 March 2011), 30. *Northern Territory News* (Darwin NT, 25 March 2011), 15. *Western Advocate* (Bathurst NSW, 25 March 2011), 7. *Barrier Daily Truth* (Broken Hill NSW, 25 March 2011), 8. *Port Augusta Transcontinental* (Port Augusta SA, 23 March 2011), 7. *Townsville Bulletin* (Townsville QLD, 23 March 2011), 14. *Northern Territory News* (Darwin NT, 23 March 2011), 11. *Newcastle Herald* (Newcastle NSW, 23 March 2011), 24. *Maitland Mercury* (Maitland NSW, 23 March 2011), 9. *North West Star* (Mt Isa QLD, 23 March 2011), 5. *Barrier Daily Truth* (Broken Hill NSW, 23 March 2011), 8. *Kalgoorlie Miner* (Kalgoorlie WA, 23 March 2011), 4.

08/04/2011
Title fight looms on Murray River water flow
Traditional owners at the mouth of the Murray River have flagged a native title-based legal action against the Murray-Darling Basin Authority if environmental flows in the river system fail to protect their traditional cultural interests.

In a confidential submission to the Murray Darling Basin Authority (MDBA) last December, the Ngarrindjeri Regional Authority, on behalf of the traditional owners of the Lower Lakes and Coorong region of South Australia, said the Ngarrindjeri had a first right to exercise their rights, interests and responsibilities on the Murray.

The submission states 'The flow of water forms part of the interconnectedness of Ngarrindjeri to their country. The failure of water to flow into their country impacts upon their exercise of rights and their fulfilment of responsibilities as custodians of the land, water and sky.' Any successful native title based action against the MDBA would break new legal ground given that the law prevents Aboriginal claimants making claims outside their traditional lands. *The Australian* (National, AU, 8 April 2011), 9.

8/04/2011
Ramindjeri claim rejected by NNTT
The National Native Title Tribunal (NNTT) rejected a claim on behalf of the Ramindjeri people for

native title rights over a 20,000sq km area of the South Australia, covering the Fleurieu Peninsula, Adelaide and Kangaroo Island. The Ramindjeri claim covers an area that overlaps two other native title claims in the state, lodged by the Kaurna people in 2000 and Ngarrindjeri in 1998, which are still being processed by the courts.

The Ramindjeri claim met 8 of 10 criteria set by the NNTT, and now the group plans to amend the other two points and resubmit the claim. Because the Ramindjeri claim overlaps with much of the area of the other two active claims, the Federal Court has asked the NNTT to mediate between the three groups. If successful, a native title agreement for the area would give the applicants the right to be consulted and, in some cases, to participate in decisions about activities proposed to be undertaken on the land. *The Advertiser* (Adelaide SA, 8 April 2011), 23.

13/04/2011
Boaties to defy Lake Eyre ban
Lake Eyre Yacht Club commodore Bob Backway plans to defy a boating ban by native title claimants and sail on Lake Eyre. Mr Backway said he would take up to six people with him to sail on Lake Eyre North. 'If everything goes all right there will be two or three boats and we'll go out for a week,' he said yesterday. Mr Backway said he would risk heavy fines and sail the waterway using a desert parks pass which covers only camping.

Lawyers for the Arabunna people, Lake Eyre's traditional owners, want the police to stop people illegally sailing on the inland waterway, which they claim is spiritually significant. The Arabunna people's native title chairman Aaron Stuart says they are opposed to sailing on Lake Eyre because of its spiritual significance to them. 'It is just like someone committing some form of sacrilege on a sacred site,' Mr Stuart said. 'It is about spirits and animistic beliefs, we want people to come to our country, we really do, we just don't want boating on the lake.' *Illawarra Mercury* (Wollongong NSW, 13 April 2011), 9.*Sunraysia Daily* (Mildura VIC, 13 April 2011), 19.*Gold Coast Bulletin* (Gold Coast QLD, 13 April 2011), 11. *Newcastle Herald* (Newcastle NSW, 13 April 2011), 18. *The Advertiser* (Adelaide SA, 13 April 2011), 27. *Barrier Daily Truth* (Broken Hill NSW, 13 April 2011), 9. *Border Mail* (Albury-Wodonga NSW/VIC, 13 April 2011), 20. *The Australian* (National AU, 18 April 2011), 6. *Illawarra Mercury* (Wollongong NSW, 20 April 2011), 14. *Daily Advertiser* (Wagga Wagga NSW, 20 April 2011), 8. *Border Mail* (Albury-Wodonga NSW/VIC, 20 April 2011), 15. *Weekend Australian* (National AU, 23 April 2011), 5.

Victoria

01/04/2011
Changes to the *Traditional Owner Settlement Act 2010*
Native title claims on reserved Crown land in Victoria will soon need final Parliamentary approval before being ratified. Victorian Attorney-General Robert Clark said the government planned to amend the *Traditional Owner Settlement Act 2010* to bring this change into effect in coming months. The Act, passed in early September 2010, currently allows for native title claims to be settled out of court between traditional owners and the state government executive without a parliamentary vote.

Native Title Services Victoria (NTSV) believes the proposal 'created a new uncertainty'. However, NTSV CEO Chris Marshall said the Indigenous community would accept it if there were no further substantive changes to the Act. Mr Marshall said 'We will be happy if this is the only change made, but there has to be risks down the track and we would prefer they did not do it' he said. *The Law Institute Journal* (National AU, April 2011), 12.

Western Australia

03/03/2011
Kimberley gas deal likely to proceed
The Federal Court has ruled that traditional owner Mr. Joseph Roe be removed as a claimant on the proposed $30 billion gas hub proposed for the Kimberley region. Mr. Roe has consistently opposed the gas hub and took legal action to be recognised as a legal applicant on behalf of traditional claimants. The ruling states that Mr. Roe cannot represent any party, and that he has until mid March to appeal against the ruling. *National Indigenous Times* (Malua Bay NSW, 3 March 2011), 7.

5/03/2011
KLC CEO Resigns
Wayne Bergmann has resigned from his position as CEO of the Kimberley Land Council (KLC), after almost 10 years in the job. Nolan Hunter will become acting CEO of the KLC while a search is conducted to find a replacement for Mr Bergmann.

Mr. Bergmann will continue to work for the interest of Aboriginal people in the Kimberley region as CEO of Kimberley Regional Economic Development Enterprises, which aims to facilitate job opportunities for Indigenous Communities. *Kimberley Echo* (Kununurra WA, 10 March 2011), 09. *National Indigenous Times* (Malua Bay NSW, 17 March 2011), 19. *Broome Advertiser* (Broome WA, 10 March 2011), 3. *The Saturday Age* (Melbourne Vic, 05 March 2011), 4. *Sydney Morning Herald* (Sydney NSW, 05 March 2011), 4.

17/03/2011

Wittenoom handed over to Baratha Aboriginal Corporation

Mount Wittenoom Station was handed over to Baratha Aboriginal Corporation on 9 March 2011, marking an historic day for the Murchison Indigenous community. The Indigenous Land Council transferred the land title to the station, located 140km north-west of Yalgoo.

Shirley McPherson, ILC Chairperson was at the station to hand over the title and stated 'the granting of this property today is a significant milestone for Indigenous people in WA, this property will now provide a base for Baratha Aboriginal Corporation to continue to develop their pastoral enterprises and provide employment and training opportunities to local Aboriginal people.' *Mid-West Times* (Geraldton WA, 17 March 2011), 3.

23/03/2011

FMG meets with Yindjibarndi people

Andrew Forrest, Chief Executive Officer of Fortescue Metals Group (FMG) met with traditional owners on 15 March 2011, to discuss a planned Solomon iron ore project site which is about 60km north of Tom Price. FMG's offer of $4 million for each year the mine is open was rejected by the Yindjibarndi Aboriginal Corporation. However, FMG is continuing to negotiate with a breakaway group - the Wirlu-Murra Corporation.

Speaking in regard to the meeting, CEO of the Yindjibarndi Aboriginal Corporation stated 'I don't think most of the Yindjibarndi people…have been clearly informed on some of the stuff they've been asked to make a decision on'.

Acting Council, George Irving also from the Yindjibarndi Aboriginal Corporation said 'no proper notice was given to all members of the Yindjibarndi native title claim group to ensure they were afforded an opportunity to attend the meeting, and no procedures were put in place to ensure both that those who attended the meeting, and those who voted on the resolutions, were in fact members of the claim group.'

Mr Woodley said he could not see how a separate group was able to negotiate with FMG. 'We are going to assess where we are, seek legal advice from our lawyers and then take it from there.' *Pilbara News* (Pilbara WA, 23 March 2011), 1.

01/04/2011

Native title agreement between Mayala people and Pluton Resources

Pluton Resources is in advanced stages of exploration on Irvine Island, WA, after signing a native title agreement with the Mayala People. Pluton Resources are now waiting for an environmental approval, which might take 18 months to process. Tony Schoer, CEO of Pluton stated that the native title agreement with the Mayala People 'is based heavily around (the Mayala's) compensation, royalties and equity, and also heavily around training, education and jobs.' *Australian Journal of Mining* (National AU, 1 April 2011), 10.

06/04/2011

Fortescue Metals Group chief accused of undermining land owners

Fortescue Metals' CEO Andrew Forrest has been accused by West Australian Opposition leader Eric Ripper of meddling in the vote by a local Indigenous group to allow the Solomon's Hub project that Fortescue Metals aims to build in the Pilbara.

Mr Forrest has moved to make a deal with 200 people in a breakaway group of the Yindjibarndi people while a judgment is expected within weeks on the Yindjibarndi Corporation's request for the Federal Court to set aside approval for the project.

Michael Woodley, senior elder and CEO of the Yindjibarndi Aboriginal Corporation (YAC) has raised concerns about whether the meeting was called properly, and raised legal questions about who formed the breakaway group of about 200, the Wirlu Murra Yindjibarndi.

Under the plan, the Yindjibarndi people would get $4 million a year and $6 million in housing, training and employment from FMG. However, the YAC

wants 0.5 per cent of all future royalties, similar to agreements with rival miner Rio Tinto. Attempts have also been made to replace four YAC members who oppose FMG's offer, including Mr Woodley, at a meeting in Roebourne attended by Mr Forrest on 16 March 2011.

For further information see the YAC website: http://yindjibarndi.org.au/yindjibarndi/
The Age (Melbourne VIC, 6 April 2011), 3, 13. *The West Australian* (Perth WA, 7 April 2011), 14. *Australian Financial Review* (National AU, 13 April 2011), 7. *Pilbara News* (Pilbara WA, 13 April 2011), 8. *National Indigenous Times* (Malua Bay NSW, 14 April 2011), 3, 7, 24, 34. *The Weekend West* (Perth WA, 16 April 2011), 64. *Pilbara News* (Pilbara WA, 20 April 2011), 15. *The Weekend West* (Perth WA, 23 April 2011), 49. *Merredin-Wheatbelt Mercury* (Merredin WA, 27 April 2011), 11. *Avon Valley Advocate* (Northam WA, 27 April 2011), 21. *Wagin Argus* (Wagin WA, 28 April 2011), 10.

16/04/2011
$300m agreement between Rio Tinto and Ngarluma Aboriginal Corporation
Rio Tinto and the Ngarluma Aboriginal Corporation have signed an agreement around the key sites of Dampier and Cape Lambert. Under the deal, Rio Tinto will pay the Ngarluma Aboriginal Corporation a package of benefits worth up to $300 million.

The Ngarluma deal covers $3.1bn worth of rail and port works around Cape Lambert. The agreement also provides for education, training and employment opportunities for Ngarluma people and the opportunity for commercial ventures such as business contracting. Rio Tinto is also required to work closely with Ngarluma people on cultural heritage matters.

A Rio Tinto spokesman confirmed the Ngarluma agreement had been finalised in late March 2011. Ngarluma Aboriginal Corporation legal counsel Steven Dhu said he welcomed the signing of the agreement with Rio, but warned that 'time will tell' whether it proves to be effective. *Weekend Australian* (National AU, 16 April 2011), 26.

20/04/2011
Elders fined over sacred site assault
Two Aboriginal elders, from the Kimberley WA, have been fined $1200 each and ordered to pay almost $70,000 in costs after being convicted of attacking two men who strayed on to a sacred site on native title land.

The trial had been labelled a test case, as it is the first to see how far traditional owners' rights extend over land granted to them under native title. Law man Lenny Hopiga was convicted of two counts of assault occasioning bodily harm and carrying an article with intent to cause fear, while John Hopiga was convicted of wilfully destroying property and threats to injure. *West Australian* (Perth WA, 20 April 2011), 10.

20/04/2011
Murchison Radio-Astronomy Observatory ILUA
Representatives from the Wajarri Yamatji Aboriginal community have stated that CSIRO is building the Australian Square Kilometre Array Pathfinder (ASKAP) without meeting the terms of its ILUA that it signed in 2009.

As part of the agreement CSIRO agreed to provide work and training opportunities to Wajarri Yamatji people during the construction phase of ASKAP. Former chair of the Wajarri Yamatji Native Title Group, Anthony Dann, who negotiated with CSIRO, has claimed his people have not been given jobs or contracts. Gavin Egan, new chair of Wajarri Yamatji Native Title Group, said the problem lies with the way the ILUA was written. It's written and worded in ways that doesn't grant us the opportunities we think we deserve.'

CSIRO ASKAP Executive Officer Michelle Story believes there is nothing in the claims of the representatives and said CSIRO has offered opportunities to Wajarri Yamatji people at every stage that tenders have gone out. *Geraldton Guardian* (Geraldton WA, 20 April 2011), 1, 3.

20/04/2011
Blocks first step in housing plan
The Gumala Aboriginal Corporation has purchased seven housing lots at auction in Tom Price, WA. The lots were purchased as part of the Corporation's housing strategy to provide affordable housing to members. Chief Executive Steve May said over the past 18 months the Corporation had made great gains in housing and infrastructure investment. 'The purchase of this land in Tom Price is an important step in our overall housing strategy objective of building 150 homes throughout the traditional lands of our members.' The Corporation is negotiating with the Department of Housing to

secure funding for construction and other costs. The construction of homes is expected to begin this year. *Pilbara News* (Pilbara WA, 20 April 2011), 19.

22/04/2011
WA Premier reassures land owners
West Australian Premier Colin Barnett has reassured traditional owners that the Government won't go ahead with compulsory acquisition of land near Broome for a proposed gas hub until traditional owners have met and made a final decision. The reassurances came as traditional owners walked out of a briefing meeting with Government representatives on Thursday over the planned $30 billion liquefied natural gas hub to be built at James Price Point.

Traditional owners will meet again in early May to decide whether they will enter into the native title agreement. However, the Government has been accused by Frank Parriman, a representative for the traditional owners, of 'dirty' tactics by pursuing compulsory acquisition before the group held its final meeting.

Anne Nolan, the head of the State Development Department, has written to traditional landowners informing them the Government had lodged an application for compulsory acquisition with the National Native Title Tribunal. Ms Nolan said this was to ensure the Government had access to the land by December 2011. *The Age* (Melbourne VIC, 22 April 2011), 8. *Weekend Australian* (National AU, 23 April 2011), 23. *The Advertiser* (Adelaide SA, 23 April 2011), 81. *Kalgoorlie Miner* (Kalgoorlie WA, 23 April 2011), 8. *West Australian* (Perth WA, 27 April 2011), 12.

29/04/2011
Kimberley gas safety deal sought
Former Kimberley Land Council Executive Director Wayne Bergmann has stated that Woodside Petroleum has refused to offer guarantees to traditional owners on what it would do in the event of an industrial disaster off the Kimberley coast from a gas precinct at James Price Point. Mr Bergmann said that Woodside Petroleum and native title holders were still in discussions but that Woodside Petroleum were refusing to budge on environmental aspects on which he was unwilling to concede.

Mr Bergmann said Goolarabooloo and Jabirr Jabirr family members would be briefed on the agreement in Broome next week. It will then go to a formal vote next 6 May 2011. He said the State Government's compulsory acquisition moves had 'infuriated people'. *West Australian* (Perth WA, 29 April 2011), 17.