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

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

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

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

What's New

Recent Cases

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

25 August 2011

Federal Court of Australia, Sydney NSW

Keane CJ, Lander and Foster JJ

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

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

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

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

12 September 2011

Federal Court of Australia, Ravenshoe QLD

Dowsett J

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This argument was unsuccessful for three main reasons:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Warden held that:

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

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

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

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

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

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

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

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

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

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

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

Legislation and Policy

Commonwealth

Native Title Amendment (Reform) Bill 2011

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

The reforms in the Bill address two key areas:

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

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

Explanatory Memorandum Wild Rivers (Environmental Management) Bill 2011

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

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

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

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

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

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

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

Proposals for the carbon farming positive and negative lists

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

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

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

Indigenous Economic Development Strategy

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

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

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

Northern Territory

Kenbi Land Trust Bill 2011

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

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

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

This subordinate legislation commenced on 3 August 2011.

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

Queensland

Subordinate Legislation

The following subordinate legislation commenced on 29 July 2011:

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

The following subordinate legislation commenced on 19 August 2011:

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

The following subordinate legislation commenced on 9 September 2011:

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

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

Aboriginal Land Regulation 2011 (No. 175 of 2011)

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

Western Australia

Western Australia Conservation Legislation Amendment Bill 2010

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

The Bill has two purposes:

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

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

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

Invitation for submissions on the proposed Eighty Mile Beach Marine Park

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

The closing date for submissions is Friday 20 January 2012.

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

Proposal to change and declare coastal management districts

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

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

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

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

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

Native Title Publications

AIATSIS Publications:

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

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

Other Publications:

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

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

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

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

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Native Title in the News

National

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