What's New?

Recent cases

***Turner v South Australia* [2011] FCA 1312**
18 November 2011
Federal Court of Australia, Barmera
Mansfield J
This is a consent determination for land extending to the eastern border of South Australia, claimed by a group called the First Peoples of the River Murray and the Mallee Region. The determination was accompanied by the execution of an Indigenous land use agreement (ILUA) between the South Australia State Government and the claimants, which provides for the manner of exercise of native title rights in the determination area, the exercise of traditional rights in other designated areas of the claim area, compensation benefits for any native title holders in relation to the claim area and a process for the undertaking of future acts by the state in the claim area. Under the ILUA, the claimants agree to withdraw their claim over certain portions of the claim area, and agree that all benefits provided by the ILUA are full and final settlement of any compensation liability.

Mansfield J emphasised that through this determination, the claimants' rights are being recognised on behalf of all the people of Australia as the Aboriginal Peoples who inhabited this country prior to European settlement. His Honour underlined that the Court does not grant the claimants their status as traditional owners; it declares that the status exists and has always existed at least since European settlement.
Mansfield J observed that the parties had no doubt approached the negotiations in a sensible way, and that the Court should encourage the resolution of claims by giving effect to the agreement of the parties where it is appropriate to do so. His Honour was satisfied that in this case the requirements of s 87A *Native Title Act 1993* (Cth) had been satisfied and that it was appropriate to make the determination sought. He considered that the state had had competent legal representation and had considered the interests of the community generally in agreeing to the consent determination. The state had conducted a rigorous assessment of the available evidence, broadly in accordance with its published guidelines. The state and the claimants had made joint submissions to the Court about the material that supported the case for native title. The state's approach was thorough and careful, involving considerable anthropological evidence by experienced professionals. On the basis of all of the evidence about the process followed, Mansfield J was satisfied that the claimants are a recognisable group or society that presently recognises and observes traditional laws and customs in the determination area. His Honour was satisfied that there was a society united in and by its acknowledgement and observance of a body of traditional laws and customs, and that acknowledgement and observance had continued substantially uninterrupted since the assertion of British sovereignty. He went into the evidence in some detail.

The rights and interests recognised were non-exclusive rights including access, camping, hunting and fishing, gathering and using natural resources, sharing and exchanging subsistence and traditional natural resources, taking natural water resources (limited to domestic use in respect of water from watercourses), cooking and lighting fires not for land-clearing, conducting ceremonies and cultural activities, teaching, maintaining and protecting important sites.

***Rose on behalf of the Gunai / Kurnai and Boonerwrung People v Victoria* [2011] FCA 1538**
8 December 2011
Federal Court of Australia, Melbourne
North J

In this judgment, North J ordered a joint application of the Gunai/Kurnai People, the Kurnai, and the Boonerwrung to be struck out.

The basis for striking the application out was that the composite applicant group had been unable to cooperate to progress the claim. The Court had indicated at previous directions hearings that this inability to work together would make a strike-out appropriate. At the hearing leading up to the present judgement, representatives of the Boonerwrung and Kurnai accepted that the application in its present form could not be moved on, and agreed that the application should be struck out (there was no appearance for the Gunai/Kurnai).

***Doyle on behalf of the Kalkadoon People #4 v Queensland (No 3)* [2011] FCA 1466**
12 December 2011
Federal Court of Australia, Mount Isa
Dowsett J

This was a consent determination for land covering some 38,270 square kilometres in the area of Mt Isa and Cloncurry in north-western Queensland. There were a large number of respondents, and negotiations were long and complex.

Dowsett J emphasised that a consent determination has implications for everybody, not just the parties

to the agreement, and so it is necessary for the Court to give careful consideration to the appropriateness of making the determination. He indicated that while concessions and admissions made by parties may assist the Court in this decision, the Court may decline to act on those concessions and admissions. Further, the Court must be satisfied that all parties have agreed freely and on a fully informed basis. Dowsett J noted that the state and other respondents had the benefit of expert evidence, archival material, and affidavits from a number of claimants.

Dowsett J was satisfied as to the appropriateness of the way the parties identified and resolved the issues. Legal advice and substantial anthropological and other research was available. There was ample time and opportunity for all relevant parties to be identified and to engage with the process. His Honour granted the determination, and congratulated all parties on their willingness to negotiate and persevere towards this outcome.

The native title rights and interests recognised in the determination included the exclusive rights to possession, occupation, use and enjoyment over portions of the determination area, and a range of non-exclusive rights in the remainder. The non-exclusive rights included access; camping; taking, using, sharing and exchanging traditional natural resources for communal non-commercial purposes; conducting spiritual and cultural activities; burial; maintaining and protecting significant places; teaching and holding meetings. In relation to water (in both the exclusive and non-exclusive areas), the claimants have the right to hunt or fish for non-commercial purposes and to take and use the water for non-domestic purposes.

The following is an extract from the conclusion of Dowsett J's judgment.

> Mount Isa and its mines are important Queensland icons. The grazing industry here is also very much part of the Queensland story. As the evidence demonstrates, the Kalkadoon have played a significant role in the development of both industries and, as a result, of this city. Indeed, the Kalkadoon people are, themselves, an important part of the same Queensland story. The evidence demonstrates that they were willing to fight to defend their country and culture, just as other peoples have done for thousands of years all over the world. Their efforts to achieve recognition of their traditional ownership have not been unopposed. Very many problems have been overcome in order to permit me to make the orders which I am about to make. The Kalkadoon have borne the adverse consequences of the clash of cultures which inevitably accompanies mass migration, of which the European settlement of Australia is a typical example. The recognition of Kalkadoon traditional ownership of this land goes only a small way towards the recognition of their suffering since 1861.

His Honour finished by congratulating the Kalkadoon People and wishing them well for the future. On behalf of all Australians he expressed determination that the Kalkadoon's contribution to our history, and the price which the Kalkadoon have paid for our prosperity, will not be forgotten. He said, 'we look forward to sharing the future with you'.

***King on behalf of the Eringa Native Title Claim Group and the Eringa No 2 Native Title Claim Group v South Australia* [2011] FCA 1387**
***King on behalf of the Eringa Native Title Claim Group v South Australia* [2011] FCA 1386**
13 December 2011
Federal Court of Australia, Bloods Creek
Keane CJ

These two judgments are consent determinations for land in the far north of South Australia.
Keane CJ outlined the law relating to the Court's power to make a native title determination by consent without the need for a substantial hearing. Such a determination can be made under s 87 *Native Title Act 1993*, and among other things the Court needs to be satisfied that the orders sought would be within the power of the Court and that it would be appropriate in all the circumstances to make those orders. His Honour noted that the Court has been prepared in many cases to rely on the state or territory's processes of assessing the claimants' legal and factual case. Each state and territory has developed a protocol or procedure by which it determines whether native title (as defined in s 223 *Native Title Act 1993*), drawing on anthropological, archaeological, historical and linguistic expertise as well as competent legal representation. The state or territory acts in the public interest and as the public guardian. The Court must still ultimately answer for itself the question whether the proposed determination is appropriate in each particular case, but generally the Court can be satisfied about this question by relying on the or territory's processes. Those processes are often described in joint submissions by the state or territory and the claimant party.

His Honour cited North J in *Lovett on behalf of the Gunditjmara People v Victoria* [2007] FCA 474 for the proposition that the Court's decision about the appropriateness of making a consent determination does not require it to examine whether the agreement is grounded on a factual basis that would satisfy the Court in contested litigation. The primary task is to determine whether the parties have reached agreement and whether that agreement was freely entered into on an informed basis. This will require the Court to determine whether the state party has taken steps to satisfy itself that there is a credible basis for an application. His Honour cited a large number of cases that have applied this general approach to s 87.

In the present case, the parties made joint submissions about the processes leading up to the agreement. They confirmed that the state had the benefit of a thorough examination of evidentiary material, and described the nature and extent of that material. Black CJ was confident that the state had assessed the material rigorously and had considered the interests of the general community in coming to the view that there was a sound case for native title. The other respondents had been given a position paper by the state outlining its reasons for accepting the claimants' case, and all were represented by competent lawyers.
Black CJ went on to describe in some detail the factual basis for the claim.

In relation to the requirement to demonstrate that the claimants are members of an Aboriginal society defined in and by its observance of traditional laws and customs, His Honour said that the relevant societies are the Lower Southern Arrernte and the Luritja/Yankunytjatjara, which are closely linked but distinct societies with shared rights and responsibilities. Any one claimant may identify with a different one of these labels at different times and a claimant who identifies as one label can be referred to by reference to another label by others. His Honour said that this flexibility is common across the region.

Black CJ, drawing on comments from other judicial decisions about native title groups in the area, said that although there had been a shift in emphasis from patrifilial association to cognatic association in the intergenerational transmission of rights and identity, the claimants had nevertheless gained their rights and interests in a systematic and traditional manner. His Honour considered that the evidence supported the proposition that the traditional laws and interests of the claim group had been acknowledged and observed without substantial interruption since the assertion of British sovereignty. By those laws and customs the claimants were connected to the lands and waters in the claim area, and the rights and interests claimed were supported by the evidence.

The rights and interests in the determination are non-exclusive, and include access, hunting and fishing, gathering and using natural resources, sharing and exchanging traditional and subsistence resources, using natural water resources, living and camping, cooking and lighting fires but not for clearing vegetation, conducting cultural activities and ceremonies, teaching, maintaining and protecting significant sites. All of these rights are limited to personal, domestic and non-commercial communal use.

The determination was drafted to accommodate a disagreement between the parties on a particular point of law, namely the question whether certain pastoral improvements made after the consent determination would extinguish native title. The determination made provision to revisit the position once the law is settled in the future.

Baker on behalf of the Muluridji People v Queensland [2011] FCA 1432
14 December 2011
Federal Court of Australia, Mareeba
Logan J

This judgment is for a consent determination over land in and around Mareeba and the Tablelands region in North Queensland. The Muluridji People, the State of Queensland and a number of other parties reached an agreement regarding the recognition of Muluridji People's rights and interests, and the Court gave effect to that agreement through its consent orders made under s 87 *Native Title Act 1993*.

Logan J cited North J's judgment in *Lovett on behalf of the Gunditjmara People v State of Victoria* [2007] FCA 474 in saying that the Court's focus, in considering whether to make orders under s 87, should be on the making of the agreement by the parties. Logan J said that 'the Court is not required to make its own inquiry of the merits of the applicant's claim to be satisfied that the orders sought are supportable and in accordance with the law' (*Cox on behalf of the Yungngora People v State of Western Australia* [2007] FCA 588). The Court may, however, consider evidence about whether the state respondent is acting rationally and in good faith (*Munn (for and on behalf of the Gunggari People) v State of Queensland* [2001] FCA 1229). The state has an obligation to scrutinise the factual and legal basis of claims (*Smith v State of Western Australia* [2000] FCA 1249).

Logan J considered the evidence that had been filed in Court and found that it established that the Aboriginal persons who spoke the Muluridji dialect of the Kuku Yalanji language used and occupied the determination area prior to the assertion of British sovereignty, and continued to transfer their language and cultural knowledge to the younger generations throughout the 20th century. There was a sufficient basis to infer that today's Muluridji People are descended from those pre-sovereignty people, and to find that they have a continuing identity and a connection to the land given by normative rules associated with dreaming stories and significant places. The evidentiary material was found to support a conclusion that the Muluridji People possessed native title rights and interests in accordance with their traditional laws and customs, and that those rights and interests had been passed through the generations through to today. While there had been some adaptation of their laws and customs, those changes were not so great as to mean that the laws and customs currently observed and acknowledged are no longer 'traditional' for the purposes of s 223 *Native Title Act 1993*.

Logan J considered that it would be appropriate to make the orders sought for the following reasons: all parties were legally represented; tenure searches had been conducted to identify other interests in the claim area; respondent parties provided to the other parties lists of their interests; the parties agreed on the nature and extent of different interests in the claim area; there were no other native title proceedings on foot that covered any of the claim area; and the state had played an active role in negotiating the consent determination.

On the last point, relating to the state's role in testing the claimants' case, Logan J observerd that the state had been acting on behalf of the general community and had carefully considered the legislative requirements. It had conducted a thorough assessment process, involving extensive anthropological material, and was satisfied that a native title determination was justified.

Accordingly, Logan J made a positive native title determination in favour of the claimants. In part of the claim area, the claimants were determined to have rights to possession, occupation, use and enjoyment of the area to the exclusion of all other. (In relation to water in that exclusive possession area, however, the rights were limited to the right to hunt, fish and gather from the water, and to take water for personal, domestic, non-commercial purposes.) In the remainder of the claim area, the claimants had a range of non-exclusive rights including access, camping, hunting fishing and gathering, taking and using natural resources for non-commercial purposes, conducting ceremonies, maintaining and protecting important sites, and lighting fires (but not to clear vegetation).

***Karingbal Traditional People Aboriginal Corporation v Santos GLNG Pty Ltd* [2011] FCA 1456**

16 December 2011
Federal Court of Australia, Brisbane
Reeves J

This judgment deals with a contractual dispute between Karingbal Traditional People Aboriginal Corporation on behalf of the Karingbal native title applicants, and Santos GLNG Pty Ltd and Petronas Australia Pty Ltd. The disputed agreement was an ancillary agreement to two Indigenous land use agreements between the same three parties. Karingbal claimed that they complied with their obligations under the agreement and were therefore entitled to receive an $800,000 payment. Santos and Petronas said that Karingbal had not met its obligations and was not entitled to be paid. Reeves J found in favour of Karingbal and made a declaration that Karingbal is entitled to payment.

The dispute related to the native title applicants' obligation under the agreement to nominate a body to deal with Santos and Petronas, before any payments could be made. Karingbal Traditional People Aboriginal Corporation had been nominated for this purpose, but Santos and Petronas said that it did not satisfy the contractual requirements because not all of the named native title applicants had unanimously supported the nomination. One of the five named applicants had disagreed with the decision.

Santos and Petronas argued that the ILUA provisions in the *Native Title Act 1993* required the named applicants to act unanimously. They also argued that a clause of the ILUA, which was imported into the ancillary agreement, made obligations on the parties 'joint and several', meaning that the obligations had to be performed by all of the parties and not just some.

North J held that the ILUA provisions of the *Native Title Act* did not apply to the agreement: it had express provisions stating that it was not to be lodged with the National Native Title Tribunal, and that it did not form part of the ILUAs. Accordingly, common law principles would decide the matter. North J assumed, without deciding, that the relevant obligation was joint and several in accordance with the ILUA clause. Citing *Re Broons* [1989] 2 Qd R 315, he held that a joint and several obligation could be fully discharged even if performed by only

one or some of the multiple applicants. Accordingly, the requirement under the contract to nominate a body to deal with Santos and Petronas was satisfied even if not done by all of the five named applicants.

***Quall v Northern Territory* [2011] FCA 1441**
16 December 2011
Federal Court of Australia, Brisbane (heard in Darwin)
Reeves J

In this decision, Reeves J dismissed a number of native title applications and a compensation application, on the ground that the fundamental issues in those applications had already been determined unfavourably to the applicant in previous litigation. Mr Quall had filed since 1996 more than 20 native title applications, most of which had been dismissed by the Court in previous judgments. The Northern Territory applied to have six of the native title applications, and a native title compensation application, dismissed on the basis that those applications sought to argue issues that already been decided against Mr Quall. In summary, the previous litigation had determined that:

- The Aboriginal society that held rights and interests in the Darwin area at the time of the assertion of Crown sovereignty was the Larrakia peoples.
- There was a substantial interruption in the Larrakia peoples' acknowledgement and observance of traditional law and custom, and so native title no longer exists.
- At sovereignty there was not a separate, more confined, Aboriginal society comprising the Danggalaba clan that held rights and interests in relation to the Darwin area.

The territory relied on two alternative arguments: first, that Mr Quall was prevented from re-litigating these issues by a doctrine known as issue estoppel, and second that these applications constituted an abuse of process. Issue estoppel is a rule that prevents a party from revisiting a question of fact or law that had already been decided in previous litigation between the same parties. Reeves J held that the Quall applications did constitute an abuse of process, and did not find it necessary to consider the argument about issue estoppel.

His Honour set out the relevant principles relating to abuse of process, noting that it was a rule intended to ensure that respondents not be troubled twice for the same cause and to promote the public policy need for finality in litigation. He also said, however, that care must be taken not to deny an applicant the right to bring before the Court a real and genuine controversy that had not yet been fully and finally determined on its merits. Reeves J went through a number of factors in the determination of an abuse of process, taken from *State Bank of New South Wales v Stenhouse* (1997) Aust Torts Reports 81-423:

- The importance of the issue to the earlier proceedings: the three findings identified above had been of paramount importance to the previous litigation.
- The opportunity available and taken to fully litigate the issue: after reviewing the submissions put by Mr Quall, Reeves J identified the fundamental underlying issue in the applications as being: what was the relevant Aboriginal society at sovereignty possessing native title rights and interests in relation to the land and waters in the Darwin area? His Honour concluded that Mr Quall had had ample opportunity to fully litigate this question, and had been able to do so despite at various times being without legal representation.
- The terms and finality of the finding as to the issue: The findings in the previous litigation had followed an exhaustive examination of a large body of evidence. They had the effect of preventing any other Aboriginal society from being able to establish rights and interests over the area. This was so even though only part of the claim area was subject to a negative determination of native title in the previous litigation (Area A) – the findings about the relevant society were equally applicable to the remaining area, Area B.
- The identity between the relevant issues in the two proceedings: For the six native title applications, Reeves J considered the issues to be substantially similar to, or the same as, the issues in the previous litigation. The finding that the Larrakia Peoples were the relevant Aboriginal society at sovereignty that possessed rights and interests in lands in the Darwin area constituted a final finding as to the relevant Aboriginal society that possessed rights and interests in those lands whether they fell within Area A or Area B. The

compensation application, despite involving some additional issues, still depended on a determination that native title existed in the relevant area at the time that the extinguishing acts took place. Since that determination depends on exactly the same issues as the six native title applications, the compensation application too raised the same issues as in the previous litigation.

- Any plea of fresh evidence: Mr Quall relied on affidavits by an anthropologist, Mr Day, which purported to challenge elements of the previous findings. The anthropologist's evidence was based on a Larrakia genealogy he prepared in 1973, which he said supported Mr Quall's case and raised doubts about the previous findings. Reeves J considered that no adequate explanation had been provided as to why this evidence had not been brought in the earlier litigation. In addition, he considered that while the genealogical evidence may help deal with concerns in the earlier litigation about the composition and structure of the claim group, it did not address the deficiency in evidence relating to the rights and interests supposedly held under the traditional laws and customs of that group.
- The extent of the oppression and unfairness to the other party, and the impact of the re-litigation upon the principle of finality of judicial determination and public confidence in the administration of justice, and an overall balancing of justice to the alleged abuser against the matters supportive of abuse of process: In light of the previous factors, it would be a waste of the territory's and the Court's resources to allow the proceedings to continue, and would undermine the public's confidence in the finality of litigation.

***Cheedy on behalf of the Yindjibarndi People v Western Australia (No 2)* [2011] FCAFC 163**
16 December 2011
Full Court of the Federal Court of Australia, Perth
North, Mansfield and Gilmour JJ

This case concerns the payment of legal costs by the Yindjibarndi native title claimants, arising out of their unsuccessful appeal against the grant of certain mining tenements. The Court held that the Yindjibarndi claimants should pay one-half of FMG Pilbara Pty Ltd's costs of the appeal. The State of Western Australia did not apply for costs.

The starting point for determining whether and to what extent the claimants should bear FMG's costs was the Court's general discretion under s 43 of the *Federal Court of Australia Act 1975* (Cth) (the FCA Act) to make such order as to costs as it considers appropriate. That discretion is absolute and unfettered, but must be exercised judicially. The usual rule is that costs would ordinarily follow the event, but special circumstances may justify some other order.

Section 85A of the *Native Title Act 1993* provides that, unless the Court orders otherwise, each party to a proceeding must bear their own costs. Previous cases established that s 85A removes the expectation that unsuccessful parties will usually pay the successful parties' costs, but the Court still has discretion under s 43 of the FCA Act. Case law also establishes that s 85A applies not only to first instance decisions made under s 61 *Native Title Act 1993*, but also to appeals from such decisions and applications for special leave to appeal.

The Court cited *Murray v Registrar of National Native Title Tribunal* [2003] FCAFC 220 for the proposition that, in respect of proceedings which are not directly caught by the operation of s 85A, that section may nevertheless be relevant to the way in which the Court exercises its discretion about costs. In that case, it was held that in proceedings that consider the interpretation of the *Native Title Act 1993*, it is appropriate for Courts to 'follow the spirit' of s 85A. *Murray* involved an application to review the Native Title Registrar's decision to register an Indigenous Land Use Agreement, and the Court cited s 85A in departing from the normal rule and making no order as to costs. Another case, *Northern Territory of Australia v Doepel (No 2)* [2004] FCA 46, dealt with a review of the Registrar's decision to place a native title application on the Claims Register. Again, although s 85A was not directly engaged, its spirit informed the Court's decision as to costs.
By contrast, in *Brownley v Western Australia* [1999] FCA 1431 and *Lardil Peoples v State of Queensland* [2001] FCA 414, the Court focused on whether or not s 85A applied in strict terms, and in both cases declined to depart from the usual rule governing the exercise of the discretion under s 43.

The Court did not consider it necessary to determine conclusively whether or not s 85A applied to the present proceedings, namely an appeal under s 169 *Native Title Act 1993* against a decision of the Tribunal. The Court concluded that

whether it was required to apply s 85A directly or whether it would simply apply s 85A's spirit, the outcome would be the same.

In deciding what order to make, the Court took into account its previous comments about the claimant's disorganised conduct of the case and some problems in the way their case was presented. Some of the arguments advanced in the appeal were not well founded. On the other hand, the primary issues raised in the appeal were not without merit, and it could not be said that the claimants should have known that their case would not succeed. On balance, the Court considered it appropriate to order the claimants to pay one half of FMG's costs of the appeal.

***McNamara on behalf of the Gawler Ranges People v South Australia* [2011] FCA 1471**
19 December 2011
Federal Court of Australia, Paney (SA)
Mansfield J

In this judgment, Mansfield J made orders by consent determining that the Gawler Ranges People hold native title rights and interests over a large area within South Australia. The claim area is approximately 3.5 million hectares, mainly pastoral land but also including national parks and two small townships.

Mansfield J noted that before making a consent determination, the Court must be satisfied that a determination would be appropriate in all the circumstances. His Honour endorsed Keane CJ's recent comments in *King on behalf of the Eringa Native Title Claim Group v State of South Australia* [2011] FCA 1386 about the appropriateness of the Court relying on the processes employed by the relevant state or territory to test the claimants' factual and legal case for native title. The Court will not routinely make its own inquiry about the merits of the claim, though it may consider evidence about the claim for the limited purpose of being satisfied that the state is acting in good faith and rationally.

The parties made joint submissions about the material that had been supplied by the claimants to the state, and based on these Mansfield J described the thoroughness of the research material and the qualifications of the authors. He considered that the state had been rigorous in its assessment of the material and that it had considered the interests of the general community in coming to its decision to consent to a determination. It had circulated position papers to the other respondents to explain how it had come to that position, and the respondents had had ample opportunity to review that document and to ask further questions. Mansfield J was satisfied that the state's and other respondents' decision to agree to a consent determination was fully informed and conscientious.

Nevertheless, his Honour went through in brief detail the main elements of the claimants' case for native title. The evidence established that the claim group comprises a distinct 'Gawler Ranges' society, composed of members of three different language groups (Kokatha, which is associated with the Western Desert Cultural Bloc; Barngarla, part of the 'Lakes Groups' to the east of the Gawler Ranges; and Wirangu, associated with coastal areas to the west and south). Membership is not open to all persons from those three groups, only to those who can trace ancestry to a recognised Gawler Ranges apical ancestor. Further, membership must be activated by birth, long residence, or repeated visits in the claim area. There was some dispute among claim group around the extent of membership to particular persons, arising from disagreements about the activation of their group membership. Mansfield J, however, considered this to be an 'intra-mural' matter, meaning that it is for the claim group to work out rather than the state or the Court. Nevertheless, the state has required a term in the determination that a corporate structure be put into place that will allow the smooth administration of the native title rights and interests in the face of that contestation.

Mansfield J was satisfied that the contemporary claim group was directly linked to the original pre-colonial Gawler Ranges society, and that there had been substantially uninterrupted acknowledgement and observance of traditional law and custom. In relation to the proof of continuity, Mansfield J said that a consent determination 'can be made without the necessity of strict proof and direct evidence of each issue as long as inferences can legitimately be made'. He considered that the state's of focusing on contemporary expressions of traditional laws and customs, and paying less attention to laws and customs that may have ceased, was appropriate. His Honour went through a number of aspects of the evidence relating to how the contemporary acknowledgment and observance of law and custom connected the claimants to their land and continued their coherence as a society.

The claimants were determined to hold non-exclusive rights in the determination area, including the right to access; live and camp on land in the area; hunt, gather and use natural resources; share and exchange the subsistence and other traditional resources of the area; use the natural water resources of the area; light fires, though not to clear vegetation; participate in cultural activities, conduct

ceremonies, hold meetings, teach about the cultural and physical and spiritual attributes of the area; visit, maintain and protect significant sites.

Indigenous land use agreements governing the exercise of rights and interests in relation to the national parks and conservation reserve, were executed on the same day as the consent determination was made.

***Murgha on behalf of the Combined Gunggandji Claim v Queensland* [2011] FCA 1511**
19 December 2011
Federal Court of Australia, Yarrabah
Dowsett J

This consent determination is for combined claim whose component claims were filed in 1994 and 1995. The claim area is in the Yarrabah region near Cairns in North Queensland.

Dowsett J outlined some of the history of the claim area, including Captain James Cook's landing at the area in 1770 (prior to the assertion of British sovereignty), the subsequent settlement of the area in the late 19th century, and the establishment of the Yarrabah mission. His Honour identified aspects of the anthropological and historical evidence that supported the claimed native title rights and interests, and supported the assertions of continuous connection to the land and continuous acknowledgement and observance of traditional laws and customs.

Dowsett J noted that land within the determination area had been subject to a 'deed of grant in trust' (DOGIT), and said that while this would ordinarily extinguish native title, s 47A *Native Title Act 1993* had the effect of requiring the Court to disregard that extinguishment. That section applies where land has been reserved expressly for the benefit of Aboriginal people and, at the time when the native title claim is made, at least one member of the claim group occupies the area.

The native title rights and interests recognised in the determination include exclusive rights of possession, occupation and enjoyment in a portion of the claim area, and non-exclusive rights and interests in the remainder. In the non-exclusive areas, the claimants have the right to access and traverse the area, and to take and use natural resources for personal, domestic and non-commercial communal purposes. In relation to water within the claim area, the claimants have the right to hunt, fish and gather for personal, domestic and non-commercial communal purposes, and to take and use water for personal, domestic and non-commercial communal purposes.

***Kuruma and Marthudunera People v Western Australia* [2012] FCA 14**
16 January 2012
Federal Court of Australia, Perth
Barker J

In this decision, Barker J made orders to remove a named applicant from the Kuruma and Marthudunera People native title application. In technical terms, the effect of Barker J's orders was to replace the five individuals who had previously constituted the applicant, with a group of four individuals to make up the newly constituted applicant (these four being those who were left after the fifth was removed).
There were four facts that supported this order:

- One of the current applicants, Ms Jean Lockyer, had consented to being removed as a member of the applicant;
- The persons comprising the proposed replacement applicant were all members of the native title claim group;
- The current applicant was no longer authorised by the claim group to make the application and deal with matters arising in relation to it; and
- The replacement applicant was authorised by the claim group to make the application and deal with matters arising under it.

Barker J was satisfied that Ms Lockyer consented to stepping down, on the basis of evidence that she had accepted that her failing health made it difficult for her to continue; that she had known that a meeting was to be held to remove her and she did not take steps to oppose that course of action; and that she had nodded and smiled at a morning tea celebrating her retirement as a named applicant.

Barker J was also satisfied that the meeting held to remove Ms Lockyer and authorise the remaining four individuals to continue as applicant, had met all necessary requirements under s 66B and s 251B of the *Native Title Act 1993* (Cth). The meeting had been advertised between two and four weeks earlier in three regional newspapers, through word of mouth, and also by sending notices to claim group members by use of a contact database at the native title representative body. All such methods of communication had made clear the purpose of the meeting. Twelve claim group members attended the relevant meeting, although Ms Lockyer herself was unable to attend at the time when the relevant resolutions were passed. The native title representative body lawyer gave evidence that, in her experience of meetings for this claim group, there was no traditional decision-making process for decisions of the kind contemplated by s 66B,

and that the agreed and adopted process of decision-making is by passing resolutions, agreed by consensus, at community meetings after discussions between group members with deference to the knowledge and seniority of the group's elders. That was the process followed at the relevant meeting, and the resolutions were passed unanimously. Barker J confirmed that there was no legal requirement that the claim group bring evidence supporting the agreement and adoption of its decision-making process, nor that a formal resolution adopting the decision-making process be passed.

***Jurruru People v Western Australia* [2012] FCA 2**
16 January 2012
Federal Court of Australia, Perth
Barker J

In this decision, Barker J made orders to remove a deceased member as named applicant, and to add two persons as named applicant. A meeting was held to authorise the newly configured applicant, and notices of the meeting were published in regional newspapers three to four weeks before the meeting, spread by word of mouth, and sent to claim group members on the native title representative body's contact database. A decision-making process was agreed and adopted by the group, by way of passing a resolution, although Barker J held that this was not a legal requirement. The decision making process was decision by consensus after discussion with deference to the group's elders. Barker J was satisfied that sufficient notice of the meeting was given, that members of the claim group had a 'reasonable opportunity' to participate in the decision-making process at the meeting, that there was appropriate representation of the various families at the meeting, and that the 'usual' claim group members attended. Accordingly, all requirements of s 66B and s 251B of the *Native Title Act 1993* were satisfied.

***Mineralogy Pty Ltd v Kuruma Marthudundera Native Title Claimants* [2012] WAMW 2**
23 January 2012
Mining Warden Open Court, Karratha,
Campione M

In this case, following objections by the Kuruma Marthudundera native title claim group, the Mining Warden decided to recommend to the Minister that certain Mining Lease applications by Minerology Pty Ltd should be refused.

Kuruma Marthudundera are the registered native title applicants for land over which Mineralogy applied for Mining Leases. Mineralogy already held an underlying Exploration Licence over the relevant areas. Mineralogy said that it would most likely build an open cut mine, and would propose to store mining waste in the same area. Kuruma Marthudundera objected to the grant of the leases on the grounds that this would be contrary to the public interest. Specifically, they argued that the activities that would be allowed under the tenement could have an adverse impact on their exercise of native title rights and interests, cultural heritage (including significant sites) and lifestyle. They also argued that the probable impacts on flora and fauna would make the grant of the tenements against the public interest.

Campione M considered that the evidence presented by Mineralogy was very poor, consisting mainly of assertions about the law rather than statements of fact. Mineralogy's managing director asserted in evidence that Mineralogy would comply with all requirements of the *Native Title Act 1993* and state Aboriginal heritage and environmental protection laws. Mineralogy argued that since it had complied with the requirements of the *Mining Act 1978* (WA), and the application are covered by the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002*, the company was entitled as a matter of right to have its applications granted. It argued that the Warden's role was a 'rubber stamp' rather than to actively consider objections. Further, Mineralogy argued that Kuruma Marthudundera's objection reflected private interests rather than public interests, and were therefore irrelevant.

Campione M accepted and was impressed by the evidence given on behalf of Kuruma Marthudundera by two senior men, both about the likely impact of mining activities on the land and its people, and about the past conduct of Mineralogy in dealing with Kuruma Marthudundera. The evidence, which was not challenged, established that the proposed leases were in the vicinity of three important sites, and cover a number of important waterways and waterholes. There was evidence about the bush food and medicine taken from the area, the burial grounds in the area, artifacts and engravings, and people's residence and activities. The witnesses stated that based on their previous dealings with the company, they did not believe that Mineralogy was genuine in its promise to consult with Kuruma Marthudundera about the proposed mining. Campione M agreed that the company had a poor record in its approach to cultural and heritage matters.

On the matter of the contract between the state and Mineralogy, Campione M considered that there was nothing in that agreement or its statutory counterpart to exempt Mineralogy from the statutory

regime applying to tenement applications. The Minister may well give such matters considerable weight in making an ultimate decision, but the Warden's task was to make a recommendation on the material available. Campione M endorsed the view of the Warden's task as a 'filter for the Minister'.

On the question of private versus public interests, Campione M applied case law that held that while private interests are not directly relevant to matters of public interest, there may nevertheless be a public interest in the protection of private interests. For the purposes of the *Mining Act 1978*, non-compliance with the Act is not the only basis for findings about the public interest. Campione M considered that Kuruma Marthudundera's evidence about the impacts on the land and people, as well as the general approach of Mineralogy, could be relevant to an assessment of the public interest.

Overall, Campione M did not consider that Mineralogy had presented enough material to allow him to discharge his function as Warden. Mineralogy had not given information about the exact location of proposed mines or waste dumps, or about the use of ground water. This made it impossible to assess the impact on the proposed tenements on the public interest. That was so even though the onus is on the objecting party to establish that the grant of the tenement would not be in the public interest.

***Ryder v Western Australia* [2012] FCA 77**
2 February 2012
Federal Court of Australia, Perth
Gilmour J

In this short judgment, Gilmour J granted leave to the Lamboo native title claim group to file a notice of discontinuance of their native title application. Members of the claim group and staff at the Kimberley Land Council had sworn affidavits stating that a meeting had been held after an appropriate process of notification, and that at the meeting members of the Lamboo native title claim group had unanimously agreed to discontinue the claim.

***Lungunan v Western Australia* [2012] FCA 78**
3 February 2012
Federal Court of Australia, Perth
Gilmour J

This is another decision involving s 66B *Native Title Act 1993*, the section dealing with the removal or addition of named applicants. There were 18 individuals constituting the applicant in the Nyikina and Mangala People's native title application at the time it was filed, but subsequently 7 of those individuals had died and an eighth no longer wished to act as applicant. A meeting was held in November 2011, at which resolutions were passed stating that the previously named applicants were no longer authorised to conduct the claim, and appointing 10 individuals to constitute the new applicant. The authorisation was for those 10 individuals, 'or such of them are as eligible to act as applicant and who are and remain willing and able to do so'. Each of the 10 were present at the meeting, and filed affidavits affirming that they are members of the claim group.

Gilmour J was satisfied on the basis of affidavits from two officers at the Kimberley Land Council, as well as each of the 10 replacement applicants, that the meeting was appropriately advertised and conducted. The named applicants attested that there was no relevant traditional decision-making process, and that a decision-making process was agreed and adopted by the passage of resolutions at the meeting.
Accordingly Gilmour J made orders to replace the applicant as requested. His Honour considered that nothing would be served by requiring an amended claimant application to be filed, and so waived that requirement.

***Taylor v Fortescue Metals Group Ltd* [2012] FCA 52**
6 February 2012
Federal Court of Australia, Perth
Siopis J

This case discusses the meaning of the obligation to negotiate in good faith within the 'future acts' regime under the *Native Title Act 1993*. The Court decided that Fortescue Metals Group Ltd did not breach its obligation to negotiate in good faith when it employed as a solicitor in the negotiations a person who had previously worked at the native title representative body (NTRB) that was representing the native title claimants.

Fortescue had applied for a number of mining leases within the claim area of the Njamal People, and the state duly gave notice under the *Native Title Act 1993* of its intention to grant those licences, which would constitute future acts. Negotiations between Fortescue and the native title party did not reach any agreement, and after the necessary time period had elapsed, Fortescue applied to the National Native Title Tribunal for a determination under s 38 of the *Native Title Act 1993* that the future act could be done. The native title party argued in the Tribunal that Fortescue had not complied with its obligation to negotiate in good faith, because Fortescue had used in its

negotiations a lawyer called Mr Sukhpal Singh, who had previously worked at Yamatji Marlpa Aboriginal Corporation (YMAC), the NTRB representing the native title party.

Mr Singh had worked at YMAC between 2005 and 2008, assisting a number of different native title claim groups in the Pilbara region. The question of whether and to what extent Mr Singh had acted for the Njamal People was a matter of disagreement between Fortescue and YMAC. YMAC informed Fortescue that it considered Mr Singh was unable to represent Fortescue in negotiations by reason of a conflict of interest, and Fortescue replied by saying that it had received counsel's advice to the effect that there was no conflict and that Fortescue intended to use Mr Singh in negotiations. Correspondence about the propriety of Mr Singh's involvement continued up to the commencement of negotiations. At a meeting between the native title party and Fortescue, the claim group expressed their dissatisfaction with Mr Singh's presence but the meeting continued. Negotiations continued for a number of months and did not reach agreement. Fortescue applied to the Tribunal for a future act determination under s 38 *Native Title Act 1993*, and in response the native title party argued that Fortescue was not entitled to a determination because it had not negotiated in good faith.

The Tribunal considered two slightly different arguments put by the native title party. The first argument was that Fortescue had acted unreasonably in negotiations because Mr Singh was disqualified on common law grounds from acting for Fortescue in the negotiations. The second argument was that Fortescue had acted unreasonably because it had knowledge that Mr Singh was disqualified from acting and that he possessed confidential information about the native title claim group. The Tribunal considered evidence about the extent of Mr Singh's involvement in YMAC's work with the Njamal People. It concluded that this evidence did not establish that Mr Singh had been sufficiently involved with the Njamal People to be under a solicitor's duty of loyalty to them. The evidence also did not show that he had acquired confidential information relating to the Njamal People while working at YMAC. That finding was despite the fact that Mr Singh had been copied into emails containing the Njamal people's privileged and confidential information. The Tribunal was not satisfied that he had read that information and accepted that he did not recall the emails. The Tribunal also rejected an argument that the duties of solicitors are higher in respect of native title claim groups than under the general law.

Because of its factual findings, the Tribunal did not find it necessary to answer the question of whether Fortescue *would* have breached its obligation to negotiate in good faith if Mr Singh *had* been found to be in breach of his solicitor's duties. It also did not directly address the question about whether Fortescue's knowledge of such a breach would have been necessary to render its behaviour unreasonable.
On appeal from the Tribunal to the Federal Court, the native title party raised several grounds on which it said the Tribunal had erred. The Court, however, did not consider that these grounds raised questions of law as is required for an appeal from the Tribunal under s 169 *Native Title Act 1993.* Rather, the grounds of appeal simply sought to challenge the Tribunal's factual findings – something that is not allowed in this sort of appeal. Accordingly, the Court dismissed the appeal.

The Court went on to make some additional comments about the Tribunal's decision. The Court said that the Tribunal need not have asked whether Mr Singh was in breach of his duties of loyalty and confidentiality to the Njamal people, because the question of whether Fortescue had negotiated in good faith was to be answered by reference to Fortescue's state of mind and its actions. In this case, Fortescue had responded to the native title party's complaint about Mr Singh by seeking legal advice from an independent barrister. Further, YMAC had not sought its own independent advice, nor taken legal action in relation to Mr Singh, nor complained to the relevant legal professional body. So the Court considered that Fortescue was negotiating in good faith regardless of whether or not Mr Singh, as a matter of law, was in breach of his duties.

***FMG Pilbara Pty Ltd / Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2012] NNTTA 11**
7 February 2012
National Native Title Tribunal, Perth
Member Daniel O'Dea

In this decision the Tribunal made a determination that an Exploration Licence covering part of the Yindjibarndi #1 native title claim could be granted to FMG Pilbara Pty Ltd, subject to certain conditions.
FMG had applied for the Exploration Licence, and subsequently participated in mediations with the native title party and the state that were conducted by the Tribunal. The mediations did not lead to any agreement, and after the prescribed period of 6 months had elapsed, FMG applied for the Tribunal to make a future act determination under s 35 of the *Native Title Act 1993.* Following such an application, the Tribunal would then be required to

determine that the future act (the proposed grant of the Exploration Licence) either must not be done, or may be done, potentially subject to conditions specified by the Tribunal. Leading up to that determination, the Tribunal convened a preliminary conference and later invited written submissions from the parties, but the native title party did not attend the conference or provide submissions or any other documents.

When the s 35 application had first been filed, the law firm that was named as solicitor on the record for the native title claim was Slater and Gordon Lawyers. At this time there was significant dissent between members of the native title applicant and also between members of the claim group. Some named applicants applied to the Federal Court under s 66B *Native Title Act 1993* to remove other of the named applicants, and soon after Slater and Gordon applied to remove themselves as the legal representatives for the native title claim group. After that, spokespersons for the Yindjibarndi Aboriginal Corporation (YAC) (some of whom were the named applications who were the subject of the s 66B application) wrote to the Tribunal and said that they had never been informed of FMG's application for the Exploration Licence, and therefore had not had the opportunity to participate in negotiations or make submissions on the s 35 application. They claimed that YAC was the appointed agent for the native title claim group and sought to bring evidence and make submissions on the group's behalf. The Tribunal indicated that it could not accept such evidence and submissions unless it could be satisfied that they represented the position of all of the native title applicants acting together as a whole.

YAC had argued that it was authorised to act as agent for the native title claim group because of a notice filed in the Court in 2008. Subsequent to this, Slater and Gordon was appointed solicitor for the claim group, and then removed as solicitor. YAC claims that at this point its status as agent was revived. The Tribunal did not accept this argument. The Tribunal went on to say that even if YAC's argument about its agent status were accepted, it would not solve the problem of the divisions between the named applicants. Agents act on behalf of a principal, and in this case the principal is the native title applicant, composed of a number of individuals who are currently in dispute about how to proceed. Member O'Dea cited *Tigan and Others v Western Australia* [2010] FCA 993 and *Roe v Kimberley Land Council* [2010] FCA 809 for the proposition that a sub-group within the applicant, even if it constitutes a majority, does not have the capacity to make decisions on behalf of the applicant. In any case, while the affidavit lodged on behalf of YAC alleged that FMG had failed to negotiate in good faith, it did not provide specific details and the Tribunal did not consider that there was any evidence in front of it that would support a finding that FMG had not negotiated in good faith.

Being satisfied that good faith negotiations had taken place, the Tribunal went on to consider the merits of the application for a future act determination. Having rejected the evidence provided by YAC, the Tribunal said that it had to make a decision without any evidence from the native title party. The YAC representative requested a hearing to be held on country, but the Tribunal denied that request on the grounds that it was made too late, that no information had been given about the nature of the evidence they would seek to give on country, and that YAC did not have the authority to request that course of action on behalf of the native title party.

The Tribunal is required to consider a number of factors listed in s 39 *Native Title Act 1993*. The first factor is the likely effect of the proposed tenement on the enjoyment of registered native title rights and interests. The Tribunal said that the Exploration Lease was proposed for an area where non-exclusive native title had been claimed, and noted that the activities authorised by the Exploration Licence would be intermittent and temporary. Accordingly, the Exploration Licence would be unlikely to cause significant impact on the rights and interests claimed by the native title party.

Other factors relating to the likely impacts of the exploration activities were dealt with very briefly, on the grounds that no evidence about them had been brought by the native title party. The Tribunal instead decided that in the absence of specific information, additional conditions imposed onto the grant of the Exploration Licence would be appropriate to minimise the social, cultural and other impacts of the exploration. These conditions included a term that guaranteed the native title party's access and use of the land, and a term requiring FMG to provide to the native title party certain information about its activities.

The Tribunal determined that the Exploration Licence could be granted to FMG on the specified conditions.

***Jidi Jidi Aboriginal Corporation v Sandfire Resources NL* [2012] WAMW 5**
10 February 2012
Mining Warden Open Court, Perth
Wilson M

Sandfire Resources NL applied for Miscellaneous Licences over land within the Jidi Jidi native title determination area. Jidi Jidi Aboriginal Corporation (JJAC) lodged objections to the applications. JJAC later sought to amend those objections, and Sandfire objected to those proposed amendments.

The proposed amended objections alleged that the activities allowed under the licences would 'cause social and cultural disruption' to the Nharnuwangga, Wajarri and Ngarlawangga people (NWN people - represented by JJAC), and that any conditions imposed would not be sufficient to protect those people. In the alternative, JJAC wanted any grant of the Licences to be subject to conditions that would protect the native title holders.

Sandfire argued that JJAC should not be allowed to allege that Sandfire's activities would interfere with native title rights and interests, because the NWN people had entered into an Indigenous Land Use Agreement (ILUA) with the State of Western Australia in which they agreed not to object to tenement applications on the grounds of interference with native title rights and interests or Aboriginal heritage. Sandfire said that this ILUA was the reason that JJAC was amending the objections, to remove the reference to interference with native title interests and replace it with a reference to social and cultural disruption. Sandfire argued that the Warden should uphold the terms of the ILUA (even though Sandfire was not a party to it).

The Warden noted that the *Mining Act 1978* does not put limits on who may object to the grant of a mining tenement, or on the grounds on which they can make objections. Further, there is no provision in the *Native Title Act 1993* that prohibits the lodging of an objection after a native title determination or entry into an ILUA. The *Mining Act 1978* gives the Warden discretion to decide whether or not to hear an objection, or to limit the scope of an objection. The ILUA is a private agreement between the state and the NWN people and the Warden considered that it could not bind or constrict the operation of the *Mining Act 1978*. If the state wishes to enforce its rights under the ILUA it must do so in a Court of appropriate jurisdiction.

Accordingly, the Warden did not consider that the ILUA precluded JJAC from objecting on the grounds of social and cultural disruption. Further, the Warden did not consider that the *Aboriginal Heritage Act 1972* provides protection against disturbance to the social and cultural structure of an Aboriginal community. The proposed amendments to JJAC's objections were allowed.

Legislation

Native Title Amendment (Reform) Bill (No.1) 2012
The Native Title Amendment (Reform) Bill (No.1) 2012 aims to implement reforms to the *Native Title Act 1993* (NTA). This Bill is the second iteration of native title reform proposed by the Australian Greens. In March 2011, Senator Siewert introduced the Native Title Amendment (Reform) Bill 2011. The Bill was referred to the Senate Legal and Constitutional Affairs Standing Committee in May 2011.

Over 35 submissions were received, from a range of stakeholders and government agencies during the course of the inquiry. The majority of these were supportive of the intent of the legislation - many noting the great need for the *Native Title Act* to be reformed. The submissions contained many useful suggestions on how the Bill might be strengthened and improved. This new Bill builds on those suggestions.

The reforms in the Bill address two key areas in the interest of native title claimants:

- 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.

For more information see the following links:

- Text of the Bill: Download PDF
- Explanatory Memoranda: Download PDF

Native title publications

The National Native Title Tribunal
'*National Report: Native Title – February 2012'*

The NNTT's eighth status report on a range of matters relating to Australia's native title system. This report covers the last six month period and briefly compares what happened during those six months with what happened in the previous six months, as well as providing a picture since 1 January 1994.

Report available for download from:
http://www.nntt.gov.au/News-and-Communications/Publications/Documents/Corporate%20publications/NNTT-national-report-card-February-2012.pdf

Department of Indigenous Affairs
'Western Australia's Cultural Heritage Due Diligence Guidelines' (November 2011)

Western Australia's land users are obliged to comply with Western *Aboriginal Heritage Act 1972*. These Guidelines provide guidance to assist in meeting this statutory obligation and they are intended to help identify activities which may impact adversely on Aboriginal heritage.

Guidelines available for download from:
http://www.dia.wa.gov.au/Documents/HeritageCulture/Heritage%20management/AHA_Due_Diligence_Guidelines.pdf

South West Aboriginal Land and Sea Council
'*The Facts on the proposed native title settlement of the south west'* (February 2012)

This document contains information about the negotiations between the South West Aboriginal Land and Sea Council and the WA Government aimed at resolving the Noongar native title claims over the south west of WA.

SWALSC document available for download from:
http://www.noongar.org.au/images/pdf/forms/The%20Facts%20on%20propsed%20native%20title%20settlement%20of%20the%20SW.pdf

Native title in the news

National

03/02/2012
Tax-break for native title
A group including members of Minerals Council of Australia and Indigenous leader Marcia Langton met Treasury officials in early February to discuss the tax treatment of native title payments and the creation of a tax-exempt Indigenous community fund. The group aim to secure the Gillard Government's support for an Indigenous Community Development Corporation as a new model for managing native title and other payments negotiated by traditional owners and Indigenous groups. It is proposed that the ICDC will be able to accept and distribute funds on a tax-free basis, to maximise the economic and social benefits for communities and reduce administration. *Australian,* (AU, 03 February 2012), 6.

New South Wales

31/01/2012
Members welcome at Elders' meeting
The Dunghutti Elders Council held their Annual General Meeting (AGM) on 2 February 2012. The corporation was placed under special administration by the Office of the Registrar of Indigenous Corporations in September 2011. Changes to the membership application process and the appointment of a new board of directors were discussed.

The AGM was presided over by special administrators Andrew Bowcher and Tim Gumbleton from RSM Bird Cameron Chartered Accountants. The period of special administration ended on March 1 with the new board of directors taking control of the corporation. *Macleay Argus* (Kempsey NSW, 31 January 2012), 3.

South Australia

17/01/2012
Tasman Resources
Native title negotiations between the Kokatha Uwankara people and Tasman Resources will continue after a preliminary Aboriginal heritage survey report indicated half of the proposed drill holes at its Vulcan prospect will be approved.
The company said it was still waiting on the final report from an Aboriginal heritage survey conducted in October at the Vulcan prospect, 30 km north-east of Olympic Dam in far north South Australia. *Adelaide Advertiser* (Adelaide SA, 17 January 2012), 26.

Victoria

01/02/2012

A step closer; native title recognition

The Dja Dja Wurrung people are a step closer to receiving formal recognition of native title rights after the release of a proposed native settlement agreement area by the State Government of Victoria. The state government has released a map that it and the Dja Dja Wurrung native title negotiation committee have agreed to. The proposed area includes Crown land from Bendigo to Donald and Boort to Creswick. The Victorian Government has called for Dja Dja Wurrung people to have an input into the proposed settlement agreement. Dja Dja Wurrung Clans Aboriginal Corporation Chairman Graham Atkinson also chairs the native title negotiating committee. He said he hoped Dja Dja Wurrung people would participate in a call for submissions.

The public have until 7 March to make a formal submission to the Department of Justice. The explanatory memo is available from the Department of Justice website at: http://www.justice.vic.gov.au/resources/8/b/8bc8c80048c1a8e89758bf3432207392/explanatorymemo.pdf

Bendigo Advertiser, (Bendigo VIC, 1 February 2012), 1. *Bendigo Advertiser,* (Bendigo VIC, 1 February 2012), 8. *Loddon Times,* (Loddon VIC, 8 February 2012), 1. *Loddon Times,* (Loddon VIC, 8 February 2012), 3.

Western Australia

04/02/2012

$1 billion offer to native title claimants

An alternative settlement estimated to include a $1 billion package of cash injections and land transfers to the Noongar people of Perth and south-west of Western Australia has been offered by the Western Australian Government.

Outlining the offer, WA Premier Cohn Barnett said he was optimistic of reaching a deal that would extinguish all future native title claims for the area and benefit an estimated 35,000 Noongar descendants. The proposed deal has received bipartisan support from WA's Labor Opposition. WA Attorney-General Christian Porter, who has been overseeing the negotiations, said the negotiations would now begin in earnest. He said the federal government would be invited to join the negotiations and to honour a promise from the time of the Keating Government to pay 75% of the costs of the native title settlement. The announcement of the settlement package has led to significant protests throughout Perth.

SWALSC Chief Executive Glen Kelly said the offer put an end to a frustrating period of negotiations. For more information on the deal see the SWALSC website at: http://www.noongar.org.au/

Weekend West, (Perth WA, 04 February 2012), 1. *Sunday Canberra Times,* (Canberra ACT, 5 February 2012), 12. *Sunday Times,* (Perth WA, 05 February 2012), 37. *Augusta Margaret River Times,* (Margaret River WA, 10 February 2012), 6. *Busselton Dunsborough Times* (Busselton WA, 10 february 2012), 2. *Weekend Australian*, (AU, 11 February 2012), 8. Weekend West, (Perth WA, 11 February 2012) 3. *Australian*, (AU, 09 February 2012), 3. *Northern Daily Leader*, (Tamworth NSW, 9 February 2012), 9. Burnie Advocate, (Burnie TAS, 9 February 2012), 12. Canberra Times, (Canberra ACT, 9 February 2012), 6.West Australian, (Perth WA, 9 February 2012), 1. *Australian*, (AU 09 February 2012), 3. *West Australian* (Perth WA, 9 February 2012), 4. *West Australian* (Perth WA, 10 February 2012), 6. *Weekend Courier* (Perth WA, 10 December 2012), 3. *Koori Mail* (22 February 2012), 6.

25/02/2012

Rival land claims

Woodside Petroleum's plans to build a $40 billion gas plant on the Kimberley coast are under further questions after two Indigenous groups voted to split their native title application. This move could force the WA Government to negotiate with traditional owner Joseph Roe, who opposes the gas plant at James Price Point. The group reportedly voted to remove several Goolarabooloo ancestors from the combined claim, which allowed for it to be de-registered with the National Native Title Tribunal. Kimberley Land Council Chief Executive Nolan Hunter said he did not have details of the vote and the KLC did not organize the meeting. Woodside and the WA Government refused to comment. *Weekend Australian* (Australia, 25 February 2012), 8.