

## OUTPUT GROUP 6

### NATIVE TITLE

The Central Land Council aims to provide Aboriginal landowners with information, advice and support to enable them to manage their land in a sustainable and productive way.

#### OUTCOMES

Enhanced social, political and economic participation and equity for Aboriginal people in the Central Land Council's area as a result of the promotion, protection and advancement of their land rights, other rights and interests.

# OUTPUT 6

## NATIVE TITLE

**Native title is the legal term used by the Australian High Court to describe the rights and interests Aboriginal people have over their lands since long before European settlement. These rights and interests are called 'common law' Indigenous property rights and were recognised by the High Court in the Mabo judgment in June 1992 and were made into legislation in 1993. The High Court's subsequent Wik judgment (December 1996) further determined that native title could coexist with other rights on land held under a pastoral lease.**

While native title recognises that Indigenous people have traditional rights to speak for country, to protect sites and to be consulted regarding developments on their land, it does not give them ownership of the land in the way that the Land Rights Act does.

### THE CLC'S NATIVE TITLE PROGRAM

In 1994 the CLC became a recognised Native Title Representative Body (NTRB) for Central Australia under s.203 of the Native Title Act. In that capacity the CLC has statutory functions to facilitate and assist native title holders to make native title applications (NTA), respond to proposed 'future acts' (as defined by the Native Title Act) and negotiate agreements, and to resolve disputes between groups. In 2015, the Minister for Indigenous Affairs granted the CLC re-recognition as an NTRB for a maximum of one year to June 2016.

In the reporting period the CLC continued to certify NTAs for native title determination and applications for registration for Indigenous Land Use Agreements (ILUAs) in a timely manner. Native title determination and ILUA applications are presented to the Council or the CLC Executive before going to the National Native Title Tribunal (NNTT) for registration.

The CLC currently has 19 native title-funded positions, which includes a manager, lawyers, anthropologists, mining and research officers as well as administrative and project staff.

### NATIONAL NATIVE TITLE COUNCIL

A member of the National Native Title Council (NNTC) since its inception in 2005, the CLC continued to play an active role in the council. It contributed to NNTC submissions, discussions, joint NNTC/ Minerals Council of Australia fora and representations to government on matters of national importance. Among them

was the review of the Native Title Act 1993 by the Australian Law Reform Commission and the Human Rights Commission's Indigenous leaders roundtable on property rights.

### NATIVE TITLE CONSENT DETERMINATIONS

On 14 October 2014, a special sitting of the Federal Court was held at Honeymoon Bore near Ampilatwatja community. At this sitting Justice Mortimer handed down a determination by consent of non-exclusive native title over an 18,800 square kilometre area in the Sandover region. It incorporates Ammaroo, Derry Downs, Murray Downs and Elkedra Pastoral Leases (PPL). The determination area included community living areas on Elkedra PPL and a former stock route and stock reserve. The determination recognised the rights and interests of 19 separate landholding groups from the Alyawarr and Kaytetye native title holders to access, hunt, gather and fish on the land and waters, use its resources, and conduct cultural activities and ceremonies in the determination area. The current lessees will continue to operate Ammaroo, Derry Downs, Murray Downs and Elkedra PPLs and the native title holders' rights will co-exist with the rights of the pastoral leaseholders.

The original native title application was filed with the court in December 2001 as a result of a mining and horticulture 'future acts'. These acts raised concerns over the protection of sites and areas of cultural significance to the Aharreng, Akaneng, Akweranty/ Anwerret, Alarilpw, Angkeperretyey, Antarrengeny, Areyn, Arlangkw, Arlpaw, Arnawenty Imangker, Aterleleng, Atnwengerrp, Ileyarn, Kwerrekepy, Lyentyawel Ileparranem, Ntewerrek, Pwerrke and Tyaw estate groups on the pastoral leases. The native



Justice Mortimer congratulates Eadie Holmes, one of the traditional owners who won native title rights over an 18,800 square kilometre area in the Sandover region.

title holders instructed the CLC to lodge a native title application as they were anxious to protect their cultural areas and have a say over exploration and development on their country.

Outstanding issues in relation to the applicant's claim of s.47B over the former stock route and stock reserve, incorporating these areas into the PPLs, compensation payable and agreement from the pastoralist to enter into an ILUA delayed the determination. These issues were resolved during the reporting period.

The Alyawarr Awenyerre Aperte Ingkerr-Wenh Aboriginal Corporation was registered as the Native Title Body Corporate in December 2014.

## COMPENSATION APPLICATIONS

Where possible the CLC seeks to deal with compensation matters by negotiating outcomes. When deemed appropriate and instructed by native title holders, the CLC will seek to secure compensation for acts resulting in the extinguishment or impairment of their native title rights and interests. No new native title compensation applications were lodged with the NNTT during 2014–15.

## CLAIMANT APPLICATIONS

The CLC pursues native title determinations that will achieve recognition and protection of native title rights

and deliver outcomes that are important to native title holders. The CLC has a total of seven active native title claimant applications registered with the NNTT, with a further two applications awaiting registration. It held 68 meetings and consultations relating to native title applications and made significant progress in anthropological research, preparation and delivery of consent determination reports.

## NEW APPLICATIONS

### Phillip Creek PPL (NTD50/2015)

A new application filed on 1 December 2014 was registered with the NNTT on 23 February 2015. Phillip Creek PPL is bounded by Karlantijpa ALT to the west and north; Banka Banka PPL to the north; Brunchilly PPL to the north-east; Warumungu ALT to the east; and Tennant Creek PPL to the south and east.

### Victory Downs/Mount Cavanagh/Mulga Park/Umbeera (NTD20/2015)

A new application was filed on 19 May 2015 with registration still pending. Victory Downs/Mt Cavanagh/Mulga Park/Umbeera are bounded by Petermann ALT and Katiti ALT to the west, Curtin Springs PPL to the north-west, Lyndavale and Idracowra PPLs to the north and Lilla Creek PPL to the east.



### Maryvale (NTD35/2015)

A new application was filed on 24 June 2015 with registration still pending. Maryvale is bounded by Horseshoe Bend PPL to the south and east, Idracowra and Henbury PPLs to the west, Orange Creek PPL to the north-west and Deep Well and Allambi PPLs to the north-east. Mpwelarre ALT, the former Hugh River Stock route, lies directly to the north of Maryvale PPL.

### CURRENT APPLICATIONS

Legal issues relating to the Stirling/Neutral Junction NTA were being finalised in this period and the terms of the ILUA and other matters were still in negotiation at 30 June 2015 and close to settlement. A consent determination is likely to take place in early 2016.

During the reporting period anthropological reports and material in respect of Mt Denison, Aileron (Nolan Bore), Aileron (whole of lease), Victory Downs/Mount Cavanagh/Mulga Park/Umbeara and Phillip Creek applications were finalised and lodged with the NT Government. Additional material was being prepared by the anthropology unit for the New Crown/Andado and Narwietooma applications, and the anthropology reports were finalised for Henbury and Mount Riddock applications to enable the legal documentation to be drafted. Anthropological research is still continuing for the proposed Maryvale, Huckitta, Limbunya, Wave Hill, Jervois/Jinka, Pine Hill west and Tennant Creek applications.

Provisional consent for a native title application over Rainbow Valley National Park and tenure history has been received from the NT Government, but as at 30 June 2015 the CLC was still awaiting consent to file the NTA.

### Stirling & Neutral Junction (NTD17/2011)

The CLC filed an application on 19 July 2011 and registered it in respect of the whole of Stirling PPL and the remainder of Neutral Junction PPL (not covered by the existing native title determination). There is a history of mining and exploration interest and activities on and near the claim area. Traditional owners instructed CLC to pursue a native title claim in order to protect sites and secure their right to negotiate over any future exploration or mining. The NT Government indicated it would be satisfied with an abbreviated anthropology report. The existence of two successful land claims nearby (Ti Tree Land Claim, Alyawarra Kaititja Land Claim) further increased the chances of resolving the claim.

As a result of further research the CLC filed an amended NTA in September 2013 with a change to the composition of the claim group and other minor amendments. As at 30 June 2015 it was negotiating with the NT Government about the compensation proposal which, if accepted by the applicants, will require Cabinet approval.



Michael Liddle, John Duggie, Geoffrey Curtis during a work area clearance in the Davenport National Park.



Traditional owner Maisie Rogers and her grandchild got some bush tucker during a trip to research the Jervois Jinka native title claim.

### **Aileron (Nolan Bore) (NTD20/2007)**

Arafura Resources currently holds an Exploration Licence (23671) in the vicinity of Nolan Bore on Aileron PPL and has conducted an intensive exploration program in this area. The company publicised discovery of a 'significant' deposit of rare earth oxide and phosphate at Nolan Bore and, more recently, a deposit of uranium as well. Following this discovery, the company applied for a Mineral Lease (MLA 26659). It has also entered into an agreement with the CLC (on behalf of the native title holders) which outlines compensation to be calculated on a percentage basis of the company's in-ground expenditure. The CLC lodged an NTA in December 2007 and subsequently registered in October 2008.

This NTA was in respect of a small portion of Aileron PPL, close to Nolan Bore. However, due to the high level of exploration interest in the area, the CLC decided to pursue a whole-of-lease NTA over Aileron PPL. In order to retain the native title holders' rights to negotiate, this NTA will be pursued in conjunction with the new Aileron PPL NTA and an application to the court may be made to combine both applications in the future. Summary anthropology report was completed and served on respondents; however, the application will require

reauthorisation and amending due to the death of a named applicant.

### **Narwietooma (NTD6/2013)**

Glen Helen NTA (NTD6007/2003 amended) covered parts of the adjoining Narwietooma PPL and other PPLs, and was later renamed 'Narwietooma' by order of the Federal Court. In June 2011 the CLC received instructions to pursue an NTA over the whole of Narwietooma PPL. It filed the Narwietooma whole-of-lease NTA in May 2013. It replaces NTA (NTD6007/2003), which the CLC withdrew. The application was filed and registered in response to exploration licence applications.

The CLC submitted all documents to the NT Government in 2012–13 and consent negotiations continued throughout 2013–14. The NT's solicitor requested further evidence and s.47B evidence, for which further research was undertaken. The CLC served a supplementary report on the NT Government on 26 June 2015, and provided further information on s.47B issues. The NT Government was not able to proceed with the matter until it was able to assess the information requested.

### **Mount Denison (NTD27/2013)**

Mount Denison PPL is bounded by Coniston PPL to the east and ALTs on all other sides. There are extensive exploration interests and activities on and near the claim areas. There are sites of cultural significance in the claim area, as well as sites of local, historical significance associated with events leading up to the Coniston massacre. Traditional owners were therefore eager to pursue an NTA with a view of granting whole-of-lease instructions for the protection of sites. The NTA lodged in December 2013 was registered 7 April 2014. The CLC served documents on the NT Government and is awaiting response to the summary report. The application will require amending in relation to Yurrkuru/Brooks Soak.

### **Aileron (whole-of-lease) (NTD8/2014)**

Aileron PPL is bounded by Napperby PPL to the west, Yambah PPL in the south, Bushy Park PPL in the east and Pine Hill PPL in the north. A small portion of Aileron, close to Nolan Bore, is the subject of an NTA filed in 2007 in response to drilling (target minerals rare earth oxide and uranium) and proposed further works within the ELA (23671) held by Arafura Resources NL. Due to the high level of exploration interest in the area, CLC obtained instructions to pursue a whole-of-lease NTA over Aileron PPL. The CLC lodged an NTA in March 2014 and served the



anthropology report on the NT Government and is still awaiting response.

The CLC will pursue the original NTA (Nolan Bore) in order to retain the native title holders' rights to negotiate in respect of ELA 23671; however, it may apply to the court to combine both NTAs in the future.

### **New Crown / Andado (NTD20/2014)**

Since 2007, the CLC has been documenting expressions of interest from traditional owners in its southern region to progress native title claims. In 2008, it commissioned a scoping study to assess the needs, factors and viability of potential claims in that region, and received the consultant's report in 2009. The report identified traditional owners' concerns over site protection, the impacts of exploration and mining, and a perception that recognition of native title over pastoral leases enhances access to country.

After considering the report's recommendations, the CLC decided to progress two claims in its southern region: an application over New Crown and Andado PPLs; and an application including the areas within Victory Downs/Mount Cavanagh PPLs. Extensive field research from 2010–11 and 2013 led to the NTA being filed on 24 June 2014.

The draft summary anthropology report has been prepared and additional research regarding exclusive possession (s.47b) issues on certain areas of the claim is being undertaken.

## **FUTURE ACTS**

Mining future acts are the largest driver of the CLC's native title work program and draw most heavily on staff time and resources. The number of exploration tenements notified under s.29 of the Native Title Act has fluctuated considerably over recent years as has the exploration intensity once tenements are granted. Once notification has commenced the CLC must to obtain instructions from native title holders and respond to the potential grants in a timely manner.

Administration of future acts is a high priority for the CLC and during the period took all reasonable steps to notify native title holders and native title claimants of future acts affecting their native title rights or interests. The CLC monitors the media on a daily basis and maintains a register of all applications, relevant timelines and associated tasks. The CLC responds to all applicants with advice outlining the native title process and recommending negotiated agreements as a preferred option.

## **Mining/exploration future acts**

All applications for exploration licences within the NT include a statement from the NT Government that the grant attracts the 'expedited procedures' as laid out in the legislation. This determines a process within a strict time limit set by the Native Title Act. The CLC responded to 92 notifications under s.29 of the Native Title Act in 2014–15. It assesses the potential impact of each notification on the exercise of native title rights and interests, both legally and practically.

The CLC undertook 54 future act mining and exploration-related field trips, meetings, and consultations with affected native title holders. In other instances existing instructions adequately dealt with the application. Contact with applicants was required at some stage of the process for all notifications. However, it remains difficult to determine whether applications are a genuine exploration proposal or the development of saleable property. Mining and anthropology staff met with or contacted numerous individual native title holders for notification or research purposes.

The CLC completed 30 native title holder identifications in preparation for meetings where the



Joseph Williams Jungarrayi during a research trip for the Tennant Creek PPL Native Title Claim.

native title holders considered ELAs and EPAs, as well as for other purposes. It also provided advice and logistical assistance at those meetings and reported on the validity of the native title holder instructions received.

### Mining and exploration agreements

There were 63 extant agreements requiring ongoing monitoring during the period and, following consultations with native title holders, the Council passed resolutions on the following new and ongoing matters:

2014–15 native title exploration and mining matters and decisions about the allocation of compensation to native title holders flowing from agreements	
Production and pipeline agreements	1
Exploration agreements	1
Deeds of assumption/assignment/covenant/variation	6
Distribution of compensation monies	4
Miscellaneous	0
<b>Total</b>	<b>12</b>

### Non-mining future acts

There were three non-mining future acts related field trips, including two consultation/instructions meetings.



During the reporting period, the CLC certified a production agreement and pipeline agreement for the production and delivery of gas from a site south of Alice Springs, undertook a work area clearance for the maintenance of seismic array infrastructure, entered into negotiations regarding a proposal to excise a portion of land from a pastoral lease for commercial activity and participated in meetings/briefings following s.24K notification in relation to proposals regarding an interconnector pipeline to supply gas to Queensland and South Australia.

## INDIGENOUS LAND USE AGREEMENTS

The CLC has implemented a clear strategy to secure beneficial outcomes for native title holders through negotiated ILUAs and other agreements, including 'good faith' agreements under s.31 of the Native Title Act. The CLC currently has a total of 77 ILUAs registered with the NNTT.

## POST-DETERMINATION ASSISTANCE

### Lhere Artepe Aboriginal Corporation (Alice Springs Prescribed Body Corporate)

The CLC continued to meet with Lhere Artepe Aboriginal Corporation (LAAC). It responded to requests from native title holders for information on their native title rights and interests, proposals put forward by Power and Water and Alice Springs Town Council and matters relating to the Alice Springs Telegraph Station (ASTS) Historical Reserve and the Ilparpa Claypans. It also advised and assisted on joint management, casual employment of native title holders at the ASTS, updates on the retrieval of damaged helicopter, mountain bike track works and 41 access permits. The CLC also helped facilitate a meeting about another land development matter involving a sacred site issue, and assisted native title holders to identify a process to progress matters.

The CLC administered a grant of \$50,000 for LAAC from the Department of the Prime Minister and Cabinet under the Basic Prescribed Body Corporate (PBC) Support program. The funds were directed towards essential operational expenses and LAAC provided CLC with regular written updates.

### Patta Aboriginal Corporation (Tennant Creek Township)

The CLC responded to requests from native title holders regarding site damage allegations at a new site in Tennant Creek. It inspected the site and instructed the company undertaking the works. It wrote to AAPA

as they issued the original clearance certificate to the company.

The CLC conducted a seven-day work area clearance and negotiated with Telstra and Diamond Communications about the installation for fibre optic cables in the town. The original clearance certificate, issued by AAPA, identified a sacred site. This restricted the work area at the location concerned. The CLC provided AAPA with a report containing instructions for the work to continue.

### **Ipperelham Aboriginal Corporation (Lake Nash)**

The CLC helped the PBC to hold meetings at Alpururulam and Camooweal to obtain instructions for matters relating to Statoil exploration petroleum applications.

### **Mpwerempwer Aboriginal Corporation (Singleton)**

The CLC helped the PBC consult and took instructions from NTH for the establishment of a firebreak in response to a request from Bushfires NT and pastoralist.

### **Ooratippra Aboriginal Corporation (Ooratippra)**

The CLC helped the PBC undertake an AGM and file general reporting documentation, attend a native title holders' meeting where a mining company representative provided updates on planned exploration and conducted a meeting to resolve issues concerning the sublease with Mistake Creek. Native title holders' instructions were required to amend the sublease.

### **Gurindji Aboriginal Corporation (Kalkarindji Township)**

The CLC facilitated the preparation of a consultant's report for the corporation and attended community meetings in Kalkarindji to discuss options for business ventures and future income streams for the PBC.

### **Alyawarr Awenyerre Aperte Inggerr-Wenh Aboriginal Corporation (Sandover)**

The CLC met with native title holders to receive final instructions for the distribution of mining exploration compensation funds relating to Elkedra PPL. It responded to requests from native title holders to continue to monitor implementation of compensation as agreed in the native title settlement ILUA.

### **Kaytetye Tywerate Arengge Aboriginal Corporation (Neutral Junction)**

The CLC responded to a request from native title holders to clarify details of a s.24GB notification



Patrick Nandy and Roy Waistcoat inspect a drilling rig near the Lone Star Track on Tennant Creek PPL following an exploration agreement with Emmerson Resources.

and application made by the Neutral Junction pastoral lessee for non-pastoral land use to grow hay commercially. The CLC obtained additional information to respond on behalf of Kaytetye Tywerate Arengge Aboriginal Corporation.

## **DISPUTE RESOLUTION**

Through the routine processes CLC adopts, it attempts to identify and minimise disputes over land from any initial contact with native title holders. While there have been no major disputes relating to overlapping native title claims in the CLC region it provides relevant staff with the opportunity to develop negotiation/mediation skills in anticipation of future disputes.

### **Alternative procedure agreements**

The CLC did not enter into alternative procedure agreements.

### **Body Corporate Agreements**

No Body Corporate Agreements were entered into.