

YMAC NEWS

News from
Yamatji
Marlpa
Aboriginal
Corporation

ISSUE 38 | July 2019



Save the Date!

Yule River Bush Meeting - July 24 & 25

Yamatji On-Country - Sept 21 & 22



Yamatji Marlpa
ABORIGINAL CORPORATION



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Cover: Justice Bernard Murphy with the Thiin-Mah Warriyangka Tharrkari Jiwarli people

Warning: Aboriginal People are warned that this publication may contain images of deceased people.

Hello & Welcome



Ms Natalie Parker, Co-Chair (Pilbara)

Mr Peter Windie, Co-Chair (Yamatji)

Hello & Welcome to the 38th edition of YMAC News. In this edition we:

- learn about opportunities for on Country programs
- celebrate consent determinations in our regions
- celebrate milestones and awards of our staff and members
- review what was talked about at the National Native Title Council's annual conference
- learn about native title compensation claims
- look forward to the first Yamatji on-Country meeting
- how you can contribute to recording the histories of people you know

Please send your story ideas to editor@ymac.org.au

For more information about YMAC, and for all the latest news, please visit our website at ymac.org.au

News from the CEO

Welcome to another edition of YMAC News. We are pleased to report reaching another two determinations; for the Palyku people on 12 March 2019, and the Thiin-Mah Warriyangka Tharrkari Jiwarli peoples on 16 April. You can read more about these great achievements inside.



The Jewellery Box by Wendy Jackamarra

Negotiating new obstacles post determination was a feature of the Indigenous Economic Development Summit in Darwin, in May. I was honoured to be invited to participate in a panel discussion on the "Key success factors for collaboration and building impactful partnerships". The content of the conference, was of great value to our organisation, as we continue to provide support for PBCs post determination and support them in creating an economic legacy for future generations.

A highlight was meeting and listening to Julie-ann Lambourne, CEO of EnVizion, and Cairns Indigenous Business Woman of the Year 2017. Julie-ann delivered a dynamic speech on overcoming obstacles and succeeding as an Indigenous entrepreneur. It is encouraging to see so many opportunities opening up for Aboriginal Australians, particularly as economic success for First Peoples is a vital component towards 'Closing the Gap'.

Our Executive Management Team attended a series of meetings with YMAC Committees and Board of Directors from 6-9 May in Exmouth. At these meetings the Board and Committees discussed and contributed to YMAC's submission to the State Government's proposal for new legislation to recognise, protect and celebrate Western Australia's Aboriginal Heritage, through its second round of consultation for the Review of the *Aboriginal Heritage Act* (1972). I am pleased to report that our submission has been received and I thank everyone who contributed to this vital piece of law making.

We continued to celebrate YMAC's 25th Anniversary at our recent Joint Committees Meeting for the year on 8 May. A special morning tea gave us the opportunity to recognise the contributions of long serving members (see the separate story for more information) and reflect on YMAC's achievements. Committee members were presented with special commemorative shirts, displaying artwork "The Jewellery Box" by Wendy Jackamarra.

For me, a highlight of 2019 Reconciliation Week was the announcement that Australia finally has its first Aboriginal person as Minister for Indigenous Australians. It is an encouraging step for all Australians to progress reconciliation and recognition. YMAC congratulates and looks forward to working with the Hon Ken Wyatt MP through our native title work, and will continue to promote opportunities for Traditional Owners that will progress the goals outlined in The Uluru Statement from the Heart, for Traditional Owners in our regions.

Finally, you may be aware of the recent High Court judgment in the Timber Creek native title compensation case. YMAC is a member of the National Native Title Council (NNTC) and is pleased to include information from the NNTC in this edition of YMAC News (centre page spread), to help members to understand the implications of the judgment.



Simon Hawkins, YMAC Chief Executive Officer

Palyku marks determination milestone



Photo: Justice John Reeves with Palyku Traditional Owners.

It was the recognition of what has always been, not the creation of a native title itself that Palyku people celebrated after 20 years of hard work on 12 March, 2019.

Around 100 people gathered for the emotional on-Country hearing at Wild Dog Creek – approximately 155 kilometres north of Newman, WA. The journey to this moment began in June 1998 and the determination included Traditional Owners and representatives from the Federal Court, State and Federal governments, and Member for Pilbara Kevin Michel, MLA, witnessing it finally take place.

The determination area of 9,308 square kilometres includes Woodstock, Gallery Hill, Cadjeput Creek, Bonney Downs, Noreena Downs, Hillside and Redmont Spring, several pastoral leases and mining tenements.

Justice John Reeves congratulated the Palyku people on the momentous achievement.

“This determination of native title does not create native title in this determination area, instead it marks the recognition by the Australian legal system of the Palyku people’s long held pre-existing native title in this land, according to the traditions and customs of the Palyku people since long before this determination by the court,” Justice Reeves said.

Traditional Owner David Milroy said, “This determination means a lot to the Palyku people. It’s been a long journey to get to here. Today’s native title recognition is a historic event, and we acknowledge and celebrate this important milestone.”

Thiin-Mah Warriyangka Tharrkari Jiwarli celebrate native title win

On April 16, 2019, at Gascoyne Junction the Thiin-Mah Warriyangka Tharrkari Jiwarli people gathered together to celebrate an on-Country Federal Court hearing recognising them as native title holders.

The Traditional Owners can now look to a future ‘post determination’ as native title holders over approximately 6,804 square kilometres of land lying within the Shires of Ashburton, Carnarvon and Upper Gascoyne.

In making the judgment, Justice Murphy congratulated Thiin-Mah Warriyangka Tharrkari Jiwarli people and thanked them for the privilege to be part of such a wonderful occasion.

The determination area is home to places of special spiritual significance, in particular living waters inhabited by the mythical water serpent, thalu places, meeting and ritual places, and the burial

places of the old people, whose spirits still inhabit Thiin-Mah Warriyangka Tharrkari Jiwarli Country today.

Some areas of particular cultural, historical and environment significance within the determination area include the Lyons River, Edmund River, Yangibana Creek, Gifford Creek, Fraser Creek and Elliot Creek.

Traditional Owner, Herbert Eagles, said, “We stand on the shoulders of our ancestors, and I know that they would be proud that our connection to Country has been honoured today by the Federal Court.”

“Today means everything - Ngurra - Country. It’s been a good journey with the people, we have walked together, and will continue to walk together every step of the way – to see a different world, to see a different future. This is for the past and the present, this is for the children,” Traditional Owner, Ben Roberts said.



Photo: Justice Murphy with the Thiin-Mah Warriyangka Tharrkari Jiwarli people

Truth-telling of the past to be forever remembered

On the clifftops of Carnarvon a bronze statue stands to ensure that what took place is not forgotten. The permanent memorial, called “Don’t look at the islands”, marks the second phase to commemorate the shocking history of the Lock Hospitals of Western Australia.

The sculpture portrays a young woman pointing towards the Bernier and Dorre Islands, where her family members may have been held, her other hand covering her face. Her little brother clings to her waist, his back to the sea.

In January, descendants of those who were ‘contained’ in the Lock Hospitals off the coast of Carnarvon travelled out to the islands for a ceremony to mark 100 years since the last person was removed from the offshore prison.



Photo credit: Melissa Sweet

It is estimated more than 200 people died on the islands, where their remains were left in unmarked areas.

Descendant and key driver of the project, Kathleen Musulin said having the story told and represented will help the healing process.

“The emotion has been so overwhelming with lots of relief and happiness because we finally got our ancestors acknowledged. Truth paves the way for all descendants to start moving forward without carrying all that pain and trauma in their hearts. We will always be sad for them but they will never be forgotten.”

On 17 April, WA’s Indigenous Affairs Minister Ben Wyatt and Regional Development Minister Alannah MacTiernan attended the unveiling of the statue by Smith Sculptors which was funded by the State Government, the Shire of Carnarvon and Lotterywest.

The third phase will involve a walkway from a healing space in Carnarvon to the statue, called the Path of Pain, to detail the history of the Lock Hospitals.

Port Hedland’s Lock Hospital and Burial Ground, which contains the only standing remains of a lock hospital in Western Australia, has now been included in the State Register of Heritage Places.

Aboriginal people were incarcerated at the Port Hedland Lock Hospital from 1919 to the 1930s.

WA’s Heritage Minister David Templeman said it was important to preserve the site to acknowledge the truths of the past in the hope it can aid the healing process for the future.

“The place, which highlights the travesties involved with improper medical incarceration, will now be protected to educate future generations,” he said.

News about caring for Country

A highlight from the YMAC’s May Joint Committee presentations was a talk by Department of Biodiversity, Conservation and Attractions (DBCA) staff about the rollout of the State Government *Plan for Our Parks* initiative.

This initiative has demonstrated a promising start by announcing five million hectares of new WA national and marine parks and reserves over the next five years - increasing Western Australia’s conservation estate by 20 percent. A critical factor will be to see the level of resources the State allocates to both the negotiation phases and to the running of joint management agreements.

Seventy percent of the proposed parks and reserves occur within YMAC’s NTRB representative area. Through this plan Government intends for Traditional Owners to play a more central role in the co-management of the new conservation land announced by Government.

YMAC is very pleased to see just how far State

Government has come in prioritising Aboriginal land and culture alongside conservation objectives, as well as the recognition of the vital role Traditional Owners can play in managing and conserving our natural resources.

Opportunities exist for new national parks to be created in areas such as Shark Bay, Kennedy Range, Mount Augustus and along the Fitzroy River. This will enable Aboriginal people to establish and operate tourism ventures and other enterprises on their country.

The decision to pursue joint vesting and management will rest with Traditional Owners. It will be important for the State to recognise that the agreements should fit the aspirations of Traditional Owners, address their concerns and be tailored to be specific to each community.

YMAC Ranger program discovers endangered species

A team of Nyangumarta Indigenous rangers and Parks and Wildlife WA have discovered a haven for endangered animals in Australia’s Great Sandy Desert, including one very significant find.

Endangered quolls, bilbies, and rock wallabies have been identified on camera as some of the precious fauna in the newly created Walyarta Conservation Park which protects some of the internationally significant wetlands of the Eighty Mile Beach Ramar site. The park was one of the first to be jointly vested to the Nyangumarta people to care for Country.

Quolls have been known to the Nyangumarta traditional owners of this part of the Great Sandy Desert for thousands of years. As the vast region has very few roads the most effective and practical way to access the rocky outcrops that provide sanctuary to the animals was by helicopter. The team installed remotely-triggered cameras to record species sightings that also included the black-flanked rock wallaby and pseudantechinus also known as the English-Fat-tailed-Antechinus.

Nyangumarta senior cultural advisor Nyaparu Rose said the discovery reaffirms the important role Traditional Owners have to play on-Country.

“We are excited that the northern quoll has been recorded on Nyangumarta country,” she said.

“Caring for Country ensures our culture stays strong and in turn benefits all plants and animals, including threatened species.”



Photo credit: José Kalpers

Native Title Compensation – what you need to know

The High Court's recent judgment¹ in the Timber Creek native title compensation case looked at some of the legal issues regarding native title compensation where native title rights and interests have been extinguished or affected. Significantly, the Court explained how the value of compensation under the *Native Title Act 1993* (NTA) should be calculated.

The High Court explained that you need to consider the economic value of the land where native title rights have been extinguished or affected, and the cultural loss suffered by native title holders as a result of the extinguishment or interference with native title rights.

COMPENSATION FOR THE ECONOMIC VALUE OF THE NATIVE TITLE RIGHTS AFFECTED

The High Court said that one part of the compensation is calculated by working out the economic value of the land on which native title has been extinguished or affected.

- The Court said that the starting point is that exclusive native title rights are comparable to the full freehold value of the land.
- In the Timber Creek case where the native title rights were non-exclusive the High Court said that based on the evidence about those native title rights, the claimants were entitled to compensation at 50 per cent of the freehold value of the land.
- The Claim Group was also entitled to be paid interest on the economic value they should have received at the date the native title rights were extinguished. The Court said that depending on the evidence, interest could be calculated on a simple interest basis (as was appropriate in this case) or on a compound interest basis.

COMPENSATION FOR CULTURAL LOSS

The High Court said that the other significant part of compensation under the NTA is compensation made on just terms for the cultural loss suffered by the claimants.

- This requires a Court to recognise the spiritual relationship claimants have with their country and the spiritual hurt caused to them when their native title rights and interests are extinguished or affected.
- The High Court said that the compensation provided to a Claim Group for the cultural loss they have suffered should be an amount that society would regard as appropriate, fair and just to compensate for the effect on their native title rights and interests.

¹ Griffiths v Northern Territory [2019] HCA 7

SOME ISSUES TO CONSIDER WHEN PREPARING A COMPENSATION CLAIM

There are many important issues to consider when preparing, and before lodging, a native title compensation claim. Some of these include:

- Can you prove that members of the Claim Group had native title rights in the relevant areas at the time native title would have been extinguished or affected?
- If the Federal Court has already made a determination that native title exists over adjacent areas this may provide a basis for reaching agreement with governments that members of the Claim Group had native title rights and interests in the areas where native title has been extinguished or affected.
- If there has not been a determination of native title you need to consider if you have good prospects of achieving a favourable determination that members of the Claim Group held native title in these areas at the time native title was extinguished or affected.
- Compensation is generally only payable under the NTA if native title rights were extinguished or affected after October 1975 when the Racial Discrimination Act commenced. Have you undertaken comprehensive historical tenure searches and expert analysis to confirm that native title was extinguished or affected after this time, and not before?
- Who should make the compensation claim and how will any compensation be dealt with? In most situations, a Claim Group will need to authorise and make a compensation claim and make decisions about related matters. There will also be circumstances where a PBC may be able to bring a claim for compensation over some areas of land within a determination area.
- Are suitable experts available to assess the economic value of the land where native title has been extinguished or affected?
- Are suitable legal, anthropological and other experts available to assist in preparing expert reports and other evidence required to show the extent of cultural loss that has been suffered?
- Have members of the claim group already entered into agreements to receive benefits or compensation for activities that affected or extinguished native title in the area, and would any of these agreements prevent a claim or reduce the amount of compensation payable?

CONSIDER ALTERNATIVE OPTIONS TO MAKING A COMPENSATION CLAIM IN THE FEDERAL COURT

It is apparent that preparing and successfully running a compensation claim in the Federal Court will take several years and require significant resources.

It is also likely that future compensation claims will raise legal issues that have not yet been decided by the High Court. Some of these issues will be appealed to the Full Federal Court, and possibly to the High Court, and this will add significantly to the cost and time required to resolve compensation claims.

For these reasons, and to ensure that most resources are used to compensate native title holders rather than pay for lengthy and costly court proceedings, it may be worth exploring other processes to resolve native title compensation matters. One option would be to consider negotiating comprehensive regional settlements with

Commonwealth, State and Territory governments, as these settlements could:

- provide for the payment of compensation for government actions that have already extinguished or affected native title within a region.
- set up a process for compensation to be paid for future acts in the region.
- provide sufficient resources for PBCs so they can carry out their responsibilities and activities on behalf of native title holders.

For more information about compensation applications and the implications of the High Court decision contact your Native Title Representative Body or Service Provider.



YMAC is a member of the National Native Title Council and a contributor to this fact sheet.

Looking forward to the 6th Annual On-Country Bush meeting at Yule River

The 6th Annual Yule River Bush Meeting will be held on July 24 and 25 this year, with the Traditional Owner cultural decision-making day culminating into an evening celebration with traditional corroboree performance, and the band "Backtrack" live on stage.

On Thursday 25 July, Government officials and representatives will join the gathering to hear the resolutions passed and collectively identify solutions that will create positive change. Participation in events such as Yule River make sure the issues of importance remain highlighted.

Working together to come up with solutions that involve Aboriginal people is vital.

The Pilbara Aboriginal Voice (Kakurrka Muri) (PAV) members will be facilitating the meeting and updating attendees on what has been achieved in the previous 12 months. It has been heartening to see the recognition and endorsement of the 'Kakurrka Muri', at both State and Federal levels. 'Kakurrka Muri' is Karriyarra language for Yule River.

With the first Yamatji on-Country being held later this year on September 20 and 21, Yamatji people are also invited to attend this event.



Photos: 2018 On-Country Bush Meeting at Yule River

Yamatji on-Country preview

We are excited that the first ever Yamatji on-Country meeting will take place this year on Friday 20 and Saturday 21 September. The inaugural event will take place this year at Bundiyarra Aboriginal Corporation in Geraldton.

The purpose of the meeting is for Yamatji Traditional Owners to come together as one regional voice to discuss important issues and collaborate on grassroots solutions for change. Attendees will discuss issues and identify local solutions that can be presented to stakeholders, including local, State and Federal Governments, for delivery in partnership with Aboriginal people. It is an opportunity to revitalise trust, build relationships and provide a platform for authentic engagement.

The event will also highlight and celebrate positive accomplishments and contributions being made by Traditional Owners across the region.

Pilbara Solar Update

It has been a busy first half of 2019 for Pilbara Solar, successfully developing and funding new projects, and expanding the experience in its Board.

A highlight has been Pilbara Solar being awarded a \$50,000 Regional Economic Development grant by the Pilbara Development Commission (PDC).

Pilbara Solar Director, Sam Mella said the grant was a huge endorsement of the company's model to create economic development and equity with Traditional Owners.

"Pilbara Solar is very keen to scale up the development of renewables in the Pilbara, with a fundamental focus on Aboriginal equity ownership and involvement in this greenfields industry," Sam said.

The Pilbara Solar Board has also welcomed Natalie Parker, YMAC Chairperson-Pilbara, as a new director.

She will represent Yamatji Marlpa Aboriginal Corporation, which is a 25% owner in the company. Natalie replaces CEO Simon Hawkins as YMAC representative on the Pilbara Solar Board as he steps into the role of Secretary.



Photo: (left to right) Kevin Michel, MLA, Member for Pilbara, Simon Hawkins, Pilbara Solar Secretary, Doris Eaton, Deputy Chair, YMAC Pilbara Regional Committee, Hon. Alannah MacTiernan, MLC, Minister for Regional Development

Native title conference outcomes



Photo: (left to right) Judge Carrie Wainwright, Commissioner Jill Gallagher PO, Professor Megan Davis

On 3 and 4 June, 2019, on Wurundjeri Country at the Melbourne Cricket Ground in Melbourne Victoria, a number of YMAC committee members and staff attended the National Native Title Council annual conference. It was very fitting that this annual gathering opened on Mabo Day, and attendees were honoured by an inspirational and unifying speech from Gail Mabo at the conference dinner.

The conference program included international speakers from New Zealand and Canada joining Indigenous leaders from across the national landscape, who generously shared their stories and experiences, and updated us on their work in constitutional recognition, agreement making, treaties, truth-telling, compensation and repatriation.

There were standout presentations and discussions across the two days that were particularly useful for us to learn about and from. On day 1, Judge Carrie Wainwright from the Maori Land Court presented on the recognition of Indigenous rights other than through the grant of title to land in New Zealand. She explained

the role of Waitungui Tribunal, which makes findings about past wrongs and makes recommendations to Government about rectification.

From Canada, Mark Smith, General Counsel and Director and Sashia Leung, Associate Director from the British Columbia Treaty Commission shared insights and lessons on 25 years of treaty making in their Canadian Province. Mark reflected that in British Columbia, in relation to negotiating treaty, recognition was not an end point but a starting point.

And from Australia, Professor Megan Davis, Pro Vice Chancellor, University of NSW presented on The Uluru Statement from the Heart, and where to next for First

Nations people across Australia. She gave a summary of progress on constitutional recognition and a national Indigenous Voice for Parliament since the historic 2017 gathering of traditional owners at Uluru.

Whilst Australia's new Minister for Indigenous Australians Ken Wyatt was unable to attend, the Liberal Government has committed to progressing work on this vital issue. YMAC will continue to promote constitutional recognition, truth-telling, and establishing a representative Voice for Indigenous Australians.

Other insights on treaties and agreement making came from Jeanice Krakouer, Chair of the South West Aboriginal Land and Sea Council on the Noongar Settlement.

Of special interest to everyone was the presentation on the Timber Creek native title compensation claim (Northern Territory vs Griffiths [2019]). Inspiring presentations were given by Stuart Glacken QC, who was Senior Counsel for Griffiths; Rebecca Hughes, Instructing Solicitor for Griffiths; and Griffiths Claimant, Chris Griffiths.

The conference reinforced that while each state and territory has its own set of circumstances with respect to Native Title and agreement making with their respective governments, there remains shared values and goals for Indigenous peoples across the country. Connection to Country, self-determination, law and culture, family, and ensuring a strong future and legacy is secured for the next generation all remain vital goals.



Dr Carolyn Tan Awarded

YMAC has always been very proud of its staff and their achievements, so we are thrilled to congratulate Dr Carolyn Tan for achieving not one but two separate professional industry-recognised awards so far this year.



Earlier this year, in March - on International Women's Day - Carolyn was awarded 'Senior Woman Lawyer of the Year' at the WLWA Woman Lawyer of the Year Awards.

For Dr Tan to then win 'Senior Lawyer of the Year' at the 2019 Lawyer of the Year Awards in May is an exceptional achievement; awarded by her peers at the Law Society of Western Australia. It acknowledges those who go over and above what might be reasonably expected.

Carolyn said that it is important to realise the change you can create in the work that you do, with the theme for Law Week being – "Lawyers make a difference". One example she noted was a case that changed the law on extinguishment – that Native Title continues over an area despite extensive mining or pastoral impact.

"There is no such thing as a neutral lawyer. We always take a side and everything we do has an impact," she said.

These awards confirm what YMAC has always known about Carolyn; that she is an excellent lawyer and an exceptional person. It is wonderful to see her dedication recognised.

Joint Regional Committee Annual Awards

At YMAC's May Joint Committee Meeting on 8th May, we acknowledged the commitment and energy of people who have driven our organisation to where it is today.

The Long Service Awards are presented annually to YMAC Regional Committee members, acknowledging service and commitment to the work of the organisation. They celebrate those members who have dedicated their services to Pilbara and Yamatji Regional Committees for periods of 5, 7, 10 and 14 years.

These awards were celebrated alongside our 25th Anniversary, with a cake and presentation of commemorative shirts.

This year's awards went to-

5 Years Awards:

- **Deborah Oakley**
YMAC Deputy Co-Chairperson
– Yamatji Region;
Deputy Chairperson
– Yamatji Regional Committee.
- **Merle Dann**
Yamatji Regional Committee

7 years Awards.

- **Albert Pianta**
Pilbara Regional Committee
- **Diane Stewart**
(unable to attend),
Pilbara Regional Committee

10 years of service to YMAC.

- **Susan Oakley**
Yamatji Regional Committee
- **Terry Jaffrey**
(unable to attend),
Pilbara Regional Committee



Photo: YMAC Joint Committee members celebrate the 25th Anniversary of YMAC

Help tell the stories of your community

Is there someone from your community who we should all know about? The *Australian Dictionary of Biography* (ADB) is seeking 200 more short biographies of Aboriginal and Torres Strait Islander people to be added, and they need your help to include your mob.

The ADB tells the stories of more than 13,000 Australians who have now passed away, so that we can all remember them in the future. It is more than 50 years old, and every year it is read more than 70 million times. It is also free to read online at <http://adb.anu.edu.au/>

So, do you know someone who-

- May have done important work for your community that you feel should be recognised
- May have lived a long time ago, and their life and contributions are still talked about today
- Might simply be a legend people should know about.

They are looking for nominations of people who passed away before 2000. Please pass this information through your networks so that the ADB can get as many nominations as possible.

Nominations will be considered by the Indigenous Working Party, comprising Indigenous researchers from across Australia. This project is led by Dr Shino Konishi from the University of Western Australia, and is funded by the Australian Research Council.

If you have any questions please contact Shino at shino.konishi@uwa.edu.au



Jack Dale's 'History Painting' (2003)

Country, Culture, People, Future

About us

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YMAC News is produced by the Yamatji Marlpa Aboriginal Corporation (YMAC)

We are the native title representative body for native title claims in the Murchison, Gascoyne and Pilbara regions of Western Australia.

We work with Yamatji and Marlpa (Pilbara) Aboriginal people to pursue:

- Recognition and acceptance of Yamatji and Marlpa culture in Country; and
- A strong future for Yamatji and Marlpa people and Country



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