

The misplaced interests of Toney and other members of Tindale's 'Kungadutji Tribe' with respect to Future Act consultations for the Narriearra Caryapundy National Park and the adjoining Thurloo Downs.

This submission pertains to Traditional Owner groups who have no place in the future acts regime in the *Native Title Act 1993* (Cth) because native title decisions have placed them in areas that belong to other groups, where they have no speaking for country rights according to Aboriginal law and custom. As example of such a group, the following paragraphs outline the situation with respect to the engagement in the future act regime of descendants of the Traditional Owner Group recorded by Norman Tindale in 1938 as the 'Kungadutji Tribe'. Members of the Tindale 'Kungadutji Tribe' include an Aboriginal woman named Toney and her children. One of Toney's grandchildren - Ms Coral King - was interviewed for the *Australian Human Rights Commission Women in Native Title: Native Title Report 2024*.

In *Wallace 2014*, his Honour Justice Mansfield uses the forms 'Kungadutji' (Norman Tindale's spelling) and 'Kungardutji' when mentioning Coral King's grandmother Toney and her tribal group. This name 'Kungadutji' / 'Kungardutji' means 'circumcised'. It is a recorded name for groups located at different places in southwest Queensland and northwest New South Wales that included circumcision in their man-making rituals. The Luise Hercus spelling of this name is 'Kungardutyi' and her 2003 *Linguistic Report on Mootwingee: Languages in Far North western New South Wales* considers records relating to one of these Kungardutyi-named groups. Other spellings of the name 'Kungardutyi' are recorded as alternative names for different languages, including the Pirriya language and the language referred to by Luise Hercus as 'Wangkumara-Punthamara' or 'Modern Wangkumara'.

In the *Wallace 2014* findings, his Honour Justice Mansfield accepted the Norman Tindale recording of Toney and her tribal group as 'Kungadutji' but not the Tindale account of the location of this group's country in the Cooper Creek - Mount Howitt region of southwest Queensland, for which Tindale drew on information provided by Toney's husband Frank Booth. Instead, in the *Wallace 2014* findings, his Honour Justice Mansfield conflated the Tindale 'Kungadutji Tribe' with a northwest New South Wales circumcising group, distinguished as 'Kungardutyi' in the publication *Mutawintji: Aboriginal Cultural Association with Mutawintji National Park* ("the *Mutawintji* booklet"), authored by Dr Jeremy Beckett, Dr Luise Hercus and Dr Sarah Martin, and edited by Claire Colyer with editorial coordination by Adam Black, Rachel Lenehan, Megan Mebberson, Office of the Registrar, ALRA, and Tristan Tipps, Department of Aboriginal Affairs. The *Mutawintji* booklet was published in 2008 by the Office of the Registrar, *Aboriginal Land Rights Act 1983* (NSW).

The evidentiary material relied on by his Honour Justice Mansfield in *Wallace* 2014 for this conflation is an excerpt from the *Mutawintji* booklet. This excerpt, with a minor change to the spelling of ‘Kungardutyi’ to ‘Kungardutji’, is reproduced in *Wallace* 2014 at [84] and in two subsequent judgements that refer to *Wallace* 2014 [84], namely *Booth* 2017 at [57]; and *McKellar* 2020 at [42]. In 2021 an error in the *Mutawintji* booklet excerpt reproduced in *Wallace* 2014 at [84] was brought to the attention of the booklet’s publisher, the Office of the Registrar, *Aboriginal Lands Right Act 1983* (NSW). This error was acknowledged in writing in 2023 by the Office of the Registrar, *Aboriginal Lands Right Act 1983* (NSW) in a document that includes these statements:

“The Office of the Registrar, Aboriginal Land Rights Act 1983 (ORALRA) wishes to correct an error that occurred in the editorial process for the publication of *Mutawintji: Aboriginal Cultural Association with Mutawintji National Park* (2008). This Correction Statement and the inclusion of the original report excerpt (below), aims to address this unintentional fault.

“The error occurs in section 4.4 of the published report entitled “Karnic languages: Wangkumara / Punthamara” in the last paragraph on page 36. It reads:

*“All the evidence places Kungardutyi in the area immediately east and north-east of Tibooburra and around the southern parts of the swampy areas around Lake Bulloo.
This was in the area that was attributed ‘Karenggapa’ by Tindale.”*

“The sentence should have read:

*“All this evidence places Kungardutyi in the area immediately east and north-east of Tibooburra and around the southern parts of the swampy areas around Lake Bulloo.
This was in the area that was attributed ‘Karenggapa’ by Tindale.”*

“This is in keeping with Hercus’ original report to the Registrar, *Linguistic Report on Mootwingee: Languages in Far North western New South Wales* written in 2003” (extract from a document issued by the Office of the Registrar, *Aboriginal Land Rights Act 1983*, April 2023).

This editorial error (the substitution of “this evidence” with “the evidence”) in the 2008 *Mutawintji* booklet changes and thus misrepresents Dr Hercus’s 2003 report findings about the ‘Kungardutyi’ group mentioned in the 2008 *Mutawintji* booklet. Its reproduction in *Wallace* 2014 at [84] underlies the conflation in *Wallace* 2014 of the Tindale ‘Kungadutji Tribe’ with the *Mutawintji* ‘Kungardutyi’ group and the relocation of the Tindale ‘Kungadutji Tribe’ from the Mount Howitt-Cooper Creek region to the swamplands and flood plain region of northwest New South Wales that are associated with the *Mutawintji* ‘Kungardutyi’ group.

Recently, the NSW Department of Environment and Heritage has purchased large parts of the swamplands and flood plain region of northwest New South Wales for National Parks. These

areas are currently the subject of proposed Future Acts. One of these areas is the Narriearra Caryapundy National Park. The other is the adjoining Thurloo Downs, which is transitioning into a separate National Park, to be opened to visitors from 2025-2026. Officers of NSW National Parks and Wildlife Services plan to consult with those Traditional Owners who have a cultural association with the Narriearra Caryapundy National Park and the adjoining Thurloo Downs area with respect to Future Acts; and research is occurring to identify these Traditional Owners. Because the areas of these two National Parks are associated with the 'Kungardutyi' group mentioned in the *Mutawintji* booklet, this research will include scrutiny of the findings of *Wallace* 2014 in relation to Tindale's 'Kungadutji Tribe' and the Dr Hercus findings about 'Kungardutyi' as these are set out in her 2003 report and misrepresented in the *Mutawintji* booklet.

My research, dating from 2001 and independent of the NSW National Parks and Wildlife Services research, has found evidence that there is more than one group and one language distinguished in the written records as 'Kungardutyi' or by a similarly spelt name; that the 'Kungardutyi' group of northwest New South Wales is not the same as the Tindale 'Kungadutji Tribe' of the Mount Howitt - Cooper Creek region; that the findings of Mansfield J in *Wallace* 2014 with respect to the location of the Tindale 'Kungadutji Tribe' draw on evidentiary material that contains an error; and that this error has led to the conflation in the findings of Mansfield J in *Wallace* 2014 of the Tindale 'Kungadutji Tribe' of the Mount Howitt - Cooper Creek with the 'Kungardutyi' group of the *Mutawintji* booklet, and the relocation of Coral King's grandmother, Toney and other members of the Tindale 'Kungadutji Tribe' from the Mount Howitt - Cooper Creek region to the northwest NSW area that is now the subject of Future Acts.

The *Wallace* 2014, and subsequent *Booth* 2017 and *McKellar* 2020 judgements have denied Ms King and other members of the Tindale 'Kungadutji Tribe' opportunities to engage in Future Acts on their traditional country (the Cooper Creek-Mount Howitt-Wilson River region). These judgements have also imposed on Ms King and other members of the Tindale 'Kungadutji Tribe' a situation which is becoming of public interest and concern and which raises questions about the reliability of the *Wallace* 2014, *Booth* 2017 and *McKellar* 2020 judgements. The situation of Ms Coral King and other members of Tindale's 'Kungadutji Tribe' may affect the future act engagement of members of the 'Kungardutyi' group of the *Mutawintji* booklet; and merits an independent review of the evidentiary material and associated legal proceedings that led to its creation.

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