

## What's New - APRIL 2010

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### 1. Cases

#### ***Akiba on Behalf of the Torres Strait Regional Sea Claim Group v State of Queensland [2010] FCA 321***

(1 April 2010)

**Federal Court of Australia, Brisbane**

**Greenwood J**

Justice Greenwood considered the application to set aside a subpoena issued to the Torres Strait Regional Authority (TSRA) compelling production of an anthropological report and the allocation of costs in relation to this matter. His Honour found that s 85A of the *Native Title Act*—concerning cost determinations—applies to the application for leave to issue the subpoena, service of the subpoena and the notice of a motion to set aside the subpoena.

The Court found that for the purposes of s 85A, 'the Court must be satisfied that the conduct of the party was so unreasonable that the other party should obtain the costs of the action'. Not satisfied that the respondent's conduct was so unreasonable, His Honour held that no basis was demonstrated for making an order as to costs in relation to the TSRA's notice of motion to set aside the subpoena

However, costs for compliance with the subpoena were awarded, as the TSRA 'ought not to be put to expense' in addressing a matter at the hands of the issuing party. Hence, the respondent was ordered to pay reasonable expenses incurred to the TSRA for compliance with the subpoena.

#### ***Tulloch v State of Western Australia [2010] FCA 351***

(13 April 2010)

**Federal Court of Australia, Perth**

**Gilmour J**

Justice Gilmour pursuant to S85A of the Native Title Act awarded indemnity costs to the Tarlpa applicant (Tulloch, Jones, Wonyabong and Bingham) for a discontinued motion, brought without merit by Mr Reynold Allison as the applicant (respondent State of Western Australia).

The basis of the claim for costs concerned Mr Allison's notice of motion, which sought to amend the Tarlpa application. The amendment was disputed by the Tarlpa applicants who claimed Mr Allison was not an appropriate person to be joined as a respondent. Mr Allison did not comply with orders to submit further affidavit evidence and consequently his representative advised the Tarlpa applicants of his intention to no longer proceed with the motion.

His Honour therefore applied the court's discretion under S85A to order costs in favour of the Tarlpa applicant on an indemnity basis.

***Butterworth on behalf of the Wiri Core Country Claim v State of Queensland [2010] FCA 325***

(26 March 2010)

**Federal Court of Australia, Brisbane**

**Logan J**

Justice Logan ordered that Mr Norman Johnson and nine others be dismissed as parties to the native title claim. The case concerned the statutory inclusion of Johnson and others in the Wiri Core Country native title claim. Omitted from the claim, and without any authorisation to make amendments to the claim, the Deputy Registrar sought the engagement of anthropologist Dr Taylor to determine why Johnson and others should become parties to the proceeding. It was found that Mr Johnson and others fall within the terms of S84(3)(a) of the Native Title Act and are therefore, by force of statute, members of the native title claim group

The issue for determination was whether a party joined as a right by force ought to be dismissed and His Honour determined that no direct precedent exists. In determining whether to grant the dismissal, his Honour considered the phrase, to "consult with a native title claim group". He held it to mean extending an opportunity to be heard on appropriate occasions but determined that it does not equate to being dictated to by a member of a native title claim group. He concluded that there may be circumstances where consultation of members of the claimant group is inadequate as it does not amount to an opportunity to be directly heard in the proceedings. Therefore those dissentient members ought properly to be joined as parties to the proceedings rather than remain represented by the native title claim group.

Justice Logan dismissed Johnson and others as parties to the proceeding and expressly granted them liberty to apply in respect of a joinder to the proceedings.

## **2. Legislation**

### **COMMONWEALTH:**

#### **Wild Rivers (Environmental Management) Bill 2010 (Cth)**

The Wild Rivers (Environmental Management) Bill 2010 (Cth) was tabled in the House of Representatives on 8 February 2010. The private member's bill is described as 'an act to protect the interests of Aboriginal traditional owners in the management, development and use of native title land situated in wild river areas, and for related purposes'. [The Bill is available for download at ComLaw.](#)

Public hearings were held in Canberra on 20 March 2010 and in Cairns on 13 April 2010. [Transcripts of the hearings can be downloaded from the Senate website.](#)

Submissions received by the Committee in relation to the Wild Rivers (Environmental Management) Bill 2010 are available download here:

[http://www.aph.gov.au/Senate/Committee/legcon\\_ctte/wildrivers/submissions.htm](http://www.aph.gov.au/Senate/Committee/legcon_ctte/wildrivers/submissions.htm)

The Committee reporting date is **9 May 2010**.

### **NEW SOUTH WALES:**

#### **Acts**

The following act commenced on 31 March 2010:

#### ***Aboriginal Land Rights Amendment Act 2009***

An Act to amend the Aboriginal Land Rights Act 1983 with respect to land dealings by Aboriginal Land Councils and community development levies; and for other purposes.

[Explanatory Notes are available by clicking here](#)

## Regulations

The following regulations commenced on 9 April 2010:

### ***Aboriginal Land Rights Amendment Regulation 2010***

The Act, Regulations and Explanatory Notes are available from the NSW Legislation website <http://www.legislation.nsw.gov.au/>

## QUEENSLAND:

## Regulations

The following regulations commenced on 9 April 2010:



### ***Aboriginal Land Amendment Regulation (No. 1) 2010***

The following regulations commenced on 24 April 2010:

### ***Aboriginal Land Amendment Regulation (No. 2) 2010***

Regulations are available from the Queensland Legislation website <http://www.legislation.qld.gov.au/>

## 3. Indigenous Land Use Agreements

- The **Native Title Research Unit** maintains an **ILUA summary** which provides hyperlinks to information on the NNTT and ATNS websites.
- For more information about ILUAs, see the **National Native Title Tribunal Website: ILUAs**
- Further information about specific ILUAs is available in the **Agreements, Treaties and Negotiated Settlements (ATNS) Database**.
- **Native Title Services Victoria** have provided additional information regarding the two ILUAs finalised in Victoria in April 2010:
  -  [A Guide to the PMAV Regional ILUA for Small Scale Mining](#)  
Prospectors & Miners Association of Victoria and the DJA DJA Wurrung Native Title Group
  -  [Regional Indigenous Land Use Agreement for Small Scale Mining \(Area Agreement\)](#)  
Between The DJA DJA Wurrung Native Title Group and Prospectors & Miners Association of Victoria

## 4. Native Title Determinations

- The **Native Title Research Unit** maintains a **Determinations Summary** which provides hyperlinks to determination information on the Austlii, NNTT and ATNS websites.
- Also see the **National Native Title Tribunal Website: Determinations**
- The **Agreements, Treaties and Negotiated Settlements (ATNS) Database** provides information about native title consent determinations and some litigated determinations.

## 5. Public Notices

The *Native Title Act 1993*(Cth) requires that native title parties and the public must be notified of:

- proposed grants of mining leases and claims;
- proposed grants of exploration tenements;
- proposed addition of excluded land in exploration permits;
- proposed grant of authority to prospect;
- proposed mineral development licences.

The public notice must occur in both:

- a newspaper that circulates generally throughout the area to which the notification relates
- a relevant special interest publication that:
  - caters mainly or exclusively for the interests of Aboriginal peoples or Torres Strait Islanders;
  - is published at least once a month;
  - circulates in the geographical area of the proposed activities.

To access the most recent public notices visit the [NNTT website](#) or the [Koori Mail website](#).

## 6. Native Title in the News

The [Native Title Research Unit](#) publishes [Native Title in the News](#) which contains summaries of newspaper articles and media releases relevant to native title.

## 7. Native Title Publications

### Journal Articles:

- J Creamer, 'We will mediate the gap closed: 2009 native title amendments', *Indigenous Law Bulletin* Vol. 7 Issue 16, 2010, pp. 21-23.

### Books:

- AJ Connolly, *Cultural difference on trial: the nature and limits of judicial understanding*. Farnham: Ashgate, 2010.

### Papers:

- J Altman, Wild Rivers and Informed Consent on Cape York, CAEPR Topical Issue Paper 2/2010, April 2010.

The paper can be viewed by clicking here  (2.44Mb)

### Reports:

- **National Native title Tribunal Report: Native Title, March 2010**

The NNTT released the fourth in a continuing series of six monthly status reports on Australia's native title system. The latest report shows a slight increase in the rate of claim resolution and also in the number of claims lodged. Thirty-one applications were finalised and eight new claimant applications were made between July and December last year. The Tribunal's report includes national and state/territory statistics and graphs showing applications and trends since 1994, as well as analysis of the obstacles and ways to overcome them.

[The report can be viewed by clicking here.](#)

## 8. Conferences



### **Register now for the National Native Title Conference 2010: *People, Place, Power***

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) invite registrations for the 2010 Native Title Conference to be held in Canberra, from Tuesday 1 June to Thursday 3 June 2010. The Native Title Conference will be co-convened by the National Native Title Council and hosted by the Ngunnawal peoples, the traditional owners of the Canberra region.

This year, the conference themes reflect the fact the conference will occur in the national capital, the traditional country of the Ngunnawal peoples and a place where significant native title decisions have been made.

The first day of the conference, Tuesday 1 June, offers pre-conference workshops for delegates of native title representative bodies, service providers and native title groups. The second and third days, Wednesday 2 June and Thursday 3 June, are open to the public. As with previous conferences there will be Indigenous Talking Circles throughout the public programs.

**Professor Marcia Langton, AM**, will present the annual Mabo Lecture on Thursday 3 June.

The conference will address the following themes:

#### People

- the legacy of native title for future generations
- land justice and social and emotional wellbeing
- human rights and racial discrimination
- women and native title

#### Place

- governing native title land - roles and responsibilities of PBCs
- land, water, heritage, country
- environment, conservation and joint management
- housing, tenure and community development

#### Power

- the national policy framework and proposed National Partnership Agreement
- economic development and native title payments
- broader land settlements and native title agreements
- reforms to the Native Title Act.

Programs are available online at <http://www.aiatsis.gov.au/ntru/nativetitleconference/conf2010/program.html>

Register at: <http://www.aiatsis.gov.au/ntru/nativetitleconference/conf2010/registration.html>

**Accommodation:** You are urged to book your accommodation as soon as possible. See the conference website for detailed information about accommodation options.

**Bulk discount:** If your organisation registers 10 people on a multiple registration form (downloadable from the conference website) you will receive one registration free of charge.

For further information, please see our website at:

<http://www.aiatsis.gov.au/ntru/nativetitleconference/conf2010/NTRUSplash/index.html>

### **Australian Anthropological Society (AAS) Annual Conference**

The Society's principal academic activity each year is the Annual Conference. Attendance at the Annual Conference is open to all interested persons, whether or not they are members of the AAS, on payment of the conference fee. Each year, the conference is hosted by a different University.

This AAS Conference 2010 details are as follows:

**Date:** September 22-24

**Location:** Deakin University, Waterfront Campus, Geelong, Victoria

**Hosts:** Anthropology, School of History, Heritage & Society, Deakin University

**Contact:** Rohan Bastin

## **9. Training and Professional Development Opportunities**

See the [Aurora Project: Program Calendar](#) for information about [Learning and Development Opportunities](#) for staff of native title representative bodies and native title service providers. Applications are now open for [Aurora's NTRB Training Programs](#).