

What's New August 2009

(Sources include NNTT Judgements and Information email alert service and the Federal Court's Native Title Bulletin)

Cases.....	1
Government Reforms.....	2
Native Title Determinations	3
Indigenous Land Use Agreements.....	3
Native Title in the News	3
NTRU Publications.....	4
Other Native Title Publications	4
Training and Professional Development Opportunities.....	4
Events	4

Cases

Ampetyane v Northern Territory of Australia [\[2009\] FCA 834](#)

The Ilkewartn and Ywel Anmatyerr peoples were granted, under section 87 *Native Title Act 1993* (Cth), an order for a consent determination determining native title rights and interests in their land and waters. In making the consent determination the central consideration was whether there was a free and informed agreement between the parties.

The determination covers an area of approximately 117 600 hectares of land located along the Stuart Highway approximately 15 kilometres south of Ti Tree and 130 kilometres north west of Alice Springs, comprising the eastern half of the Pine Hill Pastoral Lease. Where native title was found to exist, the native title holders were granted the right to: access and travel; live on the land; hunt, gather and fish; take and use natural resources; access, take and use natural water; light fires for domestic purposes; access and maintain sites and places important under traditional law and customs; right to conduct cultural activities; make decisions about the use of the land by other Aboriginal people governed by the native title holders laws; share or exchange natural resources; and be accompanied on the area by persons required to perform cultural activities, persons with rights acknowledged and assist, observe or record traditional activities.

BHP Billiton Minerals Pty Ltd, Itochu Minerals & Energy Of Australia Pty Ltd and Mitsui-Itochu Iron Ore Pty Ltd v Martu Idja Banyjima (Mib) Native Title Claimants [\(Wardens Court\)](#)

The Martu Idja Banyjima Native Title Claimants objected to the grant of a miscellaneous licence to three mining companies in the Wardens Court. The objections were that; the purposes were not directly connection with mining operations; it was inconsistent with the *Iron Ore (Mount Newman) Agreement Act 1964*, and that it was not in the public interest. The Warden dismissed the objection and granted the licence.

Champion v State of Western Australia [\[2009\] FCA 941](#)

In this case the respondents sought under section 190F(6) *Native Title Act 1993* (Cth) for the court, on its own motion, to dismiss an application that had not been amended since it failed the registration test. The court held there was no reason why the application should not be dismissed.

Dodd on behalf of the Wullu Wullu People v State of Queensland [\[2009\] FCA 793](#)

In this case a motion to give effect to a resolution adopted at a native title claim group meeting was adjourned. The reason was that there were claims that the resolution was affected by the inclusion of votes by people who were not members of the claim group. Justice Dowsett held that the application be adjourned to allow further investigations.

FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia, [\[2009\] NNTTA 91](#)

On 23 April 2008 the Western Australian Government gave notice under section 29 of a future act – a proposed mining lease in the registered claim of the Yindjibarndi people. After a six month period the proposed lessee (FMG Pilbara Pty Ltd) applied for a future act determination under section 38. Although the Yindjibarndi people challenged the National Native Title Tribunal's (NNTT) power to make the decision by arguing FMG and the Government had not negotiated in good faith, this claim was rejected on 24 April 2009.

In this case the Tribunal considered the substantive question of whether the lease should be granted. Overall it was held that the Tribunal should make the determination on the condition that the four extra conditions proposed by the Government were imposed. This would significantly mitigate the impact the grant of the proposed lease. If no conditions were imposed the lease would have a significant impact on the capacity of the native title holders to access and use the area, including conduct ceremonies and protect sites. It would also have a significant impact on Yindjibarndi morale.

Jinibara People v State of Queensland [\[2009\] FCA 816](#)

In this case notices of motion that sought to join parties to a native title claim were dismissed. The court held that the requirements for joinder under section 84(5) *Native Title Act 1993* (Cth) had not been met.

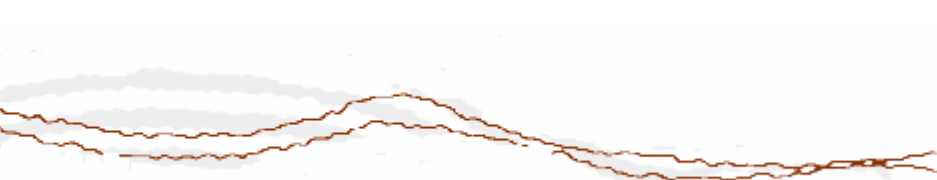
Sambo v State of Western Australia [\[2009\] FCA 940](#)

In this case the respondents sought under section 190F(6) *Native Title Act 1993* (Cth) for the court, on its own motion, to dismiss an application that had not been amended since it failed the registration test. It was held that because there was a reasonable and imminent possibility of the application being amended in a way that could give rise to its registration the application would not at the current stage be dismissed.

Government Reforms

Australian Government, [Discussion Paper on Expediting Indigenous Housing in Remote Communities](#), Attorney-General's Department, Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, Canberra, 2009.

This discussion paper focuses on reform of public housing and infrastructure in remote Indigenous communities and proposes a new specific process to facilitate these important developments. The Government is considering amending the *Native Title Act 1993* (Cth) to include a specific future act process to ensure that public housing and infrastructure in remote Indigenous communities can be built expeditiously following consultation with native title parties but without the need for an Indigenous Land Use Agreement (ILUA).



The deadline for submissions is Friday 4 September 2009. For further information see: http://www.fahcsia.gov.au/sa/indigenous/pubs/land/Pages/NativeTitleAmendments_DiscussionPaper.aspx

Australian Government, [Reform of Indigenous heritage protection laws : Improving protection for Indigenous traditional areas and objects](#), Department of Environment, Water, Heritage and the Arts, Australian Government, Canberra, 2009.

This discussion paper canvasses possible reforms to the legislative arrangements for protecting traditional areas and objects, specifically the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (ATSIHP Act). The aims of the reform are twofold. First, to ensure that Indigenous Australians will have the best opportunities to protect their heritage. This could be done by using existing processes such as native title to secure agreements on heritage protection. Second, to cut duplication and red tape by establishing a nationally consistent approach to protecting Indigenous heritage based on best practice standards.

The deadline for submissions is Friday 6 November 2009. Additional information relevant to the proposals in this paper is available at www.heritage.gov.au/indigenous/lawreform

Western Australian Government, [Review of Approvals Processes in Western Australia](#), Industry Working Group, Western Australian Government, Perth, 2009.

This report provides a two phased approach to improving approval processes in Western Australia. Phase one recommendations are essentially administrative and can be addressed without legislative change. Phase two recommendations require legislative change. The report stresses that the need to address and change the present flawed and complex approvals system is critical, and the time for implementing phase one recommendations is now.

Chapter 3 discusses native title and provides a case study example. The report notes that the effective and efficient administration of the processes contemplated by the *Native Title Act 1993* (Cth) is critical for the development of projects in remote and regional Western Australia. Most of the (reported) major native title agreements benefit a relatively small number of Aboriginal people and a few groups have received (and continue to receive) very large financial payments as a result of the development of multiple large projects within their claim areas. The report acknowledges the critical role played by the State.

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.

Indigenous Land Use Agreements

The Native Title Research Unit maintains an [ILUA summary](#) which provides summary statistics and hyperlinks to information on the NNTT and ATNS websites.

Native Title in the News

The Native Title Research Unit publishes [NTRU Native title in the News](#) which contains summaries of newspaper articles and media releases relevant to native title. The story headings are as they appear in the press.

NTRU Publications

Toni Bauman and Cynthia Ganesharajah, '[Second National Meeting of Registered Native Title Bodies Corporate, Melbourne 2 June 2009](#)', *Native Title Research Report*, 2/2009.

Dr Kingsley Palmer, '[Societies, Communities and Native Title](#)', *Land, Rights, Laws: Issues of Native Title*, vol.4, no.1, 2009.

Simon Young, '[Native Title in Canada and Australia post-Tsilqhot'in: Shared Thinking or Ships in the Night?](#)', *Land, Rights, Laws: Issues of Native Title*, vol.4, no.2, 2009.

Other Native Title Publications

Hayley Bennett and GA Broe, 'The neurobiology of judicial decision-making: Indigenous Australians, native title and the Australian High Court', *Public Law Review*, vol.20, no.2, 2009, pp.112-128.

Justice J.A. Dowsett, '[Beyond Mabo: understanding native title litigation through the decisions of the Federal Court](#)', paper delivered to LexisNexis Native Title Law Summit, 15 July 2009.

Adam MacLean, 'Frameworks to settling native title', *Indigenous Law Bulletin*, vol.7, no.12, 2009, pp.27-30.

National Native Title Tribunal, '[Guide to Sources of Assistance and Funding for Prescribed Bodies Corporate](#)', July 2009.

National Native Title Tribunal, '[Guide to Australian Government Funding Sources](#)', July 2009.

Graeme Neate, '[Negotiating comprehensive settlement of native title claims](#)', paper delivered to LexisNexis Native Title Law Summit, 15 July 2009.

Juanita Pope and Toni Bauman (eds), '["Solid work you mob are doing" : Case studies in Indigenous Dispute Resolution and Conflict Management in Australia](#)', Report to the National Alternative Dispute Resolution Advisory Council by the Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, 2009.

Patrick Sullivan, '[Policy change and the Indigenous Land Corporation](#)', AIATSIS Research Discussion Paper 25, 2009.

Siiri Aileen Wilson, 'Entitled as against none: how the wrongly decided *Croker Island* case perpetuates Aboriginal dispossession', *Pacific Rim Law and Policy Journal*, vol.18, no.1, 2009, pp.249-280.

Simon Young, 'Cultural timelessness and colonial tethers: Australian native title in historical and comparative perspective', *Australian Indigenous Law Review*, vol.12, no.1, 2008, pp.60-68.

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.

Events

See next page.



Photographs by Wayne Quilliam
 NAIDOC Artist of the Year 2009
www.waynequilliamphotography.com.au



■ AIATSI National Indigenous Studies Conference
 perspectives on urban life:
 CONNECTIONS AND RECONNECTIONS

29 SEPTEMBER ■ 1 OCTOBER 2009

Manning Clark Centre
 Australian National University, Canberra

Program and registration:
www.aiatsis.gov.au



AIATSI
 Australian Institute of Aboriginal
 and Torres Strait Islander Studies



Conference themes include:

- Culture and Heritage
- Community Partnerships
- Demography
- Education
- Health
- Housing
- Language, Kinship, Heritage
- Language, Revitalisation and Education
- Mobility and Migration
- Reconnecting Urban and Remote Communities via Digital Technologies
- Representation and Cultural Expression
- Urban Identity and Urban Experience
- Urban Histories



SPONSORED BY

Department of Families,
 Housing, Community Services
 and Indigenous Affairs



IT Demonstrations • Exhibitions • Market and Trade Stalls

ENQUIRIES

Phone: +61 2 6261 4221 or +61 2 6246 1144

Email: conference2009@aiatsis.gov.au

Website: www.aiatsis.gov.au

Post: AIATSI, GPO Box 553, Canberra, ACT 2601, Australia



AIATSI
 Australian Institute of Aboriginal
 and Torres Strait Islander Studies

www.aiatsis.gov.au