

## What's New December 2007

### Cases

#### Authorisation

##### ***Button Jones (on behalf of the Gudim People) v Northern Territory of Australia* [2007] FCA 1802**

This is one of 55 applications for the determination of native title under s 61 of the Act which have been the subject of advice by the Native Title Registrar (the Registrar) under s 66C of the Act. To explain the significance of that advice, it is necessary to refer to s 66C and s 94C of the Act. The full list of 55 applications (there is one duplication) is contained in the advices of the Registrar.

#### Consent determinations

##### ***Walker on behalf of the Eastern Kuku Yalanji People v State of Queensland* [2007] FCA 1907 (9 December 2007)**

Determination for Eastern Kuku Yalanji People.

#### Joinder

##### ***Akiba and Others on behalf of the Torres Strait Regional Seas Claim People v State of Queensland (No 3)* [2007] FCA 1940 (7 December 2007)**

Application for review of Registrar's decision dismissing a joinder motion made by a national of Papua New Guinea asserting family and historical links to claim area as well as ownership of reefs, seas and waters. The motion was dismissed. It was found that no basis for assertion was disclosed and that there was no identification of area in which ownership is asserted.

#### Procedural decisions

##### ***Allison v State of Western Australia* [2007] FCA 1969 (12 December 2007)**

By an amended notice of motion filed on 31 August 2007, with five named persons ('the Movers') seeking orders for access to certain documents. The motion has been filed in native title proceedings known as the Wanmulla / Sir Samuel claim ('Sir Samuel 2 Claim'). The Sir Samuel 2 claim relates to an area in the north-west Goldfields region of Western Australia, located between Wiluna and Leinster

#### Respondent applications for determinations of native title

##### ***Commonwealth of Australia v Clifton* [2007] FCAFC 190 (6 December 2007)**

Respondent to an application for a native title determination seeking a determination of native title. The respondent was not authorised by native title claim group as required by s61 of the Act. The Court reiterated that it can only make a determination of native title in favour of a person who has made an application under s13 of the Act and emphasised the significance of the statutory requirement that a determination of native title must be made in accordance with the procedures of the Act.

## Events

- [NTRU events calendar](#)

## Indigenous Land Use Agreements

- See the [National Native Title Tribunal Website: Browse Registered ILUAs](#).
- Information about specific ILUAs is also available in the [Agreements, Treaties and Negotiated Settlements \(ATNS\) Database](#).
- The [Native Title Research Unit](#) also maintains an [ILUA summary](#) which provides hyperlinks to information on the NNTT and ATNS websites.

## Legislation

### Native Title Determinations

- See the [National Native Title Tribunal website: Browse Determinations](#)
- The [Agreements, Treaties and Negotiated Settlements \(ATNS\) Database](#) provides information about native title consent determinations and some litigated determinations.
- The [Native Title Research Unit](#) also maintains a [Determinations Summary](#) which provides hyperlinks to determination information on the Austlii, NNTT and ATNS websites.

### Native Title in the News

- [NTRU Native title in the News](#)

## Publications

### **Procedural Direction 9 of 2007**

Specific actions to be taken by the Registrar, members and employees of the National Native Title Tribunal in relation to native title applications.

**Durette M. *Indigenous Property Rights in Commercial Fisheries: Canada, New Zealand and Australia* [CAEPR Working Paper No.37/2007](#)**

### **First Nations Leadership Council**

First Nations Leaders from across British Columbia have issued a declaration affirming Aboriginal Title to their respective traditional territories across British Columbia. The declaration entitled "All Our Relations", celebrates the victory of the Tsilhqot'in and Xeni Gwet'in peoples in last week's important BC Supreme Court decision in Tsilhqot'in Nation v. BC.

**ABARE, 2007 [Torres Strait Islanders: Improving their Economic Benefits from Fishing](#), [ABARE Research Report 07.21](#) Prepared for the Fisheries Resources Research Fund**

Fishing plays an important role in the lives of Torres Strait Islanders. Among other things, fishing offers islanders an opportunity for income, thereby reducing dependence on the

Commonwealth Development Employment Program. However, there has been a concern that Torres Strait Islanders are receiving lower economic returns from commercial fishing in the Torres Strait than non-islander fishers. ABARE was commissioned by the Fisheries Resources Research Fund to undertake a survey of fishers in the Torres Strait to examine this perception and to identify ways in which Torres Strait Islander fishers could obtain higher economic benefits from commercial fishing.

## **Reviews & Reforms**

### **A WA human rights act: report of the consultation committee for a proposed WA human rights act**

The Western Australian Attorney General has proposed a Human Rights Act. A consultation committee, chaired by Fred Chaney AO, has consulted the community and has recommended to government how best to protect and promote human rights in this State.

### **NSW Auditor General's Report 2007 Department of Lands. Aboriginal Land Claims**

The NSW Auditor General has recommended that the Department reduces the time taken to process Aboriginal Land claims. The Department investigates aboriginal land claims made under the NSW Aboriginal Land Rights Act 1983. Under the Act, claims can be made over claimable Crown land, being lands that can be lawfully sold or leased, or are reserved or dedicated for any purpose under the Crown Lands Act or Western Land Act and are not required for an essential purpose, not required for residential land, or not lawfully used and/or occupied. During the year 1,154 (6,980 in 2005-06) Aboriginal Land Claims were lodged and 387 (182) were finalised. Of these, 12 claims were granted and 375 were refused. A large proportion of the claims lodged in 2006-07 were over freehold land. Claims over freehold land cannot be granted under the NSW Aboriginal Land Rights Act 1983, and these claims do not require further investigation. Of the 15,581 claims lodged under the Act to 30 June 2007, 8,922 (57 per cent) were unresolved as at 30 June 2007, with 344 claims unresolved for more than ten years. It has been recommended that the Department reduces the time taken to transfer legal title to successful Aboriginal Land claimants. The Crown Leaseholds entity has \$1.0 billion of land granted to Aboriginal Land claimants that has not been transferred due to the absence of legal title. Legal title cannot pass until the land has been surveyed and details recorded on the State's Digital Cadastral Database so that formal title can be issued in the name of the relevant local Aboriginal Land Council. Until legal title passes, claimants cannot fully access or use the land. Based on current survey resourcing capacity, it may take more than 20 years before all current granted claims are cleared.