

What's New December 2009

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

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Cases

***Mills v State of Queensland* [\[2009\] FCA 1431](#)**

An application was sought under section 66B(1)(a)(ii) of the *Native Title Act 1993* (Cth) to replace the current applicant (deceased) in the native title claim of the Naghir People. The key issue was whether the replacement applicant was correctly authorised to act as the applicant. The judge adjourned proceedings to allow matters to progress as requested by the Torres Strait Regional Authority (TSRA). Specifically, the parties were asked to participate in a mediation facilitated and funded by the TSRA in order to determine the composition of the claim group and any overlaps with the native title determination of the Mualgal People.

***Combined Dulabed Malanbarra Yidinji People v State of Queensland* [\[2009\] FCA 1498](#)**

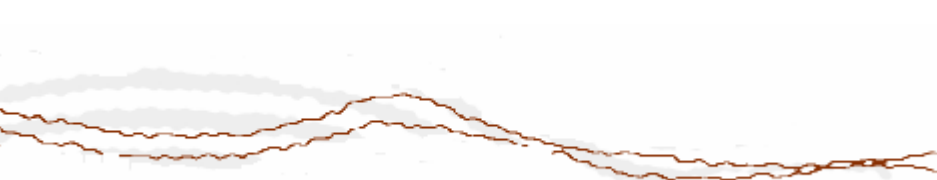
The case arose out of an application for the determination of native title by consent on behalf of Lorraine Muckan, Len Royee and the Combined Dulabed Malanbarra Yidinji People. The determination area covers approximately 166.6 square kilometres of land and water, within the upper Mulgrave River basin, 40 kilometres south-west of Cairns. In accordance with s 66 of the *Native Title Act 1993* (Cth) a number of respondents became party to the proceedings (State of Queensland, Cairns Regional Council, Tablelands Regional Council, Ergon Energy Corporation Limited and Jacqueline Spokes) which was then referred to mediation. The parties reached an agreement as to the terms of the determination, which was then filed with the Federal Court in accordance with s 87 of the Act. Justice Spender, in the present proceedings, affirmed the parties' agreement, finding that the terms of the proposed determination satisfied the requirements of s 225 of the Act and made the orders sought to give it effect.

***Tucker on behalf of the Narnobinya Family Group v Western Australia* [\[2009\] FCA 1459](#)**

Under the Native Title Act 1993 (Cth) two separate motions were filed on 11 September 2009 by the Ngadju and Narnobinya groups respectively for the determination of Native Title. While both claims overlap significantly, the Ngadju claim is more advanced than that of the Narnobinya claim which has created delays for the Ngadju's submission. Therefore the Goldfields Land and Sea Council on behalf of the Ngadju people has sought a motion requesting that the Narnobinya application be dismissed pursuant to either O 35A r 3(1) or more specifically O 20r 4 (2) of the *Federal Court Rules*. The Narnobinya applicants seek to dismiss this application in the course of seeking rejoinder to the Ngadju application. Marshall J, while acknowledging the caution with which to exercise the dismissal of Native Title claims has provided the Narnobinya applicants with the opportunity to set out the details of their proposed application by 11th December 2009. Failure to comply will result in the dismissal of their Native Title claim.

***Angale on behalf of the Irlpme Arrernte People v Northern Territory of Australia* [\[2009\] FCA 1488](#)**

The case concerned a native title application made in 2006 by the Irlpme Arrernte native title claim group. The application was made for the purpose of invoking the applicant's right to



negotiate with the holders of an Exploration Licence Application in respect of land comprising over some 270 square kilometres within the Bond Springs pastoral lease in the Northern Territory. In February 2008, the parties advised the court that, through negotiation, an agreement in respect of the Exploration Licence Application had been reached. However, the Irlpme Arrernte native title claim group did not formally withdraw the claim. Nor did the applicants further progress their claim for a period of more than a year and a half, despite directions from the court.

The Court thus considered that the mandatory dismissal provisions under s94(C) (1) of the Native Title Act had been triggered. The applicants had failed, despite directions, to take any steps to have their claim resolved and nor, on what the court was told, did they intend to. The Court considered that there were no compelling reasons not to dismiss the application. No-one would be prejudiced by the dismissal of the application. The claim, the court found, had served its purpose, and would continue to be available to the applicants in the future should they wish to reassert their rights. The application was thus dismissed.

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 [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.

Native Title Publications

Aboriginal Studies Press Publications

LM Strelein, *Compromised jurisprudence: native title cases since Mabo (2nd edition)*, Aboriginal Studies Press, Canberra, 2009.

Other Native Title Publications

D Ritter, *Contesting Native Title: From controversy to consensus in the struggle over Indigenous land rights*, Allen & Unwin, N.S.W, 2009.

CJ Sumner & L Wright, 'The National Native Title Tribunal's application of the Native Title Act in future act inquiries', *University of Western Australia Law Review*, vol.34, no.2, 2009.

J Sheehan, 'Native title holders as vulnerable publics: conflict between spatial planning and native title law in Australia', *Geography Research Forum*, vol. 29, 2009, pp. 132-140.

P Memmott, M Moran, C Birdsall-Jones, S Fantin, A Kreutz, J Godwin, A Burgess, L Thomson and L Sheppard, '[Indigenous home-ownership on communal title lands](#)' *AHURI Final Report*, no. 139, Australian Housing and Urban Research Institute, Melbourne, 2009.

J Render, *Mining and Indigenous Peoples Issues Review*, International Council on Mining and Metals, London, UK, 2009.

Western Australian Government, *Ord-East Kimberley Development Plan*, Department of Regional Development and Lands, Western Australian Government, Perth, 2009.

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.