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Cases

The following cases took place in December 2009:

Wakka Wakka People No 2 v State of Queensland [2009] FCA 1527

The Wakka Wakka People's application was dismissed on 3 December 2009 after their legal advisers could not certify that their application could proceed to a successful resolution in its present form. The Court, with Dowsett J presiding remained non-committal about whether a further determination could be reapplied for at a later date.

Mitakoodi and Mayi People 1 v State of Queensland [2009] FCA 1528

The Mitakoodi and Mayi People's application was dismissed on 8 December 2009 with Dowsett J presiding. The primary reason given for judgment was the non-compliance of a previous court order on 14 October 2008. Importantly, the court saw this as more than a non-compliance issue; rather, the applicant was not in a position to progress the claim at the time — due to difficulty in finding an anthropologist and claimant group dissention.

Gudjala People No 2 v Native Title Registrar [2009] FCA 1572

This case arose from an appeal against the original judgment of Dowsett J (*Gudjala People 2 v Native Title Registrar [2007] FCA 1167*). At the Full Court of the Federal Court on 27 August 2008, the court considered that an 'unduly onerous standard' had been applied to the evidence in the Gudjala People's claim (*Gudjala People No 2 v Native title Registrar [2008] FCAFC 157*) and remitted the case to Dowsett J for further consideration. However, Dowsett J summarily dismissed the case on 23 December 2009 (*Gudjala People No 2 v Native Title Registrar [2009] FCA 1572*). Drawing on comments made in the *Yorta Yorta* decision, particularly concerning the definition of traditional laws and customs, Dowsett J was not satisfied that the applicants had demonstrated 'the existence of a pre-sovereignty society' from which their current laws and customs were derived [72]. He found that the applicants satisfied 190B(5)(a) of the *Native Title Act* as the claimants had an association with the predecessors of the area. However, he found that they had insufficient factual evidence to satisfy 190B(5)(b), 190B(5)(c), 190B(6) and 190B(7). These provisions relate to 'traditional' connection requirements such as physical connection and rights or interests in land or waters. Dowsett J did not rule out the option for a further application.

Legislation

Possible historical extinguishment amendment

On 14 January 2010, the Commonwealth Attorney-General released draft legislation detailing a proposed amendment to the *Native Title Act 1993* (Cth). This proposed reform would allow, in certain circumstances, parties to agree to disregard the historical extinguishment of native title in areas of land set aside for the purpose of preserving the natural environment. The reform would not affect any existing interests in the area. This proposed amendment was suggested in July 2008 by High Court Chief Justice Robert French.

The Act already includes provisions that allow historical extinguishment of native title to be disregarded in certain circumstances, such as where a native title application is made over land that is subject to a pastoral lease held by a native title claimant (section 47). Similarly, the proposed amendment would allow the historical extinguishment of native title to be disregarded in areas set aside or vested by a Government law for the purpose of preserving the natural environment of the area, such as a State or Territory park or reserve.

It is possible to download information regarding proposed amendments below:

- [Proposed historical extinguishment amendment to the *Native Title Act 1993* - January 2010 \[DOC 54KB\]](#)
- [Proposed historical extinguishment amendment to the *Native Title Act 1993* - January 2010 \[PDF 56KB\]](#)

The Attorney-General's Department invites submissions on the possible reform until 19 March 2010

Senate Inquiry into the *Native Title Amendment Bill (No. 2) 2009*

On 29 October 2009 the Senate referred the *Native Title Amendment Bill (No. 2) 2009* (Cth) to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report. The Bill would amend the future acts regime of the *Native Title Act 1993* (Cth) to provide a process for the construction of public housing and other facilities by or on behalf of the Crown, a local government body or other statutory authority in communities on Indigenous-held land. The Bill would provide for a representative Aboriginal or Torres Strait Islander body or native title claimant to be notified and afforded an opportunity to comment on acts which could affect native title, and for compensation for any impact on native title rights and interests

The committee received 17 submissions as part of their inquiry. These can be viewed on the [Senate Committee Website](#).

As part of the inquiry, a public hearing took place in Sydney on Thursday 28 January 2010. [Transcripts of the hearing can be found on the website](#). The reporting date of the Committee was originally set at 2 February 2010. However, on 2 February 2010, the Senate granted an extension of time for reporting until 23 February 2010.

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](#)
- Information about specific ILUAs is available in the [Agreements, Treaties and Negotiated Settlements \(ATNS\) Database](#).

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.

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.

Native Title Publications

Reports:

Native Title Report 2009

Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner

This report covers the period 1 July 2008 – 30 June 2009 and:

- reviews developments in native title law and policy over the reporting period
- considers principles and standards that should underpin cultural change in the native title system
- highlights several aspects of the native title system in need of reform and provide options for further discussion
- provides an update on developments in Indigenous land tenure reform.

In his final Report, Social Justice Commissioner Calma outlines principles and standards that should be used to guide a new approach to native title and explains how the native title system ought to be viewed in the context of broader reforms to promote and protect the rights of Aboriginal and Torres Strait Islander peoples.

The Report makes 27 recommendations for reform of the native title system concerning several key areas, including shifting the burden of proof, more flexible approaches to connection evidence and broader and more flexible native title settlement packages.

Training and Professional Development Opportunities

University of Queensland Native Title Mediation Course

University of Queensland's TC Beirne School of Law is running an intensive *Mediation Strategies for Native Title Stakeholders* course at St Lucia campus from April 8 – 11, 2010. Coordinated by international mediation expert Patrick Cavanagh, the four-day course is the only one of its kind in Australia. It is designed specifically for lawyers, policy makers, government agency employees, negotiators and mediators and will identify the glitches in the existing system, examine the new legislation amendments and changes and offer effective options to expedite settlement. Although offered as part of UQ's Master of Laws program, legal qualifications are not a prerequisite to undertake the course. For further information visit:

www.law.uq.edu.au/mediation-strategies.

Scholarship

The Australian Government and Rio Tinto are offering two scholarships to lawyers currently working or interested in working at Native Title Representative Bodies (NTRBs) or Native Title Service Providers (NTSPs). Successful candidates will undertake a one-year Master of Laws (LLM) in Mineral Law and Policy at the Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP) at the University of Dundee and must commit to work within an NTRB or NTSP for a minimum period of two years upon their return. Candidates must be Australian citizens or permanent residents and reside in Australia and there is no age restriction for applicants. The scholarship has a value of approximately AUD\$55,000 which is paid in British Pounds. Applications for the 2010/2011 round **open 9am AEDST Monday 22 February 2010** and **close 5pm AEDST Friday 19 March 2010**. For more information see the [Aurora Website](#).

Aligning Indigenous Land Management with Economic Development Conference

24 & 25 March, 2010, Holiday Inn, Darwin

Criterion Conferences is bringing together key stakeholders in the land management and economic development spheres with the aim of maximising the economic benefits of native title for Traditional Owners.

This conference is designed specifically for Indigenous advocates, Land Councils, Community and Land & Sea Management Organisations, Local Councils, environmental groups, government officials from Commonwealth, State/ Territory and Local Government in addition to academics, NGOs and representatives from the private sector involved in:

- Indigenous land management
- Economic development
- Native title/ land tenure & leasing
- Environmental protection, land rights & Indigenous Land Use Agreements
- Community development
- Employment & business development
- Skills development, education & training
- Mining, tourism & pastoral industries
- Welfare reform

Speakers include:

- Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission
- Wayne Bergmann, Executive Director, Kimberley Land Council & Chairman North Australian Indigenous Land and Sea Management Alliance (NAILSMA)
- Warren Mundine, Chief Executive Officer, NTSCORP Ltd
- Graeme Neate, President, National Native Title Tribunal
- Richie Ah Mat, Board Member, North Australian Indigenous Land and Sea Management Alliance (NAILSMA)
- Gary Gray, AO, Parliamentary Secretary for Western and Northern Australia
- Kevin Smith, CEO, QLD South Native Title Services
- Peter Cochrane, Director of National Parks, Australian Government
- Duncan Ord, Executive Director North, Department of Indigenous Affairs, WA
- Professor Rolf Gerritsen, Research Leader, Central Australia Charles Darwin University, NT.

A limited number of scholarships for Indigenous community representatives are available.

For more information visit the website at: <http://www.indiglandmanagement.com>

Also 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.](#)