

What's New July 2008

Cases

Australia

***Amoonguna Community Inc v Northern Territory of Australia* [\[2008\] HCATrans 254](#)**

This case involves a challenge to the Northern Territory's local government changes. It was argued that the provisions of the new *Local Government Act* are beyond the power of the Northern Territory Legislative Assembly and that the compulsory acquisition of Amoonguna's property is not on just terms.

***Angelina Cox & Ors on behalf of the Puutu Kuntj Kurrama & Pinikura People/ Wintawari Guruma Aboriginal Corporation/Western Australia/FMG Pilbara Pty Ltd*, [\[2008\] NNTTA 90](#)**

Native title future act determination application concerning a proposed mining lease. Tribunal considered whether the grantee party had negotiated in good faith and found that the grantee had failed to do so.

International

***R. v. Kapp*, [2008 SCC 41](#)**

Constitutional law decision considering the implications of the right to equality and whether affirmative action programs are within this definition. The court considered the relationship between s. 15(1) and s. 15(2) of Canadian Charter of Rights and Freedoms and a communal fishing licence issued under pilot sales program granting members of three aboriginal bands exclusive right to fish for salmon for period of 24 hours. The license meant that commercial, mainly non-aboriginal, fishers were excluded from the fishery at that time and a group alleged a breach of their equality rights on basis of race-based discrimination. McLachlin CJ and Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ held that the communal fishing licenses fall within the ambit of the Charter and the claim of the commercial fishers was not successful. In reaching its conclusion the court noted that:

Section 15(1) and s. 15(2) work together to promote the vision of substantive equality that underlies s. 15 as a whole. The focus of s. 15(1) is on preventing governments from making distinctions based on enumerated or analogous grounds that have the effect of perpetuating disadvantage or prejudice or imposing disadvantage on the basis of stereotyping. The focus of s. 15(2) is on enabling governments to pro-actively combat discrimination by developing programs aimed at helping disadvantaged groups improve their situation. Through s. 15(2), the *Charter* preserves the right of governments to implement such programs, without fear of challenge under s. 15(1). It is thus open to the government, when faced with a s. 15 claim, to establish, that the impugned program falls under s. 15(2) and is therefore constitutional. If the government fails to do so, the program must then receive full scrutiny under s. 15(1) to determine whether its impact is discriminatory.

Legislation

Native Title Act compilation as at 1 July 2008 Incorporating Amendments to: Act No. 26 of 2008

Indigenous Affairs Legislation Amendment Act 2008 No. 67, 2008

An Act to amend laws in relation to Aboriginal land in the Northern Territory, and for other purposes.

Indigenous Land Use Agreements

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

Native Title Determinations

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

Native Title in the News

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

Publications

Reviews & Reforms

Variation of Area of Representative Aboriginal/Torres Strait Islander Bodies 2008 (No. 1)

This instrument provides new boundaries for the North Queensland Land Council Native Title Representative Body Aboriginal Corporation Representative area, being the area identified as the 'Northern Queensland Region' as provided in the schedule to this instrument. This boundary variation commences at midnight on 30 June 2008.

Recognition of Representative Aboriginal/Torres Strait Islander Body 2008 (No. 1)

This instrument provides for the recognition of the South West Aboriginal Land and Sea Council Aboriginal Corporation as the representative body for the area specified in the Schedule until the end of 30 June 2010.

Native Title Ministers' Meeting 18 July 2008, Communiqué

Commonwealth, State and Territory Native Title Ministers met today in Perth for the first time since the Rudd Government took office. The theme for the meeting was 'Making native title work better'. In a watershed atmosphere of accord, all Ministers joined together in agreeing that a flexible and less technical approach to native title was needed throughout Australia. Ministers agreed that the backlog of native title claims and the time estimated to resolve them using current approaches are unacceptable. But Ministers also agreed that legislative change is not a panacea. Ministers discussed the value of adopting broad and flexible processes to embracing the opportunities native title negotiations already offer under the existing legislative framework, in the interests of all stakeholders. Ministers agreed it is the responsibility of all parties to adjust their attitudes and expectations. Ministers committed their Governments to taking a more flexible view of the ways to achieve the broad range of practical outcomes possible from native title processes — achieving real outcomes for Indigenous people and providing certainty for other land users.

Northern Development Taskforce Interim Report Kimberley June 2008

[NDT Interim Report June 2008](#)

[NDT Interim Report Appendices June 2008](#)

Speeches, Seminar Papers and Conference Presentations

Conference papers from the National Native Title Conference 2008 are now available online:

Leah Armstrong	<u>Native Title Corporations and small business</u> - PDF format 26 KB
Stephen Bennetts	<u>'Dirty Deeds Done Dirt cheap': the WA Government's assault on Aboriginal cultural heritage'</u> - PDF format 1538 KB
Wayne Bergman	<u>Successful Negotiation: A Kimberley Story</u> - PDF format 1287 KB
Bob Blair	<u>Creating Indigenous wealth and economic development through industry partnerships</u> - PDF format 26 KB
Robyne Churnside's	<u>Murujuga Declaration</u> - PDF format 88 KB
Gary Hamley	<u>The Native Title Mediation Process: Insights and Developments</u> - PDF format 54 KB
Gary Hamley	<u>The Native Title Mediation Process: Insights and Developments</u> - PDF format 387 KB (PowerPoint version)
Chris Owen	<u>Publish and be damned!</u> - PDF format 33 KB
Rob Powrie	<u>Damages in Native Title</u> - PDF format 99 KB
Geoff Richardson	<u>What is Effective Leadership</u> - PDF format 142 KB
Hon Eric Ripper	<u>Keynote Address</u> - PDF format 40 KB
Austin Sweeney	<u>Practical and Strategic Considerations for PBCs</u> - PDF format 151 KB
Brian Wyatt	<u>Strategic directions: A response to the Attorney General</u> - PDF format 163 KB
Yamatji Marlpa Aboriginal Corporation	<u>Challenges for Native Title Claimants in the WA Resource Boom</u> - PDF format 96 KB

Issues Papers

Chief Judge Joe Williams, Confessions of a native judge: reflections on the role of transitional justice in the transformation of Indigeneity *Land, Rights, Laws: Issues of Native Title* (2008) Vol 3. Issue Paper 14

Research Papers

McAvoy T & Cooms V, 2008 *Even as the Cow Flies it is Still a Long Way: Implementation of the Queensland South Native Title Services Lt Legal Service Strategic Plan*, Research Monograph 2/2008, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

Guidelines

NNTT. Native title claimant applications: a guide to understanding the requirements of the registration test

The 52-page booklet identifies the type of information applicants need to provide in order to pass the registration test.

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

- [NTRU events calendar](#)

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