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Cases

***Banks v State of Western Australia* [\[2009\] FCA 703](#)**

The Jiddngarri application, relating to part of the Kimberley region of Western Australia, had twice previously failed the registration test. In those instances, the Registrar's Delegate had decided that the claim did not satisfy all the merit conditions of the registration test in s190B of the Native Title Act 1993 (Cth) (NTA). In this case, the Court was satisfied that the application had not been amended since the Registrar's decision, and was not likely to be amended in a way that would lead to a different conclusion being reached. Consequently, the application was dismissed by the Court pursuant to its discretionary power under s190F(6) NTA.

***Davis-Hurst on behalf of the Kattang People v Minister for Lands* [\[2009\] FCA 725](#)**

In this case the judge dismissed two notices of motion in which the respondent sought to keep a court application active contrary to orders made by a previous judge. The previous orders granted leave to discontinue the proceedings in relation to two parcels of land as a result of a Memorandum of Understanding between the Director-General of the Department of Environment and Climate Change (NSW) and the Saltwater Tribal Council (Aboriginal Corporation).

***FMG Pilbara Pty Ltd/ Wintawari Guruma Aboriginal Corporation; Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [\[2009\] NNTTA 63](#)**

FMG Pilbara Pty Ltd, as the potential grantee of a mining lease, made an application pursuant to s35 of the Native Title Act 1993 (Cth) (NTA) for a future act determination under s38 of the Act. This application was made on the basis that the negotiating parties had not been able to reach agreement within six months of the State of Western Australia giving notice of its intention to do the future acts. The future acts were the grant of two mining leases under the Mining Act 1978 (WA) on land that was overlapped by the Wintawari Guruma Aboriginal Corporation prescribed body corporate. These leases were to be granted to FMG Pilbara Pty Ltd. Prior to determining a s35 application, the Tribunal must be satisfied that the parties have negotiated in good faith as required by s31(1)(b) of the Act. It was decided that FMG Pilbara Pty Ltd and the State of Western Australia had negotiated in good faith with the relevant native title parties, and consequently the Tribunal did have the power to

conduct an inquiry and make the future act determination as requested by FMG Pilbara Pty Ltd.

Kuuku Ya'u People v State of Queensland [\[2009\] FCA 679](#)

This case involved a consent determination recognising that native title rights and interests exist over the land and waters in the Determination Area in Far North East Queensland. The Kuuku Ya'u people hold exclusive rights to possession, occupation, use and enjoyment of a specified area of land within the Determination Area, which does not include water. As to the remainder of the Determination Area, the Kuuku Ya'u people hold non-exclusive native title rights and interests. These non-exclusive rights and interests include the right to hunt and gather, use the natural resources in specified areas, camp on the land, and maintain and protect significant and important sites and places under traditional laws and customs. The nature and extent of the non-exclusive native title rights and interests varied across the determination area. It was agreed that there were no native title rights and interests in relation to minerals and petroleum.

Wik and Wik Way Native Title Claim Group v State of Queensland [\[2009\] FCA 789](#)

The Wik and Wik Way Peoples were granted an order for a consent determination determining native title rights and interests in their land and waters. The background to the determination was the Western Cape Communities Co-Existence Agreement, an indigenous land use agreement (ILUA), signed between the traditional owners and a range of other parties. Under the Co-Existence Agreement traditional owners were required to commence native title determination applications over land in the ILUA. There were two native title determinations preceding the current case.

In this case the land and waters were broadly described as the land and waters on the western side of Cape York Peninsula landward of the high water mark at mean spring tide of the sea of the Gulf of Carpentaria, bounded to the north by the Embley River and to the south by the Edward River and extending in the east to the upper reaches of the watercourses that drain into the Gulf of Carpentaria.

The Wik and Wik Way Peoples were granted non-exclusive rights to: live on the determination area; access, move about and use the area; use natural resources for personal, domestic or non-commercial communal needs; maintain and protect significant sites and places; conduct social, religious, cultural, spiritual and ceremonial activities; and hunt and gather on the area for personal, domestic or non-commercial communal needs.

Wilson v Northern Territory of Australia [\[2009\] FCA 800](#)

This case involved a consent determination recognising the native title rights and interests of fifteen Mudburra or Jingili or mixed Mudburra/Jingili estate groups over almost 144 hectares of land in Elliott. The determination area is to the south east of the determination area in *King v Northern Territory of Australia* [2007] FCA 944 (Newcastle Waters matter). Exclusive possession was recognised over parts of the determination area. In relation to the non-exclusive areas a range of rights and

interests were recognised including, amongst others; the right to access, hunt and fish, gather and use natural resources, conduct cultural activities and ceremonies and protect significant sites and places.

Reports

[Overcoming Indigenous Disadvantage: Key Indicators 2009](#)

Overcoming Indigenous Disadvantage 2009 (OID) is the fourth report in a series commissioned by heads of Australian governments in 2002, to provide regular reporting against key indicators of Indigenous disadvantage. The long term objective of the report is to inform Australian governments about whether policy programs and interventions are achieving positive outcomes for Indigenous people. This will help guide where further work is needed.

In March this year, the terms of reference were updated in a letter from the Prime Minister. The new terms of reference align the OID framework with COAG's six high level targets for Closing the Gap in Indigenous outcomes. The OID aims to help governments address the disadvantage that limits the opportunities and choices of many Indigenous people. However, it is important to recognise that most Indigenous people live constructive and rewarding lives, contributing to their families and wider communities. That said, across nearly all the indicators in the OID, there are wide gaps in outcomes between Indigenous and non-Indigenous Australians.

Speeches

French CJ. [Native Title – A Constitutional Shift?](#) JD Lecture Series, University of Melbourne Law School, 24 March 2009.

Indigenous Land Use Agreements

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

Native Title 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](#)

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.

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