

What's New July 2010

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1. Cases

Gorringe on behalf of the Mithaka People v State of Queensland [2010] FCA 716

29 June 2010

Federal Court of Australia, Brisbane Registry

Mansfield J

Queensland South Native Title Services (QSNTS) sought to discontinue the native title application of Gorringe on behalf of the Mithaka People. The application was instituted in 2002 and no reasons were provided to explain why the application had been discontinued. Justice Mansfield expressed concern as to the status of QSNTS and considered that the instructions it received to discontinue the application were inconsistent with previous information provided to the court and therefore could not be accepted. His Honour concluded that a motion to discontinue could not be approved until a number of considerations were addressed, for example, whether the authorisation extends to withdrawal, the effect on any ILUAs and the basis upon which the discontinuance is sought.

Cheedy on behalf of the Yindjibarndi People v State of Western Australia [2010] FCA 690

2 July 2010

Federal Court of Australia, Perth Registry

McKerracher J

The National Native Title Tribunal (NNTT) made two determinations that allowed FMG Pilbara Pty Ltd to carry out exploration activities (as future acts) over an area of land in Western Australia. This area of land adjoined land that was the subject of a native title determination made in favour of the Yindjibarndi people. In these determinations, the NNTT had allowed the future acts to be undertaken, subject to standard conditions. The Yindjibarndi people appealed both these decisions.

Justice McKerracher found the NNTT had taken a wide range of matters into account when reaching a decision and had weighed the evidence in light of the submissions of both parties. He found that the Yindjibarndi people had not established any basis on which the NNTT erred on any question of law in either determination. He therefore dismissed the appeals.

Eden Local Aboriginal Land Council v NTSCORP Limited [2010] FCA 745
Eden Local Aboriginal Land Council v NTSCORP Limited [2010] FCA 746

15 July 2010

Federal Court of Australia, Sydney Registry
Jacobson J

The Eden Local Aboriginal Land Council (Eden LALC) applied for determinations that no native title exists in relation to two areas of land within Bega Valley Shire, New South Wales. The Eden LALC had determined that the land was not of cultural significance and thus proposed to lease one of the areas of land to Telstra to operate a monopole facility and proposed to subdivide and possibly sell the other.

Justice Jacobson was satisfied that the Eden LALC was the registered proprietor of the land, that the application was unopposed and that the Federal Court had the power to make the orders. He ordered that native title did not exist in relation to the land in question.

Lennon v State of South Australia [2010] FCA 743

16 July 2010

Federal Court of Australia, Adelaide Registry
Mansfield J

Since the registration of the native title application in this case, two of the six people named as the applicant had died. The Court was asked to remove the names of the two deceased people as parties to the proceedings.

The State supported this but the Commonwealth claimed that the Court had no right to do so and that s 251B of the *Native Title Act 1993* (Cth) required the entire claim group to meet, and to authorise a group of people to be replaced as the applicant. The Commonwealth claimed that any changes to an applicant had to be made under s 66B, which allows the claim group to replace the applicant.

Justice Mansfield found that it would be inconsistent with the autonomy of the claim group that just because one of the situations mentioned in s 66B occurred (such as death, incapacity, lack of authorisation), the claim group would be obliged to apply under s 66B to proceed. He suggested that s 66B is permissive, but does not compel claim groups to use the section when one of the listed situations occurs. This would involve considerable hardship and there is no apparent reason that the legislature would intend to place such an obligation on the claim group.

Further, he considered that the authorisation given to the applicant by the claim group includes an implied understanding that the circumstances of the authorised persons may change (including the death of one or more of them) and the authorisation given under s 251B would continue. He considered that at the time the authorisation was given, it was anticipated that the claim would continue over a long period of time.

Justice Mansfield found that the four remaining people making up the applicant were still authorised to act in that capacity and ordered that the names of the two deceased parties be removed as parties to the proceeding.

BHP Billiton Minerals Pty Ltd v Martu Idja Banjima People as registered native title claimants [2010] WAMW 1

22 February 2010

Mining Warden's Court, Perth

BHP Billiton Minerals Pty Ltd applied for the grant of 22 mining leases over approximately 204 square kilometres of land in Western Australia, encompassing land subject to the Martu Idja Banyjim people's native title claim. The Martu Idja Banyjim people objected to the grant of these leases based on the alleged adverse effects that these mining operations have already had on and would have in the future on the environment, their culture and traditions and their cultural landscape, including Aboriginal heritage sites. BHP argued that the Martu Idja Banyjim people should not be given the opportunity to be heard by the Minister in relation to these leases. They claimed that the grounds of objection were not sufficient to give rise to the Minister being required to consider the exercise of his/her discretion to terminate or refuse BHP's applications.

Calder M found that, prima facie, the objections of the Martu Idja Banyjim people were sufficient, and, as such, they should be considered by the Minister.

2. Legislation

VICTORIA:

Traditional Owner Settlement Bill 2010 (Vic) & Explanatory Memorandum

The Traditional Owner Settlement Bill 2010 (Vic) was introduced into Victorian Parliament by the Hon. John Brumby on 27 July 2010.

- [Click here to view the Statement of Compatibility](#)
- [Click here to view the Second Reading Speech](#)

The framework outlined in the Bill allows Indigenous groups to settle with the Government out of court, if they drop current native title claims and agree not to lodge future claims. The government says it could lead to better economic opportunities for Aboriginal groups in managing Crown land. The Victorian Attorney General Rob Hulls said "It will mean quicker resolution of claims, reduced transaction costs, reduced compensation liability for the state, finality and certainty for the state, for business and for industry in relation to native title matters."

The Co-chairman of Victorian Traditional Owner Justice Group Graham Atkinson says it will result in better economic development opportunities in Indigenous communities. "This is a groundbreaking reform for traditional owners in Victoria. It allows groups to work in an agreement-making context rather than litigation," he said.

Bill:

[http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/CC6FF54507608897CA25776E0003B0D0/\\$FILE/561458BI.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/CC6FF54507608897CA25776E0003B0D0/$FILE/561458BI.pdf)

Explanatory Memorandum:

[http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/CC6FF54507608897CA25776E0003B0D0/\\$FILE/561458exi1.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/CC6FF54507608897CA25776E0003B0D0/$FILE/561458exi1.pdf)

3. Policy

Indigenous Land Corporation (ILC) secures reliable income stream

Based on media release from Thursday, 1st July 2010

Following the passage of legislation in late June 2010, the Indigenous Land Corporation (ILC) will receive a minimum Australian Government payment of \$45 million each year to continue its role in purchasing and managing land to benefit Indigenous communities. This delivers on a 2007 election commitment to provide the ILC with a steady and reliable income stream.

Previous funding arrangements had led to erratic annual payments. Over the past five years these payments have ranged from nil to \$71.9 million. The legislation allows additional payments to be made to the ILC where, after the annual payment has been made, the balance of the Aboriginal and Torres Strait Islander Land Account exceeds the real capital value of the Land Account based on 30 June 2010. The additional payment will be subject to the real capital value of the Land Account being maintained.

An independent review of the effectiveness of the funding arrangements will be conducted after they have been in place for three financial years, and every three years thereafter. The review will focus on whether the funding arrangements are effective in producing the outcome intended by the amendments.

Government Caretaker Arrangements:

The Government is now in caretaker mode after the calling of a Federal election for 21 August 2010. Under the caretaker conventions, the Government will not make policy decisions that would bind an incoming Government or limit its freedom of action. Therefore the Government will not be in a position to consider submissions on the native title agreements discussion paper and the Treasury consultation paper. See the native title section of the [FaHCSIA](#) and [Treasury](#) websites for further information.

Federal Court - Native title list of mediators (30 July 2010)

During the first half of 2010 the Court called for expressions of interest from people who asserted suitable qualifications and experience as a mediator so that a list of names could be compiled and made available by the Court for reference when considering the referral of a matter or part of a matter to a mediator (other than a member of the Tribunal or a Registrar).

[Click here to see the list of mediators](#)

To ensure the currency of the names on the list it will be reviewed every twelve months and updated having regard to the persons' availability, interest in the area, skills and capacity. For more information regarding the list of mediators visit the Federal Court Website or Contact Ms Louise Anderson at the Federal Court.

4. Public Notices

The *Native Title Act 1993*(Cth) requires that native title parties and the public must be notified of:

- proposed grants of mining leases and claims
- proposed grants of exploration tenements
- proposed addition of excluded land in exploration permits
- proposed grant of authority to prospect
- proposed mineral development licences.

The public notice must occur in both:

- a newspaper that circulates generally throughout the area to which the notification relates
- a relevant special interest publication that:
 - caters mainly or exclusively for the interests of Aboriginal peoples or Torres Strait Islanders
 - is published at least once a month
 - circulates in the geographical area of the proposed activities

To access the most recent public notices visit the [NNTT website](#) or the [Koori Mail website](#).

5. Indigenous Land Use Agreements (ILUAs)

- In July 2010, **3** ILUAs were registered with the National Native Title Tribunal. Of these, 2 were in the Northern Territory and 1 in Western Australia.
- 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](#)
- Further information about specific ILUAs is available in the [Agreements, Treaties and Negotiated Settlements \(ATNS\) Database](#).

6. Native Title Determinations

- In July 2010, **2** determinations were handed down in News South Wales. Both were consent determinations where native title was deemed not to exist.
- 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.

7. Registered Native Title Bodies Corporate

The [Native Title Research Unit](#) maintains a Registered Native Title Bodies Corporate Summary document which provides details about RNTBCs in each state/territory including the RNTBC name, RNTBC type (agent or trustee) and relevant native title determination information. Additional information about the RNTBC can be accessed through hyperlinks to corporation information on the [Office of the Registrar of Indigenous Corporations \(ORIC\) website](#); case law on the [Austlii](#); and native title determination information on the [NNTT](#) and [ATNS](#) websites.

8. 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.

9. Native Title Publications

RNTBC Toolkits

The NTRU has compiled toolkits for Registered Native Title Bodies Corporate (RNTBC). These toolkits have been created to assist native title holders to access information and resources regarding funding and training opportunities that may be relevant to their RNTBCs. The need for such toolkits was highlighted in the 2007 Australian Government report 'Structures and Processes of Prescribed Bodies Corporate' (Recommendation 2). The State and Territory Toolkits have recently been updated.

Download toolkits here:

- **New South Wales** (July 2010)  169Kb
- **Northern Territory** (July 2010)  191Kb
- **Queensland** (July 2010)  196Kb
- **South Australia** (July 2010)  143Kb
- **Victoria** (July 2010)  165Kb
- **Western Australia** (July 2010)  230Kb

10. Native Title Broadcasts

The Keeper – ABC TV – Message Stick

"**The Keeper**" is a coming of age story about a sixteen year old, Aboriginal girl and her growing awareness of life in a remote, South Australian community and family divided over a big mining deal. Jacinta Haseldine is a 15 year-old Kokatha girl growing up in the small town of Ceduna in far-west, South Australia. Jacinta's grandmother, Sue has taken her out bush to teach her how to hunt, find bush medicine, and most importantly take care of their sacred waterholes. But with more than 20 mining companies exploring for gold, uranium and mineral sands around Ceduna, caring for country is becoming far more difficult.

In February 2010, what will become, the world's largest zircon mine opened just north of Ceduna, and Native Title negotiations around the \$390 million mine have divided Aboriginal families, including the family of Jacinta and Sue.

To view the transcript or watch the video visit the message stick website:

<http://www.abc.net.au/tv/messagestick/stories/s2962316.htm>

11. Upcoming Conferences

Australian Anthropological Society (AAS) Annual Conference

The Society's principal academic activity each year is the Annual Conference. Attendance at the Annual Conference is open to all interested persons, whether or not they are members of the AAS, on payment of the conference fee. Each year, the conference is hosted by a different University.

The AAS Conference 2010 details are:

Date: September 22-24

Location: Deakin University, Waterfront Campus, Geelong, Victoria

Hosts: Anthropology, School of History, Heritage & Society, Deakin University

Register by contacting: [Rohan Bastin \(click here to email Rohan\)](#)

Call for Papers: PDF or DOC - (Deadline for paper submissions: 16 August)

Conference Website: <http://www.deakin.edu.au/arts-ed/shhs/events/aas2010.php>

National Indigenous Land and Sea Management Conference (NILSMC)

The NILSMC will bring together Indigenous traditional owners and leaders, community organisations and people who work in the environmental conservation industry, key stakeholders and industry partners from around Australia. It will be a time for delegates to share knowledge and experiences and exchange ideas for sustainable natural resource and cultural heritage management. It will also be a time for the Aboriginal people and the wider community of Broken Hill to come together to showcase their region and take part in a truly national Indigenous event.

This NILSMC 2010 details are:

Date: November 2-5

Location: Broken Hill Regional Events Centre Broken Hill, NSW

Register - To register attendance go to [Register Now](#)

Location - Find out more information about [Broken Hill](#) and how to get there.

Contact Us - [click here](#) for details

12. 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. [Applications are now open for Aurora's NTRB Training Programs.](#)

Native Title Research Practices 24-26 August 2010 - Sydney

The Aurora Project is running a Native Title Research Practices program is a 3 day program that aims to enable participants to develop key knowledge and skills required in their daily native title research work, through a range of interactive problem-based activities and associated presentations.

Program topics include:

- focusing anthropological research enquiries for the proof of native title
- effective use of anthropological research methods – practical ways to get the most from your research and strategic considerations in research choices
- managing the research process when working with consultants
- new developments in meeting evidentiary requirements
- briefing consultants for better outcomes – writing briefs which will satisfy legal requirements and allow experts to reach their conclusions
- exploration of the capabilities brought to native title by the various research disciplines, history in particular, and examination of the complexities faced by cognate disciplines

when required to conform to the requirements of legal evidentiary practice

- issues and solutions for the storage and transfer of cultural and heritage information and materials
- dispute management skills – learn to tailor your approach to disputes to meet the differing needs of the individuals and groups involved, and the underlying motivations which underpin their behaviour.

[Click here to download the Native Title Research Practices Flyer](#)