

## What's New June 2009

### Cases

#### Australia

##### ***Hogan v State of Western Australia [2009] FCA 610***

The primary issue in the case was whether the Court could use its discretionary power to dismiss an application on its own motion where the applicant had previously failed the registration test. On 13 November it was decided that the application did not satisfy a number conditions of the registration test. Following that date the applicants had not applied for reconsideration of the decision or amendment of the application. Further, there was no evidence to suggest it would be amended in a way that would lead to a different outcome. Therefore, under section 190F(6) *Native Title Act 1993* (Cth) the application could be dismissed. However, the judge noted that the applicants could in the future file a 'properly constituted claim'.

##### ***Hunter v State of Western Australia [2009] FCA 654***

The Nyangumarta People applied to the Federal Court for a determination of native title by consent in relation to an application area in the northwest Pilbara and southwest Kimberley regions. The Court made the order pursuant to sections 87 and 87A of the *Native Title Act 1993* (Cth) (NTA). The Court also made an order, under section 56 NTA, giving effect to the parties' proposal that the Nyangumarta Warrarn Aboriginal Corporation be the trustee of the native title rights and interests.

Most of the application area is unallocated Crown Land, to which the Nyangumarta People hold an entitlement as against the whole world to the possession, occupation, use and enjoyment of the land and waters to the exclusion of all others. Regarding other parts of the application area which are held under various pastoral leases, the Nyangumarta People hold non-exclusive rights including the right to access, move through, and live on the area. All of these native title rights and entitlements are subject to any inconsistent rights of others.

##### ***Martin (deceased) v State of Western Australia (No 2) [2009] FCA 635***

The case concerned an application under sections 61(1) and 66B(1)(b) of the *Native Title Act 1993* (Cth) (NTA) to replace the applicant in native title proceedings following the applicant's death. Orders were also sought to amend the claimant application in other ways. The applications were opposed by the Yamatji Marlpa Aboriginal Corporation (YMAC) who argued non-compliance with the NTA. The Court held that the claim group had complied with the requirements of the NTA (i.e. the claim group had appropriately authorised the seven nominated persons to make the application and deal with matters arising in relation to it). Furthermore, the judge rejected the Corporation's assertion that the claim group was attempting to vindicate the native title rights of some larger group, of which they are a part, without the larger group's authority. Overall, the Court permitted the replacement of the deceased applicant and the proposed amendments to the claimant application.

##### ***Minister Administering the Crown Lands Act v Bathurst Local Aboriginal Land Council [2009] NSWCA 138***

The Bathurst Local Aboriginal Land Council (the "BLALC") lodged an Aboriginal Land Claim over the Sir Joseph Banks Nature Park (the "Reserve"). The Reserve had previously been precluded from sale in order to preserve native flora, but had recently been closed down in July 2001 and made open to the public.

In accordance with s36(1)(b) of the Aboriginal Land Rights Act 1983 (NSW) (the Act), the BLALC would only be entitled to claim the Reserve if the land was not "lawfully used or occupied". The Minister administering the Crown Lands Act 1989 refused the BLALC's claim on the basis that the Reserve did not constitute claimable Crown land under the ALR Act.

The meaning of “used or occupied” was extensively considered, and ultimately the Reserve was transferred to the BLALC because it was not lawfully used or occupied when the claim was lodged. On appeal, it was held that no error of law had been made by the Land and Environment Court in reaching this conclusion, and consequently the appeal was dismissed.

### ***Nambucca Heads Local Aboriginal Land Council v Minister for Lands [2009] FCA 624***

An application was made by the Nambucca Heads Local Aboriginal Land Council (the Council) under section 61 *Native Title Act 1993* (Cth) (NTA) for a determination regarding existing native title rights and interests. The application was made in order to facilitate a joint venture by the Council and Indigenous Business Australia to develop two lots of land, owned by the Council, into a shopping centre. Section 40AA of the *Aboriginal Land Rights Act 1983* (NSW) prohibited the Council from disposing of the land without “an approved determination of native title”. The Court determined that there were no native title rights and interests in relation to the land.

### ***Decisions by an Independent Person under s 24MD(6B) Native Title Act 1993 (Cth)***

24/09/2003	Thalanyji Native Title Claim Group v Western Australia Heath SM
02/05/2005	Gobawarra Minduarra Yinhawanga People and Innawonga People v Western Australian and Hamersley Iron Pty Ltd, Heath SM
14/06/2005	Kuruma Marthudunera (Combined) Native Title Claimants v Western Australia and Mineralogy Pty Ltd
28/05/2008	Kuruma Marthudunera (Combined) Native Title Claimants v Western Australia and Mineralogy Pty Ltd Heath

## **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](#)

## **NTRU Publications**

- Everard, D. 2009. ‘Scoping Process Issues in Negotiating Native Title Agreements’ Research Discussion Paper 23, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies.
- Weir, J.K. 2009. ‘The Gunditjmarra Land Justice Story’ Research Monograph 1/2009, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies.

## Publications

- Armstrong, R. 2009. An overview of Indigenous rights in water resource management, Revised: Onshore and offshore water rights discussion booklets, Prepared by the Lingjari Foundation and North Australian Indigenous Land and Sea Management Alliance. Available at: [http://www.nailsma.org.au/publications/indigenous\\_water\\_rights.html](http://www.nailsma.org.au/publications/indigenous_water_rights.html)
- Department of Justice, *Report of the Steering Committee for the Development of a Victorian Native Title Settlement Framework*, Department of Justice, Victorian Government, Melbourne, December 2008. Available at: <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/ebf9a00adc6c233/FINAL%20SC%20Report%2013May09.pdf>
- Morphy, F. and Morphy, H. 2009. 'The *Blue Mud Bay case*: refractions through saltwater country', *Dialogue*, vol.28, no.1, pp.15-25.
- Richardson, B., Imai, S., McNeil, K. *Indigenous peoples and the law: comparative and critical perspectives*, Hart, Oxford, 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.

## Events

- [NTRU events calendar](#)

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