



What's New: March 2007

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Recent Cases (Australia)

***Gumana v Northern Territory of Australia* [\[2007\] FCAFC 23](#)**

ABORIGINES - land rights - grant of fee simple estate to land trust - effect of grant in inter-tidal zone - whether exclusive possession - whether excludes power of Northern Territory Director of Fisheries to grant fishing licences in area NATIVE TITLE - inter-tidal zone - non-recognition at sovereignty of exclusive rights of possession in inter-tidal zone - whether a form of extinguishment - whether amenable to operation of s 47A of Native Title Act 1993 (Cth) mandating conditional disregard of extinguishment - native title holders - membership of group - spouses of clan members - access - non-exclusive possession - whether right to control access by other Aboriginal people.

***Arnold Franks and Others v State of Western Australia and Others (No 2)* [\[2007\] FCA 45](#)**

NATIVE TITLE - practice and procedure - directions to give effect to previously published reasons for decision.

***Butcher Cherel and Others on behalf of the Gooniyandi Native Title Claimants/Western Australia/Faustus Nominees Pty Ltd* [\[2007\] NNTTA 15](#)**

Catchwords: Native title -- future act -- proposed grant of exploration licence -- expedited procedure objection application -- whether acts directly interfere with community or social activities -- whether acts interfere with areas or sites of particular significance – whether there is a likelihood of major disturbance to land or waters -- an act that attracts expedited procedure.

***Australian Capital Territory (Chief Minister's Department) V Eva Coe* [\[2007\] ACTSC 15](#)**

APPEAL - Administrative Law - Freedom of Information - access may be refused where giving access would divert resources - whether limited to work involved in locating and collating documents.

The request for access was for 'all documents relating to native title in the ACT including, either direct or indirect and funding (in relation to native title in the ACT)'. The Chief Executive of the appellant sought clarification of the extent of this request, and by letter of 9 June 2005 the respondent stated that her request covered:

- (1) All documents/records regarding Native Title in the Australian Capital Territory. This includes direct or indirect funding.
- (2) The area of Native Title would be the whole of the Australian Capital Territory.

***Milne v Minister for Planning & Anor [No. 2]* [\[2007\] NSWLEC 66](#)**

Appeal - development application - State significant development - extensions to marina - social and economic impacts - visual impacts - impacts on seagrasses - development consent refused.

***Arnhem Land Aboriginal Land Trust v Northern Territory of Australia* [\[2007\] FCAFC 31](#)**

APPEALS - practice and procedure - stay of orders pending application for special leave to appeal - declaratory orders - no power to stay declaratory orders - declaration relating to power to grant fishing licences in intertidal zone affected by land rights grants – consent order proposed - want of power and utility - stay refused.

***New South Wales Aboriginal Land Council v New South Wales Native Title Services* [\(Unreported, FCA 112, 6 February 2007, Graham J\)](#)**

Unopposed determination – native title does not exist.

Bahtabah Local Aboriginal Land Council v New South Wales Native Title Services Limited
[\[2007\] FCA 383](#)

NATIVE TITLE - non-claimant application - unopposed - no native title exists in relation to the land.

Batabah Local Aboriginal Land Council v New South Wales Native Title Services Limited
[\[2007\] FCA 382](#)

NATIVE TITLE - non-claimant application - unopposed - no native title exists in relation to the land.

Harrington-Smith v Native Title Registrar **[\[2007\] FCA 414](#)**

NATIVE TITLE - claimant application dismissed - aggrieved applicants seek injunction restraining Native Title Registrar from removing entry relating to claim from the Register of Native Title Claims - whether s 190(4)(d) of the Native Title Act 1993 (Cth) has the effect that the Registrar must remove entry once proceeding "dismissed" following trial, or only if and when dismissal sustained upon appeal - Held: the former, so that there was no scope for interference with Native Title Registrar's proposed removal of entry from the Register following dismissal at trial.

Lovett on behalf of The Gunditjmarra People v State of Victoria **[\[2007\] FCA 474](#)**

Existence of native title (s 225) - Native title exists as provided in Order 5 in the areas described in Schedule 2 ("Native Title Area"). Native title does not exist in the areas described in Schedule 3. To be clear, where Schedule 3 refers to an area covered by a public work, the land and waters in relation to which native title does not exist includes the land and waters adjacent to that public work, as described in s 251D of the Native Title Act.

(Sourced from NNTT Judgements and Information email alert service)

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Legislation

[Senate inquiry into the Native Title Amendment \(Technical Amendments\) Bill 2007](#)

The inquiry will look into proposed amendments to provisions of the *Native Title Act 1993* (the Act) relating to:

- future acts;
- Indigenous land use agreements;
- the scope of alternative state or territory regimes to the right to negotiate established under section 43 of the Act;
- the making and resolution of native title applications;
- the obligations of the Registrar of the Native Title Tribunal in relation to the registration of native title applications;
- native title representative bodies; and
- prescribed bodies corporate.

The last day to lodge submissions is 20 April 2007.

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

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Publications

National Native Title Tribunal

[What's new in the Library bulletin](#)

(Sourced from NNTT Judgements and Information email alert service)

University Publications

Brennan, Sean 'Economic development and land council power: modernising the *Land Rights Act* or same old same old?' (2007) 10 (4) *Australian Indigenous Law Reporter* 1.

Corbett, Tony and O'Faircheallaigh, Ciaran 'Unmasking the politics of native title: the National Native Title Tribunal's application of the NTA's 'arbitration provisions' (2007) 33 (1) *Western Australia Law* 153.

Dalrymple, David 'Land rights and property rights' (2007) 51(1) *Quadrant* 61.

Foley, Gary and Anderson, Tim 'Land rights and Aboriginal voices' (2006) 12(1) *Australian Journal of Human Rights* 83.

Hepburn, Samantha 'Transforming customary title to individual title: revisiting the cathedral' (2006) 11(1) *Deakin Law Review*. 63.

Irvin, Zoey 'Wilcox J and Olney J: a comparative analysis of historical assumptions in the *Yorta Yorta* and single *Noongar* decisions' (2007) 6(24) *Indigenous Law Bulletin* 24.

Laurence, Jennifer 'Amendments to Part IV (Mining) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) introduced by the *Aboriginal Land Rights (Northern Territory) Amendment Act 2006* (Cth)' (2006) 25 (3) *Australian Resources and Energy Law Journal* 230.

(Sourced from NNTT Judgements and Information email alert service)

Government Publications

Magarey, Kirsty *Native Title Amendment Bill 2006, Bills Digest* (6 February 2007) 2006-07, No. 77.

Digest of the *Native Title Amendment Bill 2006* (Cth) prepared by the Law and Bills Digest Section of the Parliamentary Library.

[National Indigenous Council Report to Government, January – December 2006](#)

(Sourced from NNTT Judgements and Information email alert service)

Upcoming Events

Conferences

[AAS Annual Conference 2007: Transforming Economies, Changing States](#)

When: 30 October – 2 November 2007

Where: Australian National University

This conference aims to provide a forum for contemporary anthropological engagements with 'the economic' and 'the state', 'government' and 'the political' more generally. The conference seeks to foreground the role of the economy in relation to the late-modern social transformations. In addition to plenary panels on The economic in contemporary anthropology, and The subject of the state, we call for panels and papers dealing with various aspects of economic and political anthropology across a range of global settings. In addition to 'themed' papers and panels, the organizers also welcome contributions reflecting the wider interests of Australian anthropology.

Those proposing sessions should in the first instance email a session name and a description of no more than 200 words to the conference Organising Committee, c/o Dr Monique Skidmore (Monique.Skidmore@anu.edu.au).

Once the session themes have been finalized by the Committee, a call for papers will be made.

A separate workshop provisionally entitled '**Practice and Practicality: Anthropology in Indigenous Australia**' will also be held on Monday October 29.

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Applications Lodged with the Federal Court

Native title applications lodged by date

DATE FILED	APPLICATION NAME	APPLICATION TYPE	STATUS	STATE/TERRITORY	TRIBUNAL FILE NO.	FEDERAL COURT FILE NO.
20/03/2007	Wiradjuri People of the Bathurst/Lithgow/Mudgee area	Claimant application	Active	NSW	NC07/3	NSD429/07
20/03/2007	Gomerioi Narrabri People	Claimant application	Active	NSW	NC07/2	NSD437/07
29/03/2007	Tipperary (KAMU)	Claimant application	Active	NT	DC07/1	NTD8/07

This information has been extracted from the [National Native Title Tribunal website: http://www.nntt.gov.au/applications/](http://www.nntt.gov.au/applications/) accessed 3/4/2007. For further information about native title applications contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

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Notifications

Native title applications by current notification of applications

NOTIFICATION CLOSING DATE	APPLICATION NAME	APPLICATION TYPE	DATE FILED	STATE/TERRITORY	TRIBUNAL FILE NO.	FEDERAL COURT FILE NO.
27/05/2007	Town of Batchelor No. 3	Claimant application	20/10/2006	NT	DC06/4	NTD18/06
28/05/2007	Bundambar Pty Ltd	Non-claimant application	9/01/2007	NSW	NN07/1	NSD37/07
13/06/2007	Ngurrulpa	Claimant application	8/12/2006	WA	WC06/5	WAD357/06
27/06/2007	Mitakoodi and Mayi Peoples #4	Claimant application	28/07/2006	QLD	QC06/9	QUD295/06
27/06/2007	Kalkadoon People #5	Claimant application	13/01/2006	QLD	QC06/2	QUD15/06
27/06/2007	Kalkadoon People #4	Claimant application	22/12/2005	QLD	QC05/12	QUD579/05

This information has been extracted from the [National Native Title Tribunal website: http://www.nntt.gov.au/applications/](http://www.nntt.gov.au/applications/) accessed 3/4/2007. For further information about native title applications in notification contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

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Registration Test Decisions

Registration test decisions by decision date

DECISION DATE	APPLICATION DATE	APPLICATION NAME	STATE/TERR.	DECISION	NNTT FILE NO.	FEDERAL COURT FILE NO.
16/03/2007	22/11/2006	Pine Hill Station	NT	Accepted	DC99/4-2	NTD6004/99

This information has been extracted from the [National Native Title Tribunal website: http://www.nntt.gov.au/applications/regtest.html](http://www.nntt.gov.au/applications/regtest.html) accessed 3/4/2007. For further information about Registration Test Decisions contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

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Determinations

Native title determinations by determination date

SHORT NAME	CASE NAME	DATE	STATE/TERR.	OUTCOME	LEGAL PROCESS
Gunditjmara	Lovett on behalf of The Gunditjmara People v State of Victoria [2007] FCA 474	30/03/ 2007	VIC	NATIVE TITLE EXISTS IN PARTS OF THE DETERMINATION AREA	CONSENT DETERMINATION
Bahtabah Local	Bahtabah Local Aboriginal Land Council	20/03/2007	NSW	NATIVE TITLE DOES NOT	UNOPPOSED DETERMINATION

Aboriginal Land Council #2	v New South Wales Native Title Services Limited [2007] FCA 383			EXIST	
Bahtabah Local Aboriginal Land Council #1	Bahtabah Local Aboriginal Land Council v New South Wales Native Title Services Limited [2007] FCA 382	20/03/2007	NSW	NATIVE TITLE DOES NOT EXIST	UNOPPOSED DETERMINATION
Eastern Guruma	Muntulgura Guruma (Part A)	01/03/2007	WA	NATIVE TITLE EXISTS IN THE ENTIRE DETERMINATION AREA	CONSENT DETERMINATION

This information has been extracted from the [National Native Title Tribunal website: http://www.nntt.gov.au/ntdetermination/bydate_index.html](http://www.nntt.gov.au/ntdetermination/bydate_index.html) accessed 7/4/2007. For further information about native title determinations contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

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Indigenous Land Use Agreements

Registered Indigenous Land Use Agreements by date

TRIBUNAL FILE NO.	NAME (NNTT HYPERLINK)	TYPE	STATE/TERR.	REGISTRATION DATE	SUBJECT MATTER
QI2005/001	Hutton Creek Crossing - Comet Ridge Project	Area agreement	QLD	12/3/2007	Mining
QI2005/011	Bar Barrum Small Mining ILUA	Area agreement	QLD	12/3/2007	Mining

This information has been extracted from the [National Native Title Tribunal website: http://www.nntt.gov.au/ilua/bydate_index.html](http://www.nntt.gov.au/ilua/bydate_index.html) accessed 3/4/2007. For further information about Indigenous Land Use Agreements contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

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Future Act Determinations

Future Act consent determinations by determination date

DETERMINATION DATE	NNTT FILE NO. (NNTT HYPERLINK)	DECISION/ DETERMINATION	PARTIES
9/03/2007	WF07/1	Consent determination: future act can be done	Doris Ryder and Others on behalf of the Lamboo People (WC99/20) (Applicant/Lamboo native title party) and Scotty Birrell and Others on behalf of Koongie Elvire (WC99/40) (Applicant/Koongie-Elvire native title party) - and - The State of Western Australia (Government party) - and -

2/03/2007	WF06/83	Consent determination: future act can be done	Bundarra Holdings Pty Ltd (Grantee party) Moly Metals Australia Pty Ltd (Applicant/grantee party) and Moly Metals Australia Pty Ltd and Kallenia Mines Pty Ltd (Applicant/grantee party) - and - The State of Western Australia (Government party) - and - Angus Abdullah and Others on behalf of Njamal (WC99/8) (native title party)
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This information has been extracted from the [National Native Title Tribunal website: http://www.nntt.gov.au/futureact/Determinations.html](http://www.nntt.gov.au/futureact/Determinations.html) accessed 3/4/2007 . For further information about future act determinations contact the National Native Title Tribunal on 1800 640 501 or visit www.nntt.gov.au.

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Other Future Act determinations by determination date

DETERMINATION DATE	NNTT FILE NO. (NNTT HYPERLINK)	DECISION/ DETERMINATION	PARTIES
29/03/2007	WO06/103 and WO06/197	Objection - Expedited Procedure Does Not Apply	Maggie John and Others on behalf of Malarngowem (WC99/44) (native title party) - and - The State of Western Australia (Government party) - and - Ord Resources Pty Ltd (grantee party)
26/03/2007	QO06/40 QO06/43 QO06/44 QO06/47	Objection - Dismissed	QO06/40 Bradley Foster Charlie Jack Danny Fowler David Darby Don George & Ors on behalf of the Waanyi People QC99/23 (native title party) QO06/43 Bradley Foster Charlie Jack Danny Fowler David Darby Don George & Ors on behalf of the Waanyi People QC99/23 (native title party) QO06/44 Alfie Johnny Clara Foster Murray Walden Jr Terrance Taylor Jimmy Pyro Jacky Green Jack Hogan Hilton Charlie Albert Charlie on behalf of the Gangalidda and Garawa People #2 QC05/3 (native title party) QO06/47 Bradley Foster Charlie Jack Danny Fowler David Darby Don George & Ors on behalf of the Waanyi People QC99/23 (native title party) - and -

			State of Queensland - Department of Natural Resources & Water (Government party) - and - Terence John Burt Judy-Anne Galway Robert William Kirkby (grantee party)
21/03/2007	WF06/64	Future Act - Dismissed	Aubrey Lynch and Others on behalf of the Wongatha People (WC99/1) (Wongatha native title party) - and - Geoffrey Alfred Ashwin and Others on behalf of the Wutha People (WC99/10) (Wutha native title party) - and - Richard Guy Evans and Anor on behalf of the Koara People (WC95/1) (Koara native title party) - and - Richard Guy Evans and Anor on behalf of Koara No.3 (WC95/22) (Koara no.3 native title party) - and - The State of Western Australia (Government party) - and - Great Gold Mines NL (grantee party)
21/03/2007	WO05/662	Objection - Expedited Procedure Does Not Apply	Scotty Birrell and Others on behalf of Koongie-Elvire (WC99/40) (native title party) - and - The State of Western Australia (Government party) - and - Jindalee Resources Ltd (grantee party)
21/03/2007	WO05/777	Objection - Expedited Procedure Does Not Apply	Connie Jugarie and Others on behalf of Ngarrawanji (WC96/75) (native title party) - and - The State of Western Australia (Government party) - and - Jindalee Resources Ltd (grantee party)
21/03/2007	WF06/62	Future Act - Dismissed	Aubrey Lynch and Others on behalf of the Wongatha People (WC99/1) (Wongatha native title party) - and - Geoffrey Alfred Ashwin and Others on behalf of the Wutha People (WC99/10) (Wutha native title party) - and - The State of Western Australia (Government party) - and - Helen Mary Ansell (grantee party)
16/03/2007	WO05/756	Objection - Expedited Procedure Does Not Apply	Banjo Wurrunmurra & Others on behalf of the Bunuba Native Title Claimants (WC99/19) (native title party) - and - The State of Western Australia (Government party) - and - Monte Ling Kevin Peter Sibraa (grantee party)
8/03/2007	WO04/132 WO06/41	Objection - Dismissed	WO04/132 Benny Duncan & Others on behalf of the Ngarrawanji Native Title Claimants (native title party) - and - State of Western Australia (Government party)

			-and - E-Kim Pty Ltd (grantee party) WO06/41 Merle Forrest & Others on behalf of the Central East Goldfields People (native title party) - and - State of Western Australia (Government party) -and - Australian Nickel Mines NL (grantee party)
6/03/2007	WO06/226	Objection - Dismissed	Paddy Neowarra & Others on behalf of the Wanjina Wunggurr Wilinggin Native Title Claimants (WC99/11) (native title party) - and - United Kimberley Diamonds NL Ragged Range Mining Pty Ltd (grantee party) - and - The State of Western Australia (Government party)
1/03/2007	WO04/89	Objection - Expedited Procedure Applies	Butcher Cherel and Others on behalf of the Gooniyandi Native Title Claimants – WC00/10 (native title party) -and- The State of Western Australia (Government party) -and- Faustus Nominees Pty Ltd (grantee party)

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