

Cases

***Re Australian Jade Exploration Pty Limited & Ors* [\[2006\] QLRT 78](#)**

This case was heard by the Queensland Land and Resource Tribunal and concerns a mining lease application lodged by Australian Jade Exploration Pty Limited and native title groups, the Barada Barna and Kabalbara Yetimarla People, Durambal People #2, and the Koinjmal People. The State of Queensland is also a party.

***Re Carpentaria Gold Pty Ltd & Ors* [\[2006\] QLRT 107](#)**

This case concerns whether compensation should be paid under s 709 of the Mineral Resources Act 1989 by Carpentaria Gold Pty Ltd to the Birri People. It was noted by the Tribunal that an appropriate figure is reached having regard to the evidence that is adduced. It was found that since no evidence on the point was adduced, compensation could not be awarded.

***Lansen & Ors v NT Minister for Mines and Energy & Ors* [\[2007\] NTSC 28](#)**

The plaintiffs are registered Native Title Claimants to land and waters affected by the McArthur River Project. The court found that the defendants conceded the plaintiffs' had standing to bring the proceedings and that the first defendant, the Minister for Mines and Energy for the Northern Territory is and was at all material times responsible for the administration of the Mining Management Act 2001 (NT), the Mining Act 1980 (NT) and the McArthur River Project Agreement Ratification Act 1992 (NT). It was found that authorisation given by the Minister did not authorise the proposal for open cut mining. As a consequence, the proposed open cut mining operation is statutorily prohibited in the absence of an Authorisation: s 35(1) Mining Management Act 2001 (NT).

***Chapman on behalf of the Wakka Wakka People 2 v State of Queensland* [\[2007\] FCA 597 \(27 April 2007\)](#)**

Considered whether a person named as 'the applicant' unable or unwilling to act can continue to be authorised and consequently whether they are a proper or necessary party to the proceedings under O 6 r 9 FCR. The court also considered whether the Register of Native Title claims can be amended to remove names of persons as applicant apart from s 66B.

***Beattie on behalf of Western Wakka Wakka Peoples v State of Queensland* [\[2007\] FCA 596 \(27 April 2007\)](#)**

In this case the Federal Court considered whether a native title application can be struck out. This required a consideration of whether the application complies with s 61 of the Native Title Act, that is that authorisation requirements have been met. It was argued that the composition of claim group was based on families rather than a larger group. There was also a consideration of whether the claim was still properly authorised where the claim group is different from those identified as descendants. The issue was also raised in relation to whether there was a 'society' that continued to observe society laws. The court found that in the present case there is nothing to suggest the continued existence of a wider group, a society of Western Wakka Wakka persons who observe that society's laws. If such a group did once exist, all that remains are the descendants of one person and they are said to follow family customs and practices. Other issues considered by the court was whether the application complied with s 62 of the Native Title Act. It was found that s 62 had not been met in a number of respects including the failure to swear an affidavit by each of the persons who are said to be authorised, identify the area and boundaries. The court also noted that the case had been the subject of mediation since 1999 and there was an absence of any meaningful action to progress the matter and struck out the application under O 35 r 2.

***Nicholson-Brown v Jennings* [\[2007\] FCA 634](#)**

This case involved an administrative review of the decision of the Minister to remove applicants from their position as inspectors under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) ('the Act'). Given that the decision followed a change in governmental policy not yet implemented in legislation the court needed to consider whether the Minister took into account irrelevant considerations, that is, whether new criteria in policy constituted an

irrelevant consideration and whether policy contrary to the subject-matter, scope or purposes of the Act. The court also considered the issue of whether there had been a failure to take into account relevant considerations or whether decision made for an improper purpose. The court also considered whether the decision of the minister ultimately constituted a denial of procedural fairness. The court was also required to interpret whether the decision to remove applicants was authorised by the Act. In particular it considered whether the power to remove can be implied where there is a power to appoint.

(Sourced from NNTT Judgements and Information email alert service)

Events

- [NTRU events calendar](#)

Indigenous Land Use Agreements

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

Legislation

Aboriginal Cultural Heritage: A new era of heritage protection begins in Victoria

On 28 May 2007, a new system of Aboriginal heritage protection in Victoria will come into force. Cultural heritage management plans are a significant feature of the new regime, with draft regulations setting out when these plans will be required. Arthur Allens Robinson Partner Chris Schulz and Senior Associate Penny Creswell provide a summary of the proposed requirements for Aboriginal heritage plans.

Native Title Determinations

- See the [National Native Title Tribunal website: Browse Determinations](#)
- The [Agreements, Treaties and Negotiated Settlements \(ATNS\) Database](#) provides information about native title consent determinations and some litigated 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](#)

Publications

The National Native Title Tribunal's latest Hotspots issue is [now available online](#).

[Lessons Learned: An evaluation of the framework of the negotiations for the Ord Final Agreement 2006](#)

This report evaluates the structures, characteristics and processes that underpinned the successful negotiation of the Ord Final Agreement/ Office of Native Title (WA)

Reviews & Reforms

[Towards An Alternative Settlement Framework for Native Title Consultation Consultation paper](#)

The Western Australian government is investigating the development of a new alternative settlements framework to resolve native title. The new process would enable claimants who might not receive a determination that native title exists to negotiate a positive settlement with the Government, achieving a fair and effective result for both native title claimants and the State Government. An issues paper and submissions are available online.

Government Business Activities And The Extinguishment Of Native Title: Position Paper Office Of Native Title (Western Australia)

This document explains the Western Australian government's position in relation to extinguishment and how that position relates to the future act processes under the Native Title Act (Cth) 1993 (NTA).

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