

What's New - May 2010

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1. Cases

Strickland v State of Western Australia [2010] FCA 272

29 April 2010

Federal Court of Australia, Perth Registry

McKerracher J

The Native Title Registrar did not accept the Maduwongga people's native title application for registration under s 190A of the *Native Title Act*. The Registrar was not satisfied that the applicant was authorised by all members of the claimant group to make an application, that the factual basis for the claim was adequate, that, prima facie, the applicants had established any of the claimed rights and interests, that there was a physical connection with the land or waters covered by the application or that the applicants were not making a claim to the ownership of gas.

In December 2009, McKerracher J had ordered that submissions in relation to the application be filed by the applicant by 19 February 2010 or the Court would proceed to determine the matter without submissions.

As no submissions were filed by that time, McKerracher J was satisfied that the application had not been amended and found no evidence that it would be amended in a way that would lead the Registrar to reach a different conclusion. He therefore dismissed the application.

Rose on behalf of the Kurnai Claims v State of Victoria [2010] FCA 460

14 May 2010

Federal Court of Australia, Melbourne Registry

North J

On 14 May 2010, Justice North dismissed the Kurnai's application for a determination of native title in the Gippsland region of south-east Victoria. The Kurnai application was brought on behalf of a group of people identified as descendants of Larry Johnson and Kitty Perry Johnson, excluding the wider Gippsland Aboriginal community. It came before the Court as alternative mechanisms could not resolve the disagreement over who should be included in the determination.

The Kurnai argued that none of the descendents of Aboriginal people in the Gippsland area, save for the descendents of Larry Johnson and Kitty Perry Johnson, remain as part of a continuing society. Their argument was therefore that none of the identified 25 ancestral sets, recognised as part of the Kurnai society today, form a continuing society. Two particular ancestral sets were examined to highlight the inadequacies of the Kurnai line of argument, and because ancestors from these groups were excluded, the claim could not succeed.

Ms Pauline Mullet - self-represented litigant and main spokesperson for the Kurnai case - was unable to satisfy the Court that the remaining individuals as identified by other witnesses and in a report produced by the State should be excluded from the claim, hence it failed.

Brown (on behalf of the Ngarla People) v State of Western Australia (No 2) [2010] FCA 498

21 May 2010

Federal Court of Australia, Perth Registry

Bennett J

Justice Bennett considered the issue of whether the grant of the Mt Goldsworthy mining leases in the Pilbara region of Western Australia effected or gave rise to the extinguishment of native title at common law. The *Native Title Act 1993* does not support an intention to extinguish native title, and therefore the concept of common law extinguishment of native title was relevant. It was agreed that the Ngarla hold native title rights and interests in the relevant land, and therefore the case centred on whether the rights granted by the lease affected the native title rights and interests or whether any inconsistencies arise at all.

The applicants (Brown on behalf of the Ngarla People) argued that mining leases do not extinguish all native title rights and interests, as they were granted by agreement differing from those made under the *Mining Act 1904*. Her Honour applied the 'inconsistency of incidents' test to determine whether the rights of the joint venturers that appeared to conflict with the determined native title rights extinguished them, prevailed over or suspended the exercise of native title. If the leases extinguished native title, there would be no issue as native title cannot be revived.

Her Honour held that the leases had not granted exclusive possession over the whole determination area and therefore not all native title interests had been extinguished. The land in which these rights were extinguished was limited to areas where there was a legal inconsistency between the interests granted by the lease and the continuing interests of the native title holders. This was limited to the areas where there had been development, namely the mines, town sites and associated infrastructure.

2. Legislation

COMMONWEALTH:

Wild Rivers (Environmental Management) Bill 2010 (Cth)

The Wild Rivers (Environmental Management) Bill 2010 (Cth) was tabled in the House of Representatives on 8 February 2010. The private member's bill is described as 'an act to protect the interests of Aboriginal traditional owners in the management, development and use of native title land situated in wild river areas, and for related purposes'. [The Bill is available for download at ComLaw.](#)

Public hearings were held in Canberra on 20 March 2010 and in Cairns on 13 April 2010. [Transcripts of the hearings can be downloaded from the Senate website.](#)

Submissions received by the Committee in relation to the Wild Rivers (Environmental Management) Bill 2010 are available for download here:

http://www.apf.gov.au/Senate/Committee/legcon_ctte/wildrivers/submissions.htm

An interim report is available for download here:

http://www.apf.gov.au/senate/committee/legcon_ctte/wildrivers/interim_report/index.htm

The reporting date is **30 June 2010**.

3. Policy

Consultation Paper - Native Title, Indigenous Economic Development and Tax

Canberra: The Treasury, 2010

Summary: "On 18 May 2010, the Government released a consultation paper entitled 'Native Title, Indigenous Economic Development and Tax'. The consultation paper discusses the interaction between the income tax system and native title and sets out three possible approaches to reform. The consultation paper also discusses how existing deductible gift recipient categories could be better adapted to reflect the needs of Indigenous communities. The consultation paper also discusses whether a new general DGR category that includes organisations that carry out activities across multiple DGR categories would better reflect the needs of Indigenous communities."

Making a submission

Interested parties are invited to comment on the consultation paper. While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

Closing date for submissions: Friday, 2 July 2010

4. Grants

The Attorney-General's Department has announced the commencement of the 'Native Title Anthropologist Grants Program'. The Program seeks to attract a new generation of junior anthropologists to native title work and encourage senior anthropologists to remain within the system.

Applications are invited from consultants, organisations, educational institutions and other interested parties working directly with anthropologists in the native title sector using the attached Application Form.

The Program Guidelines and Application Form can be downloaded from the Attorney-General's Department website:

http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenouslawandnativetitle_NativeTitleAnthropologistGrantsProgram

Applications close 5pm Monday 21 June 2010.

5. Indigenous Land Use Agreements

- 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

- 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. Public Notices

The *Native Title Act 1993* (Cth) requires that native title parties and the public 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](#).

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

Journal Articles:

- A Awad, 'Native ambitions', *Lawyers Weekly*, No. 479, 2 April 2010, pp. 16-17.
- S Labowitch, 'Integration and reconciliation of social, legal and environmental interests under Indigenous land rights sea claims', *Environmental and Planning Law Journal*, Vol. 27, No. 3, 2010, pp. 189-201.
- AC Neal SC., 'The native title concept of "society": reflections post *Sampi*', *Native Title News*, Vol. 9, Issues 7&8, 2010, p.117-120.
- J Southalan, 'Authorisation of native title claims: problems with a "claim group representative body"', *Australian Resources and Energy Law Journal*, Vol. 29, No. 1, 2010, pp. 49-59.
- M Gregory and A Maharaj-MacLean, 'Recent proposed amendments to the *Native Title Act*', *Australian Resources and Energy Law Journal*, Vol. 29, No. 1, 2010, pp. 7-9.
- L Terrill, 'Indigenous land reform: an economic or bureaucratic reform?', *Indigenous Law Bulletin*, Vol. 7, Issue 17, 2010, pp. 3-7.

Papers:

- G Neate, *Assessing native title and economic development*, Paper delivered to *Aligning Indigenous Land Management with Economic Development Conference*, Darwin, 24 March 2010.

10. Conferences

Native Title Law Summit

Enabling Sustainable Outcomes Post Reform
15–16 July 2010, Stamford Plaza, Brisbane

Program highlights (from <http://www.lexisnexis.com.au>):

- Examine the impact of 2009-10 reforms on native title practice – consider Federal Court and NNTT viewpoints
- Hear from counsel in landmark *Sampi/Bardi* case and the Pilbara Connection Project
- Achieve sustainable, long-term and mutually beneficial outcomes to negotiated agreements and comprehensive settlements
- Assess the interaction between State and Commonwealth land rights schemes, native title and future acts
- Engage in high-level legal debate on the present and future of native title in Australia

For further information or for a copy of the program visit <http://www.lexisnexis.com.au/pd>

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.

This AAS Conference 2010 details are as follows:

Date: September 22-24

Location: Deakin University, Waterfront Campus, Geelong, Victoria

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

Contact: Rohan Bastin

11. 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.