

## What's New September 2007

### Cases

#### ***Patta Warumungu People v Northern Territory of Australia* [2007] FCA 1386**

On 3 September 2007 Justice Mansfield handed down the first consent determination in the Northern Territory recognising the Patta Warumungu as the native title holders of about 25 hectares of land in Tennant Creek. In reaching his decision, Mansfield J was satisfied that the connection report prepared by anthropologist, Susan Donaldson had set 'out in detail the laws and customs of the Patta Warumungu people, including their Dreaming, ceremonial life, social organisation, and system of land tenure, acquisition of rights, punishment and permission to enter country'.<sup>1</sup> Mansfield J was satisfied that the requirements of s 223 of the Native Title Act 1993 (Cth) NTA had been satisfied and that the rights and interests in the determination area were in 'appropriately specific terms'.<sup>2</sup> The consent determination was reached after three years of negotiations between the Central Land Council, the Northern Territory Government, the Tennant Creek Town Council and various mining companies. In reaching his decision, Mansfield J noted that the 'present outcome reflects...active engagement in this matter on the part of both the native title claim group and the Northern Territory'. He also commented that 'in some respects, the outcomes which are negotiated may include outcomes beyond the declaration of the existence of native title rights and interests'.<sup>3</sup>

#### ***Worimi Local Aboriginal Land Council v Minister for Lands for the State of New South Wales* [2007] FCA 1357**

This case involved the issue of whether a person seeking to establish native title as a respondent should be joined to a non-claimant application where they are incapable of meeting the requirements of the Act for a claimant application. More specifically the Worimi Local Aboriginal Land Council had failed to satisfy s. 61 on previous occasions and had their application for native title struck out under s. 84. Now the Land Council sought to be joined as a party to a non claimant application seeking an order that no native title exists under s. 84(5) of the *Native Title Act 1993* (Cth). The court considered whether the Land Council had an interest within meaning of s 84(5) of Act and whether that interest will be affected by determination in proceedings.

#### ***Reid v State of South Australia* [2007] FCA 1479**

This case involved a motion by the South Australian Government to have a claim struck out under s 84C of the *Native Title Act 1993* (Cth) or dismissed under s 31A of the *Federal Court Act 1976* (Cth). The claim was filed by Richard Reid which overlapped with eight other claims including the Kokatha native title claim. The motion was supported by the Aboriginal Legal Rights Movement which represented the other claim groups. The South Australian Government opposed the motion was based on the fact that (1) the native title claim group description was unclear (2) the claims were made impermissibly on behalf of a sub group (3) the basis of authorisation did not meet the requirements of the NTA and (4) the application failed to comply with the requirements of s 61A and s 62 of the NTA. Mr Reid claimed that his authorisation was provided in three instances: (1) by the Kokatha Peoples Community Inc. (2) self authorisation and (3) authorisation by the elders of surrounding Western Desert tribes. Justice Finn found that there was no evidence to suggest that all members of the KPC were present and that the

---

<sup>1</sup> *Patta Warumungu People v Northern Territory of Australia* [2007] FCA 1386, [15]-[16].

<sup>2</sup> *Patta Warumungu People v Northern Territory of Australia* [2007] FCA 1386, [18]-[20].

<sup>3</sup> *Patta Warumungu People v Northern Territory of Australia* [2007] FCA 1386, [23]-[24].

description of the claim group was only a part of the group. He also found that there was uncertainty in relation to the description of the members. Justice Finn was doubtful that there was evidence of a right of self authorisation under traditional laws and customs and found that reliance on the Elders approval did not assist in the application because authorisation must be by 'all persons...who..hld common or group rights'.

### ***Ochapowace First Nation v. Canada (Attorney General)* (2007 FC 920)**

This is a judicial review of the Royal Canadian Mounted Police decision not to lay trespass or other charges against the Prairie Farm Rehabilitation Administration (the PFRA) and the Saskatchewan Watershed Authority (the SWA) in relation to their activities on, and affecting, the First Nations' reserve lands., This application directly raises for the first time, the potential impact of treaty and aboriginal rights on police discretion.

### ***King v Northern Territory of Australia* [2007] FCA 1498**

Justice Moore made a determination of native title on various sites in and around the Town of Newcastle Waters on a number of outstanding issues to be resolved from *King v Northern Territory of Australia* [2007] FCA 944.

## **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**

### **Registrar of Aboriginal and Torres Strait Islander Corporation. The rule book tool**

One of the changes made by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) is to improve the internal governance rules of Indigenous corporations. Corporations already incorporated under the *Aboriginal Councils and Associations Act 1976* (ACA Act) will have up to two years to change their rules or constitution to comply with the new law. Groups wanting to register under the CATSI Act will also need to adopt rules that comply with the CATSI Act. The rule book tool is a model that corporations can use to make their own rule book that complies with the CATSI Act and suits their needs.

### **Land Court and Other Legislation Amendment Act 2007 Act No. 39 of 2007. Assent 29-08-07**

The Land Court and Other Legislation Amendment Bill 2007 proposes to merge the jurisdiction of the Tribunal into the Land Court. The jurisdiction of the Tribunal will be exercised by the Land Court. The [explanatory notes](#) of the legislation is also available online.

## **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

### **NAILSMA Guidelines and Protocols for the Conduct of Research**

Research is an important means of promoting and assisting management and development on Indigenous land and sea estates in ways that are environmentally, culturally, socially and economically sustainable. NAILSMA has developed guidelines and protocols for ethical research practices of the highest standard.

### **Alternative Dispute Resolution (ADR) in Aboriginal Contexts: A Critical Review / Prepared by Wenona Victor for Canadian Human Rights Commission April 2007**

This paper details three emerging modes of alternative resolution processes within Indigenous contexts. One mode involves Western-based paradigms such as negotiation, conciliation, arbitration and mediation. A second mode involves Indigenous paradigms, which call for the rejuvenation and reclamation of ways in which disputes may be resolved according to the culture and custom of the Indigenous party involved. Due to the diversity and distinctiveness of Aboriginal peoples across the continent, Indigenous methods of dispute resolution are not easily summarized into categories. Rather, they are reflective of the Indigenous teachings from which they come and therefore may be different from one Aboriginal nation to another. A third mode is a combination of the two paradigms.

**John Sosso, 2007, *Good faith mediation in the National Native Title Tribunal*, ADR Bulletin, vol.9, No.8, 144-149**

**Richard Cooper Memorial Lecture 2007 *International Law and Native Title in Australia* Professor Garth Nettheim**

Customary international law provided for some early recognition of the rights of Indigenous peoples as against European colonisers, but much of this was eroded over the past two centuries. In Britain's colonisation of Australia there was little effective recognition, in contrast to British policy and practice in North America and New Zealand. Since World War 2 international law has developed wide ranging treaties relating to human rights generally. These have come to be regarded as applicable to Indigenous peoples. They played a critical role in the events leading to the High Court of Australia's recognition of native title in 1992, and supported the *Native Title Act 1993* (Cth). They provided the basis for international criticism of the 'winding back' of native title in the Native Title Amendment Act 1998 (Cth). This lecture considers the role Australia has to play the implementation of international law and its relationship with Indigenous rights.

## Other

**Memorandum of Understanding between the Queensland Government and the Queensland Resources Council to increase Indigenous employment in the Queensland resources sector and related Indigenous enterprise development**