

PATTA WARUMUNGU PEOPLE V NORTHERN TERRITORY OF AUSTRALIA

Federal Court of Australia (Mansfield J)
3 September 2007
[2007] FCA 1386

This application, by the Patta Warumungu people, sought matter a native title consent determination over an area comprising various allotments of land in the town of Tennant Creek in the Northern Territory. The areas of land surrounding the township were granted to the traditional owners under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) ('ALRA'), but section 3(1) of ALRA prevented township land itself being included within the subject of a grant.

The claim area originally submitted to the Registrar of Native Title comprised 60 administrative parcels of land covering approximately 42.1 square kilometres in and around Tennant Creek (Schedules 1 and 2). Upon negotiation between the parties, it was agreed that native title rights and interests existed within only 18 of those parcels (Schedule 1), but that together those parcels covered 80 percent of the original claim area.

By consent of the parties Mansfield J, present in Tennant Creek, ordered that there be a determination of native title over the parcels of land agreed to by the parties in Schedule 1. It was ordered that the Patta Aboriginal Corporation act as trustee over the determined native title areas for the holders pursuant to section 57 of the *Native Title Act 1993* (Cth) ('NTA').

The Court confirmed that the native title rights held by the claimants pursuant to the determination comprise: the right to live on the land, and for that purpose to camp, to erect shelters and other structures, and to travel over any part of the land; to hunt, gather and take the natural resources of the land (excluding mineral and petroleum); to access, maintain and protect places of importance on the land; to engage in cultural activities, conduct ceremonies, hold meetings, teach the physical and spiritual attributes of places and areas of importance, and participate in cultural practices relating to

birth and death including burial rites; to make decisions about the use and enjoyment of the land by Aboriginal people who recognise themselves as governed by Aboriginal traditional laws and customs and who acknowledge the traditional laws and customs of native title holders; to share and exchange natural resources obtained on or from the determination area, including traditional items made from the natural resources of the land.

Justice Mansfield was satisfied that the preconditions for an order pursuant to section 87 of the *NTA* had been met since all parties had consented to the orders sought and all parties with proprietary interests in the determination area had signed the proposed consent orders. This left only a determination as to the appropriateness of a determination order. Justice Mansfield accepted that the material relied on by the parties claiming native title demonstrated that they had a continuing system of laws and customs that sounded in a claim of native title rights and interests: *Members of the Yorta Yorta Aboriginal Community v State of Victoria* (2002) 214 CLR 422 referred to. His Honour also concluded that all of the parties likely to be affected by the determination had been afforded sufficient access to legal representation and had given appropriate consideration to other parties likely to be affected, such as the interests of the Northern Territory community generally.

Justice Mansfield found that in light of these considerations it was appropriate to make the proposed orders and declaration in the terms sought by the parties. His Honour commended the active engagement of both parties to the claim in reaching a consent determination and noted that it was to be expected that a number of common claims with similar geographical, social cultural and legal characteristics could expect to be resolved using similar consent determinations in the near future.

An Indigenous Land Use Agreement ('ILUA') was signed immediately after the Federal Court's determination to effect the operation of the consent determination and related matters.

The full text of this determination is available at: <http://www.austlii.edu.au/au/cases/cth/federal_ct/2007/1386.html>.