

had not for a period of time actually discharged the responsibilities of *Nguraritja* native title had been lost the Court said:

contrary to the Fullers' submissions, s 223(1)(a) does not necessarily require claimants to establish that they have continuously discharged their responsibilities, under traditional laws and customs, to safeguard land or waters. Of course, the traditional laws and customs may provide that the holders of native title lose their rights and interests if they fail to discharge particular responsibilities. But s 223(1)(a) does not impose an independent requirement to that effect.

The Court compared the failure to fulfil traditional responsibility to lapses in the wider Australian community by persons holding certain religious beliefs and noted that their failure to live up to those beliefs did not necessarily mean those beliefs had been abandoned. The Court said:

it is one thing to find that a person had not lived up to his or her religious or ethnical responsibilities. It is another to find that the person does not regard himself or herself as bound by the rules imposing and defining those responsibilities. Their 'default' may continue for a long time, yet they may continue to acknowledge and accept the binding force of the rules imposing the unfulfilled responsibilities.

The appeal Court concluded that there was ample evidence to show that the Western Desert Bloc had a system of traditional laws and customs that remained acknowledged and that

the failure to visit sacred or secret sites for a period of time, even a lengthy period was not sufficient to counteract the affirmative evidence of acknowledgement and observance of traditional laws and customs.

Extinguishment issues & comment

The Court found that the right to make improvements, granted under the terms of the pastoral leases, did extinguish native title but only once that right was exercised.

The Court determined that:

In the circumstances of the present case, the 'operation of a grant of (the right to conduct and use improvements)' should be regarded, in effect, as subject to a condition precedent. The grant of the right could become operative in relation to a particular area of the leasehold land only when the right was exercised. The grant of the right could have an extinguishing effect only when the right was exercised, since it was only then that the precise area or areas of land affected by the right could be identified.

This produces a common sense result. However, a 'condition precedent' is something which must happen before the right comes into being. It is somewhat twisted logic to say that a condition that precedes the operation of a grant of a right is the exercise of that right.

10 June 05

WHAT'S NEW

Legislation

The Attorney-General has announced a series of proposed reforms to the Native Title Act. The reforms include: an overview of the native title system; a review of Native Title Representative Bodies; a review of assistance to respondents in native title claims; technical amendments to the native title act; a review of claims resolution processes; a review of Prescribed Bodies Corporate (PBCS) and consultation with State and Territory governments.

More information can be found by visiting the [Attorney-General's Department](http://www.ag.gov.au/nativetitlesystemreform) website at <http://www.ag.gov.au/nativetitlesystemreform>

The High Court of Australia has adopted new procedural rules. The [High Court Rules 2004](#) were notified in a Special Gazette on 14 October 2004 and comprise five chapters which are organised by subject matter. The Rules came into effect on 1 January 2005. Text of the new rules is available at:

http://www.austlii.edu.au/au/legis/cth/consol_reg/hcr2004170/



Administration

The Native Title Registrar has released a revised application form for use in lodging an application for [registration of an Indigenous Land Use Agreement](#). It is available from the Tribunal's website in both PDF and RTF versions. You can find the new form at:

<http://www.nntt.gov.au/ilua/Apply.html>

Australian Case Law

Australian Securities & Investments Commission v Rich and Ors. NSWCA 152

The NSW Court of Appeal overturned a decision made by Austin J in respect of expert evidence on 20 May 2005. The court held that for expert evidence to be admissible it need only disclose the facts and reasoning process used by the expert rather than the true factual basis upon which the experts evidence was formed. Additionally, the Court found that the probative value of expert evidence needs to be assessed when the Court is exercising discretionary powers to exclude evidence.

International Case Law

R. v. Marshall; R. v. Bernard, 2005 SCC 43

The Supreme Court of British Columbia released it's reasons in Musqueam Indian Band et al v City of Richmond et al on July 18 2005. In their reasons the Court clearly indicate that the 'duty to consult and where appropriate accomodate' is engaged where the Crown or it's agent has knowledge of the potential existence of Aboriginal title on land affected by a dealing that may adversely affect that title and that where that Crown has failed to discharge their duty and the damages are economically compensable the appropriate remedy is economic compensation to the First Nation.

Publications

The Department of Land and Water Australia have published an online report titled '*Aboriginal Management and Planning for Country: respecting and sharing traditional knowledge*' by view the report go to:

http://www.lwa.gov.au/downloads/publications_pdf/PK040789.pdf

Native Title Hot Spots issue no. 15 is now available. This publication is generated by the National Native Title Tribunal every two months. This issue includes summaries of the Ngaanyatjarra Lands, De Rose Hill and Bardi Jawi determinations.

It may be accessed at:

http://www.nntt.gov.au/metacard/files/HotSpots/Hot_Spots_Number_15.pdf

Indigenous Housing In Remote Australia— 'Housing tenure and Indigenous Australians in remote and settled areas: Discussion Paper 275' by W. Sanders is now available for purchase or free download in PDF format. [22 August 2005] It may be accessed at:


<http://www.anu.edu.au/caepr/>

[The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples](#) was launched by Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma and Mr Jim Birch, Chief Executive Officer of the Department of Health in South Australia in Adelaide on the 26th July 2005. A major joint report produced by the Australian Bureau of Statistics (ABS) and the Australian Institute of Health and Welfare (AIHW) it shows the health of Aboriginal and Torres Strait Islander peoples remains poor compared to the rest of the Australian population.

[Australia's National Framework For Human Rights - National Action Plan](#) co-ordinated by a steering committee composed of officers from the Attorney-General's Department (Michael Cook, Kathy Leigh, Matt Minogue, Suesan Sellick, Matt Hall, Harriet Spinks and Julia Gallucio) and the Department of Foreign Affairs and Trade (Mark Napier and Gerry McGuire) was posted on the Attorney-General's website 29 August 2005.

'Social justice and human rights – Utilising Indigenous socio-economic data in policy development' a speech given by Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma at the CAEPR Indigenous Socioeconomic Outcomes conference is now available for download in PDF format. [23 August 2005] It may be accessed at <http://www.anu.edu.au/caepr/>

[Overcoming Indigenous Disadvantage: Key Indicators 2005](#) was released by the Productivity



Commission on 12 July 2005 and can be downloaded from the [OIPC website](http://www.oipc.gov.au/) at <http://www.oipc.gov.au/>

[Australia's Identified Mineral Resources 2005](#) can be downloaded from the [Geoscience website](#). The information in this publication is used to formulate Government policy, and provide industry, the investment sector and the general community with an informed understanding of Australia's known mineral resources and exploration activity.

Focus: Native Title – September 2005: Recent native title decisions In brief: Allens Arthur Robinson's Senior Associate Robyn Glindemann and Lawyers Kate Barrett and Penny Creswell look at some of the issues raised in four recent decisions relating to native title.

- [Four rulings on native title](#)
- [Bardi Jawi native title claim in Western Australia](#)
- [Should native title claimants be treated as private land holders for the purposes of granting entry permits to mark out tenements?](#)
- ['Partial' extinguishment of the right-to-control access](#)
- [Native title over the De Rose station](#)

Seminars & Workshops

Series 2 of the Centre for Aboriginal Economic Policy Research (CAEPR) seminar series commences from July to September 2005. When? Wednesdays 12.30 to 2.00pm, unless otherwise noted.

Where? CAEPR Seminar Room GO58, Ground Floor, Hanna Neumann Bldg #21, The Australian National University, Canberra.

Enquiries: Centre Administrator on (02)6125 0587 or email: admin.caepr@anu.edu.au A number of the topics involve native title matters. For more information go to:

<http://www.anu.edu.au/caepr/events.php>

AIATSIS Seminar Series. The next seminar will be presented by:

Mr Kim Scott, Writer and Miles Franklin Literary Award Winner

When:

Monday 26 Sep 2005, 12.30pm - 2.00pm

Where:

Mabo Room

AIATSIS Building, Acton Peninsula

Reconciling the Past. Amnesty International and the Coalition of Peoples are hosting a workshop: [Healing Without Violence](#). Using the model of reconciliation and forgiveness as tools for healing, this workshop will equip you with practical skills and knowledge to deal with issues of violence. Dr Gobodo-Madikizela's skills in facilitating encounters between victims of violence and perpetrators will help us understand the processes involved in providing solutions to the issues of inter-generational violence. Pg 7

Thursday 9am-5pm November 17 \$325

Dr Gobodo-Madikizela

In Her Own Voice

Wednesday 6-7.30pm November 16 \$35

Unwaged \$20

Justice Michael Kirby's address will be followed by a panel of high profile speakers including the Chief Justice of Western Australia, Hon Chief Justice Malcolm, Patron Coalition of Peoples, Hon Fred Chaney, Reconciliation Australia and Marlene Jackamarra-Carnamah, Chairperson Coalition of Peoples.

Monday 5-7pm October 24 \$35 at the University of Western Australia. For more information visit: <http://www.equity.uwa.edu.au/welcome?f=87045>

National Centre for Indigenous Studies at the ANU will host a talk:

Title: Palm Island - Something is Very Wrong

Speaker: Andrew Boe

When: 6 - 7 pm Wednesday 28 September 2005

Where: Law Lecture Theatre, Faculty of Law, Fellows Road, ANU

Colloquium

The Curtin University of Technology held a one-day colloquium titled 'A New Backyard Blitz? – Enactments of Australian Sovereignty Post 2001'. For more information visit: <http://humanities.curtin.edu.au/sovereignty/>


Conferences

[W.E.H. Stanner: Anthropologist and Public Intellectual](#)

Thursday 24 - Friday 25 November 2005

Coombs Lecture Theatre

The Australian Institute of Aboriginal and Torres Strait Islander Studies together with The Australian National University present this two-



day symposium to mark the centenary of the birth of W.E.H. Stanner (1905-1981).
REGISTRATIONS ARE NOW OPEN For more information or to register visit the website:
<http://www.anu.edu.au/culture/stanner>

[Aboriginal Placenames Old and New](#)

1 October, 2005

Organised by the Asia-Pacific Institute for Toponymy, Macquarie University
Geoscience Offices, Canberra, ACT

For more information visit URL:

<http://www.anps.mq.edu.au/currentactivities5.html>

[6th National Men's Health Conference](#)

incorporating the 4th National Aboriginal & Torres Strait Islander Male Health Convention will be held on 10-12 October 2005 at the RACV Club, 501 Bourke St, Melbourne.

For more information visit:

<http://www.regocentre.com/nmh2005/>

[NSW Aboriginal Health Research Conference](#)

18 & 19 October 2005, Sydney The conference is an initiative of the [Coalition for Research to Improve Aboriginal Health \(CRIAHA\)](#)(pdf) and is the first of its kind to showcase research in Aboriginal health specific to New South Wales.

[AAS Annual Conference](#) Fundamentalisms and

Their Alternatives: Anthropological Responses and Responsibilities The 2005 conference will be held at the University of Adelaide from 27-30 September . Details can be found on the [2005 AAS conference web page](#) at:
<http://www.arts.adelaide.edu.au/socialsciences/anthro/aasac2005/>

[The Gathering: An Alliance of Elders, Healers and Wisdomkeepers](#) 08 Sep 2005 Big Bear CA

[The Uses and Abuses of Archaeology for Indigenous Populations](#) 08 Nov 2005
Rangataua, Tauranga New Zealand

[Culture Fix](#) 25 Nov 2005 Sydney Australia

[World Indigenous Peoples Conference on Education \(WIPCE\)](#) 27 Nov 2005 Waikato New Zealand

[Family & Community Strengths Conference - Evidence driving Practice](#) 05 Dec 2005
Newcastle Australia

Native Title Newsletter

Vol 4/05

[Sharing the Fish - Allocation Issues in Fisheries Management](#) 26 Feb 2006 Fremantle Australia

[Community Development in a 'Global Risk Society'](#) 20 Apr 2006 Melbourne Australia

[Opportunities](#)

The Australian Sociological Association is calling for papers and presentations for a special Issue of the Journal of Sociology. For more information including submission requirements, go to:

<http://www.craah.org.au/resource/Indigenous%20Call%20for%20papers.doc>

Call for Papers: Appreciating and Promoting Indigenous Knowledge Systems and Practices in Local Governance: Phase II Local Government Academy. The Phillipines. For more information you may contact Ms. Jean T. de Pano (Project Officer) at jean_depano@yahoo.com

[Rio Tinto NTRB Scholarships for 2006](#)

The two scholarships offered cover all the expenses involved in undertaking a one-year Masters in Mining Law and Policy at the University of Dundee, Scotland (approximately \$55,000) and are open to any Australian resident with a law degree. The successful candidates will commit to work within the Native Title Representative Body system for a minimum period of two years. Closing date for the scholarships is Wednesday 21 September 2005. For more information visit <http://www.dundee.ac.uk/cepmlp/main/html/academic/FT-LLM-Min%20Law%20and%20Pol.php>

Call for Papers & Presentations

Indigenous Australia: Beyond the Margins/Beyond Marginality

A Special Issue of the Journal of Sociology (Journal of The Australian Sociological Association)

Guest Editors

Maggie Walter (University of Tasmania)
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Submissions should be sent by 20 December 2005 to:

Jul/Aug 2005

NATIVE TITLE IN THE NEWS

National

19-Aug-05 Ruddock wants native title blackball removed In a significant change to native title, the Howard government is preparing to override any objections by land councils to enable individual Aborigines to gain housing and commercial leases on community land. National Centre for Indigenous Studies director Mick Dodson said the mooted changes "violate() racial discrimination conventions and just about every other human-rights accord. No other land-owner in the country is required to give you a lease...This is outrageous stuff and it saddens me that the idea has been put to government by blackfellas" i.e. the National Indigenous Council. Australian Financial Review, pg 27

29-Aug-05 Business to win in red-tape reform. The Federal Government is conducting a "stock take" of all it's laws and regulations including native title laws to repeal unnecessary red tape and address a "regulatory blow out" that is costing business billions of dollars a year and constraining economic growth. Alice Springs News, pg 6; 01-Sep-05 Alice Springs News, pg 19

New South Wales

08-Jul-05 After ten years of negotiations and hard work, the Saltwater people of the Manning Valley signed an ILUA on the 30 June 2005. The claim was originally lodged by Mrs Davis Hurst in 1995 on behalf of the traditional owners. The agreement covers 14 acres of land including the region's most significant traditional camping ground. Manning River Times, pg 7. 08-Jul-05. Kattang/Saltwater People ILUA: NI2002/001.

12-Aug-05 New gold mine in Lake Cowal NSW region. The Cowal Gold Project have negotiated a native title agreement with the Wirajuri community, including awarding tertiary scholarships and varying mining related apprenticeships and conducting heritage management with the Wirajuri community by

recording and collecting artefacts before any digging starts. Mining Chronicle, pg 48

19-Aug-05 Historic land bill on track Representatives of the Yuin people, National Parks and Wildlife Service, conservation groups, lawyers and land owners have thrashed out the details of an agreement that will see the deeds of two south coast national parks, Gulaga and Biamanga, handed back to traditional owners. Colin Markham introduced a private members bill 11 years ago proposing the hand back of five national parks. Since retired Mr Marham said "when this legislation was passed it was innovative and groundbreaking and the other states have now followed suit...I am really pleased it is still on track". Illawarra Mercury, pg 12

21-Aug-05 NSW/SA Native title compensation case A Barkandij woman, Dorothy Lawson, is suing the State of NSW for compensation for the extinguishment of her native title rights in 1922. The case is the result of the Federal Court ruling in the case of Lake Victoria that native title had been extinguished in 1922 when the state of NSW sold the land to South Australia. She argues that the government's failure to advise people at the time that their rights had been extinguished put it in breach of the Aborigines Protection Act Alice Springs News, pg 9

30-Aug-05 ALRA(NSW) claim lodged over 43 lots in the Collina Stage 10 development in East Griffith. A claim has been lodged by NSWALC over 43 lots in the Collina Stage 10 development in East Griffith. It will not affect the 39 lots already sold. NSWALC lodged the claim after becoming aware that the land, which was previously a dedicated reserve, had become available under the terms of the Land Rights Act. Alice Springs News, pg 23

31-Aug-05 Native title agreement to be registered. The native title agreement over Saltwater will be registered shortly after years of negotiations between Elders and various agencies. The agreement is currently being