NEWS

Yulara Compensation Claim

Jango v Northern Territory of Australia (includes Summary) [2006] FCA 318 (31 March 2006)

On 31 March 2006, the Federal Court of Australia dismissed theYulara compensation claim. There were several issues of contention where the anthropological reports were questioned. First of all, their reports suggesting differences in the patrilineal descent model and in the notion of 'discrete bounded areas or estates' were not accepted by Sackville J, who generally upheld the views of previous anthropological literature. Also, Sackville J found that the laws and customs of the applicants could not be seen as 'traditional'. The report was dismissed on the grounds that "the analysis does not assist the applicants to establish that the current laws and customs relating to rights and interests in land represent an adaptation of pre-sovereignty norms." (17.5.5.2, para 507). The findings bring up a number of concerns for anthropologists and others preparing reports for native title claims.

You can read the full judgement from the Federal Court at:
http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/federal%5fct/2006/318.html?query=%5e+jango

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Larrakia Native Title Claim

Risk v Northern Territory of Australia (includes Summary) [2006] FCA 404 (13 April 2006)
The Larrakia people, whose country includes areas in and around Darwin, Palmerston and Litchfield in the Northern Territory, had their native title claim dismissed by the Federal Court on April 13, 2006.

In a summary of the judgement, Justice John Mansfield said that 'the evidence shows that a combination of circumstances has, in various ways, interrupted or disturbed the presence of the Larrakia people in the Darwin area during several decades of the 20th century in a way that has affected their continued observance of, and enjoyment of, the **traditional** laws and customs of the Larrakia people that existed at sovereignty'. He concluded that 'current Larrakia society, with its laws and customs, has not carried forward the traditional laws and customs of the Larrakia people' and thus does not 'support the conclusion that those traditional laws and customs have had a continued existence and vitality since sovereignty'. Justice Mansfield did not find the current laws and customs of the Larrakia to be 'traditional' in the sense required by s 223(1) and as explained by the High Court in *Yorta Yorta*.

You can read the full judgement from the Federal Court at:
http://www.austlii.edu.au/au/cases/cth/federal_ct/2006/404.html

Rubibi Community v State of Western Australia (No 6)(includes Corrigendum dated 15 February 2006) [2006] FCA 82 (13 February 2006) Determination native title exists.
Available at http://www.austlii.edu.au/au/cases/cth/federal_ct/2006/82.html

13-Apr-06 Mary Beckett has represented the Alexandria Council during negotiations for an ILUA in the Kaurna Native Title application area. **Beckett present at Kaurna negotiations** Times, 13-Apr-06, pg 9. **Kaurna Peoples Native Title Claim** - Tribunal File Number: SC00/1, Federal Court File Number: SAD6001/00.

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These findings and others will be addressed at the Native Title Conference to be held in Darwin 24-26 May. Please come along to register your critiques and ideas.

CLAIMANT COMMENT

Claimant Comment – The Western Yalanji Native Title determination Friday 17th February 2006.

Danny O'Shane

Courtesy of The Message Stick, the official newsletter of the North Queensland Land Council

There are probably two important aspects of Western Yalanji country that people in the rest of Australia should know if they don't already. One is that the country lies in the Mitchell River catchment system on the Western side of the Great Dividing Range on Southern Cape York Peninsula. The Mitchell River is fed by many tributaries including the Saint George, the Hodgkinson and the Palmer. Although in the late dry season the river system can cease to flow, there remains a series of permanent water holes which have supported human and animal life for thousands of years. Needless to say this area supported a large and healthy population of Kuku Yalanji people before European contact. The other important aspect is that two gold fields, the Hodgkinson and the legendary Palmer River gold fields, lie in the heart of our country.

The various clan groups or "warra", in Kuku Yalanji, come under one law with the right to speak for country but also having obligations to neighbouring groups. Our Yalanji ancestors nurtured the land through controlled burning, cleaning of springs and waterways and ceremony to maintain the land for its human and animal inhabitants.

It was in the late 1800s that Europeans first discovered gold in the region and it wasn't long before many thousands of Chinese and Europeans descended on the rich gold fields in search of their personal fortunes. Because it was the late 1800s many people my age (I'm in my 60s) had contact with grandparents and others who gave first and second-hand accounts of events that took place after the inevitable clash of cultures. The clash of cultures was inevitable because the Chinese and Europeans viewed the land as valuable only for the gold it could deliver to them. The Kuku Yalanji saw it as far more valuable, so valuable that their very lives depended on it. It was their Mother.

When our ancestors saw the newcomers desecrating their sacred story places and churning and muddying the rivers in search of gold they began a campaign to chase the strangers from the land. With spears and woomeras our ancestors fought against the intruders' rifles for over a decade as their numbers dwindled to a level that threatened their extinction. In the face of superior weapons and overwhelming numbers our ancestors had to abandon their campaign. What had once been a thriving nation was now reduced to a handful of families.

It was a descendant of one of these families, Mr. Rodney Riley, who lodged the Native Title application for the Western Yalanji 3# on behalf of the Western Yalanji people in 1998. Some eight years later on Friday 17th February 2006 we found ourselves at a sitting of the Federal Court convened in the tiny North Queensland township of Mount Carbine (which sits squarely in Western Yalanji country) presided over by his Honour Allsop J.

Years had been spent in negotiation and mediation, all necessary documents and agreements were in place, so it remained just a formality for a consent determination to be handed down. When a consent determination of Native Title is handed down by the Federal Court it is inevitable that memories come flooding back for those associated with the process.

The Western Yalanji #3 determination certainly brought the memories flooding back for myself. The most prominent of which, for me, were of friends with whom I had sat at the negotiation table and who were no longer with us.

I thought also how hard and fierce our ancestors had fought to keep our homeland and I imagined their wawu wawu (their spirits) were all around us nodding in agreement and congratulating us, knowing full well their fight was just and true. I thought of how little Native Title actually delivered to traditional owners. It is only the bare bones and there is so much more work to do to put meat on the bone i.e. real benefits to traditional owners.

I thought of parts of the preamble to the Native Title Act – "The people whose descendants are now known as Aboriginal peoples and Torres Strait Islanders were the inhabitants of Australia before European settlement. They have been progressively dispossessed of their lands. This dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable