



WHAT'S NEW

Recent Cases

Australia

***Gordon Charlie v Cape York Land Council* [2006] FCA 1418**

NATIVE TITLE - application for an interim injunction to restrain the conduct of an authorisation meeting at Hope Vale convened by the Cape York Land Council in connection with a Native Title Determination Application by the Dingaal claim group.

***Forster Local Aboriginal Land Council v New South Wales Native Title Services Limited* [2006] FCA 1455**

Orders, pursuant to s 47B of the Federal Court of Australia Act 1976 (Cth), that Mr Hagan of Baker & Borthwick Solicitors be allowed to appear before the Court by way of audio link. Orders by consent that there be no mediation in relation to the whole of the proceeding in accordance with s 86B(2) of the Native Title Act 1993 (Cth). Orders that no native title exists in relation to the land described as Lot 2 DP 1014466.

***Wiri People # 2 v State of Queensland* [2006] FCAFC 158**

1. The appeal be allowed.
2. Order 3 made by the Court on 19 June 2006 be set aside and in lieu thereof:
 - (a) Order that the Appellants be given leave to file in court today an amended application.
 - (b) Order that the Appellants file and serve within 21 days an affidavit setting out the basis upon which the amended application filed today has been authorised including, notice given of the authorisation meeting, attendance record and minutes and resolutions.
 - (c) Order that the Appellants file and serve within 21 days an affidavit by an applicant to the effect that the claim group comprises all of those who, to his or her best knowledge, information and belief are the native title holders.
3. In default of compliance with orders 2(b) or 2(c) above, the Appellants show cause why the application should not be dismissed.
4. There be no order as to costs.

5. The matter be remitted to the docket judge in relation to any need to consider order 3 of these orders and otherwise generally.

***Kuuku Ya'u v State Of Queensland & Ors* [2006] FCA 1500**

NATIVE TITLE - application pursuant to s 84(8) of the Native Title Act 1993 (Cth) to remove parties from a proceeding.

***Anderson (behalf of Numbahjng Clan within the Bundjalung Nation) v Minister for Infrastructure Planning & Natural Resources* [2006] NSWLEC 725**

Judicial Review - whether Minister's development consent for housing subdivision valid - failure to take into consideration massacre of Aboriginal people in the area in the 19th century - failure to take into consideration that judgment was reserved in a case challenging the validity of a consent to destroy Aboriginal objects under s 90 National Parks and Wildlife Act 1974 - whether decision manifestly unreasonable - whether condition void for uncertainty - whether misleading conduct by applicant can invalidate development consent.

Ben Ward, Kim Aldus, Frank Chulung, Sheba Dignari & Ors v State of Western Australia & Ors

Consent determination acknowledging the Miriwung, Gajerrong, Doolboong, Wardenybung and Gija groups and other Aboriginal people who are acknowledged by these groups as having rights in the determination area.

***Gordon Charlie V Cape York Land Council (No. 2)* [2006] FCA 1683**

NATIVE TITLE - further application for an interim injunction to restrain the conduct of an authorisation meeting to be held at Hope Vale convened by the Cape York Land Council in connection with a Native Title Determination Application by the Dingaal claim group.

***Ulladulla Local Aboriginal Land Council v New South Wales Native Title Services Limited* (unreported, FCA, 13 December 2006, Jacobson J)**



International

Botswana High Court ruling in favour of the Kalahari Bushmen

A summary of the case is [available online](#).

An online press file about the court case, including summaries, biographies, legal precedents, photos and video clips, is available at <http://www.survival-international.org/bushmenpresspack>

(Sourced from NNTT Judgements and Information email alert service and the Federal Court's Native Title Bulletin)

Legislation

[Corporations \(Aboriginal and Torres Strait Islander\) Consequential, Transitional and Other Measures Act 2006](#)

An Act to deal with transitional and consequential matters relating to the enactment of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 and to amend the Native Title Act 1993, and for related purposes. Date of commencement 4 November 2006

Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Bill 2006.

Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006

[Bills Digests no.38-39, 2006-10-30](#)

The purpose of these Bills is to make amendments to the Corporations Act 2001 required for compatibility with the new regime for Aboriginal and Torres Strait Islander corporations under the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 (CATSI Bill), and to make associated transitional and consequential amendments to other Acts

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Publications

Books

O'Faircheallaigh, Ciaran. *Environmental agreements in Canada: Aboriginal participation, EIA follow-up and environmental management of major projects* (2006).

Hicks, Stuart *The delivery of natural resources management in Western Australia : a review* Western Australia. Natural Resource Management Office (2006).

Scholtz, Christa Sieglinde, *Negotiating claims: the emergence of indigenous land claim negotiation policies in Australia, Canada, New Zealand, and the United States* (2006).

Journal articles

Ulla Secher 'The doctrine of tenure in Australia post-Mabo: replacing the 'feudal fiction' with the 'mere radical title fiction' (2006) 13 *Australian Property Law Journal* 107.

Behrendt, Larissa 'Native title: beyond the backyards and beaches' *New Matilda* (5 October 2006).

O'Faircheallaigh, Ciaran 'Aborigines, mining companies and the state in contemporary Australia: a new political economy or 'business as usual'?' (2006) 41 *Australian Journal of Political Science* 1.

Sculthorpe Gaye 'Recognising difference: contested issues in native title and cultural heritage' (2005) 15 *Anthropological Forum* 171.

McHugh PG, 'New dawn to cold light: courts and common law Aboriginal rights' (2005) 4 *New Zealand Law Review* 485.

Collings, Neva 'The rights of Indigenous peoples to water: international environmental and human rights standards' (2006) 6 *Journal of Indigenous Policy* 60.


Bell, Charlotte A, 'A corner turned: Supreme Court of Canada decisions of the year past' (2006) 34 *The Supreme Court law review. Second series* 433.

Mahmud Jamal 'Treaty interpretation after R v Marshall; R v Bernard' (2006) 34 *The Supreme Court law review. Second series* 443.

Corbett, Tony 'The National Native Title Tribunal's facade of indigenous advocacy' (2006) 25 *Social Alternatives* 2.

Sullivan, Patrick 'Introduction: Culture Without Cultures: The Culture Effect' (2006) 17 *The Australian Journal of Anthropology* (Special Issue 18. Delimiting Indigenous Cultures: Conceptual and Spatial Boundaries).

Correy, Simon 'The reconstitution of Aboriginal sociality through the identification of traditional owners in New South Wales (2006) 17 *Australian Journal of Anthropology* 3.



Smith, Benjamin Richard "More than Love': Locality and Affects of Indigeneity in Northern Queensland' (2006) 7 *The Asia Pacific Journal of Anthropology*.

Jowett, Tina 'Native Title over Perth' (2006) 7 *Native Title News* 196.

Norris, Joanne 'The Perth Metro Native Title Decision – What happens now?' (2006) 7 *Native Title News* 200.

de Soyza, Anne 'The implications of Bennell v Western Australia for the High Court decision in Yorta Yorta v Victoria' (2006) 7 *Native Title News* 202.

Treasure, Wendy, 'What happened to the long-standing principle that the Crown sets an example to others by behaving as a model litigant' (2006) 7 *Native Title News* 205.

McIntyre, Greg 'Noongar native title case' (2006) 33 *Brief / Law Society of Western Australia* 10.

Porter, Libby 'Rights or containment? the politics of Aboriginal cultural heritage in Victoria' (2006) 37 *Australian Geographer* 355.

(Sourced from NNTT Judgements and Information email alert service and the Federal Court's Native Title Bulletin)

Discussion Papers

National Alternative Dispute Resolution Advisory Council [NADRAC Legislating for alternative dispute resolution: A guide for government policy-makers and legal drafters](#) (2006).

Cleary, John [Indigenous governance at the crossroads: The way forward](#) Centre for Indigenous Studies (2006).

Sanders, W, [285/2006 Local governments and Indigenous interests in Australia's Northern Territory](#) CAEPR (2006)

Sanders, W, [280/2006 Being a good senior manager in Indigenous community governance: Working with public purpose and private benefit](#) CAEPR (2006).

Hunt J & Smith DE [WP 31 Building Indigenous community governance in Australia: Preliminary research](#) CAEPR (2006).

Speeches

Graeme Neate [Native title and sustainable agreement-making: options, obstacles and opportunities](#) (Paper presented at the MCA Sustainable Development Conference 2006

'Operating for enduring value' Perth, 25 October 2006)

Reports

Western Australia Law Reform Commission

[Aboriginal Customary Laws. Final Report](#)

This Final Report is the culmination of the Law Reform Commission of Western Australia's six-year inquiry into the recognition of Aboriginal customary laws in Western Australia. This Report contains a total of 131 [recommendations](#) for reform. Two important recommendations relate to the recognition of the unique status of Aboriginal peoples in the Western Australian Constitution and the creation of an Office of the Commissioner for Indigenous Affairs.

National Native Title Tribunal [Annual Report 2005–2006](#)

Bird Caroline & Hallam Sylvia J ["Archaeology and rock art in the Dampier Archipelago"](#) National Trust of Australia (2006).

Case notes

'The long and winding road: case comment on Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)' (2006) 34 *The Supreme Court law review* 465.

The decision [Mikisew Cree First Nation v. Canada \(Minister of Canadian Heritage\)](#), [2005] 3 S.C.R. 388 is also available online.

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Online Publications

CAEPR


Craig Linkhorn [Maori Land and Development Finance](#) (2006).

National Native Title Tribunal

The latest [What's new in the Library bulletin](#) is now available

[Updates to the Guide to Future Act Decisions](#)

The Guide to future act decisions made under the Commonwealth right to negotiate scheme has been updated and is available on the website. Compiled by Member Chris Sumner, these updates include an



additional 18 case notes of significant decisions, updated to 30 September 2006.

[Updated geospatial maps and statistics](#)

National Native Title Tribunal (Australia) Research Unit

[Guide to Australian Government funding sources](#)

Government Publications

Government of Western Australia .[Bilateral agreement on indigenous affairs between the Commonwealth of Australia and the State of Western Australia](#) (2006).

This Agreement provides a framework and establishes priorities for the Governments to work together to streamline service delivery to Indigenous Australians in Western Australia.

ORAC Transition Constitution [available online](#)

This is an example model constitution for corporations under the *Aboriginal Councils and Associations Act 1976* (the ACA Act). By using this constitution groups will also be largely consistent with the rules under the new *Corporations (Aboriginal and Torres Strait Islander) Act 2006* which will begin on 1 July 2007.

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Upcoming Events

[In the Pipeline: new Directions in Cultural Research on Water Symposium](#)

When: 19- 20 July 2007

(abstracts due 28 February 2007)

Where: University of Western Sydney, Parramatta Campus.

Abstracts and inquiries welcomed. Please send via email to Dr Zoë Sofoulis, z.sofoulis@uws.edu.au and cc: to conference assistant, Justine Humphry, Justine@scholar.uws.edu.au.

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Recent Events

[World Archaeological Congress symposium on Cultural Heritage & Indigenous Cultural & Intellectual Property Rights](#)

When: 3-5 December 2006

Where: South Australia Burra

The sessions were:

- Barney Warria and Ronald Berndt: their Relationship and Intellectual Property
- Indigenous Peoples, Archaeologists and the Research Process
- Managing Cultural Values and Biodiversity: Research, Cultural Knowledge and Intellectual Property on Ngarrindjeri Ruwe
- Indigenous People and Film: Getting your Story Out There
- The Rights of Rock Art
- Modern World? One Law? Two Laws? Many Laws?
- Publishing: Negotiating Clashing World Views

NNTT Melbourne Native Title Forum with Fred Chaney

When: 29 November 2006

Where: National Native Title Tribunal, Conference Room, Level 8 310 King Street, Melbourne

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Opportunities

[The University of Western Australia Native Title Courses](#)

Anthropology at UWA offers two online courses.

Both the Graduate Certificate and Graduate Diploma in Applied Anthropology (Native Title & Cultural Heritage) are taught online and have attracted students from across Australia.

The courses focus on professional research issues relating to native title and Aboriginal cultural heritage. The aim is to equip graduates with theoretical, analytical and practical skills in applied native title and cultural heritage anthropology.

To enrol, you need to already have a degree in any Humanities or Social Science discipline, although people with degrees in other areas can apply for consideration.

Applications should be lodged by the 9th February 2007. Early applications are encouraged.

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