positive exclusive determination of native title in favour of an applicant or a negative determination that native title does not exist in the claim area. What it cannot secure is a s 225 determination in the non-applicant's favour.[14]

NTRU News

Native Title Research Unit National Meeting of Prescribed Bodies Corporate, Canberra 11-13 April 2007 Research Report 3/2007, AIATSIS

This workshop was held on 11-13 April 2007 in Canberra, and was attended by 23 people representing PBCs from Western Australia, Queensland, Victoria, New South Wales, and the Northern Territory. The meeting provided the PBCs with a much needed networking opportunity, and time to reflect on their particular challenges, aspirations and achievements. Various federal government departments were invited to present on the recent Commonwealth PBC reforms, and give advice about relevant funding and training opportunities for PBCs. This report provides a record of the meeting, and also aims to be of practical assistance to PBCs, particularly those who were unable to attend the meeting. Since the National PBC Meeting, the Department of Family and Community Services and Indigenous Affairs (FaCSIA) has released draft guidelines for supporting PBCs, some of the detail of which is also incorporated into this document. Further practical information for PBCs is also available in the PBC toolkit which has been developed by the NTRU.

Native Title Research Unit Native Title Representative Bodies and Prescribed Bodies Corporate: native title in a post determination environment Research Report 2/2007, AIATSIS

This workshop was held on 5-6 December 2006 in Canberra, and was attended by 25 staff from Native Title Representative Bodies who have been or will be involved in the design and establishment of PBCs. Participants also included government representatives from the Department of Families, Community Services and Indigenous Affairs and Attorney General's Department who gave presentations on the proposed changes to PBCs as a part of the Australian Government's broader native title reforms. A report has been prepared based on the major issues that arose during the workshop. In particular, the report focuses on measures to improve the effectiveness of PBCs and coincides with the Government's recognition of the need for resources and support for PBCs to adequately carry out their functions.

[14] *Kokatha*, [50].

What's New

Reforms and Reviews

Negotiation Or Confrontation: It's Canada's Choice : Final Report of the Standing Senate Committee on Aboriginal Peoples Special Study on the Federal Specific Claims Process

In its study of the Specific Claims policy and process, this Committee found that the present system cannot resolve Specific Claims within a reasonable length of time. Lack of resources for, and contradictions within, the present system are producing results contrary to the goal of the federal government's Specific Claims policy which is to resolve Specific Claims.

Inquiry into the Northern Territory National Emergency Response Bill 2007 & Related Bills

Information about the inquiry

Information about the key Bills

- Northern Territory National Emergency Response Bill 2007
- Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007
- Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007
- Appropriation (Northern Territory National Emergency Response) Bill (No. 1)

- Appropriation (Northern Territory National Emergency Response) Bill (No. 2)

Recent Cases

Australia

King v Northern Territory of Australia [2006] FCA 944

This case involves an application for a determination of native title where current pastoral leases in claim area are currently used as commercial cattle stations. The case considers the right to live and to camp and for that purpose, erect shelters and other structures and whether such a right includes the right to build permanent structures and remain permanently on land. The Court considered whether such rights were inconsistent with rights of pastoral lease holders and accordingly distinguish the Full Court's decision in Northern *Territory of Australia v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group* (2005) 145 FCR 442. The case also considered extinguishment where land in claim area is proclaimed as a garbage reserve and later approved as garbage depot and whether this was inconsistent with claimed native title rights and interests.

Griffiths & Anor (On Behalf Of The Ngaliwurra And Nungali) v Minister for Lands, Planning & Environment & Anor [2007] HCATrans 320

Special leave was granted to join a matter concerning the compulsory acquisition of land.

Walker on behalf of The Noonukul of Minjerrabah v State of Queensland [2007] FCA 967

This case involved a strike-out application under section 84C of the *Native Title Act 1993* (Cth) based on non-compliance with section 61 requiring the identification of claim group, authorisation and description of claim area.

Jango v Northern Territory of Australia [2007] FCAFC 101

This case involves a native title compensation claim. It considered the nature of native title rights and interests extinguished criteria for the identification of native title holders and whether the evidence presented was sufficient to support the existence of traditional laws and customs. The court focused on whether the trial judge ought to have determined pre-existing native title on other bases and whether he misunderstood the pleaded case. The court concluded that there was no error by the trial judge and dismissed the appeal. In reaching the decision the court considered whether registration of title under the *Real Property Act 1886* (SA) had validly extinguished native title, the effect of indefeasibility provisions and the validation provisions of the *Validation (Native Title) Act 1994* (NT).

Parker on behalf of The Martu Idja Banyjima People v State of Western Australia [2007] FCA 1027

This case involved an objection to a Future Act. The Court considered whether the Tribunal considered the nature of the activity that would constitute an Aboriginal site under s 237(b) of the *Native Title Act 1993* (Cth).

Brown (on behalf of the Ngarla People) v State of Western Australia [2007] FCA 1025

Consent determination of native title made pursuant to s 87 or in the alternative s 87A of the *Native Title Act 1993* (Cth). The court was satisfied that the statutory preconditions of s 87A and s 87 were met.

Kokatha People v State of South Australia [2007] FCA 1057

This case involved the issue of whether a respondent to an application for a native title determination can seek a determination of native title in his favour under s 225 of the *Native Title Act 1993* (Cth). The court considered whether it had jurisdiction to make a positive determination in the respondent's favour and whether the respondent can argue native title defensively. It concluded that a respondent could not seek a determination under s 225 without following the procedures for authorisation under the NTA.

Gamogab v Akiba [2007] FCAFC 74

This case involved the issue of whether a national of Papua New Guinea could be joined as a respondent. It focused on the nature and extent of the Court's discretion to do so where interests may be affected by a native title determination.

Webb v State of Western Australia [2007] FCA 1342

This case involved a native title determination application lodged by SWALSC over the southwest corner of Western Australia and follows the low water mark covering an area from Dunsboroough to Capel. The application was registered in October 2006 and considers the new s 94C enacted under the *Native Title Amendment Act 2007*. The Native Title Registrar is resposible for notification under s 66 C of the NTA. The Court cosnidered the relationship between s 94 C and s 66C. It noted that the purpose of s 94 C is to 'provide for summary dismissal of native title determination applications that have been filed to secure procedural rights with respect to future acts covered by the right to negotiate provisions…the mechanism of summary dismissal enliven when, broadly speaking the procedural rights are effectively exhausted and the natvie title determination application is not being pursued to a mediated or litigated determination'. The report provided by the native title registrar is a 'statutory means for drawing the attention of the Court to applications which may meet the conditions of dismissal under s 94C'. The Court is not bound by the report and dismissal under s 94 is not considered unless there is failure to comply with directions under s 94C(1)(e)(i) of there has been a failure to take steps to resolve the claim. Justice French found that the area of the claim was much larger than areas covered by future act notices and the application was a part of regional work program. Accordingly he found that ther was no occasion for consideration of mandatory dismissal provisions.

Gudjala People 2 v Native Title Registrar [2007] FCA 1167

This case involved an application for review of a decision by the Native Title Registrar not to register an application. The Court considered the applications argument that they were (1) misled by the Registrar who had accepted a previous application on similar ground but based in a different claim area (2) that the applicant was denied procedural fairness in the Delegates consideration of the statutory provisions (3) that an error of law had been made and (4) that the material that had been tendered did not justify failing the registration test. In reaching its decision the Dowsett J said that the Registrar was bound by their statutory duty rather than a previous decision. Also even though there may be an error in decision making this may not necessarily deny the applicant procedural fairness. Dowsett J noted that the role of the Registrar is administrative and a failure to refer to a salient fact is not within this role. His Honour also considered the principles of *Yorta Yorta* and considered the reasons of the registrar, identification of the claim group. He found that even though membership of the claim group was asserted there was no evidence of the traditional laws and customs upon which membership was to have been was based. His Honour did not encourage this approach but found that it was sufficient that the group was adequately identified by reference to apical ancestors. The Court considered the factual basis for claimed Native Title and found that the overlaps in the claim area were not adequately explained and that the application fails to explain how, by reference to traditional law and customs presently acknowledged and observed, the claim group is limited to descendants of the identified apical ancestors. Dowsett J also noted that no basis is shown for inferring that there was, at and prior to 1850-1860, a society which had a system of laws and customs from which relevant existing laws and customs were derived and traditionally passed on to the existing claim group. His Honour aultimately found that the claim should not be accepted for registration.

Van Hemmen on behalf of the Kabi Kabi People #3 v State of Queensland [2007] FCA 1185

This case involved the review of a decision by the Native Title Registrar to not accept the application of the Kabi Kabi #3 applicants. The Kabi Kabi #2 applicants, the Gurang Land Council and Queensland South Native Title Services supported the registrars decision that the Kabi Kabi #3 applicants were not properly authorised and claimed that Kabi Kabi #3 should be dismissed pursuant to s 84C. The Court accepted this argument noting that the claim overlaped with another claim and that eleven of the twelve named apical ancestors were named in both the Kabi Kabi #2 and #3 claims. It also considered whether a majority vote is a method of decision making in accordance with traditional laws and customs of the Kabi Kabi people and whether all relevant Kabi Kabi people were consulted.

P.C (name withheld for cultural reasons) on behalf of the Njamal People v State of Western Australia [2007] FCA 1054

An application to amend the claim group description to reflect the community and replace persons under s 66B of the NTA. The removed applicant is now challeneging the Court's orders arguing that the decision to remove him was reached during a meeting which was 'flawed'. Bennet J noted that there is no precise process or cultural precedent under the traditional laws and customs of the Njamal people that must be followed for decisions of the kind contemplated by s 66B of the Act or otherwise for authorising claim group members to represent the group as applicant. Decisions as to the authorisation or removal of applicants are not part of Njamal traditional law and culture. Instead, the Njamal people have agreed to and adopted a process of making decisions (s 251B(b) of the Act). Pursuant to that process, decisions are made by resolution or consensus at community meetings organised by the Pilbara Native Title Services. He said that it was not for the Court to consider merits of the claim group's decision.

Kerinaiua v Tiwi Land Council & Anor [2007] NTSC 40

Applicant sought an interlocutory injunction to stop the Tiwi Land Council from granting a lease over the township of Nguiu. The applicant argued that there was inadequate consultation, agreement and approval processes but this was rejected and the application was denied.

International

Ka'a'Gee Tu First Nation v. Canada (Attorney General) 2007 FC 763

This case involved an application for judicial review challenging a decision to approve a recommendation of a project involving oil and gas development in the Northwest Territories. The project, known as the Extension Project, proposed by Paramount Resources Ltd. (Paramount) is located in the Cameron Hills, over which the Ka'a'Gee Tu First Nation (KTFN) claims Aboriginal rights and treaty rights. The KTFN argued that the project negatively impacts on their established treaty rights and their asserted Aboriginal rights and consequently argued that the Crown had a duty to consult and accommodate them before approving the project. The KTFN claimed that the Crown failed to meet its duty to consult and accommodate. The Court ordered that 'the parties are to engage in a process of meaningful consultation with the view of taking into account the concerns of the KTFN and if necessary accommodate those concerns. The process is to be conducted with the aim of reconciliation in a manner that is consistent with the honour of the Crown and the principles articulated by the Supreme Court of Canada in *Haida* and *Taku*.'

Ka'a'Gee Tu First Nation v. Canada (Indian Affairs and Northern Development) 2007 FC 764

The case involved a judicial review of the decision of the Mackenzie Valley Land and Water Board (the Land and Water Board) to issue an amended land use permit MV2002A0046 (the LUP) to Paramount Resources Ltd. (Paramount), pursuant to its powers under the *Mackenzie Valley Resource Management Act* (the Act) and associated regulations. It was found that the Crown failed to meet its duty to consult and to take into account the concerns of the Aboriginal people before the Extension Project was approved. As a result, the requirements of Part 5 of the Act had not been complied with. Accordingly pursuant to section 62 of the Act, the amended land use permit MV2002A0046 should not have been issued by the Land and Water Board and was set aside.

Legislation

Native Title (Federal Court) Amendment Regulations 2007 (No. 1)

Number: SLI 2007 No. 250
These Regulations amend the *Native Title (Federal Court) Regulations 1998* to update the forms to be used for making applications for the Federal Court for a determination of native title or compensation.
These Regulations commence on 1 September 2007.
Regulations (Legislative Instrument)
Explanatory Statement

Native Title Act 1993

Act Compilation (current) - C2007C00498; Date Published: 31/07/2007 ; Start Date: 21/07/2007; Incorporating Amendments to: Act No. 125 of 2007; Administering Department: AG, FaCSIA

Rreports

Social dimensions of mining in Australia – understanding the minerals industry as a social landscape Fiona Solomon, Evie Katz and Roy Lovel, CSIRO Minerals

This report seeks to map the social landscape of the minerals industry and help inform efforts towards a socially sustainable future. The social dimensions of the minerals industry – how it deals with people, values, development, policy, regulation and a range of associated issues – are becoming increasingly critical to business success. Company public reports and conference papers suggest that companies' engagement with critical social issues has increased over the past five years.

Nkuzi Development Association. No policy for change

This paper discusses whether or not the land reform polices adopted by the South African government since 1994 are adequate to bring about a fundamental change in property rights. The paper starts by looking at what would constitute a fundamental change in property rights and goes onto to assess the land reform policies in terms of their potential to bring change and the actual experiences of implementation. The paper concludes with some thoughts on why there is no programme to bring fundamental change and suggestions for what needs to be done.

Story Place - Information on Traditional Connections to Sea Great Barrier Reef Marine Park Authority.

Story Place is a reference database that holds resources about Traditional Owner groups adjacent to the Great Barrier Reef in Australia. It holds hundreds of references relating to Indigenous history and co-operative management practices within the Great Barrier Reef region.

Rights Reform: Separating fact from fiction: An assessment of the proposed amendments to the Aboriginal Land Rights (Northern Territory) Act 1976 Briefing paper for Oxfam Australia prepared by Professor Jon Altman

This paper provides compelling evidence to show that the proposed changes to the Aboriginal Land Rights (Northern Territory) Act 1976 (the "ALRA") have no connection with the incidence of child sexual abuse; are likely to jeopardize the effectiveness of the Government's emergency response in the Northern Territory and are detrimental to the development of Aboriginal communities.

Canada's New Government and Assembly of First Nations Strike Specific Claims Task Force: July 25, 2007

The Honourable Jim Prentice, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians and Phil Fontaine, National Chief of the Assembly of First Nations (AFN) have struck a Task Force to assist in the development of specific claims legislation. The work of the Canada-AFN Task Force will shape the development of legislation centred on the creation of an independent tribunal on specific claims. The Task Force will be supported by experienced technical staff from both the Government of Canada and First Nations. See also Negotiation Or Confrontation: It's Canada's Choice: Final Report of the Standing Senate Committee on Aboriginal Peoples Special Study on the Federal Specific Claims Process

Native title in the News

National

July 2007 NATIONAL **A new law for Indigenous corporations** On 1 July 2007, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) replaced the *Aboriginal Councils and Associations Act 1976* (ACA Act). The CATSI Act will introduce 'a strong but flexible