research, participatory planning and support for capacity-building in a range of governance issues such as decision making and conflict resolution processes and frameworks, strategic planning, economic development and natural resource management.

Many PBCs lack support to carry out Future Act Agreements and other native title business. There are key risks for industry if PBCs are not appropriately resourced. Failure to have functioning

and effective PBCs will increase costs and lead to substantial delays in agreement-making for industry.

There are also significant issues for PBCs in relation to changes to Aboriginal corporation rules

July 2007.

corporation rules around training, compliance and the transitional arrangements and implementation processes around the replacement of the Aboriginal Councils and Associations Act 1976 with the Corporations (Aboriginal and Torres Strait Islander) Act 2006 on 1

PBC National Meeting 11-13 April 2007

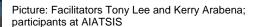
The NTRU held the first national meeting of PBCs with 23 participants from a range of PBCs from 11th to 13th April 2007 in Canberra. The meeting provided PBCs with a much needed networking opportunity and a range of critical information.

Representatives of the Attorney-Generals Department and of the Department of Family and Community Services and Indigenous Affairs informed the meeting about recent PBC reform measures and implementation issues including the recommendation that PBCs are to receive support through NTRBs.

Representatives of ORAC provided information about changes to corporation legislation and training. A range of other Government representatives provided information about funding opportunities, programs and training relevant to PBCs.

Feedback from the meeting indicates that participants derived significant benefit from the workshop and the information which was provided. Unfortunately, budgetary limitations and the costs involved in

bringing
people
together
from the
remote
locations
where
many
PBCs are
located
meant



that not all PBCs were able to be represented. Discussions are now taking place as to how to involve more PBCs in the future.

A report on the workshop is currently being prepared for circulation for confirmation by participants and will subsequently be posted on the NTRU web site. Government representatives at the workshop will also be invited to a follow-up meeting to further discuss ways of assisting PBCs.

Staffing

The NTRU welcomes Kayeleen Brown as the new personal assistant to the Manager of the NTRU and Acting Director of Research, Lisa Strelein.

Back to contents

WHAT'S NEW

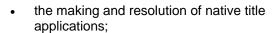
Reviews and Reforms

Senate inquiry into the Native Title Amendment (Technical Amendments) Bill 2007

The inquiry looks into proposed amendments to provisions of the *Native Title Act 1993* (the Act) relating to:

- · future acts;
- Indigenous land use agreements;
- the scope of alternative state or territory regimes to the right to negotiate established under section 43 of the Act;

Native Title Newsletter Vol2/07 March/April 2007 6



- the obligations of the Registrar of the Native Title Tribunal in relation to the registration of native title applications;
- native title representative bodies; and
- prescribed bodies corporate.

Maori Fisheries Trust

<u>Submission on Shared Fisheries To The Ministry Of Fisheries</u>

Standing Committee on Environment, Communications, Information Technology and the Arts

Conserving Australia: Australia's national parks, conservation reserves and marine protected areas Recommendation 3 5.76 The committee recommends that all governments give greater priority to Indigenous knowledge and participation in park management generally, and fire management in particular.

Senate Legal and Constitutional Affairs Committee

Inquiry into the Native Title Amendment (Technical Amendments) Bill 2007. <u>Submissions</u>

Changes to the registration test

See the National Native Title Tribunal's website for more details.

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

Back to contents

Recent Cases

Gumana v Northern Territory of Australia [2007] FCAFC 23

ABORIGINES - land rights - grant of fee simple estate to land trust - effect of grant in inter-tidal zone - whether exclusive possession - whether excludes power of Northern Territory Director of Fisheries to grant fishing licences in area NATIVE TITLE - intertidal zone - non-recognition at sovereignty of exclusive rights of possession in inter-tidal zone - whether a form of extinguishment - whether amenable to operation of s 47A of Native Title Act 1993 (Cth) mandating conditional disregard of extinguishment - native title holders - membership of group - spouses of clan members - access - non-

exclusive possession - whether right to control access by other Aboriginal people.

Arnold Franks and Others v State of Western Australia and Others (No 2) [2007] FCA 45

NATIVE TITLE - practice and procedure - directions to give effect to previously published reasons for decision.

Butcher Cherel and Others on behalf of the Gooniyandi Native Title Claimants/Western Australia/Faustus Nominees Pty Ltd [2007] NNTTA 15

Catchwords: Native title -- future act -- proposed grant of exploration licence -- expedited procedure objection application -- whether acts directly interfere with community or social activities -- whether acts interfere with areas or sites of particular significance - whether there is a likelihood of major disturbance to land or waters -- an act that attracts expedited procedure.

Australian Capital Territory (Chief Minister's Department) V Eva Coe [2007] ACTSC 15

APPEAL - Administrative Law - Freedom of Information - access may be refused where giving access would divert resources - whether limited to work involved in locating and collating documents. The request for access was for 'all documents relating to native title in the ACT including, either direct or indirect and funding (in relation to native title in the ACT)'. The Chief Executive of the appellant sought clarification of the extent of this request, and by letter of 9 June 2005 the respondent stated that

her request covered:

- All documents/records regarding Native Title in the Australian Capital Territory. This includes direct or indirect funding.
- The area of Native Title would be the whole of the Australian Capital Territory.

Milne v Minister for Planning & Anor [No. 2] [2007] NSWLEC 66

Appeal - development application - State significant development - extensions to marina - social and economic impacts - visual impacts - impacts on seagrasses - development consent refused.

Arnhem Land Aboriginal Land Trust v Northern Territory of Australia [2007] FCAFC 31

APPEALS - practice and procedure - stay of orders pending application for special leave to appeal - declaratory orders - no power to stay declaratory orders - declaration relating to power to grant fishing licences in intertidal zone affected by land rights grants - consent order proposed - want of power and utility - stay refused.



Unopposed determination – native title does not exist.

Bahtabah Local Aboriginal Land Council v New South Wales Native Title Services Limited [2007] FCA 383

NATIVE TITLE - non-claimant application - unopposed - no native title exists in relation to the land

Batabah Local Aboriginal Land Council v New South Wales Native Title Services Limited [2007] FCA 382

NATIVE TITLE - non-claimant application - unopposed - no native title exists in relation to the land.

Harrington-Smith v Native Title Registrar [2007] FCA 414

NATIVE TITLE - claimant application dismissed - aggrieved applicants seek injunction restraining Native Title Registrar from removing entry relating to claim from the Register of Native Title Claims - whether s 190(4)(d) of the Native Title Act 1993 (Cth) has the effect that the Registrar must remove entry once proceeding "dismissed" following trial, or only if and when dismissal sustained upon appeal - Held: the former, so that there was no scope for interference with Native Title Registrar's proposed removal of entry from the Register following dismissal at trial.

Lovett on behalf of The Gunditjmara People v State of Victoria [2007] FCA 474

Existence of native title (s 225) - Native title exists as provided in Order 5 in the areas described in Schedule 2 ("Native Title Area"). Native title does not exist in the areas described in Schedule 3. To be clear, where Schedule 3 refers to an area covered by a public work, the land and waters in relation to which native title does not exist includes the land and waters adjacent to that public work, as described in s 251D of the Native Title Act.

Bropho v State of Western Australia [2007] FCA 519

The claims in these cases are in respect of alleged racial discrimination. The claims are brought by the applicant on behalf of former Aboriginal inhabitants of the Reserve in respect of the enactment of the Reserves (Reserve 43131) Act 2003 (WA) (the Reserves Act) and actions taken under it. It is said the consequences of the Act and actions under it are that the Aboriginal inhabitants are no longer able to manage or reside at the Lockridge Camp of the SVC. It was claimed the Reserves Act and the

actions were contrary to the *Racial Discrimination Act 1975* (Cth) (the RDA).

New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act [2007] NSWLEC 158

Aboriginal:- Aboriginal Land Rights - Land claim - former motor registry in Wagga Wagga - building vacant except for storage of small amount of furniture- whether fact that steps were in place to sell the land when claimed was lodged means that it was "lawfully used" and therefore not "claimable Crown lands" within s 36(1)(b) of Aboriginal Land Rights Act 1983 - interpretation of "lawfully used or occupied" in s 36(1)(b).

Kullilli People # 2 and Kullilli People # 3 v State of Queensland [2007] FCA 512

NATIVE TITLE - Native Title Determination application - Native Title Act 1993 (Cth), s 61 - authority to make application - persons "jointly" comprising the applicant - agreement of all persons comprising the applicant.

PRACTICE AND PROCEDURE – reinstatement application – original dismissal final – discretion to set aside interlocutory judgment in exceptional circumstances – realistic attempt to comply with previous order – Federal Court Rules, O 35 r 7(2).

Outstanding Landscape Protection Society, Maungaharuru Tangitu Society and Ngati Hineuru Iwi v Hastings District Council & Unison Networks Ltd. NZ Environmental Court 27/2007

Windfarm. "The whole ridgeline, and the feature of Te Waka in particular is, for them, an area rich in lore, history and spiritual significance. They hold that the presence of turbines and related infrastructure along it would desecrate a place that is sacred for them".

Cox on behalf of the Yungngora People v State of Western Australia [2007] FCA 588

ABORIGINES – native title – consent determination – whether appropriate and within power – consideration of connection report – determination made.

Risk v Northern Territory of Australia [2007] FCAFC 46

NATIVE TITLE – Native Title Act 1993 (Cth) s 223(1) – rights and interests of claimant groups – whether possessed under traditional laws acknowledged and customs observed – whether traditional laws and customs discontinued – whether trial judge failed to consider relevant oral evidence in determining discontinuance – whether trial judge required to adopt findings of Aboriginal Land Commissioner – identification of laws and customs and composition of claimant group – whether trial judge failed to

Native Title Newsletter Vol2/07 March/April 2007 8



consider claim of alternative claimant group Held: No error in trial judge's treatment of evidence, or in conclusion that traditional laws and customs discontinued. Discretion not to adopt findings of Aboriginal Land Commissioner not miscarried. No failure to consider claim of alternative claimant group.

Wilfred Hicks and Others on behalf of Wonggoo-tt-oo/ Western Australia/ Red River Resources Ltd 2007 NNTTA 30 (30 March 2007)

Native title – future act – proposed grant of exploration licence – expedited procedure objection application – whether act likely to interfere directly with the carrying on of community or social activities – whether act likely to interfere with sites of particular significance – whether act likely to cause major disturbance to land or waters – expedited procedure applies.

(Sourced from NNTT Judgements and Information email alert service)

Legislation

Senate inquiry into the Native Title Amendment (Technical Amendments) Bill 2007

The inquiry will look into proposed amendments to provisions of the *Native Title Act 1993* (the Act) relating to:

- future acts;
- Indigenous land use agreements;
- the scope of alternative state or territory regimes to the right to negotiate established under section 43 of the Act;
- the making and resolution of native title applications;
- the obligations of the Registrar of the Native Title Tribunal in relation to the registration of native title applications;
- native title representative bodies; and
- prescribed bodies corporate.

The last day to lodge submissions is 20 April 2007.

Native Title Amendment Bill 2006

The Bill received Royal Assent on Sunday April 15. The Act is now available.

Native Title Act 1993 incorporating Act No.61 of 2007

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

Back to contents

Publications

Brennan, Sean 'Economic development and land council power: modernising the *Land Rights Act* or same old same old?' (2007) 10 (4) *Australian Indigenous Law Reporter* 1.

Bauman, Toni, 'Nations and tribes 'within': emerging Aboriginal 'nationalisms' in Katherine' (2006) 17(3) *The Australian Journal of Anthropology* 322.

Corbett, Tony 'The National Native Title Tribunal's façade of Indigenous advocacy' (2006) 25(2) Social Alternatives 37.

Corbett, Tony and O'Faircheallaigh, Ciaran 'Unmasking the politics of native title: the National Native Title Tribunal's application of the *NTA*'s 'arbitration provisions' (2007) 33 (1) *Western Australia Law* 153.

Dalrymple, David 'Land rights and property rights' (2007) 51(1) *Quadrant* 61.

Foley, Gary and Anderson, Tim 'Land rights and Aboriginal voices' (2006) 12(1) Australian Journal of Human Rights 83.

Hepburn, Samantha 'Transforming customary title to individual title: revisiting the cathedral' (2006) 11(1) Deakin Law Review. 63.

Irvin, Zoey 'Wilcox J and Olney J: a comparative analysis of historical assumptions in the *Yorta Yorta* and single *Noongar* decisions' (2007) 6(24) *Indigenous Law Bulletin* 24.

Laurence, Jennifer 'Amendments to Part IV (Mining) of the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) introduced by the Aboriginal Land Rights (Northern Territory) Amendment Act 2006 (Cth)' (2006) 25 (3) Australian Resources and Energy Law Journal 230.

Langton, Marcia, Mazel, Odette and Palmer, Lisa 'The 'spirit' of the thing: the boundaries of Aboriginal economic relations at Australian common law' (2006) 17(3) The Australian Journal of Anthropology 307.

Loo, Tse Chee 'The crown as a model litigant' (2007) 8(1) *Native Title News* 5.

Native Title Newsletter Vol2/07 March/April 2007 9



Phillips, Susan 'Retrospective registration following judicial review? - Wakaman People (No 2)' (2007) 8(1) Native Title News 3.

Porter, Libby 'Rights or containment?: the politics of Aboriginal cultural heritage in Victoria' (2006) 37(3) *Australian Geographer* 355.

Timms, Cathryn 'Negotiation and agreement-making: providing the way forward in Australian native title' (2006) 8 *University of Notre Dame Australia Law Review* 107.

Government Publications

Magarey, Kirsty *Native Title Amendment Bill 2006*, *Bills Digest* (6 February 2007) 2006-07, No. 77. Digest of the *Native Title Amendment Bill 2006* (Cth) prepared by the Law and Bills Digest Section of the Parliamentary Library.

National Indigenous Council Report to Government, January – December 2006

(Sourced from NNTT Judgements and Information email alert service)

Back to contents

Events

Events will now be updated online at http://ntru.aiatsis.gov.au/publications/whats-new.htm l#events

Back to contents

NATIVE TITLE IN THE NEWS

NATIONAL

1-Mar-07 NATIONAL Tipping the scales: law firms making hay while resources shine The resources boom has lead to an increased demand in legal services. The 'proliferation of legal services in the resources industry has lead a number of law firms to establish specialised niche areas of expertise'. Blake Dawson Waldron senior associate Murray Wheater said 'land access is also key issue for the resources sector with matters like native title claims and environmental approvals becoming more prominent'. Christine Lovitt, a partner at Blakiston & Crabb who works in resources and project acquisitions says that 'native tittle is one of the main areas of concern for many junior [mining] companies and it has become a complex issue'. Other firms acting in hard rock mining law include Hunt & Humphry. Resource Stocks (National, March 2007), 36.

1-Mar-07 NATIONAL Logan comfortable in resources chair Western Australia has a newly appointed Minister for Energy, Resources, Industry and Enterprise Francis Logan MLA. He said that one of the key issues for the WA industry was the 'relationship with Commonwealth government in regards to Native Title'. Mr Logan said that a 'significant part of the bottleneck in the approvals process has been caused by the finalising of agreements under the (federal) Native Title Act' which was outside the control of the WA government. In relation to streamlining the approvals

process Mr Logan said that 'there are a lot of external factors - Native title, heritage agreements and environmental approvals - but as long as the department's own side of the process is done in an efficient and effective manner and can't be criticised then [his] responsibility under [his] jurisdiction [would be] delivered'. *Paydirt* (National, March 2007), 5.

9-Mar-07 NATIONAL Government responds to native title report The Federal Government has recommendations on native representative bodies that would oblige it to consider independent advice in some circumstances, alter eligibility for financial assistance and review the allocation of operational funding'. This was issued as a part of its response to the Parliamentary Joint Committee report on native title and the Aboriginal and Torres Strait Islander land account on the operation of NTRBs. The Government rejected the recommendation that it 'establish an independent advisory panel to advise the Minister on the rerecognition of NTRBs once their recognition period found expired' because it that recommendation would not assist with the aim of the current reforms, which is to improve efficiency'. The Government noted that the 'Office of Indigenous Policy Coordination holds substantial amounts of information relevant to these criteria and its staff have practical experience in gauging whether they have been met'. Lawyers Weekly (National, 9 March 2003), 6.