

'Adnyamathanha' referring to a large group with separately identifiable language groups). Also, there had been,

substantially uninterrupted observance of traditional laws and customs since sovereignty, albeit not necessarily homogenous in the level of its observance, and notwithstanding varying levels of knowledge and enforcement amongst the Adnyamathanha people.⁴

Moreover, Justice Mansfield described the continued use of the Adnyamathanha language, and the ongoing knowledge of muda or Dreaming traditions as 'strong identifier[s] of ongoing Adnyamathanha custom and identity'.⁵

Although a late objection was made by a pastoralist who did not consent to the determination, Justice Mansfield decided to proceed with the hearing of the application for consent determinations for two reasons. First, there a range of prescribed notification procedures in the NTA which the pastoralist did not seek to utilise at any time. Second, the pastoralist was aware of the Adnyamathanha claim and could have expressed any concerns at an earlier time.

Native Title Rights and Interests

The native title rights and interests, subject to later paragraphs, are rights to use, stay on and enjoy the land and waters of on the determination areas.

These rights and interests include: the right to access and move about the area; the right to live, to camp and to erect shelters; the right to hunt and fish; the right to gather and use the natural resources such as food, plants, timber, resin, ochre and soil; the right to cook and to light fires for cooking and camping purposes, the right to use the natural water resources; the right to distribute, trade or exchange the natural resources; the right to conduct ceremonies and hold meetings; the right to engage in and participate in cultural activities; the right to carry out and maintain burials of deceased native title holders and of ancestors; the right to teach the physical and spiritual attributes of locations and sites; the right to visit, maintain and preserve sites and places of cultural or spiritual significance; the right to speak for and make

⁴ *Adnyamathanha No 1 Native Title Claim Group v The State of South Australia (No 2)* [2009] FCA 359, Mansfield J, [28].

⁵ *Adnyamathanha No 1 Native Title Claim Group v The State of South Australia (No 2)* [2009] FCA 359, Mansfield J, [29].

decisions in relation to the use and enjoyment of the area by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Native Title Holders; and the right to be accompanied on to determination the area by other people.⁶

Overall

Overall, as noted by the CEO of South Australian Native Title Services (SANTS) Parry Agius:

There is a lot to celebrate, but we should also recognise that it took ten years of hard work and that demonstrates, that without doubt, there is room for improving the process to make native title work better and more efficiently ... There is also clearly a need to challenge negative attitudes to native title that unfortunately persist and we must continue to work at that.⁷

Aboriginal and Torres Strait Islander Social Justice Commissioner *Native Title Report 2008*: Summary

By Cynthia Ganesharajah, Research Officer NTRU

This article is extracted from the summary contained within the *Native Title Report 2008*.

Each year the Aboriginal and Torres Strait Islander Social Justice Commissioner delivers a *Native Title Report* to the Federal Parliament. In these reports the Commissioner, 'gives a human rights perspective on native title issues

⁶ For the entire list see Annexure A, paragraph 7.

⁷ Parry Agius, SANTS Chief Executive, *Aboriginal Way*, Issue No.37, March 2009, p1.

and advocates for practical co-existence between Indigenous and non-Indigenous groups in using land'.⁸

The 2008 Native Title Report is concerned with two main topics; changes to native title law and policy and native title and climate change and water policy. It includes two case studies that demonstrate the potential impact of climate change on the human rights of Torres Strait Islanders and the Indigenous nations of the Murray-Darling Basin.

Chapter 1 discusses the impact of significant events concerning Aboriginal and Torres Strait Islander peoples on native title. Such events include the National Apology, the indication of support for the UN Declaration on the Rights of Indigenous Peoples, and the active attempts by the Attorney General and Federal, State and Territory Ministers to develop a new relationship between Indigenous and non Indigenous Australians.

Chapter 2 examines the practical effects of the 2007 changes to the native title system. The changes examined include the relationship between the National Native Title Tribunal and the Federal Court, the impact of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), and amendments to the registration test, Native Title Representative Bodies, respondent funding and Prescribed Bodies Corporate. The chapter concludes with suggestions for further improvement to the native title system.

Chapter 3 considers three key native title cases decided in 2007-2008, *Noongar*,⁹ *Rubibi*¹⁰ and *Griffiths*.¹¹ It also discusses the *Blue Mud Bay case* which relates to the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). These cases highlight the human rights impacts of the native title and land rights system on Aboriginal and Torres Strait Islander peoples.

Chapter 4 analyses international and domestic climate change policy, in order to highlight mechanisms that can

be used to address the relationship between climate change and Indigenous peoples' rights and interests.

Chapter 5 contains suggestions for strategies to prepare for the impact of climate change on Indigenous peoples. It also discusses opportunities that may arise from climate change and the way these opportunities may be taken. Finally, the chapter explores existing work undertaken by Indigenous people around climate change.

Chapter 6 highlights the specific concerns of Indigenous people in relation to water. This includes addressing pressures and being able to access opportunities to work with governments on water management. Other issues considered include access to cultural water rights and lack of protection of these rights.

Chapter 7 considers the lack of protection of Indigenous peoples' knowledge in the context of climate change and water. It examines the need for a mechanism, or protection regime, for the use, access and ownership of Indigenous knowledge.

The *Native Title Report 2008* provides an important opportunity to reflect on native title developments within a human rights framework. Furthermore, it provides critical thinking in relation to the unavoidable impact of climate change and water policy on native title, and consequently, the rights and interests of Aboriginal and Torres Strait Islander peoples.

⁸ Australian Human Rights Commission, *Native Title Reports*, Australian Human Rights Commission, viewed 8 May 2009, http://www.hreoc.gov.au/social_justice/nt_report/index.html.

⁹ *Bodney v Bennell* [2008] FCAFC 63 (23 April 2008).

¹⁰ *Western Australia v Sebastian* [2008] FCAFC 65

¹¹ *Griffiths v Minister for Lands, Planning and Environment (Northern Territory)* [2008] HCA 20 (15 May 2008).