Changes to NTRU Website

We are currently updating the NTRU website. We appreciate your patience during this process. If you are having any problems accessing NTRU resources please contact Amy Williams on (02) 6246 1161 or via email at ntru@aiatsis.gov.au

What's New

Recent Cases

James v State of Western Australia [2009] FCA 1262

This case concerned a part of the original native title application lodged on behalf of the Martu People of the Western Desert area of Western Australia. Although a determination was made over part of the original application area (*James on behalf of the Martu People v State of Western Australia* [2002] FCA 1208) there is still part of the area not covered by the determination. The issue of the outstanding area, and whether the leases over that area extinguish native title rights and interests was referred to the Federal Court by the National Native Title Tribunal under section 136D *Native Title Act* 1993 (Cth) and Order 78, Division 3 of the Federal Court Rules (FCR). Justice McKerracher ordered that the referral be reserved to the Full Court.

Thudgari People v State of Western Australia [2009] FCA 1334

By consent, the Court made a determination of native title in favour of the Thudgari People. The determination covers approximately 11,280 square kilometres and is located at the northern edge of the Gascoyne region of Western Australia, lying between the Ashburton and Gascoyne Rivers.

Dodd on behalf of the Wulli Wulli People v State of Queensland (No 2) [2009] FCA 1180

This case concerned an application to amend a claim group description. There were two key issues. Firstly, there were questions about the process by which members of the applicant group were elected. Secondly, there was discussion about whether the amendments had to be voted on separately by the claim group as previously constituted and also by the claim group as it was to be constituted following amendments to the claim group. In relation to the first issue, Dowsett J was satisfied that there was no irregularity in the process by which members of the applicant group were selected. In relation to the second issue, Dowsett J found that a second meeting was not required on the basis that a sufficient majority was obtained on the first occasion.

Mills v State of Queensland [2009] FCA 1431

An application was sought under section 66B(1)(a)(ii) of the *Native Title Act* 1993 (Cth) to replace the current applicant (deceased) in the native title claim of the Naghir People. The key issue was whether the replacement applicant was correctly authorised to act as the applicant. The judge adjourned proceedings to allow matters to progress as requested by the Torres Strait Regional Authority (TSRA). Specifically, the parties were asked to participate in a mediation facilitated and funded by the TSRA in order to determine the composition of the claim group and any overlaps with the native title determination of the Mualgal People.

Combined Dulabed Malanbarra Yidinji People v State of Queensland [2009] FCA 1498

This case arose out of an application for the determination of native title by consent on behalf of Lorraine Muckan, Len Royee and the Combined Dulabed Malanbarra Yidinji People. The determination area covers approximately 166.6 square kilometres of land and water, within the upper Mulgrave River basin, 40 kilometres south-west of Cairns. In accordance with section 66 of the *Native Title Act* 1993 (Cth) a number of respondents became party to the proceedings (State of Queensland, Cairns Regional Council, Tablelands Regional Council, Ergon Energy Corporation Limited and Jacqueline Spokes) which was then referred to mediation. The parties reached an agreement as to the terms of the determination, which was then filed with the Federal Court in accordance with section 87 of the Act. Justice Spender, in the present proceedings, affirmed the parties' agreement, finding that the terms of the proposed determination satisfied the requirements of section 225 of the Act and made the orders sought to give it effect.

Tucker on behalf of the Narnoobinya Family Group v Western Australia [2009] FCA 1459

Under the *Native Title Act* 1993 (Cth) two separate motions were filed on 11 September 2009 by the Ngadju and Narnoobinya groups respectively for the determination of Native Title. While both claims overlap significantly, the Ngadju claim is more advanced than that of the Narnoobinya claim which has created delays for the Ngadju's submission. Therefore the Goldfields Land and Sea Council on behalf of the Ngadju people has sought a motion requesting that the Narnoobinya application be dismissed. The Narnoobinya applicants seek to dismiss this application in the course of seeking rejoinder to the Ngadju application. Marshall J, while acknowledging the caution with which to exercise the dismissal of Native Title claims has provided the Narnoobinya applicants with the opportunity to set out the details of their proposed application by 11th December 2009. Failure to comply will result in the dismissal of their Native Title claim.

Angale on behalf of the Irlpme Arrernte People v Northern Territory of Australia [2009] FCA 1488

The case concerned a native title application made in 2006 by the Irlpme Arrernte native title claim group. The application was made for the purpose of invoking the applicant's right to negotiate with the holders of an Exploration Licence Application in respect of land comprising some 270 square kilometres within the Bond Springs pastoral lease in the Northern Territory. In February 2008, the parties advised the court that, through negotiation, an agreement in respect of the Exploration Licence Application had been reached. However, the Irlpme Arrernte native title claim group did not formally withdraw the claim. Nor did the applicants further progress their claim for a period of more than a year and a half, despite directions from the court.

The Court thus considered that the mandatory dismissal provisions under section 94(C)(1) of the *Native Title Act* 1993 (Cth) had been triggered. The applicants had failed, despite directions, to take any steps to have their claim resolved and nor, on what the court was told, did they intend to. The Court considered that there were no compelling reasons not to dismiss the application. No-one would be prejudiced by the dismissal of the application. The claim, the court found, had served its purpose, and would continue to be available to the applicants in the future should they wish to reassert their rights. The application was thus dismissed.

Native Title Publications

Department of Finance and Deregulation, 'Evaluation of the Capacity Development Program of the Office of the Registrar of Indigenous Corporations', Office of Evaluation and Audit (Indigenous Programs), Department of Finance and Deregulation, 2009.

National Native Title Tribunal, 'Guide to future act decisions made under the right to negotiate scheme', National Native Title Tribunal, 2009.

D Ritter, *Contesting Native Title: From controversy to consensus in the struggle over Indigenous land rights*, Allen & Unwin, N.S.W, 2009.

CJ Sumner & L Wright, 'The National Native Title Tribunal's application of the Native Title Act in future act inquiries', *University of Western Australia Law Review*, vol. 34, no. 2, 2009.

J Sheehan, 'Native title holders as vulnerable publics: conflict between spatial planning and native title law in Australia', *Geography Research Forum,* vol. 29, 2009, pp. 132-140.

P Memmott, M Moran, C Birdsall-Jones, S Fantin, A Kreutz, J Godwin, A Burgess, L Thomson and L Sheppard, 'Indigenous home-ownership on communal title lands' *AHURI Final Report,* no. 139, Australian Housing and Urban Research Institute, Melbourne, 2009.

J Render, *Mining and Indigenous Peoples Issues Review*, International Council on Mining and Metals, London, UK, 2009.

Western Australian Government, *Ord-East Kimberley Development Plan*, Department of Regional Development and Lands, Western Australian Government, Perth, 2009.

Native title in the News

National

23/12/2009 -AU- Native title blocking Indigenous home ownership Indigenous Business Australia blamed native title laws for blocking the signing of individual 99-year leases on lands held under Aboriginal trust in Queensland. This leaves many Indigenous Australians keen to own a home, instead forced to remain in the public housing system. The Mayor of Palm Island