

What's New

Reforms, Reviews and Reports

[Native title claims: overcoming obstacles to achieve real outcomes](#)

This paper provides a stock take of key outcomes achieved to date and an estimate of how long it will take to finalise native title claims, an assessment of the main obstacles to resolving claims, and an analysis of an approach which all participants could take to resolve the remaining claims and those to be made in the future.

[Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people](#)

The Special Rapporteur provides an analysis of the Declaration in the context of other international instruments specifically regarding Indigenous peoples and human rights instruments of general applicability. Reflecting the common international body of opinion regarding the rights of Indigenous peoples, the Declaration elaborates on general human standards as they apply to the specific context of Indigenous peoples, with a particular emphasis on the remedial measures required to address the historical contemporary denial of their rights. The last section of the report analyses the different measures required to implement and make operative the rights affirmed in the Declaration, a process which involves a joint effort by States, the United Nations system, Indigenous peoples and relevant civil society actors.

[Optimising benefits from Native Title Agreements](#)

Australian Government discussion paper on Indigenous Economic Development Strategy, incorporating recommendations of the Native Title Payments Working Group.

[National Native Title Tribunal Annual Report 2007-2008](#)

Reviews the Tribunal's work during the year and identifies external factors that affected the Tribunal and its work, and trends within the Tribunal.

Recent Cases

Australia

Bennell v State of Western Australia [2008] FCA 1633

A new body was recognised as the representative body for an area. The issue was whether the former representative body for the area, the Noongar Land Council, retained a sufficient interest to remain a party to the proceeding in respect of that area. Siopis J held that the Council did not have a sufficient interest.

Vaughan William Corps & Darryl John Corps - V-Donald Kimberley North 2008 WAMW 15

Whether the granting of an application for a miscellaneous license was lawful. The land concerned was held by the Ngaluma Injibandi Native Title claimants holders. The basis for the objection included: compliance with regulation 37(3) of the Mining Regulations 1981; whether the applicant was required to obtain a permit before marking out; whether the purpose for which the license was sought was directly connected with the mining operations; whether the granting of the licence would injuriously affect or revoke an existing mining operation and; whether the granting of the license would be against the public interest. The application was dismissed.

JED (Deceased) v State of Western Australia [2008] FCA 1684

Leave was granted for an application to replace the applicant due to death and to amend Form 1 of the application of a native title determination application.

Gia People v State of Queensland [2008] FCA 1696

Orders made as a result of repeated defaults by the applicants to comply with previous orders.

Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council - (2008) 249 ALR 602 [\[2008\] HCA 48](#)

Appeal from the Supreme Court of New South Wales. The court considered whether land was "claimable Crown land" under s 36(1) of Aboriginal Land Rights Act (NSW); whether land "lawfully used or occupied" under s 36(1)(b) of Act and; whether steps taken preparatory to intended sale of land constituted lawful use and occupation of land. The Court considered the meaning of "lawfully used or occupied" and whether "lawfully used or occupied" was a compound expression with a single meaning. In addition the court considered whether "used" and "occupied" should be considered separately, and the meaning of "use" and "occupied". Appeal was dismissed with costs.

Wurridjal & Ors v Commonwealth of Australia & Anor [\[2008\] HCATrans 348](#)

Wurridjal & Ors v Commonwealth of Australia & Anor [\[2008\] HCATrans 349](#)

Judgment was reserved concerning the issue of acquisition of property other than on just terms. The land concerned was Aboriginal land which was subject to a five year lease to the Commonwealth. The issue was whether ss 31, 32, 34, 35, 36, 37, 50, 51, 52, 60, 61, 62, 68(2) and 134 of Northern Territory National Emergency Response Act 2007 (Cth) ("the Emergency Response Act") and items 12, 15 and 18 to Sch 4 of Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007 (Cth) ("impugned provisions") affect acquisition of property subject to s 51 (xxxi) Constitution. The Court looked to whether the property was acquired other than on just terms and was therefore invalid, and whether payment of reasonable compensation is just terms.

Collard v The State of Western Australia [\[2008\] FCA 1566](#)

Sambo v State of Western Australia [\[2008\] FCA 1575](#)

Application to have members of an applicant in a native title determination claim removed for failure to cooperate

with other members of the applicant. The issue was whether a member of an applicant can be removed as a party by reference to O r 9 of the Federal Court Rules or whether s 66B of the Native Title Act 1993 (Cth) should be relied upon. Siopis J dismissed the application based on s 66B(1) of the Native Title Act 1993 (Cth).

Taylor v State of Western Australia [\[2008\] FCA 1675](#)

Phillips v State of Western Australia [\[2008\] FCA 1676](#)

Martin v State of Western Australia [\[2008\] FCA 1677](#)

Whalebone v State of Western Australia [\[2008\] FCA 1678](#)

The issue concerned the Court's discretionary power to dismiss an application on its own motion if the application has not been amended since earlier failure of registration test, and no evidence existed that it was likely to be amended in a way that would lead to a different outcome. McKerracher J held that there was no other reason why the application should not be dismissed.

Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples v State of Queensland [\[2008\] FCA 1855](#)

Determination of native title by consent. The issue was whether it is within the power of the Court and appropriate to make an order under section 87 of the Native Title Act, and whether section 225 of the Native Title Act satisfied. The determination of native title made.

Anderson on behalf of Numbahjing Clan within the Bundjalung Nation v Director-General of the Department of Environment and Climate Change & Anor [\[2008\] NSWLEC 299](#)

Costs proceedings brought in the public interest. Applicant was unsuccessful. The Court held that there was an insufficient basis for departing from the usual order that costs follow the event.

Evans on behalf of the Koara People v The State of Western Australia [\[2008\] FCA 1557](#)

Notice on Court's own motion to show cause why an application should not be dismissed pursuant to s 190F(6) of the Native Title Act (Cth). The application was not likely to be amended in a way that would lead to a different outcome once considered by the Registrar of the Native Title Tribunal and there was no other reason why the application should not be dismissed. The application was dismissed.

International

Musqueam Indian Band v. Minister of Public Works and Government Services and Squamish Nation AND BETWEEN Squamish Nation v. Minister of Public Works and Government Services (F.C.) (Civil) (By Leave) Coram : McLachlin C.J. and Fish and Rothstein JJ.

Application for leave dismissed with costs. Numerous issues including whether the Court of Appeal's application of the principles in *R. v. Gladue*, [1999] 1 S.C.R. 688, effectively overruled jurisprudence to the effect that aboriginal rights exist within the Canadian legal system and not outside of it.

Frontenac Ventures Corporation v. Ardoch Algonquin First Nation, Robert Lovelace, Paula Sherman and Her Majesty the Queen in Right of Ontario - and - Native Women's Association of Canada (Ont.) (Civil) (By Leave) Coram: Binnie, Deschamps and Abella JJ

This was an application for an interlocutory injunction regarding the Federal government selling small parcel of urban-developed land located within First Nation's traditional territory. One issue involved consideration of the interests of the First Nation that are to be considered in the analysis of irreparable harm. The application for an extension of time was granted and the applications for leave to appeal were dismissed with costs to the respondent.

Legislation

[Aboriginal Land Rights \(Northern Territory\) Amendment Regulations 2008 \(No. 1\) \(Cth\)](#)

"The purpose of the Regulations is to prescribe certain parcels of land on Groote Eylandt (Angurugu and Umbakumba) and Bickerton Island (Milyakburra) totalling approximately 974 hectares as a single township in relation to the Anindilyakwa Land Trust. The Regulations will enable the Anindilyakwa Land Trust to lease the township under section 19A of the Act [Aboriginal Land Rights (Northern Territory) Act 1976]" (Explanatory Statement page 1).

Conference Papers, Speeches

Neate, G and Catlin, J '[Intervention strategies in native title mediation](#)' Paper delivered to the 9th National Mediation Conference, Perth, 10 September 2008.

Robert McClelland, ([Speech delivered at the Native Title Consultative Forum](#)), Old Parliament House, Canberra, 4 December 2008.

Journal Articles

Venn, T. J. 'Economic implications of inalienable and communal native title: the case of Wik forestry in Australia' *Ecological Economics* (2008) Vol. 64 No. 1 pp. 131-142.

Brennan, S 'Compulsory acquisition of native title land for private use by third parties' *Public Law Review* (2008) Vol. 19 No. 3 pp. 179-185.

Korosy, Z 'Native title, sovereignty and the fragmented recognition of Indigenous law and custom' *Australian Indigenous Law Review* (2008) Vol. 12 No. 1 p. 81-95.

Brennan, S 'Wet or dry, it's Aboriginal land: the Blue Mud Bay decision on the intertidal zone' *Indigenous Law Bulletin* (2008) Vol. 7 Issue 7 pp. 6-9