

## Compensation Annotated Case List

### **Walmbaar Aboriginal Corporation v State of Queensland [2009] FCA 579**

In this case the Walmbaar Aboriginal Corporation applied under sections 50(2) and 61(1) of the Native Title Act 1993 (Cth) (NTA) for a determination of the compensation payable in respect of acts that extinguished, significantly impaired or otherwise affected the native title rights and interests of the Dingaal People forming part of the Hopevale determination. Overall, it was found that Walmbaar had commenced the compensation application without authority (Rule 9(1) of the corporation's rules, section 57(3)(b) NTA, Regulation 7 of the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth)) of the and further, that the compensation claim included lands and waters over which there had been no determination of native title. Thus, the application was dismissed pursuant to s84C NTA.

### **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 Native Title Act and Validation Act.

### **Jango v Northern Territory of Australia [2006] FCA 318**

The case in *Jango v Northern Territory of Australia* [2006] FCA 318 involved a claim for compensation over the tourist town of Yulara near Uluru under s 61(1) of the *Native Title Act 1993* (Cth) (NTA). In order to demonstrate their entitlement to compensation the claimant group were required to establish, as a threshold issue, that they had native title rights and interests over the area at the time the 'compensation acts occurred'. These acts included the granting of freehold leases and the construction of public works which were said to have extinguished native title between 1979 and 1992. Sackville J ultimately found that the applicants failed to establish critical elements of the threshold issue – namely, that the applicants observed and acknowledged the traditional laws and customs of the Western Desert bloc *as pleaded*, and that the laws and customs were *traditional* in the required sense. While Sackville J rejected the applicants' claim on the basis of insufficient evidence to establish the case as pleaded, His Honour made clear that the decision did not mean individual applicants would have been unable to prove native title had the case been conducted differently. Indeed, Sackville J's latest decision leaves the way clear for another native title compensation claim to be formulated in relation to the same application area.

For further information see:

<http://ntru.aiatsis.gov.au/research/jango/Jango%20v%20Northern%20Territory.pdf>