

What's New February 2009

Cases

Australia

Holocene Pty Ltd/Western Australia/Western Desert Lands Aboriginal Corporation (Jamukurnu – Yapalikunu) [\[2009\] NNTTA 8](#)

Future act determination application concerning a proposed mining lease. A primary issue was whether the grantee party had negotiated in good faith. There was an in principle agreement and the grantee party was not required to further negotiate about agreed commercial terms. A second issue was whether the grantee party agreed to pay negotiation costs of native title party. An unreasonable demand for the native title party to execute agreement was not fatal as the conduct is to be judged from negotiations overall. The court held that the grantee party had negotiated in good faith.

Quall v Northern Territory of Australia [\[2009\] FCA 18 \(19 January 2009\)](#)

Application under O 20 r 4 for summary dismissal. The native title determination application claim area split into areas A and B and earlier determination that no native title exists for area A because the traditional Aboriginal society that existed at sovereignty had a substantial interruption in acknowledgement and observance of traditional laws and customs. Issue estoppel was considered regarding whether an earlier determination decided what the relevant Aboriginal society was at sovereignty. Whether this was an abuse of process because there was a failure to claim particular Aboriginal society possessed native title rights and interests in earlier proceedings and because there was an attempt to pursue that claim in proceedings for area B.

International

Indigenous Land Use Agreements

- See the [National Native Title Tribunal Website: ILUAs](#)
- The [Native Title Research Unit](#) also maintains an [ILUA summary](#) which provides hyperlinks to information on the NNTT and ATNS websites.
- Information about specific ILUAs is also available in the [Agreements, Treaties and Negotiated Settlements \(ATNS\) Database](#).

Native Title Determinations

- See the [National Native Title Tribunal website: Search Determinations](#)
- The [Native Title Research Unit](#) also maintains a [Determinations Summary](#) which provides hyperlinks to determination information on the Austlii, NNTT and ATNS websites.
- The [Agreements, Treaties and Negotiated Settlements \(ATNS\) Database](#) provides information about native title consent determinations and some litigated determinations.

Native Title in the News

- [NTRU Native title in the News](#)

Publications

- Tony McAvoy, 'Native title litigation reform' (2008) 8 *Native Title News* 12, 193-195.
- Jason Behrendt 'The Wellesley Sea Claim and the gap between Indigenous sea cultures and native title recognition' (2008) 2 *Ngija: Talk the Law* 2, 2-16.
- Jeswynn Yogaratnam 'Mabo: whistle blowing the state government on native title in Malaysia' (2008) 33 *Alternative Law Journal* 4, 240-243.

Reviews & Reforms

Aboriginal Affairs Victoria. Review of the Aboriginal Heritage Regulations 2007

The *Aboriginal Heritage Act 2006* ('the Act') commenced operation on 28 May 2007. The commencement of the Act proceeded as soon as practicable after the completion of the Regulations. This new legislation substantially changed the management and protection of Aboriginal heritage in Victoria.

Given the substantial change to the legislation, it was accepted that a period of operation was required before some aspects of the Regulations could be reasonably evaluated. Firstly, the Regulatory Impact Statement (RIS) process had highlighted that the cost of the Regulations could only be accurately assessed after the Regulations had been in operation for a period. Secondly, the then Minister for Aboriginal Affairs wanted to ensure that the list of High Impact Activities in the Regulations was sufficiently targeted, and considered that an operational period may be needed to identify corrections (if any) in this list. In addition to these issues, a review was considered beneficial in assessing the effectiveness of the Regulations in meeting the aims of the Act.

This report sets out the results of the review of the Aboriginal Heritage Regulations 2007 ('the Regulations') conducted by Lily D'Ambrosio, Parliamentary Secretary, Community Development, and Aboriginal Affairs Victoria. The Allen Consulting Group assisted with the review in terms of the evaluation of the Regulations and the revised cost estimates.

Training and Professional Development Opportunities

- See the [Aurora Project: Program Calendar](#) for information about [Learning and Development Opportunities](#) for staff of native title representative bodies and native title service providers.
- The program commences in September 2009. **Rio Tinto NTRB Scholarships** Rio Tinto is once again offering two scholarships to lawyers currently working or interested in working at Native Title Representative Bodies (NTRBs) or Native Title Service Providers (NTSPs). Successful candidates will undertake a one-year Master of Laws (LLM) in Mineral Law and Policy at the Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP) at the University of Dundee and must commit to work within an NTRB or NTSP for a minimum period of two years upon their return. Candidates must be Australian citizens or permanent residents and reside in Australia and there is no age restriction for applicants. FaHCSIA provides an additional AU\$15,000 towards the living expenses of those recipients of the scholarship who are working within the NTRB system at the time they receive the scholarship. **Applications open from Monday 16th February through Friday 20th March 2009.** Further information can be found at: www.auroraproject.com.au/RioTintoScholarships.htm For further information on the LLM in Mineral Law and Policy Program please visit: www.dundee.ac.uk/cepmlp/main/html/academic/FT-LLM%20and%20Diploma-Generic.php

Events

- [NTRU events calendar](#)

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