

## Cases

### ***King v Northern Territory of Australia* [\[2006\] FCA 944](#)**

This case involves an application for a determination of native title where current pastoral leases in claim area are currently used as commercial cattle stations. The case considers the right to live and to camp and for that purpose, erect shelters and other structures and whether such a right includes the right to build permanent structures and remain permanently on land. The Court considered whether such rights were inconsistent with rights of pastoral lease holders and accordingly distinguish the Full Court's decision in *Northern Territory of Australia v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group* (2005) 145 FCR 442. The case also considered extinguishment where land in claim area is proclaimed as a garbage reserve and later approved as garbage depot and whether this was inconsistent with claimed native title rights and interests.

### ***Griffiths & Anor (On Behalf Of The Ngaliwurra And Nungali) v Minister for Lands, Planning & Environment & Anor* [\[2007\] HCATrans 320](#)**

Special leave was granted to join a matter concerning the compulsory acquisition of land.

### ***Walker on behalf of The Noonukul of Minjerrabah v State of Queensland* [\[2007\] FCA 967](#)**

This case involved a strike-out application under section 84C of the *Native Title Act 1993* (Cth) based on non-compliance with section 61 requiring the identification of claim group, authorisation and description of claim area.

### ***Guiseppe v Registrar of Aboriginal Corporations* [\[2007\] FCAFC 100](#)**

On 15 June 2007 the Court delivered reasons for judgment allowing the appeal (*Guiseppe v Registrar of Aboriginal Corporations* [2007] FCAFC 91). Certain orders were made but the appeal was stood over to enable submissions to be received as to the orders for relief that ought to be made. The parties considered the situation and agreed upon the further order that should be made. It was found that agreement made it unnecessary for the Court to give independent consideration to the appropriate order. The court held that the first respondent's decision to appoint the second respondent as administrator made on 18 July 2006 will be set aside, with effect from midnight 17 July 2007.

### ***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*

### ***Parker on behalf of The Martu Idja Banyjima People v State of Western Australia* [\[2007\] FCA 1027](#)**

This case involved an objection to a Future Act. The Court considered whether the Tribunal considered the nature of the activity that would constitute an Aboriginal site under s 237(b) of the *Native Title Act 1993* (Cth).

### ***Brown (on behalf of the Ngarla People) v State of Western Australia* [\[2007\] FCA 1025](#)**

Consent determination of native title made pursuant to s 87 or in the alternative s 87A of the *Native Title Act 1993* (Cth). The court was satisfied that the statutory preconditions of s 87A and s 87 were met.

### ***Kokatha People v State of South Australia* [\[2007\] FCA 1057](#)**

This case involved the issue of whether a respondent to an application for a native title determination can seek a determination of native title in his favour under s 225 of the *Native Title Act 1993* (Cth). The court considered whether it had jurisdiction to make a positive determination in the respondent's favour and whether the respondent can argue native title

defensively. It concluded that a respondent could not seek a determination under s 225 without following the procedures for authorisation under the NTA.

**Gamogab v Akiba [2007] FCAFC 74**

This case involved the issue of whether a national of Papua New Guinea could be joined as a respondent. It focused on the nature and extent of the Court's discretion to do so where interests may be affected by a native title determination.

**Hillig v Darkinjung Pty Ltd & Ors [2007] NSWSC 683**

This is a procedural case but considered whether the defendants owed fiduciary duties to plaintiff and whether they had breached those duties. It considered whether the imposition of certain statutory duties created fiduciary duties. It was found that within the statutory framework, voting members of a council who exercise voting rights may stand in fiduciary relationship with the council. It was also held that the characterisation of duties as fiduciary or equitable was immaterial to question whether such duties were owed and enforceable in equity.

**Ka'a'Gee Tu First Nation v. Canada (Attorney General) 2007 FC 763**

This case involved an application for judicial review challenging a decision to approve a recommendation of a project involving oil and gas development in the Northwest Territories. The project, known as the Extension Project, proposed by Paramount Resources Ltd. (Paramount) is located in the Cameron Hills, over which the Ka'a'Gee Tu First Nation (KTFN) claims Aboriginal rights and treaty rights. The KTFN argued that the project negatively impacts on their established treaty rights and their asserted Aboriginal rights and consequently argued that the Crown had a duty to consult and accommodate them before approving the project. The KTFN claimed that the Crown failed to meet its duty to consult and accommodate. The Court ordered that 'the parties are to engage in a process of meaningful consultation with the view of taking into account the concerns of the KTFN and if necessary accommodate those concerns. The process is to be conducted with the aim of reconciliation in a manner that is consistent with the honour of the Crown and the principles articulated by the Supreme Court of Canada in *Haida* and *Taku*.'

**Ka'a'Gee Tu First Nation v. Canada (Indian Affairs and Northern Development) 2007 FC 764**

The case involved a judicial review of the decision of the Mackenzie Valley Land and Water Board (the Land and Water Board) to issue an amended land use permit MV2002A0046 (the LUP) to Paramount Resources Ltd. (Paramount), pursuant to its powers under the *Mackenzie Valley Resource Management Act* (the Act) and associated regulations. It was found that the Crown failed to meet its duty to consult and to take into account the concerns of the Aboriginal people before the Extension Project was approved. As a result, the requirements of Part 5 of the Act had not been complied with. Accordingly pursuant to section 62 of the Act, the amended land use permit MV2002A0046 should not have been issued by the Land and Water Board and was set aside.

**Timothy James Malachi on behalf of the Strathgordon Mob v State of Queensland [2007] FCA 1084**

The court reached a determination of native title pursuant to s 87 of the *Native Title Act* 1993 (Cth). It found that The Native Title holders are a group within a broader regional society whose relationships within that society extend from the Kendall River in the north to the Mitchell River in the south. Accordingly the court found that the claimants are affiliated with the Determination Area by laws and customs that are shared by other Aboriginal people in the region.

**Chicot v. Paramount Resources Ltd [2006] NWT SC 30.**

The case involved a judicial review of a decision made by the Mackenzie Valley Land and Water Board (the MVLWB) to grant Paramount Resources Ltd a land use permit and water licence to build six wells in the Cameron Hills area, on traditional territory of the Ka'a'Gee Tu First Nation (the First Nation). The MVLWB decided that Part 5 of the Act, which contains the requirement for a preliminary screening, had been satisfied and subsequently issued the permit and licence. The applicants argued that the MVLWB had no jurisdiction to issue the permit and licence without conducting a preliminary screening and that the First Nation, was denied natural justice in the proceedings before the MVLWB.

## Events

- [NTRU events calendar](#)

## Indigenous Land Use Agreements

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

## Legislation

**[Native Title \(Prescribed Bodies Corporate\) Amendment Regulations 2007 \(No. 1\) Explanatory Statement:](#)**

**[Corporations \(Aboriginal and Torres Strait Islander\) Regulations 2007 Explanatory Statement:](#)**

**[Native Title Act 1993 Act](#)**

## Native Title Determinations

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

## Native Title in the News

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

## Reports

**[Native Title Research Unit National Meeting of Prescribed Bodies Corporate, Canberra 11-13 April 2007 Research Report 3/2007, AIATSIS](#)**

This workshop was held on 11-13 April 2007 in Canberra, and was attended by 23 people representing PBCs from Western Australia, Queensland, Victoria, New South Wales, and the Northern Territory. The meeting provided the PBCs with a much needed networking opportunity, and time to reflect on their particular challenges, aspirations and achievements.

Various federal government departments were invited to present on the recent Commonwealth PBC reforms, and give advice about relevant funding and training opportunities for PBCs. This report provides a record of the meeting, and also aims to be of practical assistance to PBCs, particularly those who were unable to attend the meeting. Since the National PBC Meeting, the Department of Family and Community Services and Indigenous Affairs (FaCSIA) has released draft guidelines for supporting PBCs, some of the detail of which is also incorporated into this document. Further practical information for PBCs is also available in the [PBC toolkit](#) which has been developed by the NTRU.

**[Native Title Research Unit Native Title Representative Bodies and Prescribed Bodies Corporate: native title in a post determination environment Research Report 2/2007, AIATSIS](#)**

This workshop was held on 5-6 December 2006 in Canberra, and was attended by 25 staff from Native Title Representative Bodies who have been or will be involved in the design and establishment of PBCs. Participants also included government representatives from the Department of Families, Community Services and Indigenous Affairs and Attorney General's Department who gave presentations on the proposed changes to PBCs as a part of the Australian Government's broader native title reforms. A report has been prepared based on the

major issues that arose during the workshop. In particular, the report focuses on measures to improve the effectiveness of PBCs and coincides with the Government's recognition of the need for resources and support for PBCs to adequately carry out their functions.

**CAEPR Discussion Paper 285/2006. Local governments and Indigenous interests in Australia's Northern Territory W Sanders**

Australia's Northern Territory has three categories of local government referred to as municipal, community government and association councils. This paper explores the historical development of these three categories of local governing body since Northern Territory self-government in 1978. Through more contemporary demographic analysis, and some minor spatial analysis, the paper also explores the different relationships of these three types of local governments to Indigenous interests. Two important pieces of background information are that roughly one-quarter of the Northern Territory's population of 200,000 is Aboriginal and that outside the major urban areas this proportion is much higher still. A later section of the paper looks at the contrasting financial positions of these three types of local government in the Northern Territory and relates this to the very different service roles they play for Indigenous people in remote areas and others.

**Social dimensions of mining in Australia – understanding the minerals industry as a social landscape Fiona Solomon, Evie Katz and Roy Lovel, CSIRO Minerals**

This report seeks to map the social landscape of the minerals industry and help inform efforts towards a socially sustainable future. The social dimensions of the minerals industry – how it deals with people, values, development, policy, regulation and a range of associated issues – are becoming increasingly critical to business success. Company public reports and conference papers suggest that companies' engagement with critical social issues has increased over the past five years.

**4722.0.55.001 - The health and wellbeing of Aboriginal and Torres Strait Islander women: A snapshot, 2004-05**

This snapshot provides an overview of the health and wellbeing of Aboriginal and Torres Strait Islander women. Topics covered include health status, long-term health conditions, mortality, health risk factors, exposure to violence, social and emotional wellbeing, health-related actions and health screening and contraception.

**Nkuzi Development Association. No policy for change**

This paper discusses whether or not the land reform policies adopted by the South African government since 1994 are adequate to bring about a fundamental change in property rights. It will show that the land reform policies in South Africa cannot bring fundamental change. The paper starts by looking at what would constitute a fundamental change in property rights and goes on to assess the land reform policies in terms of their potential to bring change and the actual experiences of implementation. The paper concludes with some thoughts on why there is no programme to bring fundamental change and suggestions for what needs to be done.

**Minerals Council of Australia. Unearthing new resources: attracting and retaining women in the Australian minerals industry**

**Story Place - Information on Traditional Connections to Sea Great Barrier Reef Marine Park Authority.**

Story Place is a reference database that holds resources about Traditional Owner groups adjacent to the Great Barrier Reef in Australia. It holds hundreds of references relating to Indigenous history and co-operative management practices within the Great Barrier Reef region.

## **Reviews & Reforms**

**Negotiation Or Confrontation: It's Canada's Choice : Final Report of the Standing Senate Committee on Aboriginal Peoples Special Study on the Federal Specific Claims Process**

In its study of the Specific Claims policy and process, this Committee found that the present system cannot resolve Specific Claims within a reasonable length of time. Lack of resources for, and contradictions within, the present system are producing results contrary to the goal of the federal government's Specific Claims policy which is to resolve Specific Claims. The number of unresolved Specific Claims now exceeds 800 and is growing. Collectively, these claims represent a significant potential liability for the Government of Canada. Where their Specific Claims are valid, First Nations require the compensation owing for their future economic development; moreover, justice requires that Specific Claims be addressed.