

What's New March 2008

Cases

***Hazelbane v Doepel* [2008] FCA 290**

This decision involves a review of the Registrar's decision to register an overlapping claim over the Town of Bachelor under s 190A of the *Native Title Act 1993* (Cth). The original applicants, the Warai and Kungarakany groups opposed a later application made by the second applicants, the 'Town of Bachelor No 2 Applicants' representing the Emu and Blue Lizard Kungarakany group. They objected to the application on the basis that there are now two groups of people with the same negotiation rights in respect of the same claim area which would affect their rights and interests. The original applicants argued that the registrar, in deciding to accept the Town of Bachelor No 2 did not seek submissions from them, nor did the registrar notify the Northern Land Council (NLC), which is the responsible representative body in the area.

The court considered whether the original applicants had standing to bring the claim. It noted that a 'person aggrieved' for the purposes making an application for review under the ADJR Act included the original applicants on the basis that 'the potential beneficiary of the future act [was] unlikely to negotiate in a way which would give each of the negotiating registered native title applicants the same benefits as if there were only one group of registered native title applicants with whom those negotiations should be conducted': [20].

The court also considered the original applicant's argument that they were not afforded with procedural fairness. It noted that the right to procedural fairness does not arise automatically where parties have standing to challenge the Registrar's decision, however it considered that the NLC were the relevant representative body for the area and was entitled to be notified of the Bachelor No 2 application.

The court also considered whether the claim was properly authorised. The Registrar noted that the applicant had been made in the first instance without legal assistance and did not expect the same level of organisation or legal sophistication that would otherwise be expected. However, the original applicants argued that the material did not allow the Registrar to reach the conclusion that there was a traditional decision making process in place nor did the application identify those with traditional authority or the basis for having such authority.

The court also considered whether the requirements of ss 190B and 190C and whether the Registrar erred in having regard to additional information provided by Bachelor No 2 claimants specifically for the purpose of a mediation in order. The court found that the Registrar fell into error by identifying a wrong issue and asking himself a wrong question in addressing procedural requirements in s 190C(2) and (4). Accordingly it was held that the decision to register the Bachelor No 2 application be set aside.

***Turrbal People v State of Queensland* [2008] FCA 316**

Notice of motion seeking to replace an applicant in proceedings. The original applicant, Connie Isaacs sought to replace herself with Maroochy Barambah. This motion was opposed on the basis that she did not have the authority of the claim group to make this decision. The court considered whether the issue of whether a native title determination application has been properly authorised can be considered during a strike out application under s 84C of the Act. Justice Splender noted that the relevant issue was if an application were to succeed on its own terms, the court need to consider whether the applicants would not have been authorised by all those persons the Court would determine to be the members of the claim group. However he found that the factual inquiry of whether the claimants actually constitute the persons who actually hold the common or group rights and interests cannot be properly the subject of a strike out application.

It was argued that if the Court was not satisfied that there was a traditional decision making process in place there was an alternative decision making process that was agreed to and adopted by the claim group. His Honour found this argument inconsistent but followed the previous decision of *Williams v Grant* which assumes that Connie Isaacs was authorised. Following this decision, if she had the authority to make the original application, she had the authority to decide on an altered position of the applicant.

Indigenous Land Use Agreements

- See the [National Native Title Tribunal Website: Browse Registered 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: Browse 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

Aboriginal and Torres Strait Islander Commissioner, '[Native Title Report 2007](#)', Human Rights and Equal Opportunity Commission, Sydney, 2008.

Justice Robert French, '[Plus ca change, plus c'est la meme chose?](#) - The 2007 Amendments to the Native Title Act' *Land, Right, Laws: Issues of Native Title*, Volume 3, Number 12, AIATSIS, Canberra.

Megan Davis, 'The United Nations Declaration on the Rights of Indigenous Peoples Australian Indigenous Law Review' (2008) Vol. 11 No. 3 pp. 55-63.

Michael C. Dillon, 'Negotiating a Northern Territory parks settlement: a new approach to resolving native title claims' Chapter 4 from *Beyond humbug : transforming government engagement with indigenous Australia*, Michael C. Dillon & Neil D. Westbury, Seaview Press, 2007, pp. 84-119.

Grace Koch, *The Future of Connection Material held by Native Title Representative Bodies: Final Report*, Research Report 1/2008, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2008.

Ciaran O'Faircheallaigh, 'Unreasonable and extraordinary restraints: native title, markets and Australia's resources boom' *Australian Indigenous Law Review* (2008) Vol. 11 No. 3 pp. 28-42

Reviews & Reforms

[Caring for our Country announced](#)

Caring for our Country is the Government's new natural resource management program designed with a business approach to investment, clearly articulated outcomes and priorities and improved accountability. It will commence on 1 July 2008 and will integrate delivery of the Commonwealth's existing natural resource management programs, the Natural Heritage Trust, the National Action Plan for Salinity and Water Quality, the National Landcare Program, the Environmental Stewardship Program and the Working on Country Indigenous land and environmental program.

Victorian Government's Alternative Framework for Negotiating Native Title

The Victorian State Government and traditional Aboriginal owners can negotiate directly with each other outside of the Federal Court System which will allow the State to be proactive rather than reactive in the resolution of claims. Professor Mick Dodson will be chairing an independent committee comprising of representatives of the Victorian Traditional Owner Land Justice Group and State representative whose joint task will be to develop a Victorian settlement framework.

Guide to help do the right thing with Indigenous culture

The Australia Council for the Arts has released a fully revised second edition of its protocol guides to help Australians better understand the use of Indigenous cultural material. The five guides cover protocols for producing Indigenous Australian media arts, music performing arts, visual arts and writing. They were written for the Australia Council by eminent Indigenous intellectual property lawyers Terri Janke and Robynne Quiggin.

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.

Events

- [NTRU events calendar](#)

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