

What's New June 2008

Cases

Australia

***Illawarra Local Aboriginal Land Council v Minister Administering the Crown Lands Act* [2008] NSWLEC 188**

Aboriginal land claim where the Land and Environment Court considered whether the land was 'needed', or 'likely to be needed', for the essential public purpose of nature conservation; whether the land was 'used' or 'occupied'.

***Bropho v State of Western Australia* [2008] FCAFC 100**

An appeal to the Full Court from a judgment of a single judge of this Court: *Bropho v State of Western Australia* [2007] FCA 519. On 13 April 2007, where the primary judge dismissed the applications in each of two proceedings raising the same issues. The principal issues are whether the Reserves (Reserves 43131) Act 2003 (WA) ("Reserves Act") and action taken under that Act contravene or are inconsistent with the *Racial Discrimination Act 1977* (Cth) (RDA). The reserves were used for the benefit of Aboriginal inhabitants however, following concerns for the safety of women and children on the reserves control was removed and eventually vested in the Aboriginal Affairs Planning Authority. In reaching their decision, the Court noted:

In the present case it is undesirable to explore, to the point of conclusion, what might be the content of the rights or freedoms asserted by the appellant concerning the occupation and management of the reserve land having regard to legitimate laws and rights recognized in Australia. To the extent that the rights in question (which were derived from a mix of statutory instruments) were property rights, such rights were not absolute in nature given the general recognition that a State has a right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. It follows that any interference with the enjoyment of the right, provided that such interference is effected in accordance with the legitimate public interest (in this case to protect the safety and welfare of inhabitants at Reserve 43131), will not be inconsistent with s 10 of the RD Act. Indeed, although the authorities on s 10 of the RD Act recognise that there is no basis for distinguishing between different species of ownership of property, no property right, regardless of its source or genesis, is absolute in nature, and no invalid diminution of property rights occurs where the State acts in order to achieve a legitimate and non-discriminatory public goal.

***Bell on behalf of the Barungam People v State of Queensland* [2008] FCA 840**

Dismissal of an application to amend a native title application. It was found that the native title claim was fundamentally flawed.

***Mineralogy Pty Ltd v Kuruma Marthudunera Native Title Claimants* [2008] WAMW 3**

Objection to grant of tenement. The objectors are the Kuruma Marthudunera Native Title Claimants who claim that they are 'registered native title applicants over the land on which the Applicant seeks to have the proposed tenement granted. The objectors believe that activities that might be allowed under the proposed tenement could have an adverse impact upon the exercise of native title rights, cultural heritage (including sites of significance) and lifestyles of the objectors. Work and activity allowed under the licence could also affect the environment and flora and fauna in the area, which would impact on the objectors, and the granting of the tenement would be contrary to the public interest.' Final recommendation that grant be refused.

***Ronald Crowe & Ors (Gnulli)/Charlie Laphorne & Ors (Thudgari People)/Western Australia/Zhukov Pervan,* [2008] NNTTA 71**

Consideration of proposed grant of exploration licence where it was found that the expedited procedure does not apply. Decision considered the following:

- gender restricted evidence

- whether act likely to interfere directly with the carrying on of community or social activities
- whether act likely to interfere with sites of particular significance

Billy Patch and Others on behalf of the Birrilburu People v State of Western Australia
[\[2008\] FCA 944](#)

Consideration of the formal and substantive requirements of s 87A and whether the proposed consent determination was within the power of the court given the difference in description of native title holder group in determination and native title claim group in application. It was found that it was still appropriate to make the order and an alteration would not constitute an amendment to the application.

International

Shilubana and Others v Nwamitwa [\[2007\] ZACC 14](#)

This is an application for leave to appeal against a decision of the Supreme Court of Appeal,¹ substantially confirming a decision of the Pretoria High Court.² It raises issues about a traditional community's authority to develop their customs and traditions so as to promote gender equality in the succession of traditional leadership, in accordance with the Constitution.

[Mining Information Kit for Aboriginal Communities](#)

A new educational tool, The Mining Information Kit for Aboriginal Communities, will inform Aboriginal communities across Canada about all the stages of the mining cycle from early exploration to mine closure. This information kit will help Aboriginal peoples better understand mining activities and identify the many opportunities that mining can bring to communities. This tool is conveniently designed in four modules corresponding to the main stages of the mining cycle. It provides examples of community experiences, positive relationships, and partnerships with mining companies. It also outlines the regulatory process to ensure Aboriginal peoples are well informed of the economic, social and environmental effects, benefits and opportunities in making decisions. The kit is the product of a partnership between Natural Resources Canada, Indian and Northern Affairs Canada, the Prospectors and Developers Association of Canada, The Mining Association of Canada, and the Canadian Aboriginal Minerals Association (CAMA).

Legislation

[Indigenous Affairs Legislation Amendment Bill 2008](#)

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

Research Papers

McAvoy T and Cooms V, 2008 'Even as the Crow Flies, it is Still a Long Way: Implementation of the Queensland South Native title Services Ltd Legal Services Strategic Plan' *Research Monograph 2/2008*, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

Strelein, L, 2008, [Taxation of Native Title Benefits](#), *Research Monograph 1/2008*, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

Reviews & Reforms

Senate Standing Committee on Legal and Constitutional Affairs, [Report on the Stolen Generation Compensation Bill 2008](#), Senate Standing Committee on Legal and Constitutional Affairs, Canberra.

Australia, Department of Families, Community Services, Housing and Indigenous Affairs, 2008, [Northern Territory Emergency Response: One Year On](#) Canberra.

Speeches, Seminar Papers and Conference Presentations

Williams, J 2008 'Confessions of a native judge: reflections on the role of transitional justice in the transformation of indigeneity' 2007 3(13) *Land, Rights, Laws: Issues of Native Title*, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

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)