



Native Title Report 2009



Aboriginal and Torres Strait Islander Social Justice Commissioner

Report of the Aboriginal and Torres Strait Islander Social
Justice Commissioner to the Attorney-General as required by
section 209 of the *Native Title Act 1993* (Cth).



**Australian
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**Aboriginal & Torres Strait
Islander Social Justice
Commissioner**

Aboriginal and Torres Strait Islander Social Justice Commissioner

The position of the Aboriginal and Torres Strait Islander Social Justice Commissioner was established within the Australian Human Rights Commission in 1993 to carry out the following functions:

- (1) Report annually on the enjoyment and exercise of human rights by Aboriginal peoples and Torres Strait Islanders, and recommend where necessary on the action that should be taken to ensure these rights are observed.
- (2) Promote awareness and discussion of human rights in relation to Aboriginal peoples and Torres Strait Islanders.
- (3) Undertake research and educational programs for the purposes of promoting respect for, and enjoyment and exercise of, human rights by Aboriginal peoples and Torres Strait Islanders.
- (4) Examine and report on enactments and proposed enactments to ascertain whether or not they recognise and protect the human rights of Aboriginal peoples and Torres Strait Islanders

The Commissioner is also required, under section 209 of the *Native Title Act 1993* (Cth), to report annually on the operation of the Act and its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders.

Office holders

- Mr Tom Calma: 2004 – present
- Dr William Jonas AM: 1999 – 2004
- Ms Zita Antonios: 1998 – 1999 (Acting)
- Mr Mick Dodson: 1993 – 1998



About the Social Justice Commissioner's logo

The right section of the design is a contemporary view of traditional Dari or head-dress, a symbol of the Torres Strait Island people and culture. The head-dress suggests the visionary aspect of the Aboriginal and Torres Strait Islander Social Justice Commissioner. The dots placed in the Dari represent a brighter outlook for the future provided by the Commissioner's visions, black representing people, green representing islands and blue representing the seas surrounding the islands. The Goanna is a general symbol of the Aboriginal people.

The combination of these two symbols represents the coming together of two distinct cultures through the Aboriginal and Torres Strait Islander Commissioner and the support, strength and unity which it can provide through the pursuit of social justice and human rights. It also represents an outlook for the future of Aboriginal and Torres Strait Islander social justice, expressing the hope and expectation that one day we will be treated with full respect and understanding.

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23 December 2009

The Hon Robert McClelland MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney

I am pleased to present to you the *Native Title Report 2009* in accordance with section 209 of the *Native Title Act 1993* (Cth).

I have also used this opportunity to examine the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander peoples in light of other changes to policy and legislation made between 1 July 2008 and 30 June 2009 in accordance with section 46C(1)(a) of the *Australian Human Rights Commission Act 1986* (Cth).

The Report is focused on three main topics. First, I give an overview of changes to native title law and policy, and summarise key cases that were decided during the reporting period. Secondly, I consider principles that should underpin a new approach to native title law and policy. I also highlight aspects of the native title system that require reform. Finally, I review developments in Indigenous land tenure reform.

I look forward to discussing the Report with you.

Yours sincerely

Tom Calma
Aboriginal and Torres Strait Islander
Social Justice Commissioner

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Note – Use of the terms ‘Aboriginal and Torres Strait Islander peoples’ and ‘Indigenous peoples’

The Aboriginal and Torres Strait Islander Social Justice Commissioner recognises the diversity of the cultures, languages, kinship structures and ways of life of Aboriginal and Torres Strait Islander peoples. There is not one cultural model that fits all Aboriginal and Torres Strait Islander peoples.

Aboriginal and Torres Strait Islander peoples retain distinct cultural identities whether they live in urban, regional or remote areas of Australia.

Throughout this report, Aborigines and Torres Strait Islanders are referred to as **‘peoples’**. This recognises that Aborigines and Torres Strait Islanders have a collective, rather than purely individual, dimension to their livelihoods.

Throughout this report, Aboriginal and Torres Strait Islander peoples are also referred to as **‘Indigenous peoples’**.

The use of the term ‘Indigenous’ has evolved through international law. It acknowledges a particular relationship of Aboriginal people to the territory from which they originate. The United Nations High Commissioner for Human Rights has explained the basis for recognising this relationship as follows:

Indigenous or aboriginal peoples are so-called because they were living on their lands before settlers came from elsewhere; they are the descendants – according to one definition – of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means... (I)ndigenous peoples have retained social, cultural, economic and political characteristics which are clearly distinct from those of the other segments of the national populations.

Throughout human history, whenever dominant neighbouring peoples have expanded their territories or settlers from far away have acquired new lands by force, the cultures and livelihoods – even the existence – of indigenous peoples have been endangered. The threats to indigenous peoples’ cultures and lands, to their status and other legal rights as distinct groups and as citizens, do not always take the same forms as in previous times. Although some groups have been relatively successful, in most part of the world indigenous peoples are actively seeking recognition of their identities and ways of life.¹

The Social Justice Commissioner acknowledges that there are differing usages of the terms ‘Aboriginal and Torres Strait Islander’, ‘Aboriginal’ and ‘indigenous’ within government policies and documents. When referring to a government document or policy, we have maintained the government’s language to ensure consistency.

¹ United Nations High Commissioner for Human Rights, *The Rights of Indigenous Peoples*, Fact Sheet No 9 (Rev 1) (1997). At <http://www.ohchr.org/Documents/Publications/FactSheet9rev.1en.pdf> (viewed 24 November 2009).

Contents

Report overview: The challenges ahead	xi
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Chapter 1: The state of land rights and native title policy in Australia in 2009	1
1.1 Introduction	1
1.2 Policy approaches to land rights and native title – the legacy of the Howard Government	2
(a) The 1998 Wik Amendments	4
(b) The 2006 ALRA amendments	7
(c) The 2007 compulsory acquisition of land for the purposes of the Northern Territory Emergency Response legislation	9
1.3 The Rudd Government's response – new promises, a fresh approach in 2008–09?	10
(a) The native title system in numbers	12
(b) Changes to native title over the year – the direction of the Australian Government	15
1.4 Significant cases affecting native title and land rights	26
(a) The constitutional validity of compulsory acquisitions under the Northern Territory intervention: <i>Wurridjal v Commonwealth</i>	26
(b) The requirement to negotiate in good faith: <i>FMG Pilbara Pty Ltd v Cox</i>	31
(c) The first decision that a mining lease must not be granted: <i>Western Desert Lands Aboriginal Corporation (Jamukurnu – Yapalikunu) / Western Australia / Holocene Pty Ltd</i>	35
1.5 International human rights developments	42
(a) The Declaration on the Rights of Indigenous Peoples	42
(b) Treaty monitoring bodies	44
(c) United Nations Permanent Forum on Indigenous Issues	46
1.6 Significant developments at the state and territory level	47
(a) Victoria – the place to be	47
(b) And the others? The states and territories lingering behind	51
1.7 Conclusion	53

Chapter 2:	Changing the culture of native title	55
2.1	The challenge: decolonising the native title framework	55
2.2	We need a level playing field	56
2.3	Principles to underpin cultural change	58
(a)	Changing the approach of governments	58
(b)	Building relationships between Indigenous peoples and governments	61
(c)	Corporate social responsibility	63
(d)	Encouraging an interest-based approach to negotiation	65
2.4	Transforming the policy landscape	66
(a)	Improving the governance framework	68
(b)	Further unfinished business	72
2.5	Conclusion	74
Chapter 3:	Towards a just and equitable native title system	77
3.1	Improving the native title system – the time for change is now!	77
3.2	Recognition of traditional ownership	79
3.3	Shifting the burden of proof	80
(a)	Background	80
(b)	Triggering presumptions in favour of native title claimants	82
(c)	A presumption of continuity	84
(d)	Reforms to section 223 of the Native Title Act	85
(e)	Shifting the attitudes of states and territories	87
3.4	More flexible approaches to connection evidence	88
(a)	Overview of connection evidence requirements	88
(b)	What are some of the problems with connection evidence requirements?	90
(c)	Possible solutions	91
3.5	Improving access to land tenure information	94
3.6	Streamlining the participation of non-government respondents	96
(a)	The role of state and territory governments	96
(b)	Party status	97
(c)	Removal of parties throughout proceedings	99
(d)	Exploring the potential for using representative parties	100
(e)	Improving transparency in respondent funding processes	100
3.7	Promoting broader and more flexible native title settlement packages	101
(a)	Background	101
(b)	Strengthening procedural rights and the future acts regime	104
(c)	Recognition of commercial rights	108
(d)	Disregarding extinguishment	110
(e)	Providing for long-term adjournments	111
(f)	Building the capacity of Indigenous communities to effectively engage in agreement-making	112
(g)	Promoting a regional approach to agreement-making	117
(h)	Improving mechanisms for evaluation and monitoring	118

3.8	Initiatives to increase the quality and quantity of anthropologists and other experts working in the native title system	118
(a)	Establishing a register of experts	119
(b)	Better use of independent experts in native title claims	120
(c)	Improved training and development opportunities for anthropologists	121
3.9	Conclusion	122
.....		
Chapter 4:	Indigenous land tenure reform	125
4.1	Introduction	125
4.2	Identifying a national Indigenous land reform policy	126
(a)	The Australian Government's policy	126
(b)	COAG reform processes	131
(c)	Assessing the elements of the Australian Government's policy	133
4.3	Priority locations	142
(a)	The Australian Government's priority locations: Northern Territory	143
(b)	COAG processes	143
(c)	How priority locations are selected	144
(d)	What the priority location policy means	147
(e)	Extension of the priority location policy	148
(f)	Northern Territory – A Working Future	149
4.4	Land reforms in the Northern Territory	151
(a)	Northern Territory Emergency Response	151
(b)	Township leasing	159
(c)	Tenure requirements for new housing	164
4.5	Land reforms in Queensland, New South Wales, South Australia and Western Australia	166
(a)	Queensland	166
(b)	South Australia	176
(c)	New South Wales	178
(d)	Western Australia	179
4.6	Principles for Indigenous land tenure reform	184
4.7	Conclusion	187
.....		
Appendices		
Appendix 1:	Native title determinations	189
Appendix 2:	Native title statistics	195
Appendix 3:	Principles for effective consultation and engagement	201
Appendix 4:	United Nations Declaration on the Rights of Indigenous Peoples	207
Appendix 5:	Twenty six priority communities	219

.....

List of figures, maps, case studies, text boxes and tables

Chapter 1:	The state of land rights and native title policy in Australia in 2009	
Map	1.1: Determinations and Native Title Prescribed Bodies Corporate	22
Text Box	1.1: Examples of funding arrangements for land rights regimes	24
Text Box	1.2: Affidavit evidence of the Martu Elders	40
Chapter 2:	Changing the culture of native title	
Text Box	2.1: Decolonising the legislative framework through human rights principles	59
Text Box	2.2: How is the principle of free, prior and informed consent relevant to native title?	60
Text Box	2.3: Closing the gap through land rights	66
Text Box	2.4: Good governance and human rights	68
Chapter 3:	Towards a just and equitable native title system	
Figure	3.1: South Australia's assessment process	89
Text Box	3.1: Report of the 'Getting Outcomes Sooner Workshop' – July 2007	93
Text Box	3.2: Section 84 of the <i>Native Title Act 1993</i> (Cth)	97
Map	3.1: Registered Indigenous Land Use Agreements as at 30 June 2009	102
Text Box	3.3: Procedural rights	105
Text Box	3.4: Survey on land, sea and economic development – 2006	112
Text Box	3.5: The Argyle Participation Agreement	115
Text Box	3.6: The Argyle Participation Agreement: Negotiation process	116
Chapter 4:	Indigenous land tenure reform	
Text Box	4.1: Central Australian Affordable Housing Company	157
Table	4.1: Administration of township leases at Nguui and Groote Eylandt	162
Table	4.2: Difference between township leases and housing precinct leases	165
Text Box	4.2: Types of Indigenous land in Queensland	166
Table	4.3: Rules in relation to the grant of leases	169
Text Box	4.3: Katter leases	172
Text Box	4.4: Case Study – Kowanyama	175
Text Box	4.5: The Bonner Report	182

Appendix 2: Native title statistics

Table	1:	Native title applications filed between 1 July 2008 and 30 June 2009	195
Table	2:	Native title applications finalised between 1 July 2008 and 30 June 2009	195
Table	3:	Native title claims or claims for compensation filed with the Court as at 30 June 2009	196
Table	4:	Native title claims or claims for compensation under native title listed for hearing as at 30 June 2009	196
Table	5:	Native title claims struck out by the Court between 1 July 2008 and 30 June 2009	196
Table	6:	Registration test decisions made between 1 July 2008 and 30 June 2009	197
Table	7:	Native title applications not accepted for registration between 1 July 2008 and 30 June 2009	197
Table	8:	Native title determinations made between 1 July 2008 and 30 June 2009	197
Table	9:	Future act agreements made between 1 July 2008 and 30 June 2009	198
Table	10:	Determination application agreements made between 1 July 2008 and 30 June 2009	198
Table	11:	Future act determination applications (s 35) finalised between 1 July 2008 and 30 June 2009	199
Table	12:	Future act objections finalised during the reporting period	199

