



2nd Annual National

Up to
6 CPD Points/day

Native Title Law Summit

Enabling sustainable outcomes
post reform

15 – 16 July 2010
Stamford Plaza
Brisbane

Program highlights

- EXAMINE the impact of **2009-10 reforms on native title** practice – consider Federal Court and NNTT viewpoints
- HEAR from counsel in landmark **Sampi/Bardi** case and the **Pilbara Connection Project**
- ACHIEVE sustainable, long-term and mutually beneficial outcomes to **negotiated agreements and comprehensive settlements**
- ASSESS the interaction between State and Commonwealth **land rights schemes, native title and future acts**
- ENGAGE in **high-level legal debate** on the present and future of native title in Australia

Speakers



Hon Andrew Greenwood
Judge, Federal Court of Australia



Graeme Neate
President, National Native Title Tribunal



Mick Gooda
Aboriginal & Torres Strait Islander Social Justice Commissioner



Graham Hiley QC
Queensland Bar



Kevin Smith
CEO, Queensland South Native Title Services



Mark Geritz
Partner, Clayton Utz

Raelene Webb QC
Northern Territory Bar

Early Bird Discount expires 4 June 2010

Not-for-profit fee assistance available

PLUS Santos, Rio Tinto, North Queensland Land Council and more

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Native Title Law Summit

Day 1: Summit – Thursday, 15 July 2010

8:30 **Summit registration**

8:50 **Welcome from the Chairperson**

Graham Hiley QC, Queensland Bar

Keynote Opening Address

9:00 **Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner**

Keynote address from the Federal Court of Australia

9:20 **Deliberating on the evolving Federal Court's practice post reform**

- Determining, settling and expediting native title claims
- Re-examining the role of the Federal Court in native title claims post 2009 Native Title Law reforms
- Elucidating the Court's approach to resolution and the mediation of
- Aspects of the consent determination process under the *Native Title Act 1993* (Cth)

The Hon Andrew Peter Greenwood, Judge, Federal Court of Australia

10:00 **Morning tea**

10:30 **Legislative Update**

2009-2010 Reform: Entering the new era of native title?

- Implementing the changes to the claims resolution process under the 2009 amendments to the Native Title Act
- How will the Federal Court and the NNTT interact under the 2009 amendments?
- What are the implications of 2009 reforms for claims management
- What ongoing issues need to be resolved?
- Navigating reform in native title in 2010: The way forward
- *Native Title Amendment Bill (No 2) 2009* - creating a new process for delivery and construction of vital public housing and infrastructure in communities on Indigenous land held
- *Native Title (Prescribed Bodies Corporate) Amendment Regulations 2010*
- Proposed historical extinguishment amendment
- Other possible reforms

Graeme Neate, President, National Native Title Tribunal

11:20 **Case Study and Joint Presentation**

Expert Evidence: A legal and anthropologist's view

- Analysing changes to rules of evidence to native title claims – *Evidence Amendment Act 2008*
- Giving evidence in relation to native title claims – overcoming the hurdles
- Establishing admissibility of expert opinion
- Considering the methodology and timelines for preparing anthropological material to support applications, resolve disputes as to membership of claim groups, boundary descriptions and overlaps, consent determinations and use at trial
- Achieving synergy between legal and anthropologist's viewpoints and findings
- Working within time periods for an anthropologist to arrive at reliable conclusions
- Case Study: Pilbara Connection Project

Raelene Webb QC, Northern Territory Bar

David Trigger, Professor of Anthropology, Program Head, Anthropology, Deputy Head, School of Science, University of Queensland

12:10 **Joint presentation**

Proving continuity in community: Reviewing implications of the Sampi/Bardi 2010 decision

- Analysing *Sampi on behalf of the Bardi and Jawi People v State of Western Australia* [2010] FCAFC 26: The unanimous decision
- Reviewing the presumption of continuity
- Proving continuity of claims
- Proving sovereignty of society: What is "one society" v separate territories
- Implications for cases going forward: Enabling regional resolution of native title claims
- Evidential aspects of establishing rights
- Level of acceptable proof to prove existence of native title without going to court

Raelene Webb QC, Northern Territory Bar

Marshall McKenna, Principal, Hunt & Humphry

Leading practitioner in Native Title – Chambers Global 2010

12:50 **Networking lunch for speakers and delegates**

1:45 **Welcome from the afternoon Chairperson**

Heather Watson, Special Counsel, McCullough Robertson

Commentary

1:50 Indigenous governance in native title

- Negotiation and ongoing arrangements in terms of settlement
- Dissecting the issues for consideration and proposed changes to prescribed body corporate (PBC)
- Overcoming obstacles to establishing a PBC
- Delivering real economic and other benefits for claimants – preserving financial benefits and building capacity for indigenous stakeholders
- Contemporary governance structures and potential future developments
- Engagement challenges
- Challenges of funding representative bodies

Panellists:

Nathan Jarro, *Indigenous Barrister, Queensland Bar*
Tony McAvoy, *Barrister, Frederick Jordan Chambers, NSW Bar*
Martin Dore, *Principal Legal Officer, North Queensland Land Council*
Wesley Aird, *Specialist Advisor – Indigenous Relations, QGC*

Facilitated by:

Heather Watson, *Special Counsel, McCullough Robertson*

3:40 Trusts and future act agreements: Can an applicant be held to account?

Mining companies always want to make sure that the compensation they pay under native title agreements goes to as many of the native title groups as possible. On a few occasions, however, applicants signing such agreements have been known to make payments and utilise compensation moneys in a more circumscribed way.

This session will cover:

- Analysing the relation of the law of equity and native title law
- Exploring circumstances where the law of equity may be used by the court to construe a trust between the applicant and the native title group
 - Drafting of the future act agreement and providing for its implementation
 - Relevant facts and circumstances
- Drafting mechanisms to make such equitable remedies more accessible
- *Western Desert Lands Aboriginal Corporation (Jamukurnu – Yapalikunu) / Western Australia / Holocene Pty Ltd*

Dr Jonathan Fulcher, *Special Counsel, Hopgood Ganim*
Leading practitioner in Native Title – Chambers Global 2010

Joint Presentations and Industry Case Studies

2:30 Achieving sustainable native title agreements

- Examining the making of agreements following amendments to the *Native Title Act 1993*
- Analysing the impact of cultural heritage legislation
- Establishing mutually beneficial agreements
- Current practical perspectives on implementation of agreements
- Analysing implementation issues
- Recognising the importance of ongoing engagement
- Case studies

Tony Denholder, *Partner, Blake Dawson, Leading practitioner in Native Title – Chambers Global 2010*

Craig Jones, *Principal Adviser, Indigenous Affairs, Santos*
Jeremy van de Bund, *Manager Community Relations - External Relations, Coal Australia, Rio Tinto*

4:30 Examining the interaction between State and Commonwealth land rights schemes and native title with respect to future acts – a comparative perspective

- Overview of traditional owners' rights under the Native Title Act, state and Commonwealth land rights regimes vis-à-vis future acts
- Decision-making by registered native title bodies corporate and land trusts
- Harmonisation of decision-making by registered native title bodies corporate and land trusts
- *Native Title (Prescribed Bodies Corporate) Amendment Regulations 2010* – will the new regulations authorise PBCs to ask proponents to fund future act negotiations?
- Recent decisions and future developments
- Case Law: Obligations to negotiate in good faith with traditional owners under the Native Title Act (*FMG Pilbara Pty Ltd v Cox*)

Nicholas Testro, *Minter Ellison*

3:20 Afternoon tea

5:10 Close of Day One

“Conference was very useful, good speakers and topics.”

Day 2: Intensive – Friday, 16 July 2010

8:30 **Intensive registration**

8:50 **Welcome from the Chairperson**

Helen Bowskill, Barrister, Queensland Bar

Intensive Session

9:00 **Indigenous cultural heritage legislation reform: Balancing the protection of aboriginal cultural heritage and the sustainability of mining, petroleum and infrastructure industries**

- A comparative view of state-based Cultural Heritage reform (eg. WA, NT)
- Proposed changes to Commonwealth legislation in 2009: Regulating Indigenous cultural heritage
- Proposed amendments to *Aboriginal Cultural Heritage Act 2003* (Qld) and *Torres Strait Islander Cultural Heritage Act 2003* (Qld)
 - Multiple parties involvement
 - Establishing a code
 - Minimum standard for Cultural Heritage Agreements (CHMPs)
 - Last standing failed claim rule
- Ensuring duty of care is met
- Interface between native title and cultural heritage

Scott Singleton, Special Counsel, Minter Ellison

Commentary:

- How proposed changes will affect mining, petroleum and infrastructure companies ability to access land
- Dissecting key issues regarding compliance with cultural heritage protection provisions and investigation and enforcement
- Reviewing outcomes of Indigenous Cultural Heritage Acts review
- What key actions can be done to prepare and anticipate legislative impact?

Panellists:

Dominic McGann, Partner, McCullough Robertson

Leading practitioner in Native Title – Chambers Global 2010

Mark Geritz, Partner, Clayton Utz

Paul Travers, Associate Director, Cultural Heritage and Native Title, AECOM

11:00 **Investigating the law of authorisation in Native Title**

- Law of authorisation – authorisation of native title applications and agreements and sustainability of agreements
- Indigenous decision-making structures
- Legal process of reaching ILUAs / area agreements
- How to run authorisation process and establish proper authorisation
- S24CG
- Interaction with *Aboriginal Cultural Heritage Act 2003* “Aboriginal parties”
- Recent cases: *Kemp v Registrar of Native Title* [2006] FCA939 and Queensland Water Infrastructure (*Festl v Delegate of the Native Title Registrar (No 2)* [2008] FCA 1479; *Festl v Delegate of the Native Title Registrar* [2008] FCA 1469)

Mark Geritz, Partner, Clayton Utz

Leading practitioner in Native Title – Chambers Global 2010

“Over the years I have attended many conferences throughout Australia and the (Native Title) conference ranks with the very best.”

Paul Arthur, Corporate Counsel QLD Department of Environment and Resource Management and 2009 delegate

“An exceptional conference. The speakers are recognised as outstanding in their field.”

10:30 **Morning tea**

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Day 2 – continued

11:45 **The roles, powers and functions of an Applicant**

- Basis and extent of an Applicant's authority
- Additional powers and functions of an Applicant who becomes a registered native title claimant - under the NTA, and under other legislation
- Status and rights of each of the individuals that comprise an Applicant. Eg:
 - must those individuals act unanimously, is a majority decision sufficient, does an individual have a right of veto?
 - what can be done about a reluctant or recalcitrant individual? Is s 66B the only remedy? Can s 84D(4) be used?
- How can an Applicant function? Eg:
 - providing instructions to a lawyer or other representative
 - executing an ILUA or other agreement such as a s 31 agreement
 - participating in other future act processes

Graham Hiley QC, Queensland Bar

12:30 **Networking lunch for speakers and delegates**

1:25 **Welcome from the afternoon Chairperson**

Marshall McKenna, Principal, Hunt & Humphry

1:30 **Developing comprehensive settlements**

- Navigating the current legislative framework
- Negotiating Indigenous Land Use Agreements
- Achieving social, economic and environmental outcomes in comprehensive settlements
- Incorporating sustainability into the framework
- Post-implementation and ongoing engagement

Kevin Smith, CEO, Queensland South Native Title Services

2:15 **Navigating Native Title mediations**

- Focusing on mediation and consensual resolution as the ideal means of resolution of native title claims
- Adopting a flexible and creative approach to negotiations
- Avoiding unduly narrow and legalistic approaches to negotiations
- Achieving sustainable, long-term outcomes for communities

Tony McAvoy, Barrister, Frederick Jordan Chambers, NSW Bar

3:00 **Afternoon tea**

Intensive Session

3:30 **Land access agreements: Negotiating agreements for mutually – beneficial outcomes**

- Anticipating challenges throughout the negotiation process
- Negotiating with indigenous communities for mutual benefit
- Traps and pitfalls in negotiation
- Measuring outcomes and resolving disputes
- Navigating the intricacies of valuation
- Integrating Cultural Heritage management

Margarita Escartin, Gadens Lawyers

5:00 **Close of conference**

Who should attend?

- Native Title Law Practice Groups
- Indigenous Representative Bodies
- Indigenous Law Practice Groups
- Mining Law Practice Groups
- Planning and Environment Law
- Government Lawyers, Local and Regional Councils
- Civil & Human Right Lawyers
- Mining, Resources & Energy Company Executives and In-house Counsel

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Position: _____

Organisation: _____

Postal address: _____

Suburb Postcode State

Telephone: _____

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\$86.36 + GST = \$95.00

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Native Title Law Summit papers for \$360 + GST = \$396

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or Group Booking Price (per person, available anytime)**

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TOTAL

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Event date
& venue

15 – 16 July 2010
Stamford Plaza
Cnr Edward & Margaret Streets, Brisbane