



How best to proceed

Native Title and You



By National
Native Title
Tribunal
President
**GRAEME
NEATE**

WITH about 575 native title applications currently in the system, there are practical questions about how best to progress them. Is it better to negotiate or argue in court? How should claims be prioritised? Are test cases useful for resolving other claims?

These issues came up at a Federal Court sitting to recognise native title over parts of the town of Tennant Creek on 3 September.

The Tennant Creek consent determination was the first of the Northern Territory native title claims to be resolved through a fully negotiated agreement rather than expensive and time-consuming litigation.

The determination and indigenous land use agreement struck between the NT Government and the Patta Warumungu people give benefits such as education,

compensation and recognition of their native title. The agreements also cover the need for areas of land for town expansion.

Justice Mansfield said the completion of the consent determination was an important step for future agreement making over claims in the NT. He said that the court's strategy for dealing with the 188 native title and compensation claims in the NT has been to select

particular test cases that raised common issues.

"Once those cases had been heard, and those 'test' issues resolved, it was planned that cases with which they were similar would unfold into consent determinations," Justice Mansfield said.

The test cases are the native title claims to Newcastle Waters, areas of Darwin, Timber Creek and Blue Mud Bay, and the compensation claim over Yulara. Two of them have been finalised – Darwin and Yulara.

The Larrakia people's native title claim involved parts of Darwin. Their request to the High Court for permission to appeal against the decision that they do not have native title in and around Darwin was refused in August.

Compensation for the loss of native title rights was to be tested in the courts through the compensation application over

the town of Yulara. The court found that the evidence could not establish that the compensation claim group observed and acknowledged the laws and customs of the Western Desert bloc at the time of the compensation act. An appeal to the Full Federal Court was dismissed in July.

The Newcastle Waters native title claim is expected to clarify the requirements of co-existence

arrangements between pastoralists and claimants in the NT. Although this case is yet to be finalised, in July Justice Moore delivered his finding that non-exclusive native title existed over the Newcastle Waters pastoral lease.

The Blue Mud Bay claim tested issues around native title claims to the sea and intertidal areas. The court decided that the claim group has non-exclusive native title rights over some areas of the sea and the intertidal zone.

In March the full Federal Court decided that freehold title over areas of Blue Mud Bay under the Aboriginal Land Rights Act gave the title holder exclusive rights to the intertidal areas.

The Blue Mud Bay appeal to the High Court is not on issues of native title law but on the issue raised by the grant of freehold in relation to exclusive rights to the intertidal zone. This issue has ramifications for the commercial and recreational fishing industry.

The native title claim over the town of Timber Creek is expected to clarify issues about claims over rural towns.

The court found that the Ngaliwurru and Nungali people had native title rights and interests in the area.

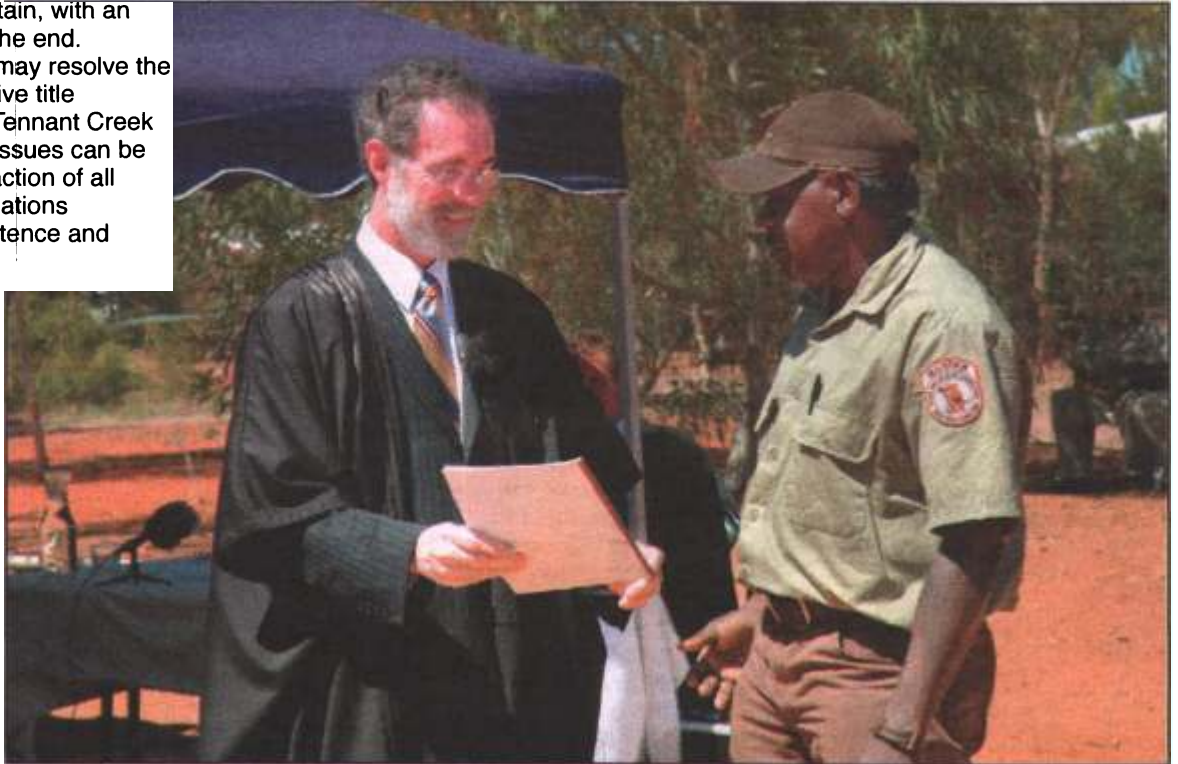
In September 2006 they filed an appeal against the decision that their native title rights and interests were not a right to exclusive possession.

Test cases can set out the legal ground rules and can assist parties in other claims to negotiate agreements.

Native title litigation is risky,



expensive, and uncertain, with an imposed outcome at the end.
Such an outcome may resolve the issues, but recent native title agreements such as Tennant Creek show that native title issues can be resolved to the satisfaction of all parties through negotiations conducted with persistence and goodwill.



Justice Mansfield presenting the determination papers to Jeremy Dawson (Jurpurula), one of the native title claimants.



The Federal Court sitting in the grounds of the Nyinkka Nyunyu Arts and Cultural Centre in Tennant Creek.