

Determination of native title – Newcastle Waters

King v Northern Territory [2007] FCA 1498

Moore J, 26 September 2007

Issue

The issue in this case was whether the court should make determinations of native title in relation to six claimant applications before the court made pursuant to s. 61(1) of the *Native Title Act 1993* (Cwlth) (the NTA).

Background

The nature and extent of the native title rights and interests that could be recognised was considered in *King v Northern Territory* [2007] FCA 944, summarised in *Native Title Hot Spots Issue 25*. The parties were ordered to submit a draft determination and related orders within six weeks of that decision. The applicants and Northern Territory submitted final draft determinations. The pastoral respondents were primarily in agreement with the draft submitted by the Northern Territory.

Determinations of native title

Justice Moore resolved a small number of differences between the parties over the exact wording of particular clauses within the draft determinations. His Honour then made orders in the following terms:

- there be a determination of native title;
- the native title is not to be held on trust;
- an Aboriginal corporation, the name of which is to be provided within 12 months or such further time as the court may allow, be the prescribed body corporate for the purposes of s. 57(2) and perform the functions under s. 57(3);
- there be no order as to costs; and
- the parties have liberty to apply:
 - to establish the precise location and boundaries of the public works and adjacent land and waters referred to in Schedule D;
 - to establish the precise location of the boundaries of land on which the improvements referred to in Schedule D have been constructed and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements; and
 - to establish whether any of the improvements referred to in Schedule D of the determination have been constructed lawfully.