

# Determination of native title – Tennant Creek

## *Patta Warumungu People v Northern Territory* [2007] FCA 1386

Mansfield J, 3 September 2007

### Issue

The issue before the court was whether to make a determination of native title by consent in relation to a claimant application made under the *Native Title Act 1993* (Cwlth) (NTA). The court decided to do so.

### Background

This application on behalf of the Patta Warumungu people in relation to various allotments in the town of Tennant Creek was filed in July 2006 and registered in September 2006. The areas surrounding Tennant Creek were the subject of a grant of land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) (the ALR Act) but s. 3(1) of the ALR Act precluded land within the township of Tennant Creek from being available for such a grant.

### The claim area

The claim area included 65 parcels of land covering approximately 42.1 sq km in and around the town of Tennant Creek in the Northern Territory. The traditional territory of the claim group, the Patta Warumungu people, was one of ten estates within the Warumungu language region.

The parties agreed that native title existed in 18 parcels of vacant Crown land within the township, comprising 80% of the total claim area. Justice Mansfield was satisfied that one or more members of the claim group occupied those areas at the date the application was filed within the meaning of s. 47B(1)(c) of the NTA—at [6].

It was agreed that native title had been extinguished in the remaining 47 parcels of land within the township, consisting of residential and vacant industrial lots, as well as two larger parcels in the south east subject to a pastoral lease, and one larger parcel of vacant Crown land to the east of the township.

The court noted that the requirements of s. 87 were met in that:

- the s. 66 notice period had elapsed;
- a signed copy of the agreed orders had been filed with the court; and
- took the view that the court was not entitled to consider a case that might have put to it but was not;
- the court was satisfied that the orders were appropriate and within its power to make and the orders complied with s. 94A—at [8] to [11].

### Evidence

The evidence before the court included:

- affidavits by the seven members of the claim group deposing to the basis of their membership of the Patta Warumungu people and their connection to the claim area; and
- a summary of two expert anthropological reports—at [13] to [17].

His Honour concluded that:

- the material relied upon by the parties adequately addressed the requirements of ss. 223 and 225;
- the statements of the applicants and the report supported the recognition of native title rights and interests possessed by the native title claim group;
- the parties likely to be affected by the proposed consent determination had sufficient access to independent legal representation;
- the Northern Territory, in providing its consent, had given appropriate consideration to the evidence and to the interests of the community generally;
- the material before the court suggested that both the applicants and the territory had carefully considered all that material and its significance;
- the terms of the proposed consent determination satisfied the requirements of s. 225 i.e. the proposed determination was carefully worded, the native title rights and interests were appropriately specific, the nature and significance of the other interests in the area was clearly spelled out—at [18] to [20].

Mansfield J was satisfied that it was within the power of the court, and appropriate in the circumstances, to give effect to the proposed determination without a full hearing of the native title application—at [22].

### **Comments by the court**

The court noted that:

- the large number of native title determination applications in the Northern Territory presented a 'considerable challenge' to ensure that they were dealt with in as efficient a manner as possible;
- with the support generally of the claimants (particularly through the Northern Land Council and the Central Land Council) and the Northern Territory, as well as other respondents, the court had adopted a strategy of hearing selected cases to determine particular issues of principle or issues which related to the decided case and to a number of others with similar geographical, cultural, social or legal characteristics;
- that process had almost been completed and it was expected that, as a result of those cases having been decided, many of the claims with which they had common features would progressively resolve by a series of consent determinations;
- this was the first consent determination in what the court hoped would be an 'escalating process';
- it had occurred in the framework of the overall strategy, reflected the active engagement of the parties and the fact that in some respects the outcomes which are negotiated may include outcomes beyond the declaration of the existence of native title rights and interests;

- the consent determination was accompanied by an Indigenous Land Use Agreement which had been achieved with the support of the National Native Title Tribunal;
- the Tribunal's role under the NTA was an important one and its capacity to contribute to mediated resolution of native title claims was well illustrated in the resolution of this application—at [23] to [24].

### **Determination**

Native title was recognised in part of the determination area (the recognition area) and determined not to exist in relation to the remainder of the determination area. The native title holders are Patta Warumungu Aboriginal people, as defined in the determination. The native title rights and interests recognised are the right to:

- use and enjoy the recognition area, including the right to conduct specific activities incidental to those rights;
- make decisions about the use and enjoyment of the recognition area by Aboriginal people who recognise themselves as governed by Aboriginal traditional laws and customs and who acknowledge the traditional laws and customs of the native title holders;
- the right to share and exchange natural resources obtained on or from the determination area, including traditional items made from the natural resources of the recognition area.

There are no native title rights and interests in minerals, petroleum or prescribed substances.

The other interests in the determination area noted in the determination include those held pursuant to mining and exploration tenements. The relationship between the native title rights and interests and the other interests in relation to the determination area is that:

- the other interests and the doing of any activity required or permitted to be done by or under the other interests, prevail over the native title rights and interests, but do not extinguish them, and the existence and exercise of the native title rights and interests do not prevent the doing of the activity;
- to the extent that the other interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist, but have no effect in relation to the other interests during the currency of those interests;
- if those other interests are later removed or otherwise cease to operate, either wholly or partly, the native title rights and interests will again have effect.

The Patta Aboriginal Corporation (the Corporation) holds the rights and interests comprising the native title in trust for the common law holders pursuant to s. 56(2)(a).