National Native Title Tribunal

25 YEARS OF NATIVE TITLE RECOGNITION

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KEY NATIVE TITLE CASES

While the Mabo decision determined that native title rights and interests continued to exist in Australia post-European settlement, it provided little guidance to parties in relation to what these rights consisted of or how they were to be determined. When the *Native Title Act 1993* (Cth) (*Native Title Act*) was introduced in 1994, parties were uncertain about what was required in relation to certain aspects of the legislation, most notably proof of native title. Subsequent case law has clarified this and provided practitioners with guidance.

Following is a summary of specific cases that have been influential in settling the law in relation to native title post the introduction of the *Native Title Act*. The summaries are presented thematically rather than chronologically.

KEY NATIVE TITLE CASES

Connection and traditional law and custom – the Yorta Yorta test

Section 223 of the *Native Title Act* outlines the concept of native title. Specifically, it requires that native title rights and interests are possessed under the traditional laws acknowledged and the traditional customs observed by any native title holder. Further, that the native title holders have a connection with the claimed land and water under the system of law and custom.

Murray River, Victoria

The specifics of what material or evidence would satisfy s 223 was unclear when the *Native Title Act* was enacted and the first significant case to consider this was filed by the Yorta Yorta people in Victoria. The claim was considered at first instance by Olney J[1], by the Full bench of the Federal Court[2] and the High Court.[3]

In the first instance decision, Olney J found that native title no longer existed due to a lack of continued connection by the claimants and all prior generations of their ancestors to the land subject to claim. He determined that they ceased to occupy the land "in the sense that the original inhabitants had occupied it"[4] and the 'tide of history has indeed washed away any real acknowledgement of their traditional laws and any real observance of their traditional customs."[5]

On appeal to the Full Federal Court, Olney J's decision was upheld, although Chief Justice Black, in dissent, said that there should be some allowance for adaptation of traditional laws and customs.[6] The matter was then appealed to the High Court which upheld the initial decision.

The High Court majority joint decision[7] became the seminal decision on 'connection' and provided the framework for the criteria required to satisfy s 223.

This decision introduced new terminology which has since become integral to the consideration of proof of native title: *normative system* and *society*.

The majority determined that native title rights and interests "originate in a *normative system*"[8] which regulated the observance of the traditional system of law and custom and "[i]f that normative system has not existed throughout that period, the rights and interest which owe their existence to that system will have ceased to exist."[9] Further, according to the majority, the normative system could not be revived once it had ceased to operate.[10]

The majority noted that a "society" for the purposes of native title "is to be understood as a body of persons united in and by its acknowledgment and observance of a body of law and customs"[11] and, like the normative system, must have remained substantially the same since sovereignty.[12]

This meant that, in order for native title to be recognised, a group had to show that:

- they formed a society, substantially the same as that which existed at sovereignty, and
- had continued to observe a system of laws and customs which were, again, substantially unaltered from those observed by their ancestors at sovereignty.

The requirement for evidence of the continuation of a traditional normative system and traditional society since sovereignty led many to consider that native title would be impossible to recognise in highly settled areas.

Applying the legal principles of the High Court *Yorta Yorta* decision, in the 2006 case *Risk v Northern Territory of Australia*, Justice Mansfield stated that the evidence in that case demonstrated that "a combination of circumstances has, in various ways, interrupted or disturbed the presence of the Larrakia people in the Darwin area during several decades of the 20th Century" and was a factor in His Honour's inability to find the continued existence of native title.[13]

The decision was upheld on appeal to the Full Federal Court bench of Justices French, Finn and Sundberg[14] who said "[a] claimant group that has been dispossessed of much of its traditional lands and thereby precluded from exercising many of its traditional rights will obviously have great difficulty in showing that its rights and customs are the same as those exercised at sovereignty."[15]

Although the principles of the continued normative system and society have guided judicial consideration

since Yorta Yorta, the evaluation of these principles has relied upon the facts presented in each case. Following are some of the cases where individual aspects of the system of law and custom were considered, specifically in relation to continuity.

Watch: The Hon Justice John Mansfield AM QC, Federal Court of Australia

Physical v spiritual connection

An initial consideration by the Courts was whether claimants and their ancestors were required to have maintained physical connection with the land under claim.

The Full Court of the Federal Court, in *Western Australia v Ward*[16] (Ward) determined that "[a]ctual physical presence upon the land…would provide clear evidence of the maintenance of the connection with the land. However the spiritual connection…can be maintained even where physical presence has ceased."[17]

This interpretation of the *Native Title Act* was upheld by the High Court[18] which agreed that continuous physical 'connection' to the claimed land was not necessary to prove that native title still existed. The majority noted that "…the absence of evidence of some recent use of the land or waters does not, of itself, require the conclusion that there can be no relevant connection."[19]

In *Daniel v Western Australia,*[20] Justice Nicholson applied the findings of the High Court in *Ward* to examine a case where none of the claimant groups continued to live on the claimed land, re-affirming that physical connection was not a pre-requisite to prove ongoing native title.[21] The principle was also subsequently applied in *De Rose*[22] and *Sampi*.[23]

However, the issues of proving ongoing connection to land and waters according to the criteria established by the High Court in *Yorta Yorta,* continued to challenge native title groups, particularly in highly settled areas of Australia. In the first instance decision of Justice Wilcox in *Bennell v State of Western Australia*,[24] His Honour found that native title continued to exist and that the Noongar people formed a single Noongar community that had continued to exist since sovereignty. Justice Wilcox observed that "undoubtedly, there have been changes in the land rules. It would have been impossible for it to be otherwise, given the devastating effect on the Noongars of dispossession from their land and other social changes"[25] but, despite finding that Noongar people had been dispossessed, he also found that the Noongar people had retained their native title rights and interests in their traditional lands.

Wilcox J's decision was ultimately overturned by the Full Court[26] which determined that, the question of whether laws and customs had continued substantially uninterrupted since sovereignty was to "be answered by ascertaining whether, for each generation of the relevant society since sovereignty, those laws and customs constituted a normative system giving rise to rights and interests in land"[27] and whether this normative system was observed through generations. Determining that Justice Wilcox had not made sufficiently appropriate enquiries and had erred in his interpretation of the *Yorta Yorta* test, the Full Court referred the matter back to the Federal Court. The matter was subsequently progressed as part of the south west settlement with the State of Western Australia.

Descent rules

The question of how much adaptation to the traditional system of law and custom was permissible continued to be considered by the Courts.

Justice Weinberg considered the adaptation from patrilineal to cognatic descent in *Griffiths v Northern Territory of Australia*, determining that while the shift represented a change of emphasis in the laws and customs relating to membership, it did "not give rise to a new normative system"[28]: a decision upheld by the Full Court which held that His Honour had not erred in finding that the shift from patrilineal to cognatic descent was a permissible adaptation.[29]

Traditional hunting and gathering

In 1999, the High Court considered the issue of whether taking crocodile for personal use was an exercise of traditional law and custom in *Yanner v Eaton*[30] and whether rights were extinguished by state legislation. The High Court found that the taking of crocodile in this instance was an exercise of native title rights and confirmed that native title holders could exercise such rights on native title land. The Court found that in order to extinguish native title rights and interests the legislation had to have a clear and plain intention to do so. Further, the Court found

that such native title rights to hunt could be exercised by modern means of transportation and weapons which were seen as an evolution of traditional means.

In 2013, the issue of the exercise of traditional laws and customs and its intersection with state legislation was considered by the High Court in *Karpany v Dietman*.[31] In this South Australian matter, traditional owners took undersized abalone and were prosecuted under state *Fisheries Management* legislation for fishing without the relevant licence.

The matter began in the Magistrates Court, was appealed to the Full Court of the South Australian Supreme Court[32] and ultimately to the High Court which ruled that the state legislation did not extinguish the native title rights to hunt and fish, confirming the position in *Yanner v Eaton*.

One principle arising from this case was that where a law was intended to prohibit certain conduct for all people then that could extinguish native title rights and interests in that activity, but where the legislation merely regulated the activity there was no extinguishment.

Native title rights and interests

Another issue which was the subject of significant judicial consideration was which specific native title rights and interests could be recognised under the *Native Title Act*.

Watch: The Hon Justice Neil McKerracher, Federal Court of Australia

Bundle of rights

In the High Court decision in *Ward*, their Honours determined that native title rights and interests consisted of a 'bundle' and that each right could be subject to extinguishment, introducing the concept of partial extinguishment[33] and requiring consideration of each native title right independently.

Subsequent cases considered questions of proof of individual rights and interests and the nature of these rights and interests.

In *Mabo*, the High Court did not consider the matter of what rights, if any, might exist offshore. The matter came before the High Court in 2001 in *Yarmirr*,[34] where the Court considered the first native title claim to the sea. In the test case, which was first considered by Justice Olney,[35] appealed to the Full Bench of the Federal Court[36] and ultimately decided by the High Court, parties sought to determine whether claimants could hold exclusive native title rights to sea areas. Olney J, at first instance, found that while native title rights existed in relation to the sea and seabed in the claimed area, the rights were non-exclusive in nature. The practical result of this decision was that native title holders could not prevent others from fishing or participating in commercial activities in the area. The matter was appealed to the Full Federal Court which upheld Olney J's decision.

The High Court ultimately confirmed that native title rights and interests existed in the sea but that these rights were not exclusive, nor were these rights commercial in nature. The majority determined that exclusive native title rights were inconsistent with the public rights to navigate and fish.

Exclusive possession

The evidence required to prove exclusive possession native title was clarified by the Full Federal Court in *Griffiths*, where the judges found that, where claimants were acknowledged to be 'gatekeepers' and believed their law and custom afforded them this responsibility, they could prove exclusive possession, albeit that permission to enter native title land was not always sought. Further, the Court held that there was no requirement to prove that the group had successfully denied entry to others.[37]Their Honours said that "[i]f control of access to country flows from spiritual necessity because of the harm that "the country" will inflict upon unauthorised entry", this was sufficient to prove exclusive possession native title.[38] The decision meant that proof of the continued existence of the right to exclusive possession rested within the system of law and custom of the claimants and their obligations to protect the land and strangers who entered their land. Claimants were not required to provide evidence that they had successfully excluded others from their traditional territory. See also the decision in *Ward*.[39]

Commercial rights and interests

The question of whether native title rights and interests extended to commercial purposes has been the subject of much consideration since the *Native*

Title Act was enacted, with many believing that native title rights could only exist in relation to personal use, as was considered in *Yanner v Eaton*.

In 2013, the first litigated decision in relation to commercial rights and interests was handed down by the High Court in *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia* which found that a native title right to commercially exploit fish did exist in a determination relating to 13 Torres Strait Island communities. In this case, the Court found that the native title holders held "the right to take marine resources for trading or commercial purposes."[40] The evidence indicated that this right was part of the ongoing traditional system of law and custom of the group and part of the broader right to fish.[41] The primary judge found that evidence submitted proved that the "Islanders sold marine resources for money – the sea provided their "income" – and…for some of the Islanders, this was done regularly and systematically."[42] This was subsequently challenged in the Full Federal Court[43] and High Court, but the decision upheld.

20 June 2008 - Justice French congratulating traditional owners at the Birriliburu Native Title Determination

The following year, the Federal Court found, in two native title determinations in the Western Desert in Western Australia, *Willis on behalf of the Pilki People v State of Western Australia and BP (Deceased) on behalf of the Birriliburu People v State of Western Australia*, held that the native title holders had always held the right to access and take the resources within their territory for any purposes, including commercial purposes, provided the right was consistent with the group's traditional system of law and custom.[44] In both matters, the State of Western Australia disputed the claimed right to access resources and to take for any purposes resources of the area, arguing that these rights only extended to personal, domestic or non-commercial uses. Justice North found to the contrary and determined that such a right existed in both instances. The Pilki matter was appealed to the Full Court and, in December 2015, the Full Bench upheld the primary judge's decision.[45] *Birriliburu (Part B), Birriliburu #2 and Birriliburu #4* were determined together in June 2016 by consent and included the right to take resources for commercial purposes.[46]

Extinguishment

The matter of extinguishment of native title rights and interests has also been the subject of extensive judicial consideration. The High Court in *Ward* noted that "questions of extinguishment of native title cannot be answered without first identifying the rights and interests possessed under traditional laws and customs which it is said have been extinguished."[47]

Native title rights may be extinguished by the exercise of an inconsistent grant, legislation or acquisition by the Crown when the intent to extinguish is clear and plain. A number of matters have provided the case law on extinguishment issues, either partial or full.

The first significant consideration of the issue arose in relation to pastoral leases in 1994, when the National Native Title Tribunal received an application from the Waanyi People for a determination over native title over an area of land near Lawn Hill, which was the subject of the Century Zinc proposed mining operation. Century Zinc and CRA Exploration, the second respondent, provided documentation to the Registrar showing it had also been the subject of pastoral leases.

In applying the statutory test for registration of the claim, the President, Justice French, formed the view that the effect of the grant of a pastoral lease under the *Lands Act 1902* (Qld) was to extinguish native title and directed the Native Title Registrar not to accept the claim.

Watch: The Hon Justice Michael Barker, Federal Court of Australia

An appeal to the Full Court was dismissed, and the matter was appealed to the High Court in *North Ganalanja v Queensland*.[48] The High Court found in favour of the Waanyi people in February 1996, the same year that the *Wik* decision was handed down where the High Court determined that pastoral leases did not extinguish native title and that native title and pastoral lessees could co-exist.[49] In the *Wik* decision, the Court also determined that, if there was a conflict between the rights of the native title holder and the pastoralist, the rights of the pastoralist prevailed.

The decision caused considerable concern as parties had proceeded upon the belief that pastoral leases extinguished native title and pressure exerted on the government ultimately led to the 1998 amendments to the *Native Title Act.*

A single point of appeal was raised in the High Court in the *Fejo* case: whether the trial judge had erred in finding that a grant of freehold had extinguished all native title rights and interests in the land.[50] The land in question had been the subject of a freehold grant, acquired by the Commonwealth for public purposes and subsequently reverted to vacant Crown land. The decision considered whether a grant of freehold completely extinguished native title and whether that extinguishment was permanent or could be revived.

The majority determined that a freehold grant was inconsistent with native title holders continuing to hold any rights and interests. The Court also referred to native title as being a 'bundle of interests' and 'rights which together constitute native title', signalling the concept described in Ward of native title consisting of a 'bundle of rights'.

Further, the Court determined that a freehold grant did not have temporary effect on native title rights and interests, rather the effect was permanent.

On the same day in 2002, two important decisions on extinguishment were handed down by the High Court: these were *Wilson v Anderson* and *Ward*.

The issue of the effect of the grant of a pastoral lease on native title was considered in the New South Wales matter, *Wilson v Anderson*, which involved consideration of a specific form of pastoral lease in the Western Division of the state under the *Western Lands Act 1901* (NSW).[51] The specific type of pastoral lease issued, a perpetual grazing lease, was found by the High Court to have extinguished native title and gave pastoralists a right of exclusive possession as they were a lease in perpetuity. As a result of this decision, large areas of New South Wales were exempt from native title claims.

The High Court decision in *Ward* established a number of significant legal principles in relation to extinguishment.[52] Ward found that there could be partial extinguishment of native title, there were no native title rights in relation to minerals and petroleum in Western Australia, mining leases under certain Western Australian legislation extinguished native title rights of control and confirmed pastoral leases in Western Australia did not wholly extinguish native title.

Ward remained the leading case on extinguishment until recently when the High Court found, in *Brown*, that mineral leases did not confer exclusive possession rights on the lessee, thereby finding that native title could co-exist with mineral leases.[53] The Court also held that any extinguishing effect occurred at the time of the grant of title and not at the time the act, supported by the grant, occurred. This decision rejected previous case law on the issue.[54]

In 2008, the High Court considered whether governments could acquire native title rights and interests, thereby extinguishing them, when there were no other rights and interests other than the Crown. In *Griffiths*[55] the majority determined that s 24MD of the *Native Title Act* allowed for compulsory acquisition that had the effect of extinguishing native title under all circumstances and there was no requirement that there be non-native title interests in the area.

The complexity of the extinguishing effect on native title rights and interests of various forms of mining tenure was confirmed with the Full Federal Court decision in the 2016 *Ngadju* matter.[56] In this matter the Full Court confirmed that almost 300 mining leases granted under a State Agreement and initially found to be invalid in the Ngadju native title determination were, in fact, validly granted. The Ngadju people sought special leave to appeal from the High Court which was subsequently denied.

Native title compensation

The issue of native title compensation was first explored in *Jango*[57] in 2006, where the claimants sought a determination in respect to the township of Yulara in the Northern Territory. Justice Sackville determined that, before any consideration could be given to compensation, the continued existence of native title rights and interests under traditional laws and customs needed to be proven in accordance with s 223 of the *Native Title Act*.

From evidence provided by claimants and experts,

His Honour determined that there was no discernible system of law and custom and, as a result, the claim group had not established that native title rights and interests existed and the issue of compensation was not pursued. The matter, thus, provided no precedent for practitioners on determining the quantum of native title compensation.

The first determination of native title compensation was made in *De Rose v State of South Australia*[58] in 2013. The determination was made by consent between the State and the native title holders, with the terms of the settlement being confidential. This case, therefore, also provided no guidance to other parties as to what would form an appropriate formula applicable to other compensation claims.

In 2016, the Federal Court delivered a determination in relation to native title compensation over the town of Timber Creek in the Northern Territory.[59] The compensation was awarded to the native title holders in relation to the extinguishment and impairment of their native title rights by past government acts such as grants of land tenures and public works. This matter was the first to provide judicial guidance on how compensation might be calculated.

Township of Timber Creek, Northern Territory.
Source: Northern Land Council

In this matter, the Court awarded just over $3.3 million to the native title holders in relation to approximately 23 square kilometres of land. Compensation was awarded for economic loss ($512,000), interest on that economic loss ($1.488 million) and in recognition of the loss of diminution of connection or traditional attachment to land, or 'solatium' ($1.3 million).

The economic loss component was assessed by reference to the market value of freehold land in the area, with non-exclusive native title land valued at 80 per cent of the freehold value. Justice Mansfield reached this 'formula' through an 'intuitive decision'.

In his judgment, Justice Mansfield stated that determining the solatium payment was dependent upon the specifics of the case and, the final amount was reached through an evaluation of the pain and suffering and loss of amenities experienced by the native title holders.

Upon appeal to the Full Federal Court, the quantum for non-exclusive possession native title was subsequently revised to 65 per cent of the freehold value of the land.

Execution of agreements

Following the 2008 Full Federal Court decision in *Bodney v Bennell*, the State of Western Australia and the South West Aboriginal Land and Sea Council entered into negotiations to settle all native title claims in the south west of the state. This agreement consisted of six ILUAs which were lodged for registration on the Native Title Register in the NNTT in 2014. Proceedings were initiated in the High Court opposing the registration of four of those ILUAs. The applicants in those four matters sought a writ of prohibition to prevent the Native Title Registrar from registering the ILUAs. The High Court referred the matter to the Full Court of the Federal Court.

Objections made to the ILUAs were on the basis that not all the individuals who comprised the registered native title claimant had signed the ILUAs. The Full Court was asked to determine whether the agreements were valid ILUAs for the purposes of the *Native Title Act.*

On 2 February 2017, the Full Federal Court handed down its judgment in the matter[60] commonly known as *McGlade*. Primary to the consideration of the Court was the 2010 decision of Justice Reeves in *QGC v Bygrave*[61], where His Honour found that it was not necessary for all individual members of the applicant for the registered native title claim to be party to, or execute, the ILUA for it to be valid.

The Full Court in *McGlade* unanimously overturned Justice Reeves' decision in *QGC v Bygrave,* holding that the *Native Title Act* required that all named applicants must be party to an agreement for it to be registered as an ILUA.

In response, the Commonwealth amended the legislation to reverse the impact of *McGlade* for registered ILUAs and some ILUAs awaiting registration, and also to change the requirements for who must be parties to future ILUAs.

Footnotes

[1] Yorta Yorta Aboriginal Community v Victoria (1998) FCA 1606

[2] Yorta Yorta Aboriginal Community v Victoria [2001] 110 FCR 244

[3] Yorta Yorta Aboriginal Community v Victoria [2002] 214 CLR 422

[4] Yorta Yorta Aboriginal Community v Victoria (1998) FCA 1606 at [121]

[5] Yorta Yorta Aboriginal Community v Victoria (1998) FCA 1606 at [129]

[6] Members of the Yorta Yorta Aboriginal Community v State of Victoria (2001) FCA 45 at [64] – [89]

[7] The majority decision was written by Gleeson CJ, Gummow and Hayne JJ.

[8] Yorta Yorta Aboriginal Community v Victoria [2002] 214 CLR 422 at [43] (emphasis in original)

[9] Yorta Yorta Aboriginal Community v Victoria [2002] 214 CLR 422 at [47]

[10] Yorta Yorta Aboriginal Community v Victoria [2002] 214 CLR 422 at [47]

[11] Yorta Yorta Aboriginal Community v Victoria [2002] 214 CLR 422 at [49]

[12] Yorta Yorta Aboriginal Community v Victoria [2002] 214 CLR 422 at [50]

[13] Risk v Northern Territory of Australia (with Corrigendum dated 29 August 2006) (2006) FCA 404 at [812]

[14] Risk v Northern Territory of Australia (2007) FCAFC 46

[15] Risk v Northern Territory of Australia (2007) FCAFC 46 at [104]

[16] Western Australia v Ward [2000] FCA 191

[17] Western Australia v Ward [2000] FCA 191 at [243]

[18] Western Australia v Ward [2002] 213 HCA 28

[19] Western Australia v Ward [2002] 213 CLR 1 at [85]

[20] Daniel v Western Australia (2003) FCA 666

[21] Daniel v Western Australia (2003) FCA 666 at [422]

[22] De Rose v South Australia (2003) FCFCA 286 and De Rose v South Australia (No 2) [2005] 145 FCR 290, at [306–307]

[23] Sampi v Western Australia (2005) FCA 777 (10 June 2005) at [1079]

[24] Bennell v State of Western Australia [2006] 153 FCR 120

[25] Bennell v State of Western Australia (2006) FCA 1243. Judgment summary.

[26] Bodney v Bennell [2008] 167 FCR 84

[27] Bodney v Bennell [2008] 167 FCR 84 at [70]

[28] Griffiths v Northern Territory of Australia (2006) FCA 903 at [7]

[29] Griffiths v Northern Territory of Australia (2007) FCAFC 178 at [145]

[30] Yanner v Eaton (1999) HCA 53

[31] Karpany v Dietman [2013] HCA 47

[32] Dietman v Karpany & Anor [2012] SASCFC 53

[33] State of Western Australia v Ward (2002) HCA 28 at [76]

[34] Commonwealth v Yarmirr (2001) HCA 56

[35] Mary Yarmirr & Ors v The Northern Territory of Australia & Ors (1998) FCA 771

[36] Commonwealth of Australia v Yarmirr (1999) FCA 1668

[37] Griffiths v Northern Territory [2007] 165 FCR 391

[38] Griffiths v Northern Territory [2007] 165 FCR 391 at [127]

[39] Western Australia v Ward [2002] 213 CLR 1

[40] Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia (2013) HCA 33

[41] Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia (2013) HCA 33

[42] Akiba v State of Queensland (No. 2) [2010] FCA 643 (2 July 2010) at [528].

[43] The Commonwealth v Akiba [2012] 204 FCR 260

[44] Willis on behalf of the Pilki People v State of Western Australia (2014) FCA 714 and BP (Deceased) on behalf of the Birriliburu People v State of Western Australia (2014) FCA 715

[45] State of Western Australia v Willis on behalf of the Pilki People (2015) FCAFC 186

[46] BP (Deceased) on behalf of the Birriliburu People v State of Western Australia (2016) FCA 671

[47] Western Australia v Ward [2002] 213 CLR 1 at [94] – [95]

[48] North Ganalanja v Queensland (1996) 185 CLR 595

[49] The Wik Peoples v The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors (1996) HCA 40

[50] Jim Fejo & David Mills on behalf of the Larrakia People v The Northern Territory & Oilnet (NT) Pty Ltd (1998) HCA 58

[51] Wilson v Anderson (2002) HCA 29

[52] Western Australia v Ward [2002] 213 CLR 1

[53] Western Australia v Brown (2014) HCA 8

[54] De Rose v South Australia (No 2) (2005) FCAFC 137

[55] Griffiths v Minister for Lands, Planning and Environment (2008) HCA 20

[56] State of Western Australia v Graham on behalf of the Ngadju People (2016) FCAFC 47

[57] Jango v Northern Territory of Australia (2006) FCA 318

[58] De Rose v South Australia (2013) FCA 988

[59] Griffiths v Northern Territory of Australia (No 3) [2016] FCA 900

[60] McGlade v Native Title Registrar [2017] FCAFC 10

[61] QGC Pty Ltd v Bygrave (No 2) [2010] FCA 1019

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