

ADNYAMATHANHA NO 1 NATIVE TITLE CLAIM GROUP V SOUTH AUSTRALIA (NO 2)

Federal Court of Australia (Mansfield J)
30 March 2009
[2009] FCA 359

Native title – consent determination – South Australia

Facts:

This case involved the making of three determinations of native title by the Federal Court in response to applications for consent determinations under ss 87 and 87A of the *Native Title Act 1993* ('NTA') by the Adnyamathanha people. The first two claims were heard together as the Adnyamathanha No 1 native title determination. The third proposed claim, which related to the whole of the Adnyamathanha No 2 native title determination, encompassed the entirety of the Flinders Ranges National Park. During the determination process, a pastoralist whose lease appeared to be within the determination area repeatedly wrote to the Court and objected to the consent determination.

Held, giving effect to the consent determinations:

1. The requirements for making the proposed orders specify that a specific amount of time must elapse and that the proper documents must be filed as set out in ss 87 and 87A of the *NTA*. The Court is satisfied that these preconditions have been met: [11].

2. Because the orders sought by the parties involve a determination of native title, they must comply with s 94A of the *NTA*, which specifies that the proposed orders must contain the details mentioned in s 225. Section 225 requires, amongst other things, specification of the nature and extent of native title rights and interests in relation to the determination area. Native title rights and interests are defined in section 223(1): [17]–[19]

3. The material relied upon by the Adnyamathanha people adequately addresses the requirements of ss 223(1) and 225. This material includes the demonstration of uninterrupted observance of traditional laws and customs, the recognition by other Aboriginal people that the Adnyamathanha people control the enjoyment of rights and interests in the claim area, and that these rights and interests continue to be practised by the Adnyamathanha people: [26], [31]–[35]

4. The pastoralist who objected to the consent determination was clearly informed of the processes to become a party to the application by the Registrar of the Native Title Tribunal. The pastoralist failed to make an application under ss 84(3) and 84(5) of the *NTA* and O 78 r 8 of the *Federal Court Rules*. Despite adequate notification and knowledge of the proceedings, the pastoralist still did not make an application to become a party to the proceedings. As a result, the consent determination may proceed despite the objection, as it is entirely inconsistent with the orderly management of any proceeding that a person who has been aware of the process for some time should, by an informal side wind, be in a position to frustrate the outcome of that process: [12]–[15].