



Friday, 11 October 2024

Weekly Environmental Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Environmental Law

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Executive Summary (One Minute Read)

Nona on behalf of the Badulgal, Mualgal and Kaurareg Peoples (Warral & Ului) v State of Queensland (No 6) (FCA) - Court made a determination of native title under s87 of the *Native Title Act 1993* (Cth)



HABEAS CANEM

Before the puppy ears finally dropped

Summaries With Link (Five Minute Read)

Nona on behalf of the Badulgal, Mualgal and Kaurareg Peoples (Warral & Ului) v State of Queensland (No 6) [2024] FCA 1162

Federal Court of Australia

Mortimer CJ

Native title - Warral and Ului are two uninhabited islands in the Torres Strait, which jointly comprise 6.35 square kilometres of land above the high water mark - a native title claim was made in respect of those islands by the Badulgal People - the Kaurareg People also asserted native title - representatives of the Mualgal People were later joined as parties - the Court had previously found that the persons who hold the native title were the members of the Badulgal and Mualgal Peoples, such group membership being determined in accordance with their traditional laws and customs - the Court had found that the Badulgal and Mualgal Peoples held a single native title over the claim area in the same nature as had been recognised in previous judgments of the Court - the Court had found that the Badulgal and Mualgal native title rights and interests in the land of Warral and Ului were exclusive in nature - the parties then sought a determination of native title under s87 of the *Native Title Act 1993* (Cth) - held: an authorisation meeting of the common law native title holders had authorised the applicant to agree to the terms of the proposed s87 orders, and accepted the nomination of a corporation to hold native title on trust and to the registered native title body corporate for the determination area - the Court was satisfied on the evidence that discrepancy between the lists of apical ancestors proposed in the s87 determination and the existing list in the Court's previous determination did not result in the exclusion of any persons who should be included as common law holders in this determination - the notification period for the claim had ended - the parties had agreed in writing the proposed s87 orders - the Court was satisfied that the applicant, which included representatives of the Kaurareg People, had had a fair opportunity to consider seeking leave to appeal from the Court's earlier decision and had elected not to do so - it was appropriate to make the proposed s87 order - orders made as proposed.

[Nona on behalf of the Badulgal, Mualgal and Kaurareg Peoples \(Warral & Ului\)](#)

[From Benchmark Friday, 11 October 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Paki Nikora v Tamati Kruger (NZSC) - The Maori Land Court had jurisdiction to review the election of trustees to the Tuhoe - Te Uru Tamatua Trust inasmuch as the Trust, among other functions, held land as a post-settlement governance entity

Summaries With Link (Five Minute Read)

Paki Nikora v Tamati Kruger [2024] NZSC 130

Supreme Court of New Zealand

Winkelmann, CJ, Glazebrook, Williams, O'Regan, & Collins JJ

Paki Nikora contended that two of the trustees of the Tuhoe - Te Uru Taumatua Trust (TUT) had not been selected in accordance with the terms of the trust. Nikora commenced proceedings in the Maori Land Court and the Court ordered fresh elections. TUT refused to acknowledge the jurisdiction of the Land Court and declined to participate in the proceedings. The matter was appealed to the Maori Appellate Court that upheld the decision of the Land Court. However on subsequent review by the Court of Appeal, the decisions of the Maori Land Court and Appellate Court were overturned. The Court of Appeal found that, inasmuch as TUT had authority over a wide range of matters and was not constituted in respect of land and its primary purpose did not relate to land, the Maori Land Court lacked jurisdiction with respect to trust activities. On further review, the Supreme Court determined that the Court of Appeal was in error and concluded that the Maori Land Court had jurisdiction to hear the matter because, from its outset, TUT was established to hold parcels of land regardless of its holdings at the time of its inception. The Court also noted that the Maori Land Court by long experience was sensitive to the challenges of communal asset management and that Maori Land Court judges had special knowledge and expertise and had proceeded with due care to resolve the issues despite the lack of participation by one of the parties.

[Paki Nikora](#)



Poem for Friday

Risk

By Anaïs Nin (1903-1977)

And then the day came,
when the risk
to remain tight
in a bud
was more painful
than the risk
it took
to blossom.

Anaïs Nin, (Angela Anaïs Juana Antolina Rosa Edelmira Nin y Culmell), was born in 1903, outside Paris, of Cuban parents. Her father was the composer, Joaquin Nin. Nin was a French Cuban American who wrote essays, novels and short stories. *The Diary of Anaïs Nin* was written initially as a letter to her father, who had left the family some years before Anaïs Nin wrote, starting at the age of 11 in 1914. The diary of Anaïs Nin was published over 7 volumes, in expurgated and unexpurgated volumes. She was a close friend of Henry Miller. She died in Los Angeles, USA, of cancer.

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

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Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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