



ATTORNEY-GENERAL
THE HON. DARYL WILLIAMS AM QC MP

NEWS RELEASE

8 August 2002

80/02

HIGH COURT DECISIONS ON NATIVE TITLE

The Commonwealth Government welcomes the decisions of the High Court today in two important native title cases – *Miriuwung Gajerrong* (Ward) and *Wilson v Anderson* (the Western Division case).

The decisions provide long awaited clarification of important principles about native title claims across Australia.

The *Miriuwung Gajerrong* decision relates to an area in the north East Kimberley in Western Australia and the north west of the Northern Territory. *Wilson v Anderson* concerned the native title status of a pastoral lease in the Western Division of New South Wales.

Today's judgments go some way to delivering certainty to participants in the native title system. They affect all people with an interest in native title matters, including indigenous people, governments, local governments, miners and pastoralists.

It must be remembered that native title is still in its infancy, and we have come a long way in the 10 years since *Mabo*. The Government remains committed to ensuring the workability of the system.

The judgments are involved and complex and the Government will consider them in detail to determine their full implications.

Miriuwung Gajerrong

In the *Miriuwung Gajerrong* decision, a majority of the Court set aside the orders of the Full Federal Court and sent the case back to the Full Court to determine it in accordance with the principles set out in the judgment.

The High Court addressed a number of fundamental questions about the nature of native title and the ways in which it can be extinguished.

Consistent with the Commonwealth's submissions, the High Court ruled that there can be partial extinguishment of native title rights and interests.

The majority considered several kinds of dealing with land, including pastoral leases, mining leases and other dealings under WA and NT legislation. The Court said that some of these wholly extinguished native title rights and interests, while others did not.

According to the Court, pastoral leases in WA and the NT extinguished any *exclusive* native title rights and interests but did not necessarily extinguish other types of native title rights and interests.

To the extent that pastoral leases granted rights and interests that were not inconsistent with native title, the lease prevailed over, but did not extinguish, native title rights.

Similarly, the High Court found that the grant of a mining lease in WA did not necessarily extinguish native title.

The Court found that the evidence in this case established no native title rights to minerals or petroleum. Therefore the High Court did not have to decide whether, as a general rule, native title can exist in minerals and petroleum. But even if such a right did exist, the Court said it would have been extinguished by the *Mining Act 1904* (WA) and the *Petroleum Act 1936* (WA).

In order to establish native title, it is necessary to prove a connection with the land. On this issue, the High Court noted that the *Native Title Act* protects rights in relation to land or waters only. Therefore, where claims to protection of cultural knowledge go beyond denial or control of access to land or waters, they are not rights protected by the Act.

The Court ruled, amongst other things, that no native title existed within the area of the Argyle mining lease and any exclusive right to fish in tidal waters had been extinguished. The effect on native title of the creation of the Ord River Scheme is one of the issues sent back to the Full Federal Court. We look forward to a timely resolution of those remaining issues.

Wilson v Anderson

In *Wilson v Anderson*, the Court concluded that the lease in question gave the leaseholder exclusive possession over the land. Therefore the grant of the lease extinguished any native title in that land.

While the Commonwealth was not a party in this case, the Government provided funding for this issue to be resolved by the Courts.