

## Wik: Coexistence, pastoral leases, mining, native title and the ten point plan

### Overview

In *The Wik Peoples v The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors* [1996] HCA 40 ('Wik'), the High Court held that native title rights could coexist on land held by pastoral leaseholders. The High Court decided that:

- a pastoral lease does not necessarily confer rights of exclusive possession on the pastoralist
- the rights and obligations of the pastoralist depend on the terms of the lease and the law under which it was granted
- the mere grant of a pastoral lease does not necessarily extinguish any remaining native title rights
- if there is any inconsistency between the rights of the native title holders and the rights of the pastoralist, the rights of the native title holders must yield.

So if there is a conflict of rights, the native title holders come off second best. If there is no conflict, the rights of each co-exist.

(Source: Brennan, Frank: [The Wik Judgement: Parliament's Opportunity to Restore Certainty and to Rectify a Significant Moral Shortcoming in Australian Land Laws -The Case for Non-Extinguishment, Non-Discrimination and Negotiation](#). UNIYA Occasional Paper No. 97, March 1997)

This High Court decision prompted the Howard Government to implement amendments to the NTA. These amendments were known as the '10 Point Plan'. The Government's Native Title Amendment Bill 1997 was amended by the Senate twice, and finally passed in July 1998 following an agreement between the government and Senator Brian Harradine. Most of the provisions of the Native Title Amendment Act 1998 (Cth) came into force on 30 September 1998. The Native Title Amendment Act 1998 (Cth) changed significant aspects of the NTA. In introducing the legislation, the Howard Government stated that the amendments were needed to provide 'certainty' after the Wik decision. However, many groups argued that the amendments resulted in the reduction of only Indigenous peoples' rights.

### Cases

[The Wik Peoples v The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors \[1996\] HCA 40](#) (23 December 1996) - The High Court decision

[Wik Peoples v State of Queensland](#) [2000] FCA 1443 (3 October 2000) - Consent determination relating to 'Part A' lands.

[Wik Peoples v State of Queensland](#) (with Corrigendum dated 15 October 2004) [2004] FCA 1306 (13 October 2004) - Consent determination relating to 'Part B' lands.

## Legislation

[Native Title Act 1993 \(Cth\)](#)

[Native Title Amendment Act 1998 \(Cth\)](#)

## Media

[Scaremongering on Wik Bill Should Cease](#): Law Council of Australia, 28 November 1997

['Wik 10 point plan'](#): Prime Minister John Howard, 1 May 1997.

## Case note

Kalowski, R. & Gal, D. 1997 Case note: *The Wik People v The State of Queensland and Others: The Thayorre People v The State of Queensland and Others* (1997) 71 ALJR 173 *Southern Cross University Law Review* Vol 1 September 1997: 245

## Background

The Wik decision arose out of two native title claims in Queensland, by the Wik peoples and the Thayorre people. The claims were over large areas which included a number of pastoral leases, and two special mining leases granted under ratified State Government agreements. The claimants asserted that their native title rights had survived the grant of the pastoral leases, and that the mining leases were invalid. The respondents to the claim asserted that, applying the principles stated by the High Court in *Mabo*, any native title which might have existed was necessarily extinguished by the grant of the pastoral leases. Justice Drummond in the Federal Court found against the claimants on both issues. The claimants' appeal to the Full Court of the Federal Court was removed to the High Court. The High Court found for the claimants on the pastoral lease issue (by a majority of four judges to three), and found against them unanimously in relation to the special mining leases.

(Source: Hattem van Peter: [Native Title after Wik: Where to Now?](#) *Murdoch University Electronic Journal of Law*, Vol 4, No 1 March 1997)

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Guest, K. & Clarke, J. 1999 '[Submission by Australians for Native Title and Reconciliation \(ANTaR\) to the Committee on the Elimination of Racial Discrimination pursuant to their request for information concerning the compatibility of the 1998 native title amendments with Australia's obligations under the Convention on the Elimination of All Forms of Racial Discrimination](#)'. March 1999.

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### **Useful websites**

[Agreements, Treaties & Negotiated Settlements Database: Wik Peoples v State of Queensland \[2000\] FCA 1443 \(3 October 2000\)](#)

[Australians for Native Title and Reconciliation: The Ten Point Plan and the 1998 Native Title Act Amendments](#)

Australian Politics (www.australianpolitics.com) [Sydney Morning Herald Newspaper Archive - Wik Articles](#) (A registration fee is charged to read the articles but headlines and dates are available.)

Forum of the University of New South Wales Law Journal, '[Wik: The aftermath and implications](#)', Vol. 3, No. 2, 1997:

- Tony Abrahams, [Foreword](#)
- Richard Bartlett, [Is Equality Too Hard For Australia?](#)
- Simeon Beckett, [The Impact of Wik on Pastoralists and Miners](#)
- Daniel Gal, [An Overview of the Wik Decision](#)
- Bryan Keon-Cohen, [Wik: Confusing Myth and Reality](#)
- Mark Love, [Implications of Wik for Company Directors](#)
- Garth Nettheim, [Wik: On Invasions, Legal Fictions, Myths and Rational Responses](#)

- Doug Young, [Wik: Implications for Statutory Lessees](#)
- [Appendix A: The Prime Minister's Ten Point Plan](#)
- [Appendix B: Definition of "Primary Production"](#)