

Jones v. The State of Queensland (unreported, Supreme Court of Queensland, Dowsett J., 23rd March 1994); Re. Waanyi People's Native Title Application (1994) 129 ALR 100; Re: Waanyi People's Native Title Application (1995) 129 ALR 118 (and on appeal to the Federal Court of Australia, North Gananja Aboriginal Corporation v. State of Queensland (1995) 132 565); Selpam (unreported, NNTT, 18th January 1995); Western Australian & Ors v. Minister for Aboriginal and Torres Strait Islander Affairs (1994) 54 FCR 144; Western Australia v. Tickner (1994) 49 FCR 507; and later (1995) 37 ALD 633; Western Australia v. The Commonwealth (1995) 128 ALR 1; 69 ALJR 309; Northern Territory v. Lane & Ors (unreported, Federal Court, O'Loughlin J. 24th August 1995); Miriuwong Gajerrong Peoples v. Western Australia & Northern Territory (unreported, Federal Court, Lee J., 21st December 1995); Yuin Council of Elders Aboriginal Corporation v. The State of New South Wales (unreported, Federal Court, Lockhart J, 23rd October 1995); Members of the Yorta Yorta Aboriginal Community & Ors v. The State of Victoria, The State of New South Wales & Ors (unreported, Federal Court, Olney J., 13th October 1995); Warren & Ors v. The State of South Australia (Federal Court Matter No.SG6001 of 1995).

22 The Director of National Parks and Wildlife has appeared in Uluru (supra) (re: Ayers Rock), and in Alligator Rivers Stage II (supra) (re: Kakadu).

23 Katherine Town Council in Jawoyn (supra); Tennant Creek Town Council in Warumungu (supra); and Cook Shire Council in Cape Melville (supra), Simpson Desert (supra) and Birthday Mountain (supra).

24 Parties have included pastoralists, miners and people with various other commercial interests such as commercial fishing and tourism. Recreational interests subject of evidence and submissions have included hobby farms, horse riding, motor cycle riding, pistol shooting and speedway racing. Associations representing various of the above interests have also participated.

25 Similarly, the Aboriginal Land Act (Qld) s.8.17 provides for parties. c.f. the Aboriginal Land Rights (NT) Act.

26 See definition of interested person in s.1.03

27 Simpson Desert National Park, GOPRINT, 1994 at pp.175-6; Lakefield National Park (unreported, reasons for decision 16 August 1993); Cliff Island National Park (unreported, reasons for decision 20th August 1993).

28 Cape Melville National Park, GOPRINT, 1994, pp.33 and 220-1; Simpson Desert National Park, GOPRINT, 1994, pp.22 and 178-9; Lakefield National Park (unreported, 13th August 1993).

29 Lakefield National Park, (unreported, 16th August 1993); Ten Islands National Park (unreported, 16th May 1994).

30 Lakefield National Park (various associations subject of unreported decisions of 13th August 1993).

31 Ten Islands National Park (unreported, 16th March 1994).

32 Lakefield National Park (various unreported decisions dated 16th August 1993 and 18th August 1993); Cliff Islands National Park (unreported, 20th August 1993).

33 Cape Melville National Park re: Russell, GOPRINT, 1994 at pp.32-3 and 179-180 and unreported decision dated 24th August 1992; Lakefield National Park re: McNiven (unreported decision dated 16th August 1993).

34 Russell v. G.J. Neate, Chairperson, Lands Tribunal (Land Appeal Court of Queensland, unreported, 8 February 1993); McNiven v. Lands Tribunal (Land Appeal Court of Queensland, unreported, 12th November 1993).

35 See decisions of Olney J. in Members of the Yorta Yorta Community & Ors v. The State of Victoria & Ors (unreported, reasons for judgment delivered 13th October 1995).

36 See Delgamuukw (supra) at 492, 494, 496-7, 565, 572-3, 579.

37 See for example, observation by Toohey J. in Mabo at 190. Note also that native title interests are not confined to ownership of land as we know it, see Mabo per Deane & Gaudron JJ. at 85, Toohey J. at 187 and Brennan J. at 70. Section 223(2) NTA contemplates that a person or group may hold a native title right to hunt, gather or fish, without being the traditional owner of the land where the activity may be carried out. Section 11(1) Aboriginal Land Rights (Northern Territory) Act provides for land to be granted for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the land whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission. See discussion in Pareroutja v. Tickner (1993) 42 FCR 32.

38 For example s.404 Lands Act 1994 (Qld) and similar waste lands legislation elsewhere creates an offence of trespass where a person occupies etc. certain Crown Land unlawfully. If the relevant legislation did not extinguish native title and if that person was the holder of a native title interest that allowed him to occupy that land then he would probably not be doing so unlawfully. See too Mason -v- Tritton (1993) 70 A Crim R 28 (Young J.); (1994) 34 NSWLR 572 (C/A); Sutton v. Derschaw (unreported, Supreme Court of Western Australia, Heenan J., 15th August 1995) and generally s.211 NTA.

39 For example, absent rights of entry pursuant to a reservation in a pastoral lease or provided for by statute (e.g. s.47 Pastoral Land Management and Conservation Act 1989 (S.A.)), the claimants could be liable for trespass to land.

40 For example a number of claims have been made in Western Australia, and accepted by the NNTT, in respect of those rights preserved on account of reservations in pastoral leases.

41 c.f. R -v- Toohey; ex parte Meneling Station Pty Ltd (1982) 158 CLR 327.

42 c.f. Aboriginal Land Commissioner (Toohey J.) Limmen Bight Land Claim Report AGPS, 1981; Yorta Yorta Native Title Claim (supra).

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Expressions of interest should be directed to Mrs Marian Trobbiani at the office of the Ombudsman of the Northern Territory.

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