

Aboriginal Land Rights over the inter-tidal zone

August, 08

Recent High Court Decision on Blue Mud Bay- Does It Have Implications Outside the Northern Territory?

This Finlaysons Alert is produced to correct any misleading impressions that may have been created by media reports of the recent High Court decision on Aboriginal Land Rights.

On 30 July 2008 the High Court handed down its decision regarding the Blue Mud Bay region of Arnhem Land in the Northern Territory.

The central issue arising in this appeal from the Federal Court was whether a grant in fee simple, made under the Northern Territory Aboriginal Land Rights Act, conferred rights to exclude from tidal waters within the boundaries of the grant, persons who wished to fish in those waters, including persons holding a licence under the Northern Territory Fisheries Act.

The case originated when Aboriginal traditional owners of parts of Blue Mud Bay in northeast Arnhem Land wished to claim rights to exclude fishermen and others from waters in that area.

The High Court held, but not unanimously, that the traditional owners had those rights.

However the decision is likely only to apply to coastal land granted to Aboriginal traditional owners under the Northern Territory Land Rights legislation. There is no comparable land in South Australia, for example.

It is not a Native Title decision.

The law is clear and settled on that point. There are no exclusive Native Title rights anywhere in Australia below the high water mark. If a Determination of Native Title does find Native Title to exist over the inter-tidal zone and the sea, they will be non-exclusive rights which must be shared with whoever else holds rights to fish or pass through those waters.

For any Local Government body or resources industry operator with interests along the shoreline anywhere in South Australia, and probably the rest of Australia outside the Northern Territory, the implications are that nothing has

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changed as far as their interests are concerned following this High Court decision.

Northern Territory of Australia v Arnhem Land Aboriginal Land Trust
[2008] HCA 29 (unreported, Full High Court, 30 July 2008)

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