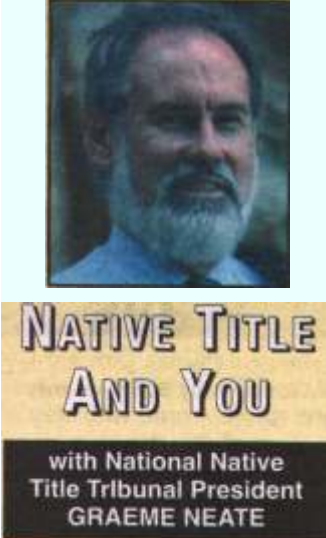




Differences highlighted



THERE has been a lot of talk about the recent High Court decision in the Blue Mud Bay case, in the Northern Territory. A majority of the High Court justices (5-2) decided on 30 July that traditional Aboriginal owners have the right to exclude fishermen and others from tidal waters within Blue Mud Bay in north-eastern Arnhem Land. People have been wondering what impact this could have for native title claims around the country. The short answer is it will have no direct affect on native title claims. Why is this the case? Although the Blue Mud Bay claim involved native title, the issue the High Court had to decide involved only the operation of the Aboriginal Land Rights (Northern Territory) Act 1976. Under that Act, Aboriginal freehold title to coastal lands extends to the low-water mark. The High Court decision applied only to coastal land granted to Aboriginal traditional owners under the Land Rights Act. The court partially accepted the Northern Territory Government's appeal that the Territory's Fisheries Act applied to all waters.

This enables the Territory Government to manage and regulate fishing in coastal regions. Existing permit arrangements that enable entry to waters on Aboriginal lands will remain in place for at least 12 months from 30 July while permanent arrangements between all relevant stakeholders are finalised. Because the High Court judgment dealt only with the Land Rights Act, it didn't deal with the rights that native title holders have to areas of the coast. In a previous native title case, the 2001 Croker Island decision, the High Court accepted that native title rights could exist in all areas of the sea and sea bed claimed, including small areas of the territorial sea. This decision recognised non-exclusive native title rights seaward to the 12 nautical mile limit. It was limited to non-commercial activities such as fishing and hunting for subsistence or cultural purposes, access to areas of sea, protecting places of cultural and spiritual importance and safeguarding cultural and spiritual knowledge. The decision allowed for the co-existence of native title and other rights in the sea, similar to the way co-existence of rights to

land was recognised by the High Court in the 1996 Wik case. The Australian Government has, in effect, supported this decision when, ahead of the recent meeting in Perth of Australia's native title ministers, the Government said it would take a 'more flexible approach to recognising native title in Australia's territorial waters'. Attorney-General Robert McClelland said the Commonwealth would recognise that non-exclusive native title rights could exist in territorial waters up to 12 nautical miles from the shoreline. This approach should help parties co-operate to resolve coastal native title claims. These two important decisions of the High Court illustrate some of the differences between land rights laws and native title. It is important to bear these differences in mind when working out the implications of any particular judgment. An explanation of the key differences between land rights and native title can be found on the Tribunal's website. Visit Hyperlink 'www.nntt.gov.au' www.nntt.gov.au and go to the News and Publications section.



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