



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: QUD6109/1998
NNTT number: QC1998/043

Application Name: Janette Owens & Ors on behalf of the Tagalaka People v State of Queensland & Ors (Tagalaka People)

Application Type: Claimant

Application filed with: National Native Title Tribunal

Date application filed: 29/09/1998

Current status: Full Approved Determination - 05/03/2013

Registration information: Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.

Date claim entered on Register of Native Title Claims: 29/09/1998

Registration decision status: Accepted for registration

Registration history: Registered from 29/09/1998 to 15/03/2013,

Date claim / part of claim determined: 10/12/2012

Applicants: Billy Fortune, Johnny Miles, Joseph Callope, Alma Douglas, Beverly Bowyang, Gladys Callope, Janet Busch, Janette Owens, Clara Booth

Address(es) for Service: Principal Legal Officer
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Additional Information

Not applicable

Persons claiming to hold native title:

Identity of the native title Claim Group

The native title claim group is known to itself and all neighbouring Aboriginal groups as the Tagalaka. The group is continuous both in terms of descent and in terms of continuous transmission of the Tagalaka identity from the group of the same name recorded in and around the claim areas late last century, and in various written sources since.

Membership of the Group

The current membership of the group is primarily identified by the principle of cognatic descent (descent traced through either one's father or one's mother). Descent is traced from a limited set of persons recognised in the regional Aboriginal community as associated with the Tagalaka identity, including the claim areas, soon after European occupation. By these descent principles, the current membership of the Tagalaka consists of those persons who are descendants of the following Tagalaka antecedents.

- a) Nelly Robertson (nee Grogan)
- b) Edith Echo
- c) Edith Sargent
- d) Charlie Hayes (aka Short Charlie)
- e) Herbie East
- f) Topsy Cane (aka Topsy Owens)
- g) Jack Fortune
- h) Left hand Charlie

Adoption

The membership of some of these descent groups includes adopted persons. Adoption is in accordance with Tagalaka traditional laws and customs.

In the first place, the actual incidence of it among the claimants is very low. That is, it is not an open ended or casual affair, and concerns very few of the claimants. Secondly, adoption arises by similar means and has much the same meaning and status as it does in the general Australian community. If an objective test for adoption is required, it can be tested for the following features based upon practice under the laws and customs of the claimants and wider North Queensland region:

1. Has the person been taken at the time of being a child into one of the Tagalaka descent groups by an adult, who raised the child as one of their own? This is commonly referred to by the claimants as "growing up" that person. The child is often a step child of the adopting adult, and often the child's biological parentage is within the claimant group in any case, but not necessarily so.
2. During the time the child was growing up, did he/she come to identify as a member of that family, and were they commonly identified as such by the other members?
3. Were they given the same rights within the family as other members? If so, this would be expected to flow on to rights in land as well, since kin relations and relations in connection to country share a common structure to a great degree. For example, when one refers to "my mother[s] land" the relationship to that land is seen as of a similar order to, and derived from, one's relationship to one's mother.
4. As the child matured, did they become recognised as a member of the adopting adult's descent group and as Tagalaka by a significant number of the other descent groups (especially those most closely related to the family involved), and eventually by a majority of the senior people of the wider Tagalaka community?
5. Has the adopted person closely associated with the claimant community throughout their life, and held an active association with, knowledge of, etc. the traditional country of the claimant community, comparable to that of the rest of the claimant community, and prior to the native title application?

In addition "adoption" as used here is not what is meant in cases where a child has been "grown up" by her/his grandparents or other close biological kin.,

Importantly, cases of adoption do not alter the fact that descent is the primary basis of the claimant group's constitution and that of its component descent groups, nor complicate significantly the identification of either the descent group into which a child is adopted, nor the larger Tagalaka identity.

Native title rights and interests claimed:

Details of native title rights and interests.

1. The native title rights and interests do not confer possession, occupation, use and enjoyment of the determination area on the native title holders to the exclusion of all others because the native title rights and interests held by them or their predecessors:

(a) are and have been subject to:-

(i) the valid laws of the State of Queensland and the Commonwealth of Australia (past and present);

(ii) the rights past and present conferred upon persons pursuant to the laws of the Commonwealth and the State of Queensland.

(iii) any valid rights and interest conferred upon non-native title holders, or subject of an agreement made under the Native Title Act 1993 (Cth) (the Act) or by the principles of Aboriginal law and custom.

(b) have been diminished or modified over time such that they are not exclusive as against all others. To avoid doubt, to the extent that the native title rights and interests were ever exclusive, the character of exclusivity has been extinguished.

2. The right to have access to, and use of natural resources of the claim area including the right to:

(i) maintain and use the claimed area;

(ii) conserve the natural resources of the claimed area;

(iii) safeguard the claimed area and the natural resources of the claimed area for the benefit of the native title holders;

(iv) manage the claimed area for the benefit of the native title holders;

(v) use the claimed area and the natural resources of the claimed area for social, cultural, economic, religious, spiritual, customary and traditional purposes;

and more particularly to:-

A. reside on, camp on, and travel across the land and, subject to regional customary-lawful expectations and protocol, permit non-native title holders to do so;

B. exercise rights of use and disposal over the natural resources, including the right to confer use of those natural resources upon non-native title holders;

C. exercise and carry out economic life on the claimed area including the creation, growing, production, husbanding, harvesting and exchanging of natural resources and that which is produced by the exercise of the native title rights and interests;

D. discharge cultural, spiritual, traditional and customary rights, duties, obligations and responsibilities on, in relation to, and concerning the claimed area and its welfare including to:-

preserve sites of significance to the native title holders and other Aboriginal people on the claimed area;

conduct secular ritual and cultural activities on the claimed area.

conduct burials on the claimed area;

determine, give effect to, pass on, and expand the knowledge and appreciation of the culture and tradition;

regard the claimed area as part of the inalienable affiliation of the native title holder to the claimed area;

maintain the cosmological relationship beliefs, practices and institutions through ceremony and proper and appropriate custodianship of the claimed area and special and sacred sites, to ensure the continued vitality of culture, and the well being of the native title holders;

inherit or dispose of native rights and interests in relation to the claimed area in accordance with custom and tradition;

determine who are the native title holders and determine amongst them the connections of particular individuals and sub-groups to specific portions of the claimed area (such determinations being made by reference to multiple criteria e.g. descent, birth/conception sites, succession practices and indigenous subdivisions of the land); and

resolve disputes between the native holders and other Aboriginal persons in relation to the claimed area;

E. construct and maintain structures for the purpose of exercising the native title.

3. Any other native rights and interests are derived from those native title rights and interests listed in clause 2 above.

Application Area:

State/Territory: Queensland

Brief Location: Croydon region, Far North Queensland

Primary RATSIB Area: Northern Queensland Region

Approximate size: 39.9685 sq km

(Note: There may be areas within the external boundary of the application that are not claimed.)

Does Area Include Sea: No

Area covered by the claim (as detailed in the application):

A. The area covered by the application excludes any land or waters covered by:

- a) a scheduled interest
- b) a valid non-Aboriginal freehold estate
- c) a commercial lease that is neither an agricultural lease nor a pastoral lease
- d) an exclusive agricultural lease or an exclusive pastoral lease
- e) a residential lease
- f) a community purpose lease
- g) a lease dissected from a mining lease and referred to in S.23B(2)(vii)
- h) any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters
- i) a public road

which was validly granted or vested on or before 23 December 1996.

C. Subject to paragraph (E), the area covered by the application excludes any land or waters covered by the valid construction or establishment of any public work, where the construction or establishment of the public work commenced on or before 23 December 1996.

D. The area covered by the application excludes land or waters where the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2)) pursuant to s.190B(9)(c).

E. Where the act specified in paragraphs B & C falls within the provisions of:

- 1) s.23B(9) - Exclusion of acts benefiting Aboriginal peoples or Torres Strait Islanders;
- 2) s.23B(9A) - Establishment of a national or state park;
- 3) s.23B(9B) - Acts where legislation provides for non-extinguishment

4) s.23B(9C) - Exclusion of Crown to Crown grants; and

5) s.23B(10) - Exclusion by regulation

the area covered by the act is not excluded from the application.

- Attachments:**
1. Attachment B - Identification of Boundaries, 3 pages - A4, 13/06/2012
 2. Attachment C - Map of Claim Area, 7 pages - A4, 13/06/2012

NNTT Contact Details

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