

Determination of native title – Strathgordon Mob

Malachi v Queensland [2007] FCA 1084

Greenwood J, 26 July 2007

Issue

The issue was whether the Federal Court should make a determination by consent recognising the existence of native title in respect of 118,000 hectares bounded in part by sections of the Edward and Coleman Rivers of Cape York Peninsula on the western side of Cape York, described generally as Strathgordon.

Background

A claimant application seeking a determination of native title over the Denman Pastoral Lease was lodged in 1997 under the *Native Title Act* 1993 (Cwlth) (NTA). This application was withdrawn and a further claimant application filed on 29 May 2003. This is the claim dealt with here – at [1] and [11].

Native title claim group

The court noted that the native title holders are a group within a broader regional society whose relationships extend from the Kendall River in the north to the Mitchell River in the south. They are affiliated to the determination area by laws and customs that are shared by other Aboriginal people in the region, the majority of whom now reside in the communities of Aurukun, Pormpuraaw and Kowanyama.

The claimants are the descendents of the Bakanh, Wik Iyeny and Olkol/Olkola language groups. The ethnographic evidence showed that in the claim area parcels of land were and are held by descendents (lineages) based on patrilineation (and occasionally by adoption) properly described as clans. Six clan parcels or estates were identified but inter-marriage had created a network of linked families. Accordingly, the claimants sought recognition of native title in area on behalf of the interlinked ‘Strathgordon Mob’ – at [4] to [7].

Court’s power to make a determination

After reviewing the historical and anthropological evidence, Justice Greenwood was satisfied that the claimants had established all of the elements required by s. 225 of the Act – at [38].

The rights and interests were characterised as ‘core and contingent interests’ as parts of an integrated and complimentary system of land tenure for distributing rights (entitlements) and responsibilities in connection with the land across an Aboriginal population occupying a particular area or region – at [27].

Greenwood J was satisfied that the agreed determination of native title was within power and that it was appropriate to make it by consent of the parties. The court noted that, despite s. 87A, inserted when the *Native Title Amendment Act 2007* (Cwlth) commenced on 14 April 2007, the agreement proposed a determination of native title for the entirety of the claim area and so the appropriate source of the court's power was s. 87 of the NTA—at [19].

The native title holders

The native title is held by the Strathgordon Mob, being:

- the descendants of certain named ancestors; and
- those persons adopted by those descendants in accordance with the traditional laws acknowledged and traditional customs observed by those descendants.

Determination of native title

Native title is recognised in the determination area. In relation to:

- land, it consists of the right of possession, occupation, use and enjoyment to the exclusion of all others; and
- water, it consists of the non-exclusive rights to hunt and fish in or on, and gather from, water for the purpose of satisfying personal, domestic and non-commercial communal needs and the non-exclusive right to take and use water for the purpose of satisfying personal, domestic or non-commercial communal needs.

Prohibitions and restrictions

No native title exists in 'minerals' as defined in the *Mineral Resources Act 1989* (Qld) and 'petroleum' as defined in the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

The native title is subject to, and exercisable in accordance with, the laws of the State of Queensland and Commonwealth and the traditional laws acknowledged and traditional customs observed by the native title holders.

Application of s. 47A(1)(b)(ii)

The Denman Pastoral Lease was purchased by the Indigenous Land Corporation on behalf of the traditional owners in October 2000. The lease, limiting the use of the land to pastoral purposes, was transferred to the *Poonko Strathgordon Aboriginal Corporation*. The parties agreed that s. 47A applied to the area subject to the lease.

Prescribed body corporate

The native title is not to be held in trust and the Thaa-Nguigaar Strathgordon Aboriginal Corporation (Aboriginal Corporation) is to:

- be the prescribed body corporate for the purposes of s 57(2) of the NTA; and
- perform the functions mentioned in s 57(3) of the NTA after becoming a registered prescribed body corporate.