

Indegenous people native tile

People



Native title is a concept in the Australian law. It is a type of continuous ownership of land by local indigenous Australian. However native title can be combined with non-indigenous proprietary rights. Common law and aboriginal law develop this concept In case of any discrepancy between Australian law and customary aboriginal law, the non-indigenous rights will generally prevail. Native title is a land title and it was recognized in Australia during 1992 by the High Court in the Mabo decision. The native title linked with groups of people whom traditional connections between the lands, waters among the aboriginal people.

The native title rights recognized under Australian law. The native titleholders protected to get compensation if governments acquire their land or waters for future developments. The native title is different from land rights. Native title is available to Aboriginal groups with traditional ties to land. Hence people who have always lived in the same area can claim native title. The native title is recognized by Commonwealth legislation. On 1st September 1995, the Bardi and jawi people of Dumpier Peninsula and islands of Buccaneer Archipelago filed an application for a native title determination.

After registration and public notification more than 155 persons were joined as parties to the application. At last the claim was made on behalf of the Bardi and Jawi people. The applicants i. e. Bardi-Jawi people sought a native title determination in regard to land, waters, water courses, reefs, seas and seabed in the Northern Dampier and Kind Sound Regions of Western Kimberley-Lombadina and One Arm Point, Western Australia. The claim of native title rights and interest which includes rights to the possession, occupation, use and enjoyment of the areas.

Besides its protection of cultural knowledge also claimed. The main opponent Western Australian Fishing Industry Council and Telstra were opposed the application. Federal Court Judge Robert French had given a judgment in favor of a native title application by the Bardi and Jawi people. Their claim is at about 1,037-sq. km area of land at the northern end of Dampier Peninsula. This land surrounded by areas of sea to a three nautical mile boundary comprising Aboriginal reserves and unallocated crown land with many of the 900-strong community living on or near the area.

The judge also ruled that the Bardi and Jawi people had exclusive rights to the whole of the mainland they had claimed, as well as right to hunt turtle and dugong in waters in the area and to take pearl shell for cultural purposes, which includes the following rights based on the Sec. 225 Native Title Act indicates the rights and interests. The rights include use and enjoyment rights and these are not limited to the following rights:

1. The right to live on the land
2. The rights to access move about on and use the land and waters
3. The right to hunt and gather on the land and waters
4. The right to engage in spiritual and cultural activities on the land and waters
5. The right to access, use and take any of the resources of the land (including ochre) for food, shelter, medicine, fishing and trapping fish, weapons for hunting, cultural, religious, spiritual, ceremonial, artistic and communal purposes
6. Right to refuse, regulate and control the use and enjoyment by others of the land its resources,
7. The right to have access to and use the water of land for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal purposes.

In relation to the offshore waters, the rights were limited to non-exclusive rights of access and use of the areas resources. These rights are exercisable in accordance with the traditional laws and customs of the native titleholders and the laws of the State and Commonwealth. However these are subject to the certain other rights and interest such as 1. Use and Benefit of Aborigines 2. Fishing and aquaculture licenses 3. The interest of Telstra Corporation Limited 4. Public right to fish and navigate in tidal waters 5.

International right of innocent passage The exclusive native title rights cannot be granted in relation to any flowing or underground waters and the taking of resources cannot be done for commercial purposes. Not only the bardi - jawi people or any other persons can be used. LEGAL The Native Title Act, 1993§, which was in force from 1st January 1994. In order to provide native title rights, the Act was established. The Australia's legal and parliamentary systems required providing such native rights to the persons in order to enable economic activity.

It was forced by the decision of High court in the case of Mabo Vs. State Queensland. The determination of native title in a particular area, land or water depends upon the group of persons and their interests. The offshore place means the water within the limits of the State only. BLUE REEF With regard to the Brue Reef, the evidence established its importance in the mythology or cosmology of the applicants, it did not establish that the law devolved rights in relations to land or waters as a result.

This leaves the claimant group unable to protect an important spiritual site. Here the judge has placed undue weight on activity-based use-rights of members of the group and thereby discounting the importance of indigenous

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forms connection to land. Instead more importance to be given the indigenous rights. In the case of Sampi Vs State of Western Australia. The part of Brue Reef, which lies within 12 nautical mile limit. There was no basis disclosed on the evidence of native title rights in Brue Reef and hence the Bardi/Jawi claim was dismissed.

The rights and interest claimed that includes access and use and enjoyment of the reef, and it cannot be as an exclusive right. The Blue Reef also comes under non-exclusive right. § NON-EXCLUSIVE RIGHTS Non-exclusive rights also proposed to be recognized over the inter tidal zones and associated reefs and areas of water. With regard to the Blue Reef area though it may be evidently noticed the use as traditional and occasional visit and it may be religious significance, the exclusive right to use the persons only cannot be issued. However they can go as usual beside all other like people will go.

Mere visiting to the places does not confer any privilege to get the exclusive right only particular people should go which attraction of non-violence of international treaties. It was linked with the claim, which was made by the Bardi-Jawi people previously. The rejection of claim will not be amounted to the exploitation of the Bardi-Jawi people. Hence the claim of Bardi-Jawi people with regard to the Blue Reef cannot be entertained which was linked with more than 12 nautical miles of the water. The non-exclusive possession native title rights exist to the Bardi Jawi people.

With this they have the right to access, hunt dugong and turtle, and take resources for food, religious, spiritual, cultural, ceremonial and communal purposes. It includes used pearl shell for ceremonial purposes in accordance with the traditional laws and customs. EXCUSIVE RIGHTS The rights over land
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include the right to live on the land, right to access, move about and use the land, the right to hunt and gather, the right to engage in spiritual and cultural activities, the right to use resources including food and ochre and the right to refuse, regulate and control the use of the land by the others.

The rights over areas of water include the right to use and enjoy the reefs and associated water, the right to hunt and gather, including for dugong and turtle and the right to use the resources for food, trapping fish, religious, cultural and ceremonial purposes. Their basic claim was registered in the case lies only with three nautical mile limit back to the commencement point. The claim of Bardi Jawi people first lodged in 1995. Before the claim went to trial and later amended the area from 12 nautical miles offshore to three nautical miles.

Hence the claim again cannot be entertained, which was already decided with the three nautical miles of the water. ADVISE TO THE COUNSEL Based on the above, it is identified the following suggestions for which counsel may not entertain the Bardi-Jawi arguments. 1. The claim of Bardi-Jawi people for extension of 12 nautical lines cannot be entertained since they have claimed earlier for three nautical miles only. Once the decision was made cannot be reopened in the same issue. If it is accepted again they will raise for another. 2.

With regard to the Blue Reef, which extends beyond sixteen nautical miles from the coast cannot be entertained. Traditional custom is not exclusive right for which every other person can also go. Though it is evidenced by several years that Bardi-Jawi people are using and going for religious significance, exclusive right rights cannot be permitted. 3. The native title <https://assignbuster.com/indegenous-people-native-tile/>

right cannot be recognized on the sea beyond 12 nautical miles, which attract the violation international treaties. The distinction between the existence of native title under traditional law and custom and its recognition by the common law was made in *Fejo Vs.*

Northern Territory, 1998. μ 4. Those rights and interests will be continued in spite of non- recognition by the common law may be taken into account in the definition of the connection with land and waters, which indigenou people may have by virtue of their traditional laws and customs. 5. The Bardi-Jawi also granted previously non-exclusive rights, which they have been protected sufficient and they can go for the Blue Reef as usual, but it is not exclusive right. 6. The State government power is on nautical miles only up to 3.

Hence Bardi-Jawi claim beyond 12 nautical miles cannot be entertained under any stage. Australian Fishing Industry Council and Commonwealth Government will exercise the rights. The commonwealth government has concurrent jurisdiction with the State in the claim jurisdiction with the three nautical mile limit to the 12 nautical mile limit. The commonwealth has sole jurisdiction beyond the 12 nautical mile limit around Brue Reef. The claimants made a petition for claiming a native title of the land, which is surrounded by an area of sea to a three nautical mile boundary only.

Hence more than the claim not permitted for extension beyond three nautical miles still they go for appeals again and again. § 7. The State government can grant up to three nautical miles since it recognized the role of owners i. e. Bardi-Jawi who have right to exclusive possession of the land, fishing rights up to three nautical mile limit and the right to hunt turtle and

dugong and the right to take resources from Brue Reef. CONCLUSION While taking the decision in connection with bardi-jawi, the following must be noticed by the decision makers.

In the Australia, the native tile to land has been established by taking the sources of traditional laws and customs of indigenous peoples. The principles of international law linked with the decisions taken in connection with native tile to land. The native law has been developed and justified in the Australia based on different colonial histories and styles of the community were acknowledged. * REFERENCES Appendices, http://www.nntt.gov.au/publications/AR_20052006/appendices.asp?PrintContent=True Australian Constitution Act, <http://www.austlii.edu>.

<http://www.theage.com.au/news/national/claimants-celebrate-native-title-decision/2005/06/10/1118347602071.html> Claimants celebrate native title decision, 2005, <http://www.theage.com.au/news/national/claimants-celebrate-native-title-decision/2005/06/10/1118347602071.html>

Commonwealth Consolidated Acts, http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993147/s4.html Focus: Native Title - September 2005, <http://www.aar.com.au/pubs/nat/fontsep05.htm> Frequently Asked questions, http://www.nativetitle.wa.gov.au/about_FAQs.aspx International Law, <http://www.ohchr.org/english/law/index.htm> Native Title Act, 1993, <http://www.austlii.edu>.

<http://www.nativetitle.wa.gov.au/> Office of Native Title, State Government agency, Western Australia, <http://www.nativetitle.wa.gov.au/> RacialDiscriminationAct, 1975, http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/ Sampi v State of Western Australia (No 3) [2005] FCA 1716, <http://www.atns.net.au/agreement.asp?EntityID=https://assignbuster.com/indegenous-people-native-tile/>

3203 <http://www.ministers.wa.gov.au/ripper/docs/speeches/bardiproggress.pdf>
http://www.aph.gov.au/Senate/committee/ntlf_ctte/completed_inquiries/2002-04/nat_nattitle_trib/report/report.pdf
<http://ntru.aiatsis.gov.au/ntpapers/ip04v3.pdf>