

Indigenous rights in water

Indigenous rights to water in northern Australia

The importance of water rights

Some of the Indigenous Nations of northern Australia have achieved legal recognition of and title to their traditional land and waters. Many others remain to achieve this legal status.

Whilst retaining strong and vital cultural connections and knowledge of their traditional land and waters, Indigenous people in northern Australia are among the most disadvantaged in the nation. One element of improved socio-economic status is access to, and the sustainable use of, natural resources including water.

The current legal situation

The Federal, state and territory governments are seeking to further develop and allocate the water resources of the North. This presents unique problems and opportunities for Indigenous peoples.

The current legal, policy and planning framework provides limited opportunities for the advancement of the economic interests of Indigenous people in relation to the commercial use of water.

This research will examine how existing law and associated process in northern Australia deals with native title and other Indigenous interests in water,



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the match of this law and process to the National Water Initiative and obligations under this law and process in water planning (including the nature of consultation required and treatment of native title).

This project builds on recent work done on international developments in Indigenous water rights by the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) as well as the Lingiari Foundation's overview of the national situation. The overview identified and sought to raise awareness of issues important to Indigenous people, including the need for Indigenous interests in water to be dealt with effectively and equitably.

Looking to the future

A number of recent events may change how Indigenous people access water in the North. The project will investigate the implications of proposals for the revision of water law in northern Australia. For example, Indigenous groups in Northern Australia are advocating for the recognition of Indigenous specific allocations from the consumptive or commercial pool in any water plan.

Other events of significance are the recent amendments to the Aboriginal Land Rights (Northern



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Territory) Act as well as court decisions, such as the High Court's Blue Mud Bay case in 2008 which recognised traditional ownership of the inter tidal zone and control of access over those waters by Traditional Owners.

Moreover, in conjunction with the TRaCK Water markets project, it will consider the legal implications of water markets for Indigenous interests and rights.

Who is on the team?

This TRaCK project is coordinated through NAILSMA. The research is being conducted by Mr Michael O'Donnell, Barrister, supported by a Project Advisory Committee. The project advisory committee has representatives from Western Australia, Northern Territory and Queensland state governments as well as the Department of the Environment, Water, Heritage and the Arts and the National Water Commission.

Where is the research happening?



The project is working across all north Australian jurisdictions (Western Australia, Northern Territory and Queensland) and will also consider Commonwealth law.

How will this research help?

This project will provide improved information and knowledge to government and non-government policy-makers and Indigenous peoples on the suitability of existing law and proposals for new law to deal effectively and equitably with Indigenous interests in water in northern Australia.

Where possible, the work will illustrate its analysis with water allocation scenarios and consider the legal implications for owners of Indigenous lands and holders of native title interests within water allocation districts.

The perspective offered will complement other Theme 6 (Sustainable enterprises) projects on the role of markets and the influence of Indigenous rights and interests on them.

Team contacts

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