

THE HIGH COURT'S DECISION IN THE BLUE MUD BAY CASE: A SUMMARY

NOTE: *this summary has been prepared by the Territory to provide a very short overview of the case of Northern Territory of Australia v Arnhem Land Aboriginal Land Trust D7 of 2007, commonly known as the Blue Mud Bay case, which was heard by the High Court of Australia in December 2007. The High Court's decision was given on 30 July 2008.*

The summary has been prepared to show the Territory's interpretation of the High Court's decision. It is not offered as legal advice. If you are concerned that you may be affected by this case you should speak to your own lawyer. The whole decision can be found on the High Court's web site at www.hcourt.gov.au

Background

- The High Court's decision is now the law in Australia. The High Court was ruling on an appeal made by the Territory, the Commonwealth and the Northern Territory Seafood Council against the decision of a lower Court made in March 2007.
- The decision is not about native title or who owns fish.

SUMMARY OF THE DECISION

The High Court decided that the Territory's *Fisheries Act* is valid and that licences and permits to fish issued by the Territory Government are valid. However, the Court also decided that Government licences and permits to fish do not give the people who hold them any permission to go onto water over Aboriginal land.

The Court said that the water lying over Aboriginal land should not be treated differently from the land itself.

SOME COMMENTS, ISSUES AND CONSEQUENCES

1. *The Fisheries Act*

The *Fisheries Act* is valid in all Territory waters, which includes waters within Aboriginal land grant boundaries. The Territory's fish stocks are managed through the *Fisheries Act*. The *Act* controls, for example, the licensing and management of commercial fishing and the management of recreational fishing in the Northern Territory.

2. *Need for permission to enter waters over Aboriginal land:*

People have always had to get permission from the traditional owners or the Land Council to go onto Aboriginal land. The Court has made it clear that this permission is also needed to go onto water over that land.

Entry for any purpose (not just fishing) into these waters requires permission. Entry without permission, except in a few special situations, is an offence and will also be an act of trespass.

Because the Court has said that a *Fisheries Act* licence does not authorise people to go into these waters, people who have a Government licence to take fish for commercial sale also need to have permission to go into these waters. Recreational fishers, who are allowed by the *Fisheries Act* to take fish for their own eating and use, but not for sale, also need permission to enter these waters.

3. *Enforcement and fishing activities inside the areas affected by the decision*

The *Fisheries Act* is enforced in exactly the same way inside and outside the boundary of Aboriginal land. For example, if a recreational fisher is caught taking an undersize barramundi the person can be prosecuted under the *Fisheries Act* whether the offence occurred inside the boundary or outside the boundary of Aboriginal land. A person who takes fish to sell them without a *Fisheries Act* licence commits an offence and can be prosecuted under the *Act* whether that person is fishing inside the areas affected by the decision or outside those areas.

4. *Areas affected.*

The decision affects anyone who wants to go into any area of water which is inside the boundary of Aboriginal land.

The intertidal zone is usually inside the boundary, because coastal Aboriginal land is usually granted down to the low water mark.

In some areas the boundary of the Aboriginal land is the middle of a river, in some areas it is the opposite bank of the river and in some areas the grant only goes to the river bank.

The Land Council for the area can advise where the boundary is.

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