

Towards a national approach to joint management and native title

Chris Haynes¹

¹ Honorary Research Fellow, Discipline of Anthropology and Sociology, University of Western Australia

- Two distinct ideas and practices which have become nevertheless entwined and interactive with each other much of the time
- Interaction has nevertheless resulted in wide disparities in legal arrangements and practical outcomes – between jurisdictions and even within them

- 1992 – Mabo decision
- 1993 – *Native Title Act* (C'wth)
- 1996 – Wik decision
- 1998 – amendments to the Native Title Act
- 2002 – Ward v Western Australia decision (2)
- 2006 – Ward v Western Australia decision (4)
- 2010 – amendment to include proposed S47C?

- Potential rights over successfully claimed national parks etc:
- Gaining access
- Camping – maybe even residence
- Hunting, gathering, fishing
- Ceremonial use
- Protection of sites
- Using/managing fire

- Practice of joint management preceded native title, has evolved and is still evolving
- Basic model in the NT: grant of title; lease-back; board of management; regular consultation

Some possibilities...

- Retention of rights – but negotiate conditions under which they might be exercised (e.g. fire use, rubbish collection)
- Joint management agreements – a guaranteed say in how country is managed
- Employment (and training)
- Tourism opportunities

Commonwealth

- So far not significantly involved in native title (aside from devising the principal legislation), but has full JM arrangements at:
- Kakadu, U-KT (NT), and Booderee (ACT)

Northern Territory

- Garig model;
- Nitmikuk model;
- Following the Ward (2) decision some parks following Nitmiluk (Schedule 1) full JM;
- Negotiated lesser arrangements – special form of tenure and nt rights (Schedule 2);
- For those with least likely claims tenure remains with NTG but jointly developed management plans

Queensland

- Goss Govt legislation 1991-2 of title but lease back in perpetuity – not implemented;
- Successful nt claims but no JM;
- State government strategy for cooperative management;
- *Cape York Peninsula Heritage Act* and Wet Tropics WH area – liaison and consultation only

New South Wales

- Mutawintji – full JM in 1998; small number of other areas as well;
- MOUs and other written agreements – with or without nt determinations or ILUAs;
- Arakwal example – nt surrendered in favour of nt-like rights, management committee, employment and training.

Victoria

- ‘Cooperative management’ agreements – Yorta Yorta; Mount Eccles NP; parts of Little Desert NP – short of JM but allow establishment of management committees;
- All management committees advisory only at present but state govt has plans to go to JM.

South Australia

- Like most states different agreements negotiated;
- Two areas – Witjira and Mamungari – effectively have JM arrangements in theory;
- Others consultative only.

Western Australia

- No areas have JM as defined
- But long history of consultation (park councils) in particular areas, some reasonably effective and useful to TOs – e.g. Karijini, Millstream NPs and Gibson Desert – but acrimonious and fraught in others, e.g. Purnululu – and many others feel neglected/frustrated at being ‘shut out’.
- Govt intentions to create a scheme similar to the NT

General observations

- The use and strength of sound legal arrangements that satisfy well-intentioned white supporters, and...
- Pragmatic deals that have, so far, been short of JM but provided satisfaction for TOs.

1993
AMPITHEATRE GORGE

CLOSED

BY MUTAWINTJI LAND COUNCIL
BECAUSE OF ABORIGINAL SITE DESTRUCTION
BY NPWS
WILLIAM BATES. CHAIRPERSON