

Day 3 Session 1- Richard Martin (University of Queensland): *Rights and their exercise: on the State's attempt to restrict the right to access and take resource for any purpose in the Kurtjar people's native title claim*

A native title claim has launched by the Kurtjar peoples over their traditional lands near Normanton in northwest Queensland and was heard in 2019 and 2020.

Richard discusses the evidence given in this claim against the backdrop of Kurtjar people's history on the cattle station, Delta Downs, and their efforts to manage that property in accordance with their adapted system of traditional law and custom.

As background he described the Kurtjar claim is a recent, successfully litigated claim on mainland QLD

The hearing focused in part on whether the expression of the right to take resources in a determination of native title under s225 of Act should include limitations on the exercise of that right provided for in traditional laws and customs, such as a requirement not to exploit resources for personal financial gain.

This presentation surveys the anthropological evidence presented in the case, including anthropologist Dr Kingsley Palmer's assertion that "according to anthropological understandings the right and its exercise are not differentiable", as well as the State's assertion that traditional laws and customs proscribe the exercise of the right to take resources for "the purposes of accumulating capital".

- Two key issues discussed during the court process were:
 - Succession: what it means, how it can be proved, and how might it limit the exercise of rights under traditional law and custom? A related question is the level of spiritual correspondence between the extinct group and claimant group.
 - Further succession was considered through the lens of the incoming group's ability to manage the spiritual potencies of the land and waters, and this was the substantive test in the question of whether the claimant group had conformed to prescribed rules of 'licit' succession.
 - Rights to take resources for any purpose: the claimants' belief was that the exercise of rights was unconstrained, but this was contested by the State.