CITATION:	*Windbox Pty Ltd v Daguragu Aboriginal Land Trust & Ors* [2019] NTSC 47
PARTIES:	WINDBOX PTY LTD (ACN 007 419 641) v DAGURAGU ABORIGINAL LAND TRUST and CENTRAL LAND COUNCIL and JACT PASTORAL PTY LTD and LESLIE, Zebb Raymond and ROWBOTTOM, Kylie Danielle
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	11 of 2018 (21840850)
DELIVERED EX TEMPORE:	22 February 2019
HEARING DATES:	21 and 22 February 2019
JUDGMENT OF:	Hiley J

CATCHWORDS:

ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES – Aboriginal land rights - grazing licence granted by Land Trust pursuant to s 19 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) - direction and satisfaction of relevant Land Council when performing its functions under s 19 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) - whether a Land Council can engage in "trade or commerce" within the meaning of s 18 *Australian Consumer Law*.

ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES – identification of traditional Aboriginal owners for the purposes of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) - insufficient to rely on mere assertions by individuals as to who are and who are not traditional owners - require identification of the members of a relevant local descent group.

CIVIL PROCEDURE – pleading – amendment - leave to file and serve further amended statement of claim – new issues raised that would result in trial being lengthened and adjourned - application dismissed.

REAL PROPERTY - indefeasibility of title under s 19(6) *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) – fraud as an exception.

Australian Consumer Law (Cth) s 18
Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) s 4, s 19, s 23, s 27, s 33, s 34, s 35, s 36, s 37, s 38, s 39

Aon Risk Services Australia Ltd v Australian National University [2009] HCA 27; 239 CLR 175; *Ashby v Slipper* [2014] FCAFC 15; 219 FCR 322; *Chapman v Luminis Pty Ltd (No 5)* [2001] FCA 1106; 123 FCR 62; *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; 169 CLR 594; *Ellis v Central Land Council* [2019] FCAFC 1; *Ellis v Central Land Council* [2018] FCA 35; 355 ALR 93; *Fletcher v Nextra Australia Pty Ltd* [2015] FCAFC 52; 229 FCR 153; *Rirratjingu Aboriginal Corporation v Northern Land Council* [2017] FCAFC 48; 248 FCR 349, referred to.

REPRESENTATION:

Counsel:

Plaintiff:	A Harris QC and M Barnett
1st & 2nd Defendants:	C Young
3rd, 4th & 5th Defendants:	A Wyvill SC and H Baddeley

Solicitors:

Plaintiff:	Gardiner & Associates Lawyers
1st & 2nd Defendants:	Central Land Council
3rd, 4th & 5th Defendants:	Ward Keller

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Windbox Pty Ltd v Daguragu Aboriginal Land Trust & Ors
[2019] NTSC 47
No. 11 of 2018 (21840850)

BETWEEN:

WINDBOX PTY LTD (ACN 007 419 641)
Plaintiff

AND:

DAGURAGU ABORIGINAL LAND TRUST
First Defendant

AND:

CENTRAL LAND COUNCIL
Second Defendant

AND:

JACT PASTORAL PTY LTD
Third Defendant

AND:

ZEBB RAYMOND LESLIE
Fourth Defendant

AND:

KYLIE DANIELLE ROWBOTTOM
Fifth Defendant

CORAM: HILEY J

REASONS FOR RULING

(Delivered ex tempore 22 February 2019)

Introduction

[1] By Summons filed on 11 February 2019 the plaintiff seeks leave to file and serve a Further Amended Statement of Claim (**FASOC**). The FASOC was annexed to the affidavit of the plaintiff's solicitor sworn on 11 February 2019.

[2] The defendants oppose the amendments in paragraphs 48A, 49, 50AA, 50AB and 50B of the proposed FASOC and consent to the other amendments. Accordingly these reasons and this ruling relate only to those particular paragraphs.

[3] In short the proposed amendments raise two additional issues:

(a) Paragraphs 48A, 49, 50AA, 50AB allege misleading or deceptive conduct on the part of the second defendant (**CLC**) contrary to s 18 of the *Australian Consumer Law*. Amongst other things this requires that the CLC was engaged in "trade or commerce."

(b) Paragraph 50B alleges fraud on the part of the fourth defendant (**Leslie**) and associated misconduct by the second defendant and an Aboriginal man, Mr Rob Roy. This plea is important in the context of the infeasibility provisions contained in s 19(6) of the

Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (**ALRA**).

Relevant background

[4] The plaintiff previously held grazing licences granted by the Daguragu Aboriginal Land Trust (**Land Trust**) over three areas of land known as McDonald's Yard, Berta Warta and Northern Paddocks. Those licences expired on 7 September 2011, 1 September 2010 and 12 November 2010 respectively. The plaintiff continued in occupation of the land, probably pursuant to holding over provisions in the licences.

[5] Following meetings conducted by the second defendant a fresh grazing licence was issued to the plaintiff over the Northern Paddocks land. Licences over the McDonald's Yard and Berta Warta areas (**the land**) were purportedly granted to the third defendant, JACT Pastoral Pty Ltd (**JACT**). They commenced on 8 October 2018. Those grants followed meetings conducted by the second defendant on 14, 15 and 18 June with people who it considered to be the relevant traditional aboriginal owners of the relevant land.

[6] On 29 June 2018, the second defendant wrote to the plaintiff advising of the outcome of those meetings and giving the plaintiff 90 days' notice to vacate the land. In effect this required the plaintiff to remove its cattle, approximately 6000 head, by the end of September 2018.

[7] On 27 September 2018, the plaintiff commenced these proceedings and sought urgent relief by way of interlocutory injunction to restrain the second defendant from enforcing the notices to vacate. The Court heard the application on 19 October 2018 and following agreement between the parties, made an interlocutory injunction which expires on 1 May 2019.[1]

[8] Important circumstances underlying the making of that injunction were the welfare of the 6000 or so head of cattle if they had to be moved off the properties before and during the wet season, and the Court's ability to hear the substantive claim (apart from questions of damages) within the space of four or five days commencing on 4 March 2019. (Despite its busy calendar the Court made special arrangements to enable this matter to be heard so quickly.)

[9] The main effect of the injunction was to deprive the JACT parties (i.e. the 3rd, 4th and 5th defendants) of their ability to use the land the subject of the grazing licences and pursue their business on the land.

[10] Programming orders were made then, and subsequently, to ensure that the matter could be heard during the week commencing on 4 March 2019. These included orders:

1 This has subsequently been varied and extended.

(a) permitting the plaintiff to amend its statement of claim by 2 November 2018 and for all pleadings to be filed and served by 23 November 2018;

(b) for any applications, including applications for discovery or subpoenas, to be made by 30 November 2018;

(c) that all evidence in chief be by way of affidavit unless leave is given; and

(d) that all affidavits be filed within particular time frames.

[11] On 18 January 2019 the plaintiff sought extensions of time for the filing of some of its affidavits. That application was heard on 29 January. Attached to an affidavit of Mr Gardiner, the plaintiff's solicitor, dated 29 January 2019 was a document entitled "Further Amended Statement of Claim". On 29 January 2019 the Court made orders, by consent, requiring the plaintiff to file and serve any application for leave to rely upon additional affidavit material and for leave to amend the statement of claim by 11 February 2019. That application was made by summons filed 11 February 2019 and accompanied by a further affidavit of Mr Gardiner dated 11 February 2019. The plaintiff also relied upon further affidavits made by Mr Gardiner on 12 February and 15 February (not filed), the latter annexing an expert report of anthropologist Anthony Whiting dated 15 February 2019.

Main reasons for making the amendments and for the delay in doing so

[12] In their written submissions filed 18 February 2019, counsel for the plaintiff stated that "at its heart, the Plaintiff's case against the First and Second Defendants [sic] claims that the CLC's purported dealing with the land owned by the [Daguragu Aboriginal Land Trust] was unlawful because the relevant state of *satisfaction* under s 19(5) of the *Aboriginal Land Rights Act* was not in existence."[2] This is because the people with whom the CLC consulted for the purposes of s 19 were not the traditional owners of the relevant land.

[13] Over the last few months the lawyers for the plaintiff have been visiting aboriginal communities at Kalkaringi and Daguragu and speaking to aboriginal people, presumably for the purpose of gathering evidence for the trial. They also engaged an anthropologist, Anthony Whiting, who has now provided them with a report concerning, amongst other things, the question as to traditional ownership of the relevant land.

[14] Counsel for the plaintiff have acknowledged that "the original version of the Plaintiff's Statement of Claim was based on the premise that the King family were the Traditional Owners of all Daguragu land."[3] Counsel now concede that, after receipt of discovery from CLC, "it

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2 Plaintiff's Outline of Submissions, filed 18 February 2019 at [15].

3 Ibid at [44]. See too [43] of Mr Gardiner's affidavit of 11 February 2019.

became apparent that the claims of the King family were either over-stated by them, or not understood by the Plaintiff, or both."[4]

[15] I note that notwithstanding this concession the proposed amended statement of claim still maintains and relies on the contentions in paragraphs 49.4 and 49.5 of the original statement of claim that "Ms Dianne King and members of her family (who are the traditional owners of the land comprising Northern Paddocks)" made certain representations regarding their wishes for all the grazing licences to be renewed in favour of the plaintiff, and the letter of 10 July 2018 in which the Kings claim that "we [the King family] are the only members of the Daguragu Aboriginal Land Trust and Traditional Owners of this area."[5] These were important parts of the pleadings regarding breaches of s 18 of the *Australian Consumer Law*.

[16] The original pleading, still maintained, about the validity of the direction given by the CLC pursuant to s 19 of the ALRA, and consequently the validity of the grazing licences, is contained in paragraph 51 of the FASOC. It alleges that the CLC:

(a) "failed to satisfy itself that the traditional Aboriginal Owners of that land understood the nature and purpose of the proposed grant

4 Ibid at [47].

5 Further Amended Statement of Claim at [49.4] - [49.5] as annexed to the Affidavit of Luke Timothy Gardiner filed 29 January 2019.

of [the] Grazing Licences to JACT as a group and consented to it"; and

(b) "failed to satisfy itself that any Aboriginal community or group that may be affected by the proposed grant … had had adequate opportunity to express its view to CLC."[6]

[17] In both cases the particulars given in relation to those allegations refer back to paragraph 49, which, as I have pointed out, asserted that the King family were the only traditional owners.

[18] Counsel for the plaintiff have now conceded and asserted that "it became apparent that some persons purporting or claiming to be Traditional Owners of land in McDonald's Yard had made false or incorrect claims."[7] Presumably the "some persons" are the King family. They say that "the amendments … in respect of the identity of the Traditional Owners … have therefore been made as a consequence of the First Defendant's discovery and the Plaintiff's investigations in relation to those documents."[8]

[19] Counsel then submitted that:

> 50. The plaintiff has claimed all along that the rightful Traditional Owners were not consulted and that the direction of the First Defendant was procured by fraud, a position it maintains in the FASOC. The changing of names in the

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6 Ibid at [51.1] – [51.2].

7 Above n 1 at at [48]. See too [43] of Mr Gardiner's affidavit of 11 February 2019.

8 Above n 1 at at [49].

pleadings did not change the substance of the plaintiff's case on this point.

51. The plaintiff's position is, and has always been, that the persons who held themselves out as being the Traditional Owners were not, and therefore that the relevant consultations were held with the wrong people under false pretences.

52. The defendants have been on notice of this case since at least September 2018.[9]

[20] I disagree. The pleaded case was based upon the allegation that the King family were the only traditional Aboriginal owners. Because those who participated in the relevant consultations were not members of the King family they were not traditional owners whose consent was required under s 19(5) of the ALRA. The pleading did not allege, as the plaintiff now wishes to do, that there were traditional owners other than the King family who should have been consulted and given their consent. Unsurprisingly, the plaintiff has not been able to identify those other traditional owners, or, more correctly, the local descent group comprising the traditional Aboriginal owners.

[21] Nor did the pleading involve any allegation of fraud, let alone accuse third parties, in particular Mr Rob Roy, of participating in fraudulent conduct.

[22] The plaintiff would, or should have, known that it would need to prove those asserted facts, namely that the King family were the, and the only, traditional owners, and that that contention was contrary to the

9 Above n 1 at [51] – [53].

position of the CLC. At this stage of the proceedings at least, it seems to me that other enquiries as to who were the traditional owners, were not enquiries that related to the plaintiff's case as pleaded.

[23] It also seems to me that the time, energy and expense incurred by the plaintiff in attempting to make such inquiries and pursuing the CLC for additional discovery has been unnecessarily incurred, and has contributed substantially to the plaintiff's delays in obtaining and filing evidence upon which it proposes to rely but which may well be irrelevant and inadmissible.

[24] In any event, it seems to me that the only issues relevant to the validity of the grazing licences are those raised in ss 19(5) and 19(6) of the ALRA, the former turning on whether the CLC was "satisfied" of the matters set out in that subsection,[10] the latter turning on proof of fraud. I have some difficulty understanding how the CLC's "satisfaction" could be undermined even if it did transpire that errors were made in the proper identification of all of the relevant traditional Aboriginal owners, particularly in light of s 19(6).

[25] Counsel for the plaintiff informed the court that the plaintiff did not seek to have the trial date vacated, nor to adjourn the trial,[11] but conceded that if the amendments and further evidence in relation to

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10 *Ellis v Central Land Council* [2019] FCAFC 1 at [37]; *Ellis v Central Land Council* [2018] 355 ALR 93 at [263] – [264] and *Rirratjingu Aboriginal Corporation v Northern Land Council* (2017) 248 FCR 349 at [77] – [90].

11 Above n 1 at [58].

them were permitted the hearing would not be completed within that five-day period.

[26] By way of explanation for the delays, counsel for the plaintiff referred to practical difficulties experienced by the plaintiff's lawyers interviewing potential witnesses in Alice Springs, Kalkaringi and Daguragu over the Christmas and New Year period, and as a result of the unavailability of witnesses, for example people who were otherwise engaged on cultural matters such as men's business. Counsel also referred to some delays in obtaining materials from the CLC due to the sensitive and confidential nature of some of the materials being sought, for example materials relating to traditional ownership. Counsel also referred to the need to instruct and provide materials to an anthropologist and the "difficult and time-consuming" process of "taking statements from Traditional Owner witnesses". Understandably, "the plaintiff encountered communication difficulties with a number of the witnesses due to factors such as age, health, education, language and trust.[12]

[27] Even now, neither the anthropologist Mr Whiting, nor counsel, can identify who they contend to be the traditional Aboriginal owners (within the meaning of that critical term in the ALRA) of the relevant land at the relevant time. This is unsurprising if, as it appears, they are

12 Above n 1 at [28].

not prepared to accept the findings made by the Aboriginal Land Commissioner (Toohey J) in his 1982 report on the *Gurindji Claim to Daguragu Station* and the opinions of the CLC as to who were and could speak for the traditional Aboriginal owners of the land at the relevant time, namely June 2018. Further, Mr Whiting was told by Mr Rob Roy that "he speaks for the McDonald area because of his FM and he is a worker / kurdungurlu and a TO for that country" and that "his grandfather and grandmother are the owners of McDonald yard."

Merits of the claims

Fraud claim raised in paragraph 50B of the FASOC

[28] It must have been apparent to the plaintiff and its lawyers that the best, and possibly only, way to challenge the validity of the grants was to allege and prove fraud, as contemplated by s 19(6) of the ALRA. This was certainly made clear during the hearing of the plaintiff's application for the interlocutory injunction on 19 October 2018. Yet no attempt was made to make any such allegation by the time when the plaintiff was required to tidy up its pleadings and file any amended statement of claim by 2 November 2018.[13] Indeed the allegation of fraud was not made by way of pleading until 29 January 2019 when it appeared in the FASOC that was annexed to Mr Gardiner's affidavit and was provided to counsel for the other parties shortly before the directions hearing that afternoon.

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13 See consent orders made on 19 October 2018.

[29] Even then the allegation is severely lacking in particularity. It is well established that allegations of fraud are serious allegations. They are to be properly particularised and not made unless there is a factual basis underlying the allegations.

[30] The central allegation is that Mr Rob Roy falsely held himself out to be a traditional Aboriginal owner and improperly used his position as a purported traditional owner to support the grant of the grazing licences to JACT. However the only evidence which counsel could point to were mere assertions by some other Aboriginal people that Mr Rob Roy is not a "traditional owner". Moreover, there is material in the plaintiff's own expert report that supports the contention that Mr Roy was and is a traditional owner. There has been no evidence likely to carry much weight, even if admissible, that Mr Roy is not in fact a traditional owner of McDonald's Yard; that he knows that he is not a traditional owner and dishonestly claimed that he was; that anyone from CLC or Mr Leslie knew that; that Mr Roy, the CLC and Leslie would publicly support the granting of the grazing licences to JACT in order to defraud the plaintiff; or that CLC and Mr Roy gave effect to that fraudulent scheme during the s 19(5) process.

[31] Moreover, the particulars given include allegations that relevant participants "ought to have known" certain things as a result of which their conduct was fraudulent, and do not identify the person or persons at the CLC who are said to have engaged in this unlawful conduct.

[32] Senior counsel for the plaintiff contended that the case for fraud is circumstantial and referred to authorities where a court has declined to strike out a pleading or summarily dismiss or permanently stay a proceeding where evidence at trial might "lend colour and strength to a claim" of fraud. However I am not dealing with an application to strike out or dismiss an extant claim. Rather I am dealing with an application to add a claim which appears to have no merit and would have the effect of substantially broadening the scope of the litigation and deferring its hearing and determination for a very long time.

The misleading and deceptive conduct claims raised in paragraphs 48A, 49, 50AA, 50AB of the Further Amended Statement of Claim

[33] Putting aside the evidentiary aspects of these claims and the additional time and effort that meeting those claims would entail, mainly for the CLC, there would appear to be some doubt as to whether the impugned conduct was "in trade or commerce", a necessary element of the claims under s 18 of the *Australian Consumer Law*. This is because in engaging in the conduct impugned the CLC was carrying out statutory functions and powers under ss 19, 23 and 27 of the ALRA. The statutory functions and powers of the CLC do not include the function or power to carry on any kind of business. A land council's use of funds is strictly controlled by ss 33 to 39 of the ALRA. There seems to

be nothing about the CLC's statutory functions and powers which have a trading or commercial character.[14]

Final relief sought by the plaintiff.

[34] In short the plaintiff is seeking:

(a) orders to the effect that notwithstanding s 19 of the ALRA the grants in favour of JACT were and are invalid; and

(b) damages.

[35] At this stage it seems to me that the only way by which the plaintiff could obtain orders regarding the validity of the grazing licences would be to establish fraud of the kind contemplated in s 19(6) of the ALRA. Although the *Australian Consumer Law* contemplates the making of permanent injunctions as a form of relief for contraventions of s 18, I think it very unlikely that this court would make such an order in relation to the grazing licences even if the plaintiff's claims based upon s 18 were made out (and even if they were asserted in the FASOC, which they are not.) I say this not only because of the relevant circumstances and particular allegations in the present case, but mainly because it seems to me that the validity or otherwise of these licences, granted under the ALRA, and consequently the relevant relief, is to be determined by reference to s 19 of ALRA. Unless fraud

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14 *Chapman v Luminis (No 5)* (2001) 123 FCR 62 at [178]. See too *Concrete Constructions (NSW) Pty Ltd v Nelson* (1990) 169 CLR 594 at 603 referred to in *Fletcher v Nextra Australia Pty Ltd* (2015) 229 FCR 153 at [31].

is established s 19(6) would operate to preserve the validity of the grazing licences.

Effect of allowing the amendments and other *Aon* factors

[36] It is clear that if the amendments are allowed a number of serious consequences will follow:

(a) The defendants would require more time to obtain and file evidence in response to the new claims.

(b) Other parties would need to be notified and may need to be joined. These would include:

(i) those individuals who are said to be parties to the fraud, including Mr Rob Roy and the unnamed members or representatives of the CLC;[15]

(ii) the other Aboriginal people who participated in the relevant decision-making and whose status as traditional Aboriginal owners is being challenged by the plaintiff.[16]

(c) On the plaintiff's contentions, namely that certain people were and certain people were not, traditional owners of the relevant land at the relevant time, it would be necessary in effect for this Court to conduct an inquiry of the kind which the Aboriginal Land

15 Above n 4 at [50B]. See for example *Ashby v Slipper* (2014) 219 FCR 322 at [141] – [143].

16 Above n 4 at [49.2].

Commissioner would normally conduct under the ALRA. Those representing the plaintiff appeared to be assuming, wrongly, that a determination as to who were (and who were not) the traditional Aboriginal owners within the meaning of the ALRA can simply be ascertained by receiving evidence of assertions by individuals that they or other named people are or are not "traditional owners".

(d) The trial will have to be adjourned. It is doubtful that I or any other judge will be available to conduct a one-week trial before September (and I will not be available until November).

(e) The trial will take considerably longer than the four or five days that has been allocated, indeed many weeks and even months if the issue of traditional ownership is to be litigated. This would require a special listing at least 10 months hence, probably much longer, depending upon the likely length of the trial.

[37] As I have said, the question of traditional ownership of the land is not answered simply by evidence of individuals who assert that they or others are or are not traditional owners. The land is Aboriginal land under the ALRA and the relevant requirements regarding the granting of interests in such land are dealt with in the ALRA. Where that Act, relevantly ss 19 and 23, refers to traditional owners, it is referring to "traditional Aboriginal owners" as defined in s 4 of the ALRA. Unless there has been an inquiry of the kind contemplated by the ALRA and

findings made by the Aboriginal Land Commissioner, from which the relevant land council can compile and maintain its own lists of traditional Aboriginal owners, it would be very difficult, if not impossible to identify the local descent group of people who comprise the traditional Aboriginal owners of a particular area of Aboriginal land.

[38] Moreover, those with any experience with the task of identifying traditional Aboriginal owners under the ALRA, traditional owners under other legislation such as the *Aboriginal Land Act 1991* (Qld) or native title holders anywhere in Australia, will be well aware of the extensive and sensitive enquiries and consultation that must take place in the process of investigating those kinds of issues. For example, rights and responsibilities in particular country are usually held not by individuals but on a communal basis, and individuals are not permitted or willing to speak for country without the attendance of other designated people, except in particular circumstances.

[39] I can well understand why the plaintiff's lawyers experienced some difficulty in attempting to interview Aboriginal people and obtain reliable information from them about such sensitive topics. I can also understand why concerns have been expressed by some Aboriginal people about these attempts and their reluctance to engage with strangers about those kind of issues, particularly about core issues

which concern the rights and responsibilities of them and other Aboriginal people in relation to particular areas of land.

[40] If the amendments were allowed and the trial adjourned these concerns and the ongoing disruption within the communities, including those referred to by Mr Nugent in his affidavit of 20 February 2019, would continue.

[41] I agree with counsel for the defendants that there is a need for certainty on the part of the Land Trust, the CLC, the traditional owners and the competing proposed licensees, about who is entitled to use the land and on what terms. The uncertainty in relation to traditional ownership may well extend to all of those Aboriginal people who belong to the local descent group comprising the traditional Aboriginal owners identified by the Aboriginal Land Commissioner following the land claim hearings some 35 years ago. The present situation has been in limbo since June 2018.

[42] Following the making of the interlocutory injunction the fourth and fifth defendants have been uncertain as to where they should be living and working in the meantime and how and where their four children should be schooled. This uncertainty will continue for so long as the validity issue remains undetermined, particularly if the interlocutory injunction is extended. The fourth and fifth defendants have made

special arrangements for their attendance at the hearings in Alice Springs next week.

[43] The plaintiff has been on notice since 29 June 2018 of the actions taken by the CLC under ss 19 and 23 of the ALRA and apparently since about 10 July 2018 of the King family's assertions that they were the traditional owners of all of the land. It has taken more than another 6 months for them to locate and identify the evidence in support of those assertions and to realise that they are misconceived. For the plaintiff to effectively start from scratch and embark upon what essentially would amount to a fishing expedition, and relying substantially upon the CLC engaging in time-consuming and expensive work to facilitate that expedition, is in my opinion oppressive and will necessarily result in considerable further delays.

[44] Counsel for the plaintiff explained some of the delay on the plaintiff's part by accusing the CLC of not giving proper and prompt discovery. However most of what the plaintiff's lawyers were seeking related to the broader issues of traditional ownership, not to the issues raised on the plaintiff's pleadings. I understand, and accept, that the CLC did provide discovery in a timely way, notwithstanding a temporary issue that arose as a result of confidentiality concerns.

[45] Needless to say I consider that most of the factors referred to in *Aon*[17] apply in the present case, exacerbated by the need to resolve the validity of the grazing licences as soon as possible and the need to avoid the ongoing uncertainty, particularly for those Aboriginal people whose rights and responsibilities are being probed and questioned.

[46] Accordingly, I dismiss the application to make those amendments to the Statement of Claim.

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17 *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175.