The sea belongs to no-one! Indigenous rights and interests offshore

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Abstract

Ownership of land in the Western sense involves the establishment of boundaries that simultaneously contain, restrict and grant rights within a given space. Discourse on Indigenous concepts of ownership often point to the state of 'belonging', a deep connection with a given territory rather than a distinctly marked space that one occupies. In coastal Indigenous cultures territory will often extend offshore, Law as it exists on land exists in sea. This differs from the Western view in which the sea is considered boundless and belonging to no one beyond territorial waters. Australia was settled under the idea of *terra nullius* and Indigenous ownership of land was not recognised until native title was first introduced into common law in *Mabo v Queensland (No 2).* Ownership of sea territory has not yet been recognised under Australian native title law. In 2001, *Yarmirr v Commonwealth* recognised that some native title rights and interests could exist offshore. Exclusive possession of such territory has not yet been granted as it is argued that this would violate public fishing/navigation rights, and internationally recognised rights to innocent passage. In addition to native title law, schemes for legal protection of offshore rights include the Commonwealth Constitution, international law, also fisheries management, land rights, cultural heritage protection, and conservation of fauna legislation. The purpose of this literature review is to outline the rights and interests these legal schemes offer, while exploring the clash between Indigenous and non-Indigenous senses of ownership and understanding of land and sea in Australia.