



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: SAD6002/1999
NNTT number: SC1999/004

Application Name: Eringa No 2 Native Title Claim and The State of South Australia & ors (Eringa No 2)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 26/05/1999

Current status: Full Approved Determination - 13/12/2011

Registration information: Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.

Registration decision status: Accepted for registration

Registration history: Registered from 21/05/2003 to 19/12/2011

Date claim / part of claim determined: 13/12/2011

Applicants: Edie King, Ruth McKenzie, Howard Doolan, Dean Ah Chee, Marilyn Hull

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Additional Information

Not applicable

Persons claiming to hold native title:

The Eringa Native Title Claim Group comprises those people (now alive) who hold in common the body of traditional laws and customs governing the area subject of the claim, being the following:

1. Those who are related by means of the principle of descent to:

1.1 Mary Cleanskin (Nyukapinya), who is the daughter of Tom Cleanskin and his wife Puntji who are acknowledged to be apical ancestors associated with the claim area.

Mary Cleanskin (Nyukapinya) married Cooper Bailes, and had two children, namely Billy Bailes and June Bailes. These two children and their biological descendants are members of the native title claim group.

1.2 Upitja and his wife (who is acknowledged by the claim group as the mother of Wintinna Mick) are acknowledged to be apical ancestors associated with the claim area.

1.2.1 Related by the traditional principles of descent to Upitja and the mother of Wintinna Mick are a set of siblings, namely, Wintinna Mick, Mawilya, and Tapi.

1.2.2 The biological descendants of these three siblings are members of the native title claim group. They include those biological descendants who belong to the families of: Wintinna, Emily Churchill, Betty Wintinna Buzzacott, Mindum (including of Sandra Mindum), Molly Tjulanya Jack Breadon, Mary Inawantji (including Millie Breadon), Mona Ngitji Kennedy Tur, Tjalini Gloria Carroll Hayes, Minungka (including Kay Minungka Finn) and Gibson Matasia.

1.3 Frank Pipayi and Rosie Wayi Wayi Anderson who are acknowledged as apical ancestors associated with the claim area.

1.3.1 Related by the traditional principles of descent to these apical ancestors are a set of siblings, namely Paddy Mack and Milly Napi Smith.

1.3.2 The biological descendants of these two siblings are members of the native title claim group. They include those biological descendants who belong to the families of: Gloria Kulani Wonga, Colleen Warren (including Rameth Thomas), Peter "Porky" Smith and Nita Smith Warren.

, 1.4 The mother and father of Janet Williams, Johnny Williams, Towser Williams and three other (biological) siblings whose names are not known at this time are acknowledged as apical ancestors associated with the claim area.

1.4.1 The biological descendants of these six siblings are members of the native title claim group. They include those biological descendants who belong to the families of Jones and of Charlie Stewart.

1.5 Willy Doolan who is acknowledged as an apical ancestor associated with the claim area.

1.5.1 Related by the traditional principles of descent to this apical ancestor is a set of siblings, namely: Paddy Doolan, Larry Doolan, Mick Doolan, Jimmy Doolan and Kevin Doolan.

1.5.2 The biological descendants of these five siblings are members of the native title claim group.

1.6 Anatjari and Wiltiwa (who are the parents of Lilly) and who are acknowledged as apical ancestors associated with the claim area.

1.6.1 Related by the traditional principles of descent to Lilly is a set of siblings, namely: Edie (Kunmanara) King, Maisie King, Panti King, Eileen King and Emily King.

1.6.2 These five siblings and their biological descendants are members of the native title claim group.

1.7 Lilly Summerfield who is acknowledged as an apical ancestor associated with the claim area.

1.7.1 Lilly Summerfield was married to Paddy Punka and also to Binji Lower (see 1.8.2 and 5 below).

1.7.2 Related by the traditional principles of descent to Lilly Summerfield is Ross Pearce. Ross Pearce and his biological descendants are members of the native title claim group.

1.8 The siblings, Intukurta (Angeline), Kuyarta, and Edie De Rose (the mother of Carlene Thompson), who are acknowledged as apical ancestors associated with the claim area.

1.8.1 The biological descendants of these three siblings are members of the native title claim group. They include those biological descendants who belong to the families of: Ruth (Molly Lennon) McKenzie, Tom Cramp, Jenny Cramp (Ungkurla) and Carlene Thompson.

1.8.2 Tom Cramp is acknowledged by members of the native title claim group to have been father to Binji Lowe (see 1.7.1 and 5 below) according to traditional law and custom.

1.9 The brothers Pinta Pinta and Jimmy Amuntari who are acknowledged as apical ancestors associated with the claim area.

1.9.1 The biological descendants of Pinta Pinta are members of the native title claim group.

1.9.2 The biological descendants of Jimmy Amuntari, his wife Betty (Piti) Anderson and his wife Molly Stewart are members of the native title claim group. They include the biological descendants of Molly Stewart, who belong to the families of: Lucy Lester, Mavis Allan and Emily Amuntan Allan, and the biological descendants of Betty (Piti) Anderson who belong to the families of Barbara Anderson, Julie Anderson and Mary Anderson.

1.10 Kitty Terone who is acknowledged as an apical ancestor associated with the claim area.

1.10.1 Kitty Terone was Lower Southern Arrernte (or Southern Arrernte). She and Jack Terone had a daughter, Lorna Terone.

1.10.2 The descendants of Lorna Terone are acknowledged as members of the native title claim group. They include members of the Coombes family (amongst others).

2 Phillip Ah Chee, Dean Ah Chee, Glynis Ah Chee, Vera Ah Chee, Lorraine Ah chee and Sharon Ah Chee (who are some of the children of Ruby Colson Ah Chee). These six siblings and their biological descendants are members of the native title claim group. [Membership of the native title claim group of the above-named siblings and their biological descendants is acknowledged by the claim group to be by virtue of the traditional principles of descent through the mother of Ruby Colson Ah Chee. , Additionally membership of the native title claim group of the above-named siblings and their biological descendants is acknowledged by the claim group to be by virtue of the traditional principles of descent from Paddy Doolan (see 1.5.1 above).]

3. Marilyn Rose Hull and her children, Hayden Stuart and Phillip Stuart Jnr. And the biological descendants of those three children.

4. Ian Hodgson and his biological descendants.

[Membership of the claim group of those noted in 3 and 4 above is acknowledged to be by virtue of the principle of descent through the mother of Marilyn Rose Hull and the grandmother of Ian Hodgson who were the sisters, Daisy Hull and Myra Hull, respectively. The sisters, Daisy Hull and Myra Hull were children of Clara (Mudluwada) and William Hull. Clara Hull was the daughter of Lilly and Rang (Baguwida) (Strangways).]

5. Binji Lowe (see 1.7.1 and 1.8.2 above) and his adopted descendants.

[Binji Lowe is acknowledged to be a member of the claim group by virtue of:

- His long term physical association with the claim area;
- His long term family relationships with other members of the native title claim group;
- His extensive experience and knowledge of the geographical and spiritual associations of the claim area; and
- His fluency in both Lower Southern Arrernte and Yankunytjatjara.

He adopted four children (being the biological children of Lilly Summerfield - see 1.7), namely Justine, Stewart, Max and Lorna Armstrong.]

6. Hugh Tjami (of Mimili) and his biological descendants.

[Hugh Tjami is acknowledged to be a member of the claim group by virtue of:

- His having been born at Macumba within the Eringa native title claim area; and
- His extensive experience and knowledge of the geographical and spiritual associations of the Eringa native title claim area.]

, 7. Howard Doolan and his biological descendants.

[Howard Doolan is acknowledged to be a member of the claim group by virtue of:

- His long term physical association with the claim area;
- His long term family relationships with other members of the native title claim group;
- His extensive experience and knowledge of the geographical and spiritual associations of the claim area.]

Principles of incorporation into the Eringa native title claim group according to traditional law and custom include:

- Being of Aboriginal descent, and
- Having a connection with the claim area in accordance with the traditional laws and customs of the native title group which includes the principle of descent from their ancestors. The principle of descent includes but is not limited to biological descent. It also includes, for example, the principle of descent by means of claim group members' associations with spiritual ("Dreaming") sites and areas within the claim land;
- Identifying as, and being acknowledged by other members of the native title claim group as being, a person of:
 - Lower Southern Arrernte descent or
 - Luritja/Yankunytjatjara/Antakirinja* descent or

- Both of the above by means of parents, grandparents or association with the spiritual ("Dreaming") sites and areas within the claim land.

*Members of the Eringa native title claim group acknowledge that the terms "Luritja", "Yankunytjatjara" and "Antakirinja" are used interchangeably by them and constitute different means of identifying the same language and the same individuals from whom claim group members are descended or referred to by other.

NOTES:

1. Subject to (2) below, all those persons whose names are underlined above or who fall within the descriptions underlined above are members of the claim group. No other persons are members of the claim group.

2. Schedule O below may, however, have the effect of excluding one or more of such persons from membership of the claim group.

Native title rights and interests claimed:

The nature and extent of the native title rights and interests in relation to the Claim Area are non-exclusive rights to use and enjoy in accordance with the traditional laws and customs of the Claim Area, being:

- a) the right to access and move about the Claim Area;
- b) the right to hunt and fish on the land and waters of the Claim Area;
- c) the right to gather and use the natural resources of the Claim Area such as food, medicinal plants, wild tobacco, timber, resin, ochre and feathers;
- d) the right to share and exchange the subsistence and other traditional resources of the Claim Area;
- e) the right to use the natural water resources of the Claim Area;
- f) the right to live, to camp and, for the purpose of exercising the native title rights and interests, to erect shelters on the Claim Area;
- g) the right to cook on the Claim Area and to light fires for domestic purposes but not for the clearance of vegetation;
- h) the right to engage and participate in cultural activities on the Claim Area including those relating to births and deaths;
- i) the right to conduct ceremonies and hold meetings on the Claim Area;
- j) the right to teach on the Claim Area the physical and spiritual attributes of locations and sites within the Claim Area;
- k) the right to visit, maintain and protect sites and places of cultural and religious significance to Claim group members under their traditional laws and customs on the Claim Area;
- l) the right to be accompanied on to the Claim Area by those people who, though not Claim group members, are:
 - i) spouses of Claim group members; or
 - ii) people required by traditional law and custom for the performance of ceremonies or cultural activities on the Claim Area; or
 - iii) people who have rights in relation to the Claim Area according to the traditional laws and customs acknowledged by the Claim group members; or
 - iv) people required by Claim group members to assist in, observe, or record traditional activities on the Claim Area; and
- m) in relation to Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Claim group members, the right to speak for country and make decisions about the use and enjoyment of the Claim Area by those Aboriginal persons.

Examples of current activities carried out in exercise of these rights and interests are set out in Schedule G.

In this application no claim is being made to any native title rights and interests consisting of or including ownership of minerals, petroleum or gas wholly owned by the Crown under valid laws of the Commonwealth or of the State of South Australia.

The native title rights and interests claimed are also subject to the effect of:

- all existing non-native title rights and interests (see for example those referred to in Schedule D);

- all laws in South Australia made in accordance with ss.19, 22F, 23E or 23I of the Native Title Act;

to the extent that these are now valid and applicable.

Application Area: **State/Territory:** South Australia
Brief Location: East portion of Witjira NP in north SA
Primary RATSIB Area: Greater South Australia
Approximate size: 1811.5539 sq km
(Note: There may be areas within the external boundary of the application that are not claimed.)
Does Area Include Sea: No

Area covered by the claim (as detailed in the application):

Area of Application (geographic extent) : 2,458 sq km

Description:

The area covered by this application S6002/1999 - Eringa #2 (SC99/004) is wholly within the State of South Australia. It comprises the land and waters identified on the map which shows the geographic boundaries of the claim area , "Attachment C". The external boundaries of the area covered by this application are described as follows:

The boundary of the claim area commences at the point where the eastern boundary of Witjira National Park meets the South Australian/Northern Territory border. The boundary then travels due south along the eastern boundary of the Witjira National Park and continues due south into Macumba Station, until it meets the centre line of the Macumba River, being a point on the northern boundary of the Arabunna Peoples Native Title claim SG6025/98 (SC98/002) as filed in the Federal Court 7 September 1999. The boundary then travels in a westerly direction along the centre line of the Macumba River until it meets the eastern boundary of the Eringa Native Title claim SG6010/98 (SC96/003) (Eringa #1) as filed in the Federal Court 5 October 1999, (the centre line of the Macumba River is in part coincidental with the northern boundary of the Arabunna claim). The boundary then travels in a north-easterly direction along the eastern boundary of Eringa #1 Native Title Claim (SC96/003) through Macumba Station and the Witjira National Park, until it meets the South Australian/Northern Territory border. The boundary then travels due east along that border to the point of commencement.

To the extent of any inconsistency between the map at "Attachment C" and the above description, the above description shall prevail.

The areas within the external boundary that are not covered by this application are described in "Attachment B".

For the avoidance of doubt, the applicants confirm that the Eringa #2 claim as amended does not include any area of land or waters that was not covered by the original Eringa #2 claim.

Definition of centre line of the Macumba River based on Topographic vector data (1:1M) sourced from Geoscience Australia and is © Commonwealth of Australia 2001.

Areas within the external boundaries that are not covered by the Application:

The applicants exclude from the area covered by the Application any area over which native title has been extinguished at Common Law or by statute save and except for those areas of land or waters over which prior

extinguishment may be disregarded in accordance with the provisions of either s47, s47A or s47B of the Native Title Act (1993) (NTA).

In particular the following are excluded:

Category A past acts, as defined in s229 of the NTA, including any previous non-exclusive possession acts which are also a Category A past act; and

Grants or vestings which are "previous exclusive possession acts" (as defined in s23B of the NTA) or "Category A intermediate period acts" (as defined in s232B of the NTA) attributable to the Commonwealth and such grants or vestings which are attributable to the State where and to the extent that the State has made provision as mentioned in s23E and s22F of the NTA in relation to these acts.

For the avoidance of doubt, the following acts which occurred on or before 23 December 1996, where valid (including because of Division 2 or 2A of Part 2 of the NTA) are included or, for present purposes, are to be treated as included, in the definition of "previous exclusive possession acts", unless excluded from the definition by subsection 23B(9), (9A), (9B), (9C) or (10).

1. The creation or establishment of:

i. a permanent public work;

ii. a dedicated road;

iii. an act of adverse dominion where such an act was:

- authorised by valid legislation; or

- authorised or required by the condition of a valid Crown Grant, vesting or other interest;

iv. an unqualified grant of an estate in fee simple.

2. The grant of:

i. a schedule interest (see s.249C of the NTA), including an agricultural lease where intensive cultivation of a permanent nature has been carried out and works or structures of permanent nature have been constructed in accordance with the terms and conditions of the lease;

ii. a residential lease on which a residence has been constructed in accordance with the terms and conditions of the lease (see s.249);

iii. a commercial lease on which permanent works or structures have been constructed in accordance with the terms and conditions of the lease (see s.246);

iv. a lease for the provision of community services or amenities within a town or city on which works or structures of a permanent nature have been constructed in accordance with the terms and conditions of the lease (see s249A).

For the avoidance of doubt the Applicants specifically maintain that the land the subject of the lease between the Minister for the Environment and Natural Resources and Irrwanyere Aboriginal Corporation dated 5 October 1995 is included within the area covered by this application (and is not excluded for any of the reasons set out above). The Applicants maintain that the lease did not extinguish Native Title for the following reasons:

- Whilst it was a lease granted pursuant to s.35 of the National parks and Wildlife Act 1972, it was not a lease solely or primarily for any of the purposes specified in s.39(11) of Part 5 of Schedule 1 of the Native Title Act 1993 (as

amended);

- The lease was expressly granted:

"for the purposes of the use and occupation by Aboriginal people having traditional association with the Park, the enhancement of the cultural and social aspirations of the said Aboriginal people and to achieve the management objectives of the Park".

- The lease was further expressed not to operate to have any extinguishing effect on the native title rights and interests of the said Aboriginal people.

Attachments: 1. Map showing External Boundary of Claim Area, 1 page - A3, 29/07/2002

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