



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6296/1998; WAD6001/1995
NNTT Number: DCD2003/001

Determination Name: [Attorney-General of the Northern Territory v Ward](#)

Date(s) of Effect: 9/12/2003

Determination Outcome: Native title exists in the entire determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date: 09/12/2003

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

This application was determined on 9 December 2003. The Court made separate orders in relation the areas covered by the application in Western Australia and the Northern Territory. The determination in relation to the area in the Northern Territory was registered on the National Native Title Register on 21 May 2004. For information in relation to the Western Australian portion of the determination see the associated extract on the National Native Title Register.

REGISTERED NATIVE TITLE BODY CORPORATE:

Top End (Default PBC/CLA) Aboriginal Corporation RNTBC
Agent Body Corporate
C/- GPO Box 1222
DARWIN Northern Territory 0801

Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The Damberal estate group, the Bindjen estate group, and the Nyawamnyawam estate group.

3. Each of the three estate groups referred to in clause 2 includes members by reason of patrilineal descent and matrilineal descent, who are members by reason of descent from mother and mother's father (djawidji), and persons adopted into such descent relationships ('the estate group members').

4. In accordance with traditional laws and customs, other Aboriginal people have rights in respect of the land and waters of an estate which is not their own, subject to the rights and interests of the estate group members, such people being:

- (a) members of estate groups from neighbouring estates;
- (b) spouses of the estate group members; and
- (c) members of other estate groups with ritual authority.

MATTERS DETERMINED:

The Court Orders That:

1. There be a determination of native title in terms of the determination set out below.
2. The native title is not to be held in trust.
3. An Aboriginal corporation whose name is to be provided within 12 months, or such further time as a judge of the Court may allow, is to:
 - (a) be the prescribed body corporate for the purposes of s 57(2) of the Act; and
 - (b) perform the functions outlined in s 57(3) of the Act after becoming a registered native title body corporate.
4. Appeal WAG 6296 of 1998 is allowed and leave is granted for appeal W 6020 of 1999 to be discontinued.
5. There be no order as to the costs of appeals WAG 6296 of 1998 or W 6020 of 1999.

The Court Determines That:

1. Native title exists in the areas of land and waters claimed in the Northern Territory and described in the Schedule ('the NT determination area').
2. The land and waters of the NT determination area are part of three estates (the Damberal estate, the Bindjen estate and the Nyawamnyawam estate), each of which estates is held by the members of the three respective estate groups (the Damberal estate group, the Bindjen estate group, and the Nyawamnyawam estate group). They, together with the Aboriginal people referred to in clause 4 below, are collectively referred to as 'the native title holders'.
3. Each of the three estate groups referred to in clause 2 includes members by reason of patrilineal descent and matrilines, who are members by reason of descent from mother and mother's father (djawidji), and persons adopted into such descent relationships ('the estate group members').
4. In accordance with traditional laws and customs, other Aboriginal people have rights in respect of the land and waters of an estate which is not their own, subject to the rights and interests of the estate group members, such people being:
 - (a) members of estate groups from neighbouring estates;
 - (b) spouses of the estate group members; and
 - (c) members of other estate groups with ritual authority.
5. Subject to clause 9, the nature and extent of the native title rights and interests of the estate group members in relation to the NT determination area, recognised by the common law, are non-exclusive rights to use and enjoy the land and waters in accordance with their traditional laws and customs, being:
 - (a) the right to hunt on the land, to gather and use the natural resources of the land such as food, medicinal plants, wild tobacco, timber, stone and resin, and to have access to and use of natural water on the land;
 - (b) the right to live on the land, to camp, to erect shelters, and to move about the land;
 - (c) the right to engage in cultural activities on the land, to conduct ceremonies, to hold meetings, and to participate in cultural practices relating to birth and death;
 - (d) the right to have access to, maintain and protect the sites of significance on the land of the NT determination area; and
 - (e) the right to make decisions about the use and enjoyment of the NT determination area by Aboriginal people who recognise themselves to be governed by Aboriginal traditional laws and customs.

These native title rights and interests do not confer possession, occupation, use and enjoyment of the land or waters

on the native title holders to the exclusion of all others.

6. Subject to clause 9, the nature and extent of the native title rights and interests held, in accordance with their traditional laws and customs, by the native title holders referred to in clause 4 hereof, in relation to the NT determination area, recognised by the common law are:

(a) in relation to members of estate groups from neighbouring estates - rights of access to, and rights to hunt, fish and gather the natural resources on the land and waters of their neighbouring estate group members, subject to the permission, implied or express, of the relevant senior estate group members;

(b) in relation to spouses of estate group members - rights of access to, and to hunt, fish and gather the natural resources on, the land and waters of their spouse's estate; and

(c) in relation to members of other estate groups who hold ritual authority - rights to act, in accordance with traditional laws and customs, in relation to the maintenance and protection of sites associated with the travels of an ancestral being associated with a Dreaming which passes through the estates in the NT determination area.

These native title rights and interests do not confer possession, occupation, use and enjoyment of the land or waters on the native title holders to the exclusion of all others.

7. There are no native title rights and interests in:

(a) minerals (as defined in s 2 of the Minerals (Acquisition) Act (NT));

(b) petroleum (as defined in s 5 of the Petroleum Act (NT)); and

(c) prescribed substances (as defined in s 3 of the Atomic Energy (Control of Materials) Act 1946 (Cth) and/or s 5(1) of the Atomic Energy Act 1953 (Cth)),

in the NT determination area.

8. The nature and extent of other interests in relation to the NT determination area are the interests, created by the Crown or otherwise, as follows:

(a) in relation to Northern Territory Portion 3541 (Policeman's Hole), the interests of the Nyawamnyawam Dawang Aboriginal Corporation under its fee simple estate granted on 18 December 1990;

(b) in relation to Northern Territory Portion 3542 (Bucket Springs), the interests of the Binjen Ningguwung Aboriginal Corporation under its fee simple estate granted on 18 December 1990;

(c) in relation to Northern Territory Portion 3863 (Bubble Bubble), the interests of the Dumbal Aboriginal Community Association under its fee simple estate granted on 4 October 1993;

(d) in relation to Northern Territory Portions 1801 and 3121:

(i) the interests of the Conservation Land Corporation under Special Purposes Lease 475 and Crown Lease Perpetual 581; and

(ii) the interests of the Parks and Wildlife Commission of the Northern Territory pursuant to its functions and powers of management and control of these areas under the Territory Parks and Wildlife Conservation Act (NT) (and subsidiary legislation, and including under any Plan of Management in force in relation to these areas from time to time) and the Parks and Wildlife Commission Act (NT), including interests in any buildings, works or other structures constructed or established by the Commission within these areas;

(e) in relation to Northern Territory Portions 1801 and 3121, the interests of members of the public arising from rights of access to and use of these areas as a national park, subject to any statutory limitations upon these rights, including those under the Northern Territory Aboriginal Sacred Sites Act (NT);

(f) in relation to the NT determination area, the interests of Telstra Corporation Limited, including:

(i) rights and interests as the owner or operator of telecommunications facilities installed within the NT determination area, including customer radio terminals and overhead and underground cabling;

(ii) rights and interests created pursuant to the Post and Telegraph Act 1901 (Cth), the Telecommunications Act 1975 (Cth), the Australian Telecommunications Corporation Act 1989 (Cth), the Telecommunications Act 1991 (Cth) and the Telecommunications Act 1997 (Cth); and

(iii) rights of access by employees, agents or contractors of Telstra Corporation Limited to its telecommunications facilities in and in the vicinity of the NT determination area in the performance of their duties.

9. In relation to the parts of the NT determination area identified as:

- (a) the whole of NT Portion 3541 (Policeman's Hole);
- (b) the whole of NT Portion 3542 (Bucket Springs); and
- (c) the whole of NT Portion 3863 (Bubble Bubble);

the rights of the native title holders are an entitlement to possession, occupation, use and enjoyment of those parts of the NT determination area to the exclusion of all others provided, however, that rights and interests in flowing and subterranean waters are non-exclusive.

10. In relation to those parts of the NT determination area other than the portions identified in clause 9 above, the rights of the native title holders (identified in s 122 of the Territory Parks and Wildlife Conservation Act (NT) and in the Northern Territory Aboriginal Sacred Sites Act (NT)):

- (a) to use the land or waters for hunting and gathering of food for domestic purposes;
- (b) to use the land or waters for ceremonial and religious purposes;
- (c) to be present on the land for the purpose of conducting such activities; and
- (d) to take appropriate steps to protect sacred sites from damage, disturbance or interference;

continue to be enjoyed, and, subject to the principle of reasonable use, may be exercised notwithstanding the interests referred to in clause 8 above, but are not exclusive of the rights of others.

11. Subject to clause 10, the rights and interests of the persons referred to in clause 8(d) are wholly inconsistent with the native title rights and interests (other than the right referred to in clause 5(e)), but do not extinguish them. During the currency of the interests referred to in clause 8(d), the native title rights and interests (other than the right referred to in clause 5(e)) have no effect in relation to the rights and interests referred to in clause 8(d). If the interests referred to in clause 8(d) are later removed or otherwise cease to operate, either wholly or partly, the native title rights and interests will again have full effect, wholly or partly as appropriate.

12. To the extent, if at all, that the exercise of the native title right referred to in clause 5(e) conflicts with the exercise of the rights and interests of the persons referred to in clauses 8(d) and (e), the rights and interests of the persons referred to in clauses 8(d) and (e) prevail over, but do not extinguish, the native title rights referred to in clause 5(e).

13. To the extent that the rights and interests of the persons referred to in clause 8(a), (b), (c) and (e) are inconsistent with native title rights and interests, the native title rights and interests have no effect during the currency of, but are not extinguished by, the interests referred to in clause 8(a), (b), (c) and (e). If the interests referred to in clause 8(a), (b), (c) and (e) are later removed or otherwise cease to operate, either wholly or partly, the native title rights and interests will again have full effect, wholly or partly as appropriate.

14. To the extent, if at all, that native title rights and interests are inconsistent with the rights and interests of Telstra Corporation Limited referred to in clause 8(f), the rights and interests of Telstra Corporation Limited will prevail over, but will not extinguish, the native title rights and interests.

15. The native title rights and interests are subject to and exercisable in accordance with the valid laws of the Northern Territory of Australia and the Commonwealth of Australia.

SCHEDULE

The NT determination area comprises:

- 1. Northern Territory Portion 3541, containing an area of some 16 hectares;
- 2. Northern Territory Portion 3542, containing an area of some 2 square kilometres;
- 3. Northern Territory Portion 3863, containing an area of some 16 square kilometres;
- 4. Northern Territory Portion 1801, containing an area of some 262 square kilometres; and
- 5. Northern Territory Portion 3121, containing an area of some 310 square kilometres;

as outlined in red on the following Map (Attachment A).

REGISTER ATTACHMENTS:

1. Attachment A - Map of NT Determination Area, 1 page - A4, 09/12/2003

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.