



## Extract from the National Native Title Register

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### Determination Information:

**Determination Reference:** Federal Court Number(s): SAD6016/1998; SAD6002/1999  
NNTT Number: SCD2008/002

**Determination Name:** [Eringa, Eringa No.2, Wangkangurru/Yarluyandi and Irrwanyere Mt Dare Native Title Claim Groups v The State of South Australia - \[Wangkangurru/Yarluyandi Part A Proceeding\]](#)

**Date(s) of Effect:** 11/09/2008

**Determination Outcome:** Native title exists in parts of the determination area

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

**Determination Date:** 11/09/2008

**Determining Body:** Federal Court of Australia

#### ADDITIONAL INFORMATION:

This determination was one of three made by the Court simultaneously in relation to the Witjira National Park. They are the: (i) Eringa Part A Proceeding - That part of the Eringa Native Title Claim (SAD 6010 of 1998) that covers the area of the Witjira National Park but excluding the area of the Irrwanyere Mt Dare Claim (SAD 66 of 2005). (ii) Wangkangurru/Yarluyandi Part A Proceeding - That part of the Wangkangurru/Yarluyandi Native Title Claim (SAD 6016 of 1998) that overlaps both the Witjira National Park and the Eringa #2 Native Title Claim (SAD 6002 of 1999); and (iii) The entirety of the Irrwanyere Mt Dare Native Title Claim (SAD 66 of 2005) being that part of the Park covered by the Mt Dare Lease.

#### REGISTERED NATIVE TITLE BODY CORPORATE:

Irrwanyere Aboriginal Corporation RNTBC  
Agent Body Corporate  
C/- Johnston Withers  
17 Sturt Street  
ADELAIDE SA 5000

*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](http://www.oric.gov.au)*

#### COMMON LAW HOLDER(S) OF NATIVE TITLE:

7. The Native Title Holders are those Lower Southern Arrernte and Wangkangurru persons who have a traditional connection to the Determination Area and are described in Schedule 2.

8. In addition, the individuals named in Schedule 3 are acknowledged as entitled to exercise native title rights and

interests in the Determination Area under the traditional laws and customs of the Native Title Holders.

## **MATTERS DETERMINED:**

### **THE COURT ORDERS THAT:**

1. To the extent that the Wangkangurru/Yarluyandi Native Title Claim (SAD 6016 of 1998) overlaps both the Witjira National Park and the Eringa # 2 Native Title Claim (SAD 6002 of 1999), it is to be heard and determined as a separate proceeding to be known as the "Wangkangurru/Yarluyandi Part A Proceeding".
2. The Wangkangurru/Yarluyandi Part A Proceeding shall continue in proceeding number SAD 6016 of 1998.
3. Pursuant to section 67 of the Native Title Act 1993 (Cth), to the extent that the Eringa #2 Native Title Claim (SAD 6002 of 1999) overlaps the Wangkangurru/Yarluyandi Part A Proceeding, it is to be heard at the same time as the Wangkangurru/Yarluyandi Part A Proceeding and the Applicant to the Eringa #2 Native Title Claim (SAD 6002 of 1999) be joined as the Second Applicant to the Wangkangurru/Yarluyandi Part A Proceeding.
4. The part of the Wangkangurru/Yarluyandi Native Title Claim (SAD 6016 of 1998) that does not cover the area of the Witjira National Park is to continue as a separate proceeding to be known as the "Wangkangurru/Yarluyandi Part B Proceeding" within proceeding number SAD 6016 of 1998.

### **BY CONSENT THE COURT MAKES THE FOLLOWING DETERMINATION OF NATIVE TITLE:**

1. In this determination, including its schedules, unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Part 15 of the Native Title Act.
2. In this determination,
  - (a) "the Park" means the whole of the area reserved as a National Park under the provisions of the National Parks and Wildlife Act 1972 (SA) ("NPWA") and proclaimed as the Witjira National Park in Government Gazette dated 21 November 1985, being Section 1495 Out of Hundreds Dalhousie.
  - (b) "the Determination Area" means that part of the Park covered by the Wangkangurru/Yarluyandi Part A Proceeding (SAD 6016 of 1998).
  - (c) "the Vesting" means the vesting of the Park in the Crown pursuant to section 35 of the NPWA by reason of the reservation and proclamation referred to in subparagraph (a) above.
  - (d) "the ILUA and CMA" means the Indigenous Land Use Agreement and Co-Management Agreement relating to the Park and executed by the parties on 13 August 2007.
3. In this determination including its schedules, in the event of an inconsistency between a description of an area in a schedule and the depiction of that area on the map in Schedule 1, the written description shall prevail.

### **EXISTENCE OF NATIVE TITLE**

4. Native title exists in the Determination Area.
5. Section 47A of the Native Title Act applies to the whole of the Determination Area other than a small part of the area that has been "fenced out" to the adjoining pastoral lease, as referred to in sub-paragraph 12(f). Subject to paragraph 6 all extinguishment of native title rights and interests over the Determination Area prior to 26 May 1999 is to be disregarded.
6. Native title does not exist in relation to the areas and resources described in paragraphs 14 and 15 herein.

### **THE NATIVE TITLE HOLDERS**

7. The Native Title Holders are those Lower Southern Arrernte and Wangkangurru persons who have a traditional connection to the Determination Area and are described in Schedule 2.
8. In addition, the individuals named in Schedule 3 are acknowledged as entitled to exercise native title rights and interests in the Determination Area under the traditional laws and customs of the Native Title Holders.

### **NATIVE TITLE RIGHTS AND INTERESTS**

9. The nature and extent of the native title rights and interests held by all native title holders [sic] in relation to the Determination Area are rights to use, occupy and enjoy (in accordance with the Native Title Holders' traditional laws and customs) the land and waters of the Determination Area being:

- (a) The right to access and move about the Determination Area;
- (b) The right to live, to camp and to erect shelters on the Determination Area;
- (c) The right to hunt on the Determination Area;
- (d) The right to gather and use the natural resources of the Determination Area such as food, plants, timber, ochre and feathers;
- (e) The right to cook and to light fires for cooking and camping purposes on the Determination Area;
- (f) The right to use the natural water resources of the Determination Area;
- (g) The right to distribute, trade or exchange the natural resources of the Determination Area;
- (h) The right to conduct ceremonies and hold meetings on the Determination Area;
- (i) The right to engage and participate in cultural activities on the Determination Area including those relating to births and deaths;
- (j) The right to teach on the Determination Area the physical and spiritual attributes of locations and sites within the Determination Area;
- (k) The right to visit, maintain and protect sites and places of cultural and religious significance to Native Title Holders under their traditional laws and customs on the Determination Area;
- (l) The right to speak for and make decisions in relation to the Determination Area about the use and enjoyment of the Determination Area by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Native Title Holders;
- (m) the right to be accompanied on the Determination Area by those people who, though not Native Title Holders, are:
  - (i) spouses of Native Title Holders; or
  - (ii) people required by traditional law and custom for the performance of ceremonies or cultural activities on the Determination Area; or
  - (iii) people who have rights in relation to the Determination Area according to the traditional laws and customs acknowledged by the Native Title Holders; or
  - (iv) people required by the Native Title Holders to assist in, observe, or record traditional activities on the Determination Area.

10. The native title rights and interest are for personal, domestic or communal use.

11. The native title rights and interests are non-exclusive (with the exception of those set out in subparagraph 9(l)) and subject to and exercisable in accordance with:

- (a) the traditional laws and customs of the Native Title Holders;
- (b) the valid laws of the State and Commonwealth, including the common law.

#### NATURE AND EXTENT OF OTHER INTERESTS

12. The nature and extent of other interests in relation to the Determination Area are:

- (a) the rights exercisable under the ILUA and CMA in accordance with their terms;
- (b) the interests created under the IAC Lease;
- (c) the interests of the Crown in right of the State of South Australia;
- (d) the rights of the public to use and enjoy the Determination Area in accordance with the provisions of the NPWA and associated regulations (subject to the IAC Lease) and in accordance with the provisions of the Mount Dare lease;
- (e) the rights to access land by an employee or agent or instrumentality of the State, Commonwealth or other statutory authority as required in the performance of his or her statutory or common law duties (in accordance with the NPWA or any other Act);

(f) for that part of the Park fenced into Macumba Station and habitually used by the pastoral lessees of that Station, such rights and interests as may be held and exercisable by them in those parts of the Park by reason of such usage and the pastoral lease for that station being:

(i) Pastoral Lease No. 2528, Crown Lease Volume 1607 folio 55;

subject to rights of access of Aboriginal people equivalent to those provided by section 47 of the Pastoral Land Management and Conservation Act 1989.

13. The relationship between the native title rights and interests in the Determination Area that are described in paragraph 9 and the other rights and interests that are referred to in paragraph 12 ("the other rights and interests") is that:

(a) the other rights and interests co-exist with the native title rights and interests;

(b) the existence of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the other rights and interests which prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them;

(c) the native title rights and interests continue to exist but have no effect in relation to the Vesting.

14. Native title rights do not exist in minerals as defined in section 6 of the Mining Act 1971 (SA) or petroleum as defined in section 4 of the Petroleum Act 2000 (SA).

15. Native title rights do not exist in the areas covered by Public Works (including the land defined in section 251D of the Native Title Act which were constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

16. The native title is not to be held in trust.

17. An Aboriginal corporation, the name of which must be provided to the Court within six months of the date of this Order, is to:

(a) be the prescribed body corporate for the purposes of s 57(2) of the Native Title Act; and

(b) perform the functions mentioned in s 57(3) of the Native Title Act after becoming a registered native title body corporate.

18. The parties have liberty to apply on 14 days notice to a single judge of the Court for the following purposes:

(a) as to the identification of the Aboriginal corporation referred to in the preceding paragraph;

(b) to establish the precise location and boundaries of the public works and adjacent land and waters referred to in paragraph 15 of this determination.

SCHEDULE 1 - MAP OF THE DETERMINATION AREA

(see Attachment 1 - Schedule 1 Map of Determination Area)

SCHEDULE 2 - NATIVE TITLE HOLDERS

- All of the descendants of Wiljali
- All of the descendants of Yungili and Yungili's brother and their wives, being the sisters Maggie and Bugagaguna
- All of the descendants of Opossum (including Billy Ngaltagintata Reese)
- All of the descendants of the sibling pair Nguramariu (male) and Pungatjuntu (female)
- All of the descendants of the siblings Iljili - Banggana and Iljili ' Birbana
- All of the descendants of the siblings Ruby and Elsie Girranungada Nancurda
- All of the descendants of Willy Doolan
- All of the descendants of Lalayi

- All of the descendants of Jimmy Arrerte
- All of the descendants of Lilly Summerfield (Summerville)
- Marilyn Rose Hull Ah Chee and all of her descendants
- Ian Hodgson and all of his descendants
- All of the descendants of Angeline (including Ruth McKenzie, Tom Cramp and Jenny Stewart)
- All of the descendants of Mary Cleanskin (Nyukapinya) (including Billy Bailes and June Bailes)
- All of the descendants of Anatjari and Wiltiwa (the parents of Lilly, the Arrernte mother of Edie King)
- All of the descendants of Harry Taylor

SCHEDULE 3 - Individuals acknowledged as entitled to exercise native title rights and interests under the traditional laws and customs of the Native Title Holders:

- Emily Churchill
- Hughie Tjami
- Keith Minungka

**REGISTER ATTACHMENTS:**

1. Attachment 1 - SCHEDULE 1 - MAP OF THE DETERMINATION AREA [The Wangkanggurru\_Yarluyandi Part A Nat, 1 page - A4, 11/09/2008

*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.*