



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): SAD6010/1998; SAD189/2010
NNTT Number: SCD2011/003

Determination Name: [King on behalf of the Eringa Native Title Claim Group v State of South Australia](#)

Date(s) of Effect: 13/12/2011

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

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

Determination Date: 13/12/2011

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Walka Wani Aboriginal Corporation RNTBC
Agent Body Corporate
C/- Johnston Withers
17 Sturt Street
ADELAIDE BC 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

COMMON LAW HOLDER(S) OF NATIVE TITLE:

5. The Native Title Holders are:

- (a) all those Lower Southern Arrernte persons who have a traditional connection to the Determination Area, being all of those described in Schedule 4 who:
- (i) identify as Lower Southern Arrernte; and
 - (ii) are recognised under the relevant traditional law and custom by other Native Title Holders as having rights and interests in the Determination Area; and
- (b) all those Yankunytjatjara and/or Luritja persons who:

(i) have a spiritual connection to the Determination Area and the Tjukurpa associated with it because in the case of each of them:

(A) the Determination Area is his or her country of birth (also reckoned by the area where his or her mother lived during the pregnancy); or

(B) he or she has had a long term association with the Determination Area such that he or she has traditional geographical and religious knowledge of that country; or

(C) he or she has an affiliation to the Determination Area through a parent or grandparent with a connection to the Determination Area as specified in sub-paragraph (A) or (B) above,

including all of those described in Schedule 5 who identify as Yankunytjatjara or Luritja; and

(ii) are recognised under the relevant traditional law and custom by other Native Title Holders as having rights and interests in the Determination Area.

MATTERS DETERMINED:

THE COURT ORDERS, DECLARES AND DETERMINES BY CONSENT THAT:

INTERPRETATION & DECLARATION

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 Pt 15 of the Native Title Act.

2. In this determination, 'the Determination Area' means the area described in Schedule 1 (as shown in the Map comprising Schedule 2 hereto), apart from those excluded areas which are described or referred to in Paragraph 10 and Schedule 3.

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 2, the written description shall prevail.

4. Native title exists in the areas described in Schedule 1 with the exception of those areas described or referred to in Paragraph 10 and Schedule 3.

NATIVE TITLE HOLDERS

5. The Native Title Holders are:

(a) all those Lower Southern Arrernte persons who have a traditional connection to the Determination Area, being all of those described in Schedule 4 who:

(i) identify as Lower Southern Arrernte; and

(ii) are recognised under the relevant traditional law and custom by other Native Title Holders as having rights and interests in the Determination Area; and

(b) all those Yankunytjatjara and/or Luritja persons who:

(i) have a spiritual connection to the Determination Area and the Tjukurpa associated with it because in the case of each of them:

(A) the Determination Area is his or her country of birth (also reckoned by the area where his or her mother lived during the pregnancy); or

(B) he or she has had a long term association with the Determination Area such that he or she has traditional geographical and religious knowledge of that country; or

(C) he or she has an affiliation to the Determination Area through a parent or grandparent with a connection to the Determination Area as specified in sub-paragraph (A) or (B) above,

including all of those described in Schedule 5 who identify as Yankunytjatjara or Luritja; and

(ii) are recognised under the relevant traditional law and custom by other Native Title Holders as having rights and interests in the Determination Area.

RIGHTS AND INTERESTS

6. Subject to Paragraphs 7 and 8, the nature and extent of the native title rights and interests in relation to the Determination Area are non-exclusive rights to use 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 hunt and fish on the land and waters of the Determination Area;
- (c) the right to gather and use the natural resources of the Determination 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 Determination Area;
- (e) the right to use the natural water resources of the Determination 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 Determination Area;
- (g) the right to cook on the Determination 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 Determination Area including those relating to births and deaths;
- (i) the right to conduct ceremonies and hold meetings on the Determination Area;
- (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 be accompanied on to 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; and
- (m) in relation to Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Native Title Holders, the right to speak for country and make decisions about the use and enjoyment of the Determination Area by those Aboriginal persons.

GENERAL LIMITATIONS

7. The native title rights and interests are for personal, domestic and communal use but do not include commercial use of the Determination Area or the resources from it.

8. The native title rights and interests described in Paragraph 6 do not confer possession, occupation, use and enjoyment of the Determination Area on the Native Title Holders to the exclusion of others.

9. Native title rights and interests are 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.

For the avoidance of doubt, the native title interest expressed in Paragraph 6(e) (the right to use the natural water resources of the Determination Area) is subject to the Natural Resources Management Act 2004 (SA).

10. Native title does not exist in the areas and resources described in Paragraphs 11, 13, 14 and 15 herein.

11. Native title rights and interests do not exist in respect of those parts of the Determination Area being any house, shed or other building or airstrip or any dam or other stock watering point constructed pursuant to the pastoral leases referred to in Paragraph 17(a) below constructed prior to the date of this determination. These areas include any

adjacent land or waters, the exclusive use of which is necessary for the enjoyment of the improvements referred to.

12. To be clear, Paragraph 11 does not preclude the possibility of further extinguishment, according to law, of native title over other limited parts of the Determination Area by reason of the construction of new pastoral improvements of the kind referred to in Paragraph 11 after the date of this determination.

13. Native title does not exist in those areas described in Schedule 3, as it has been extinguished.

14. Native title rights and interests do not exist in:

(a) Minerals, as defined in s 6 of the Mining Act 1971 (SA); or

(b) Petroleum, as defined in s 4 of the Petroleum and Geothermal Energy Act 2000 (SA); or

(c) a naturally occurring underground accumulation of a regulated substance as defined in s 4 of the Petroleum and Geothermal Energy Act 2000 (SA), below a depth of 100 metres from the surface of the earth; or

(d) a natural reservoir, as defined in s 4 of the Petroleum and Geothermal Energy Act 2000 (SA), below a depth of 100 metres from the surface of the earth; or

(e) geothermal energy, as defined in s 4 of the Petroleum and Geothermal Energy Act 2000 (SA) the source of which is below a depth of 100 metres from the surface of the earth.

For the purposes of this Paragraph 14 and the avoidance of doubt:

(i) a geological structure (in whole or in part) on or at the earth's surface, or a natural cavity which can be accessed or entered by a person through a natural opening in the earth's surface, is not a natural reservoir;

(ii) thermal energy contained in a hot or natural spring is not geothermal energy as defined in s 4 of the Petroleum and Geothermal Energy Act 2000 (SA);

(iii) the absence from this Order of any reference to a natural reservoir or a naturally occurring accumulation of a regulated substance, as those terms are defined in s 4 of the Petroleum and Geothermal Energy Act 2000 (SA), above a depth 100 metres below the surface of the earth or geothermal energy the source of which is above a depth of 100 metres below the surface of the earth is not, of itself, to be taken as an indication of the existence or otherwise of native title rights or interests in such natural reservoir, naturally occurring accumulation of a regulated substance or geothermal energy.

15. Native title rights do not exist in the areas covered by Public Works (including the land defined in s 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.

16. Public Works constructed, established or situated after 23 December 1996 have had such effect as has resulted from Pt 2, Div 3 of the Native Title Act.

OTHER INTERESTS & RELATIONSHIP WITH NATIVE TITLE

17. The nature and extent of other interests to the Determination Area are:

(a) the interests within the Determination Area created by:

(i) Pastoral Lease No. 2495, Crown Lease Volume 1628 Folio 19 (Tieyon);

(ii) Pastoral Lease No. 2495A, Crown Lease Volume 1628 Folio 20 (Crown Point);

(iii) Pastoral Lease No. 2460, Crown Lease Volume 1607 Folio 84 (Hamilton (Eringa));

(iv) Pastoral Lease No. 2440, Crown Lease Volume 1334 Folio 43 (Stevenson);

(v) Pastoral Lease No. 2428, Crown Lease Volume 1332 Folio 23 (Mt Sarah);

(vi) Pastoral Lease No 2528, Crown Lease Volume 1607 Folio 55 (Macumba);

(vii) Pastoral Lease No. 2408, Crown Lease Volume 1333 Folio 25 (Allandale);

(b) the interests of the Crown in right of the State of South Australia;

(c) the interests of persons to whom valid or validated rights and interests have been granted or recognised by the Crown in right of the State of South Australia or by the Commonwealth of Australia pursuant to statute or otherwise in

the exercise of executive power including, but not limited to, rights and interests granted or recognised pursuant to the Mining Act 1971 (SA), Petroleum and Geothermal Energy Act 2000 (SA) and Opal Mining Act 1995 (SA), all as amended from time to time;

(d) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;

(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 where such access would be permitted to private land;

(f) the rights and interests of all parties to the Indigenous Land Use Agreements listed in Schedule 6 arising by reason of those agreements;

(g) the rights and interests of Telstra Corporation Limited:

(i) as the owner or operator of telecommunications facilities within the Determination Area;

(ii) 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) including;

(1) to inspect land;

(2) to install and operate existing and new telecommunications facilities;

(3) to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunications facilities, including cabling, customer terminal sites and ancillary facilities; and

(iii) for its employees, agents or contractors to access its facilities in, and in the vicinity of, the Determination Area, in the performance of their duties;

(iv) under any leases, licences, access agreements or easements relating to its telecommunications facilities in the Determination Area.

18. The relationship between the native title rights and interests in the Determination Area that are described in Paragraph 6 and the other rights and interests that are referred to in Paragraph 17 (the Other Interests) is that:

(a) to the extent that any of the Other Interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency during the currency of the Other Interests; and otherwise,

(b) the existence and exercise 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 Interests, and the Other Interests, and the doing of any activity required or permitted to be done by or under the Other Interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but, subject to any application of ss 24JA and 24JB of the Native Title Act, do not extinguish them.

(c) the native title is subject to extinguishment by:

(i) the lawful powers of the Commonwealth and of the State of South Australia; and/or

(ii) the lawful grant or creation of interests pursuant to the laws of the Commonwealth and the State of South Australia.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

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

20. An Aboriginal corporation, the name of which must be provided to the Court within 6 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.

21. 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 any public works and adjacent land and waters referred to in Paragraphs 15 and 16 of this Order;

(c) to establish the effect on native title rights and interests of any public works referred to in Paragraph 16 of this Order; or

(d) to determine whether a particular area is included in the description in Paragraph 11 or Schedule 3 of this Order.

SCHEDULE 1 ' LOCATION OF AND AREAS COMPRISING THE DETERMINATION AREA

The Determination Area is located wholly within and comprises all land and waters bounded by the following line:

External Boundary Description:

Commencing at a point being the intersection of the northern boundary of Block 1198, OH(Dalhousie) with the centreline of Stevenson River. Thence generally south-easterly along the centreline of Stevenson River to its intersection with the centreline of Macumba River. Thence generally south-easterly along the centreline of Macumba River to its intersection with Longitude 135.716786 degrees East, Latitude 27.204628 degrees South.

Thence south-westerly in a straight line to Longitude 135.687164 degrees East, Latitude 27.214986 degrees South and south-westerly in a straight line to the intersection of the western boundary of Allotment 2019 of Deposited Plan 34373 with Latitude 27.369452 degrees South.

Thence northerly, westerly, northerly and westerly along the eastern and northern boundaries of Allotment 2005 of Deposited Plan 30223 to an eastern boundary of Block 1161 OH(Abminga). Thence northerly, westerly and northerly to the south-eastern corner of Block 1227, OH(Abminga).

Thence westerly along the southern boundary of the said Block 1227 to its intersection with Longitude 133.850000 degrees East. Thence through the said Block 1227 in a straight line to the intersection of the South Australian/Northern Territory border with Longitude 133.900000 degrees East.

Thence easterly along the South Australian/Northern Territory border to the north-eastern corner of Block 1264, OH (Dalhousie). Thence southerly, easterly and southerly along the eastern boundaries and westerly along the southern boundary of the said Block 1264 to the north-eastern corner of Block 1253, OH(Abminga). Thence generally south-easterly along the eastern boundaries of the said Block 1253 to its eastern-most corner. Thence westerly along a southern boundary of the said Block 1253 to the point of commencement.

Reference datum:

Geographical coordinates have been provided by the NNTT Geospatial Unit and are reference to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time, with the exception of:

1. Areas covered by determinations made on 11 September 2008 as part of judgment in *Eringa, Eringa No 2, Wangkangurru/Yarluyandi and Irrwanyere Mt Dare Native Title Claim Groups v The State of South Australia* [2008] FCA 1370 (for the avoidance of doubt).

2. The areas described or referred to in Paragraph 10 above and Schedule 3 below.

SCHEDULE 2 ' MAP OF THE DETERMINATION AREA

(See NNTR Attachment 1: 'Schedule 2 ' Map of the Determination Area')

SCHEDULE 3 ' AREAS WITHIN THE EXTERNAL BOUNDARIES OF THE DETERMINATION AREA WHERE NATIVE TITLE DOES NOT EXIST

The following areas are agreed to have been excluded from the Determination Area by reason of the fact that native title has been extinguished in those areas:

1. Any areas in relation to which native title has been extinguished by an act attributable to the State of South Australia pursuant to any of the following sections of the Native Title (South Australia) Act 1994 (SA):

1.1 Sections 33 and 34 (Category A past acts);

1.2 Section 35 (Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests);

1.3 Sections 36B and 36C (Category A intermediate period acts);

1.4 Section 36D (Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests);

1.5 Sections 36F and 36G (previous exclusive possession acts other than 'excepted acts');

2. Any areas in relation to which native title has been extinguished by an act attributable to the Commonwealth of Australia pursuant to any of the following sections of the Native Title Act:

2.1 Section 15(1)(a), (b) (Category A past acts);

2.2 Section 15(1)(c) (Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests);

2.3 Section 22B(a), (b) (Category A intermediate period acts);

2.4 Section 22B(c) (Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests);

2.5 Sections 23B and 23C (previous exclusive possession acts).

3. To avoid doubt, native title has been extinguished in relation to the following areas, the subject of freehold grants:

3.1 Section 1524, Out of Hundreds (Abminga), CT 5864/667

3.2 Section 1525, Out of Hundreds (Abminga), CT 5864/390

4. All roads which have been delineated in a public map pursuant to s 5(d)(II) of the Crown Lands Act 1929 (SA).

5. Any area in which native title rights and interests have otherwise been wholly extinguished.

SCHEDULE 4 'LOWER SOUTHERN ARRERENTE DESCENT GROUPS

* the descendants of Yungili and Yungili's brother and their wives, being the sisters of Maggie and Bugagaguna

* the descendants of Willie Doolan

* the descendants of Lalayi

* the descendants of Jimmy Arrerte

* the descendants of Lilly Summerfield (Summerville)

* Marilyn Rose Hull Ah Chee and her descendants

* Ian Hodgson and his descendants

* the descendants of Angeline (including Ruth McKenzie, Tom Cramp and Jenny Stewart)

* the descendants of Mary Cleanskin (Nyukapinya) (including Billy Bailes and June Bailes)

* the descendants of Anatjara and Wiltiwa (the parents of Lilly, the Arrernte mother of Edie King)

* the descendants of Harry Taylor

* the descendants of Lorna Terone

SCHEDULE 5 'YANKUNYTJATJARA/LURITJA DESCENT GROUPS

* the descendants of Willie Doolan

* the descendants of Lalayi

* the descendants of Angeline (including Ruth McKenzie, Tom Cramp and Jenny Stewart)

* the descendants of Mary Cleanskin (Nyukapinya) (including Billy Bailes and June Bailes)

- * the descendants of Anatjara and Wiltiwa (the parents of Lilly, the Arrernte mother of Edie King)
- * the descendants of Harry Taylor
- * the descendants of Lorna Terone
- * the descendants of Mulatjatjara
- * the descendants of Emily Churchill
- * Hughie Tjami and his descendants
- * Keith Minungka and his descendants

SCHEDULE 6 ' DETAILS OF INDIGENOUS LAND USE AGREEMENTS IN THE DETERMINATION AREA

The following Indigenous Land Use Agreements (ILUA) are envisaged in relation to the Determination Area:

- * 'Whole-of-Claim' and Compensation ILUA
- * Pastoral ILUA with Tieyon Station
- * Pastoral ILUA with Crown Point Station
- * Pastoral ILUA with Hamilton (Eringa) Station
- * Pastoral ILUA with Stevenson Station
- * Pastoral ILUA with Mt Sarah Station
- * Pastoral ILUA with Macumba Station

REGISTER ATTACHMENTS:

1. Attachment 1 Schedule 2 - Map of the Determination Area, 1 page - A4, 13/12/2011

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.