

# Determination of native title varied on appeal by consent – Roper River

## *Wandarang, Alawa, Marra and Ngalakan v Northern Territory* [2004] FCAFC 187

Black CJ, Moore and Hely JJ, 3 June 2004

### Issue

This determination of native title made by consent settles appeal proceedings relating to a determination of native title made in 2000.

### Background

This determination relates to an area that includes most of the old St Vidgeon's Homestead Station, a gazetted stock route, the banks of the Roper River and river beds of the Roper, Towns and Limmen Bight rivers, to the extent that they are tidal. At first instance, Olney J proposed a draft determination: see *Wandarang Peoples v Northern Territory* (2000) 104 FCR 380 [2000] FCA 923 which was finalised by orders on 14 November 2000. An appeal and a cross appeal were subsequently filed against aspects of both the judgment and the determination.

### Appeals allowed and determination varied

In this case, the Full Court of the Federal Court (by consent) upheld in part both the appeal and cross-appeal and varied the determination of native title made on 14 November 2000. This summary deals only with the variations.

### Non-exclusive native title rights and interests recognised

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 the determination area (with the rights to possess and occupy the determination area found in the original determination being deleted);
- speak for the determination area (with the right to make decisions about the use and enjoyment of the determination area found in the original determination being deleted);
- reside upon the land in the determination area and otherwise to have access to the determination area;
- use and enjoy the natural resources found on or within the determination area;
- maintain and protect places of importance under the traditional laws, customs and practices in that area other than with respect to the non-native title rights and interests identified below.

At first instance, Olney J had determined that there was no native title to waters of the rivers within the determination area that are affected by the tide. As varied, the determination recognises non-exclusive native title rights to those waters.