

## FEDERAL COURT OF AUSTRALIA

### Tilmouth v Northern Territory of Australia [2014] FCA 422

Citation: Tilmouth v Northern Territory of Australia [2014] FCA 422

Parties: **KENNY TILMOUTH, COLIN BIRD, MARGARET GOLDER, MARTIN MCMILLAN AND DESMOND YOUNG ON BEHALF OF THE MEMBERS OF THE ILKEWARN, ATWEL/ALKWEPETYE AND AYAMPE LANDHOLDING GROUPS v NORTHERN TERRITORY OF AUSTRALIA**

File number: NTD 38 of 2012

Judge: **WHITE J**

Date of judgment: 9 May 2014

Catchwords: **NATIVE TITLE** – consent determination – approach to resolution by agreement of claim for determination of native title – whether orders under s 87 of the *Native Title Act 1993* (Cth) appropriate and within the power of the Court

Legislation: *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)  
*Native Title Act 1993* (Cth) ss 47B, 55, 56, 61, 87, 94A, 223, 225

Cases cited: *King v State of South Australia* [2011] FCA 1386; (2011) 285 ALR 454  
*Lovett on behalf of the Gunditjmarra People v State of Victoria* [2007] FCA 474  
*Members of the Yorta Yorta Aboriginal Community v State of Victoria* [2002] HCA 58; (2002) 214 CLR 422  
*Munn for and on behalf of the Guggari People v Queensland* [2001] FCA 1229; (2001) 115 FCR 109

Date of hearing: 9 May 2014

Place: Edwards Creek

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 30  
Counsel for the Applicants: Ms S Polden  
Solicitor for the Applicants: Central Land Council  
Counsel for the Respondent: Mr R Pocock  
Solicitor for the Respondent: Solicitor for the Northern Territory

**IN THE FEDERAL COURT OF AUSTRALIA  
NORTHERN TERRITORY DISTRICT REGISTRY  
GENERAL DIVISION**

**NTD 38 of 2012**

**BETWEEN:                   KENNY TILMOUTH, COLIN BIRD, MARGARET GOLDER,  
MARTIN MCMILLAN AND DESMOND YOUNG ON  
BEHALF OF THE MEMBERS OF THE ILKEWARN,  
ATWEL/ALKWEPETYE AND AYAMPE LANDHOLDING  
GROUPS  
Applicants**

**AND:                         NORTHERN TERRITORY OF AUSTRALIA  
Respondent**

**JUDGE:                     WHITE J**

**DATE OF ORDER:        9 MAY 2014**

**WHERE MADE:           EDWARDS CREEK**

**THE COURT NOTES THAT:**

- A. The Applicants in this proceeding NTD38/2012 have made an application for the determination of native title (“the application”) in respect of an area of land and waters defined in the proposed determination (“the determination”).
- B. The Applicants and the Northern Territory of Australia (“the parties”) have reached agreement as to the terms of the determination which is to be made in relation to the land and waters covered by the application (“the determination area”). The external boundaries of the determination area are described in Schedule A and depicted on the map at Schedule B of the determination.
- C. The parties have, pursuant to s 87 of the *Native Title Act 1993* (Cth) (“the Act”) filed their agreement with this Court.
- D. The terms of the parties’ agreement involve the Court making consent orders pursuant to s 87 of the Act determining that native title exists in relation to the determination area as provided by the determination.
- E. The parties acknowledge that the effect of the making of the determination will be that the members of the native title claim group, in accordance with the traditional laws acknowledged and the traditional customs observed by them, are recognised as the native title holders for the determination area.

- F. The parties have requested that the Court determine this proceeding in accordance with their agreement.

**BEING SATISFIED** that a determination of native title in the terms set out in the determination in respect of this proceeding would be within power of the Court and, it appearing to the Court appropriate to do so, pursuant to section 87 of the Act and by the consent of the parties:

**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 on trust.
3. Akwerrperl Corporation (ICN: 7772) is:
  - (a) to be the prescribed body corporate for the purposes of s 57(2) of the Act;
  - (b) to perform the functions outlined in s 57(3) of the Act after becoming a registered native title body corporate.
4. The parties have liberty to apply to establish the precise location and boundaries of any public works and adjacent land and waters identified or otherwise referred to in Schedule C of the determination.
5. There be no order as to costs.

**THE COURT DETERMINES THAT:**

**The determination area**

1. The determination area comprises NT Portions 687, 5015, 5016, 6152, 6153, 6271, 6272 and 6273, being the land and waters more particularly described in Schedule A and depicted on the map comprising Schedule B.
2. Native title exists in the determination area as follows:
  - (a) NT Portions 687, 6152, 6153, 6271, 6272 and 6273: the native title rights and interests in paragraph 6 apply;
  - (b) NT Portions 5015 and 5016: the native title rights and interests in paragraph 6 would apply were they not wholly ineffective due to the operation of section 238 of the *Native Title Act 1993* (Cth).
3. Native title does not exist in those parts of the determination area described in Schedule C.

### **The native title holders**

4. The determination area comprises three estate areas associated with the Ilkewarn, Atwel/Alkwepetye and Ayampe landholding groups respectively.
5. The persons who hold the common or group rights comprising the native title are the Aboriginal persons who are:
  - (a) members of one or more of the landholding groups referred to in paragraph 4 by virtue of descent (including adoption) through father's father, mother's father, father's mother and mother's mother;
  - (b) accepted as members of one or more of the landholding groups referred to in paragraph 4 by senior members of a landholding group, referred to in subparagraph (a), by virtue of the following non-descent connections to an estate:
    - (i) conception and/or birthplace affiliation;
    - (ii) long-term residence in an estate;
    - (iii) possession of secular and traditional spiritual knowledge, authority and responsibility for an estate or surrounding country, in particular, knowledge of sites and their mythology; and
    - (iv) authority and responsibility for shared Dreaming tracks and/or places of significance connected with an estate, especially where authority and responsibility is held by affiliates of neighbouring estates.

### **Native title rights and interests**

6. The native title rights and interests of the native title holders are the rights possessed under and exercisable in accordance with their traditional laws and customs, including the right to conduct activities necessary to give effect to them, being:
  - (a) the right to access and travel over any part of the land and waters;
  - (b) the right to live on the land, and for that purpose, to camp, erect shelters and other structures;
  - (c) the right to hunt, gather and fish on the land and waters;
  - (d) the right to take and use the natural resources of the land and waters;
  - (e) the right to access, take and use natural water on or in the land, except water captured by the holders of Perpetual Pastoral Lease 1122;

- (f) the right to light fires for domestic purposes, but not for the clearance of vegetation;
- (g) the right to access and to maintain and protect sites and places on or in the land and waters that are important under traditional laws and customs;
- (h) the right to conduct and participate in the following activities on the land and waters:
  - (i) cultural activities;
  - (ii) ceremonies;
  - (iii) meetings;
  - (iv) cultural practices relating to birth and death including burial rites;
  - (v) teaching the physical and spiritual attributes of sites and places on the land and waters that are important under traditional laws and customs,and, subject to the rights of any person arising under the laws in force in the Northern Territory to be present on the land, the right to privacy in the exercise and enjoyment of those activities;
- (i) the right to speak for and make decisions about the use and enjoyment of the land and waters by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the native title holders;
- (j) the right to share or exchange natural resources obtained on or from the land and waters, including traditional items made from the natural resources;
- (k) the right to be accompanied on the land and waters by persons who, though not native title holders, are:
  - (i) people required by traditional law and custom for the performance of ceremonies or cultural activities on the land and waters;
  - (ii) people who have rights in relation to the land and waters according to the traditional laws and customs acknowledged by the native title holders;
  - (iii) people required by the native title holders to assist in, observe, or record traditional activities on the areas.

7. The native title rights and interests referred to in paragraph 6 do not confer possession, occupation, use and enjoyment of the land and waters on the native title holders to the exclusion of all others.
8. The native title rights and interests referred to in paragraph 6 are not exercisable for any commercial or business purpose.
9. The native title rights and interests referred to in paragraph 6 hereof are subject to and exercisable in accordance with:
  - (a) the valid laws of the Northern Territory of Australia and the Commonwealth of Australia;
  - (b) the traditional laws acknowledged and traditional customs observed by the native title holders.

**Other rights and interests**

10. The nature and extent of the other interests in the determination area are:
  - (a) NT Portion 687 – the interest of Samuel Les Goldsworthy and Heather Jessie Goldsworthy under Perpetual Pastoral Lease No. 1122;
  - (b) NT Portions 5015 and 5016 – the interest of AustralAsia Railway Corporation under Crown Lease Term 1877;
  - (c) NT Portions 6152, 6153, 6271, 6272 and 6273 – the interest of the Northern Territory;
  - (d) the interests of the title holders under the following mining interests:
    - (i) EL 29132 – the interest of NT Minerals Aust. Pty Ltd;
    - (ii) EL 29556 – the interest of Wuhua Mining Corporation Pty Ltd;
    - (iii) EL 29133 – the interest of NT Minerals Aust. Pty Ltd;
    - (iv) EL 29252 – the interest of Enigma Mining Ltd;
    - (v) EL 28340 – the interest of Mithril Resources Ltd;
  - (e) 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 under Schedule 3 to the *Telecommunications Act 1997* (Cth), including the right:

- A. to inspect land;
  - B. to install and operate telecommunication facilities; and
  - C. to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunication facilities; and
- (iii) for its employees, agents or contractors to access its telecommunication facilities in and in the vicinity of the determination area in the performance of their duties; and
  - (iv) under any lease, licence or easement relating to its telecommunications facilities in the determination area;
- (f) NT Portion 687 – the rights of Aboriginal persons (whether or not native title holders) pursuant to the reservation in favour of Aboriginal people contained in pastoral leases set out in sections 38(2) to (6) of the *Pastoral Land Act 1992* (NT);
  - (g) the rights of Aboriginal persons (whether or not native title holders) by virtue of the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT);
  - (h) rights of access by an employee, servant, agent or instrumentality of the Northern Territory, Commonwealth or other statutory authority as required in the performance of his or her statutory duties;
  - (i) the interests of persons to whom valid or validated rights and interests have been:
    - (i) granted by the Crown pursuant to statute or otherwise in the exercise of its executive power; or
    - (ii) conferred by statute.



### Relationship between rights and interests

11. To the extent that the continued existence, enjoyment or exercise of the native title rights and interests referred to in paragraph 6 in relation to NT Portions 687, 6152, 6153, 6271, 6272 and 6273 is inconsistent with the existence, enjoyment or exercise of the other rights and interests referred to in paragraph 10, the other rights and interests and the doing of any activity required or permitted to be done by or under the other interests, prevail over, but do not extinguish, the native title rights and interests.
12. In relation to NT Portions 5015 and 5016 the relationship between the native title rights and interests referred to in paragraph 6 and the interest of the AustralAsia Railway Corporation referred to in paragraph 10 is that the lease granted to the Corporation:
  - (a) is wholly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests;
  - (b) the native title continues to exist, but has no effect in relation to the grant;
  - (c) if the grant or its effect is wholly removed or otherwise wholly ceases to operate the native title rights and interests again have full effect;
  - (d) if the grant or its effect is removed to an extent or otherwise ceases to operate only to an extent the native title rights and interests again have effect to that extent.

### Other matters

13. There are no native title rights and interests in:
  - (a) minerals (as defined in s 2 of the *Minerals (Acquisition) Act 1953* (NT));
  - (b) petroleum (as defined in s 5 of the *Petroleum Act 1984* (NT));
  - (c) prescribed substances (as defined in s 5 of the *Atomic Energy Act 1953* (Cth) and s 3 of the *Atomic Energy (Control of Materials) Act 1946* (Cth)).
14. In this determination the term:
  - (a) “natural resources” means:
    - (i) animals *ferae naturae*, birds, fish and plants, including timber, wax, resin and gum; and
    - (ii) surface soils, clays, stone, rocks and ochre,but does not include minerals, petroleum and prescribed substances;
  - (b) “natural waters” includes springs and rockholes.

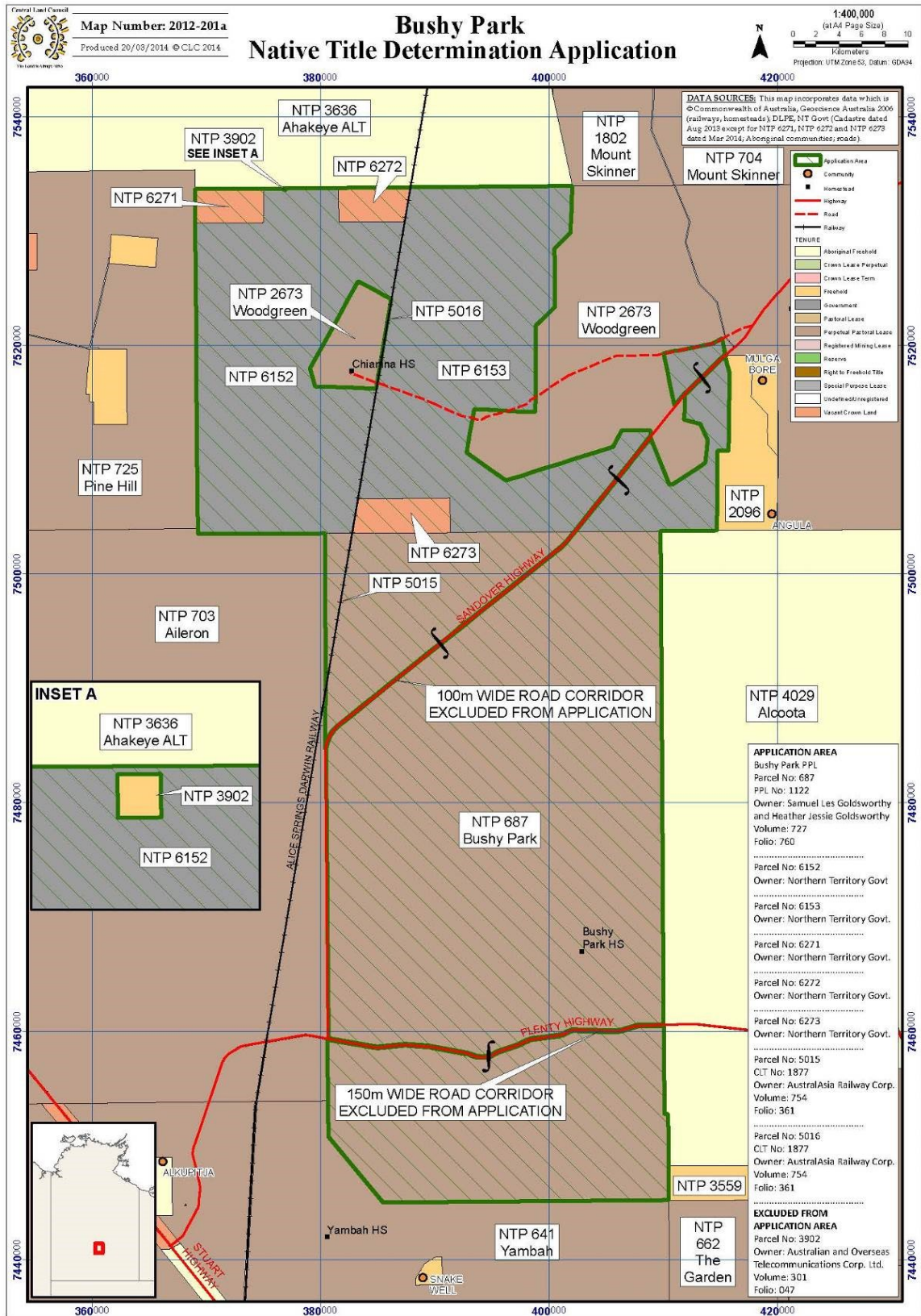
15. Unless the contrary intention appears, a word or expression used in the Act has the same meaning in this determination as it has in the Act.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

## SCHEDULE A

1. The determination area comprises the following areas of land and waters:
  - (a) NT Portion 687 comprising an area 1,695 square kilometres held under Perpetual Pastoral Lease No. 1122.
  - (b) NT Portion 6152 comprising an area of 409 square kilometres which is Crown land.
  - (c) NT Portion 6153 comprising an area of 517 square kilometres 50 hectares which is Crown land.
  - (d) NT Portion 6271 comprising an area of 17 square kilometres 99 hectares which is Crown land;
  - (e) NT Portion 6272 comprising an area of 18 square kilometres which is Crown land;
  - (f) NT Portion 6273 comprising an area of 24 square kilometres 82 hectares which is Crown land.
  - (g) NT Portion 5015 comprising an area of 1 square kilometre 38 hectares 1,000 square metres held under Crown Lease Term 1877.
  - (h) NT Portion 5016 comprising an area of 3 square kilometre 7 hectares held under Crown Lease Term 1877.
  
2. The following areas are excluded from the determination area:
  - (a) NT Portion 3902 comprising an area of 2 hectares 2,500 square metres located within the external boundaries of NT Portion 6152 held for an estate in fee simple by the Australian and Overseas Telecommunications Corporation Limited.
  - (b) A road 150 metres wide (Plenty Highway) which traverses NT Portion 687 from the boundary with Aileron Station (NT Portion 703) east to the boundary with Alcoota Station (NT Portion 4029).
  - (c) A road 100 metres wide (Sandover Highway) which traverses NT Portion 687 and part of NT Portion 6153 from the boundary with Aileron Station (NT Portion 703) north-east to the boundary with Woodgreen Station (NT Portion 2673).

### SCHEDULE B – Map of Determination Area



## SCHEDULE C

### Areas where native title does not exist

Native title rights and interests have been wholly extinguished in the following areas of land and waters:

#### Public works

Those parts of the determination area being covered by public works as defined in section 253 of the Act that were constructed or established before 23 December 1996 or commenced to be constructed or established on or before that date (including land and waters within the meaning of section 251D of the Act) including:

- (a) public roads including rural public roads (50m either side of the centre line), rural arterial roads and national highways;
- (b) gravel and fill pits established to maintain the roads referred to in (a) above;
- (c) government bores and associated works;
- (d) transmission water pipes (adjacent area 5m either side of the centre line);
- (e) distribution water pipes measuring 150mm diameter or less (adjacent area of 1.5m either side of the centre line) and greater than 150mm diameter (adjacent area 5m either side of the centre line);
- (f) sewer pipes measuring 150mm diameter or less (adjacent area 1.5m either side of the centre line) and greater than 150mm (adjacent area 5m either side of the centre line);
- (g) bores, sewer pump stations, and overhead power lines.

**IN THE FEDERAL COURT OF AUSTRALIA  
NORTHERN TERRITORY DISTRICT REGISTRY  
GENERAL DIVISION**

**NTD 38 of 2012**

**BETWEEN: KENNY TILMOUTH, COLIN BIRD, MARGARET GOLDER,  
MARTIN MCMILLAN AND DESMOND YOUNG ON  
BEHALF OF THE MEMBERS OF THE ILKEWARN,  
ATWEL/ALKWEPETYE AND AYAMPE LANDHOLDING  
GROUPS  
Applicants**

**AND: NORTHERN TERRITORY OF AUSTRALIA  
Respondent**

**JUDGE: WHITE J  
DATE: 9 MAY 2014  
PLACE: EDWARDS CREEK**

**REASONS FOR JUDGMENT**

1 On 29 November 2012, the applicants applied for a determination of native title under the *Native Title Act 1993* (Cth) (NTA) in respect of the area encompassed by the Bushy Park Pastoral Lease and two areas of Crown land to the north of that lease.

2 The parties have now reached agreement on this application and have applied to this Court pursuant to s 87 of the NTA for a determination of native title by consent.

3 For the reasons which follow, I am satisfied that it is appropriate to make the determination. I emphasise at the outset, however, that the Court's orders will not have the effect of granting native title. Instead, they will be a declaration that native title exists, and has always existed, at least since European settlement.

4 The application as filed sought a determination of native title in respect of the Bushy Park Pastoral Lease (NT Portion 687), two areas of Crown land (NT Portions 6152 and 6153) and the area occupied by the Alice Springs-Darwin railway line which intersects the north-western portion of the Bushy Park Pastoral Lease and forms the boundary between NT Portions 6152 and 6153. This is a total area of approximately 2625 km<sup>2</sup>. Since the filing of the application, a further three parcels of land have been created from land within NT

Portions 6152 and 6153. They are NT Portions 6271, 6272 and 6273, and the parties propose that determinations be made with respect to those areas as well.

5 Section 87 of the NTA authorises the Court to make orders by consent on an application for the determination of native title under s 61 of the Act, provided that certain conditions are satisfied. Those conditions are as follows:

- (a) The period specified in the notice given under s 66 of the NTA has ended (subs (1));
- (b) There is agreement between the parties on the terms of an order of the Court in relation to (relevantly) the proceedings (subs (1)(a));
- (c) The terms of the agreement are in writing, signed by or on behalf of the parties, and filed with the Court (subs (1)(b));
- (d) The Court is satisfied that an order in, or consistent with, the terms proposed by the parties is within its power (subs (1)(c));
- (e) The Court is satisfied that it is appropriate to make the order sought.

6 The Court may make a determination by consent under s 87 without holding a hearing (subs (2)) and may accept a statement of facts agreed upon by the applicant and the principal government respondent (subs (10)), in this case the Northern Territory of Australia.

7 For the purposes of this decision, the Court has had regard to the application filed on 29 November 2012, the affidavits of the applicants filed in support of the application, a statement of agreed facts by the applicants and the respondent, and the joint submissions of the parties.

8 The first three of the conditions listed above are of a procedural kind. They have been established in this case.

9 The requirements that the Court be satisfied that the proposed order is within its power and that it is appropriate to make the order are important. That is particularly so having regard to the fact that the recognition given by the orders will bind not just the parties to the present proceedings, but all people in the Australian community: *Munn for and on behalf of the Guggari People v Queensland* [2001] FCA 1229 at [22]; (2001) 115 FCR 109 at 114.

10 Subject to compliance with the obligations imposed on this Court by the NTA, it is within the power of this Court to make the proposed determination.

11 Section 94A of the NTA requires that the order by which this Court makes a determination of native title set out details of the matters mentioned in s 225 of the NTA. Section 225 provides as follows:

A determination of native title is a determination whether or not native title exists in relation to a particular area (the determination area) of land or waters and, if it does exist, a determination of:

- (a) who the persons, or each group of persons, holding the common or group rights comprising the native title are; and
- (b) the nature and extent of the native title rights and interests in relation to the determination area; and
- (c) the nature and extent of any other interests in relation to the determination area; and
- (d) the relationship between the rights and interests in paragraphs (b) and (c) (taking into account the effect of this Act); and
- (e) to the extent that the land or waters in the determination area are not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease—whether the native title rights and interests confer possession, occupation, use and enjoyment of that land or waters on the native title holders to the exclusion of all others.

12 The expression “native title rights and interests” used in s 225 is defined in s 223(1) and elaborated in the remaining provisions within s 223. It is sufficient to refer to subs (1) only:

- (1) The expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
  - (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
  - (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
  - (c) the rights and interests are recognised by the common law of Australia.

13 The meaning of native title rights and interests in s 223(1) was considered by the High Court in *Members of the Yorta Yorta Aboriginal Community v State of Victoria* [2002] HCA 58; (2002) 214 CLR 422.



14 In applying ss 94A, 223 and 225, and considering more generally the appropriateness of the orders, the Court is entitled to attach considerable weight to the circumstance that the orders are to be made by consent; that one of the consenting parties is the Northern Territory of Australia; and that government parties such as the Northern Territory have a well-recognised responsibility in assessing applications for determinations of native title.

15 In *King v State of South Australia* [2011] FCA 1386 at [19]; (2011) 285 ALR 454 at 458, Keane CJ spoke of the Court's reliance on the role of the relevant State or Territory:

More recently, the court has been prepared to rely upon the processes of the relevant state or territory about the requirements of s 223 being met to be satisfied that the making of the agreed orders is appropriate. That is because each state and territory has developed a protocol or procedure by which it determines whether native title (as defined in s 223) has been established. It acts in the public interest and as the public guardian in doing so. It has access to anthropological, and where appropriate, archaeological, historical and linguistic expertise. It has a legal team to manage and supervise the testing as to the existence of native title in the claimant group. Although the court must, of course, preserve to itself the question whether it is satisfied that the proposed orders are appropriate in the circumstances of each particular application, generally the court reaches the required satisfaction by reliance upon those processes. They are commonly explained in the joint submissions of the parties in support of the orders agreed. ...

16 Similarly, in *Lovett on behalf of the Gunditjmarra People v State of Victoria* [2007] FCA 474 at [36]-[37], North J said:

36 ... The [NTA] is designed to encourage parties to take responsibility for resolving proceedings without the need for litigation. ...

37 In this context, when the Court is examining the appropriateness of an agreement, it is not required to examine whether the agreement is grounded on a factual basis which would satisfy the Court at a hearing of the application. The primary consideration of the Court is to determine whether there is an agreement and whether it was freely entered into on an informed basis. Insofar as this latter consideration applies to a State party, it will require the Court to be satisfied that the State party has taken steps to satisfy itself that there is a credible basis for an application. There is a question as to how far a State party is required to investigate in order to satisfy itself of a credible basis for an application. ...  
(Citations omitted)

17 Accordingly, it is not necessary in every case that the Court carry out its own independent assessment of the merits of the claim. The Court may, of course, do so in order to satisfy itself that the State or Territory in question is acting in good faith and appropriately.

18 In the present case, it is apparent that the Northern Territory has exercised the appropriate care and caution before reaching agreement with the applicants. The applicants

provided the Territory with a “short-form” anthropological report prepared by Andrew Rayner and Helen Wilmot, both of whom are anthropologists. That anthropological report identified the Aboriginal groups with rights and interests acknowledged and observed in the proposed determination area, identified the nature and extent of those rights, identified the connection of a senior member of each estate group to the proposed determination area by provision of a representative biography of that person, and identified as well the sites and dreaming tracks in the area.

19           Legal officers for the Northern Territory assessed the report of Mr Rayner and Ms Wilmot against agreed criteria, having regard to s 223, and then raised various issues with the applicants. A process of joint assessment and negotiation then occurred. That process led to the applicants conceding that their claim of exclusive native title rights and interests over the Crown land Portions pursuant to s 47B of the NTA should not be pursued and, instead, to accept that the applicant groups had non-exclusive native title rights and interests over those Portions. The applicants have also agreed with the respondent’s contentions as to tenure extinguishment in the proposed determination area.

20           As previously noted, s 94A requires this Court’s determination to set out details of the matters mentioned in s 225.

21           The proposed determination defines with appropriate particularity the areas in which native title is being recognised (paragraph 1, Schedules A and B). These are NT Portions 687, 5015, 5016, 6152, 6153, 6271, 6272 and 6273.

22           In addition, the proposed determination identifies areas within the determination area in which native title has been wholly extinguished.

23           Paragraphs 4 and 5 of the proposed determination identify with appropriate particularity the groups having native title. The determination area comprises three estate areas associated with the Ilkewarn, Atwel/Alkwepetye and Ayample landholding groups. Essentially, the native title holders are members of one or more of those groups who are descendants, whether biologically or by adoption, through particular parental lines, or who have been accepted as members of one or more of the groups by virtue of their particular connections to an estate.

24 Paragraphs 6 to 9 inclusive of the proposed determination set out with appropriate  
particularity the nature and extent of the native title rights and interests in the determination  
area.

25 Next, paragraph 10 of the proposed determination lists the nature and extent of other  
interests in the determination area. Some nine separate interests are identified, including  
those of the pastoral lease holders of Bushy Park Station and those of the AustralAsia  
Railway Corporation.

26 Paragraph 11 of the proposed determination addresses the relationship between the  
native title rights and interests described in paragraphs 6 to 9 inclusive, and those interests  
listed in paragraph 10.

27 Sections 55 and 56 of the NTA require that the Court determine whether the native  
title is to be held on trust and, if so, by whom. Paragraph 2 of the proposed order provides  
expressly that the native title is not to be held on trust.

28 All parties have had the opportunity to obtain independent legal advice. There is no  
reason to suppose that a lack of legal representation has caused disadvantage to any party.

29 Finally, I take into account in determining the appropriateness of the orders that the  
Ilkwarn People and the Atwel/Alkwepetye People have been recognised under the *Aboriginal  
Land Rights (Northern Territory) Act 1976* (Cth) as the traditional Aboriginal owners of  
neighbouring land and as native title holders under the NTA.

### **Conclusion**

30 Having regard to all these matters, I am satisfied that it is appropriate to make the  
proposed determination. Accordingly, there will be orders in the form attached to these  
reasons.

I certify that the preceding thirty  
(30) numbered paragraphs are a true  
copy of the Reasons for Judgment  
herein of the Honourable Justice  
White.

Associate:

Dated: 9 May 2014