



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD13/2008; NTD38/2018
NNTT Number: DCD2011/014

Determination Name: [Kngwarraye on behalf of the members of the Arnerre, Wake-Akwerlpe, Errene and Ileyarne Landholding Groups v Northern Territory of Australia](#)

Date(s) of Effect: 13/07/2011, 19/08/2020

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: 13/07/2011

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 13 July 2011, the Federal Court of Australia (Federal Court) made a determination of native title by consent in *Kngwarraye on behalf of the members of the Arnerre, Wake-Akwerlpe, Errene and Ileyarne Landholding Groups v Northern Territory of Australia* [2011] FCA 765. Among other things, the Federal Court ordered that:

1. There be a determination of native title in the terms of the Determination set out below.
2. The native title is not to be held on trust.
3. An Aboriginal corporation whose name is to be provided within 12 months, or such further time as the Court may allow, 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. In the event that there is no nomination within the time specified in accordance with Order 3 or such later time as the Court may order, the matter is to be listed for further directions.
5. The parties have liberty to apply for the following purposes:
 - (a) 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;
 - (b) to establish the precise location of the boundaries of land on which the pastoral improvements referred to in Schedule C of the Determination have been constructed and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements; and
 - (c) to establish whether any pastoral improvements referred to in Schedule C of the Determination have been

constructed unlawfully.

Schedule C of the determination provided that native title rights and interests had been wholly extinguished in areas of land and waters affected by pastoral improvements, described more particularly under the heading '**Pastoral improvements**'.

On 4 August 2011, Justice Reeves made orders, pursuant to Order 35 rule (7)(3) of the Federal Court Rules, to replace Schedule B, the map of the determination area, in the Consent Determination Order made by the Court on 13 July 2011.

On 9 July 2012, the Kaytetye Tywerate Arengge Aboriginal Corporation was nominated as the prescribed body corporate for this determination.

Following the filing of a revised native title determination application, the Federal Court ordered on 19 August 2020 that the determination be varied so as to replace the words "paragraph 3" with "paragraph 4" in paragraphs 5(a) and 5(b) and delete the clause headed 'Pastoral Improvements' from Schedule C.

The determination of native title as varied took effect from 19 August 2020.

This Register entry contains the details of the determination of native title as varied.

REGISTERED NATIVE TITLE BODY CORPORATE:

Kaytetye Tywerate Arengge Aboriginal Corporation RNTBC
Agent Body Corporate
27 Stuart Highway
ALICE SPRINGS Northern Territory 0870

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 native title holders

4. The Determination area comprises four estate areas associated with the Arnerre, Wake-Akwerlpe, Errene and Ileyarne landholding groups.

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, father's mother, mother's father 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) immediately above, by virtue of non-descent connections to an estate.

MATTERS DETERMINED:

THE COURT ORDERS BY CONSENT THAT:

1. Pursuant to r 39.05(h) of the *Federal Court Rules 2011* (Cth), paragraph 5 of the determination of native title contained in the orders made by Reeves J in *Kngwarraye on behalf of the members of the Arnerre, Wake-Akwerlpe, Errene and Ileyarne Landholding Groups v Northern Territory of Australia* [2011] FCA 765 (13 July 2011), as amended by the order of Reeves J made on 4 August 2011, is varied as follows:

(a) in paragraph 5(a), replace the words "paragraph 3" with "paragraph 4"; and

(b) in paragraph 5(b), replace the words "paragraph 3" with "paragraph 4".

2. The determination of native title contained in the orders made by Reeves J in *Kngwarraye on behalf of the members of the Arnerre, Wake-Akwerlpe, Errene and Ileyarne Landholding Groups v Northern Territory of Australia* [2011] FCA 765 (13 July 2011), as amended by the order of Reeves J made on 4 August 2011 and the preceding order 1, is varied as follows:

The clause headed "Pastoral improvements" in Schedule C of the determination, as enumerated in paragraph C above, is deleted.

3. On and from the date of these orders the determination of native title as varied is taken to be in the form of the Varied Determination which is Annexure 1 to these orders.

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 Varied Determination.

ANNEXURE 1

THE VARIED DETERMINATION

THE COURT DETERMINES THAT:

The determination area

1. The Determination area comprises parts of Northern Territory Portion ("NT Portion") 3375, NT Portion 4336, NT Portion 5017 and NT Portion 5687, 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 Portion 4336 (part): exclusive native title rights and interests – s 47B of the Act applies;

(b) NT Portion 3375 (part): the native title rights and interests in paragraph 7 apply;

(c) NT Portion 5017 (part) and NT Portion 5687 (part): the native title rights and interests in paragraph 7 would apply were they not wholly ineffective due to the operation of s 238 of the Act.

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 four estate areas associated with the Arnerre, Wake-Akwerlpe, Errene and lleyarne landholding groups.

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, father's mother, mother's father 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) immediately above, by virtue of non-descent connections to an estate.

Native title rights and interests

6. In relation to NT Portion 4336 (part), the native title rights and interests confer possession, occupation, use and enjoyment of the land and waters on the native title holders to the exclusion of all others.

7. In relation to NT Portion 3375 (part), NT Portion 5017 (part) and NT Portion 5687 (part), 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;

(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 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.

8. The native title rights and interests referred to in paragraph 7 do not confer possession, occupation, use and enjoyment of the land and waters on the native title holders to the exclusion of all others.

9. The native title rights and interests referred to in paragraphs 7(c), 7(d), 7(e) and 7(j) are for the personal or communal needs of the native title holders which are of a domestic or subsistence nature and not for any commercial or business purpose.

10. The native title rights and interests referred to in paragraphs 6 and 7 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

11. The nature and extent of the other interests in the determination area are:

(a) in relation to NT Portion 3375 (part), the interest of the pastoral lease holders under Perpetual Pastoral Lease No 969;

(b) in relation to NT Portion 5017 (part) and NT Portion 5687 (part), the interest of AustralAsia Railway Corporation under Crown Lease Term 1879 and Crown Lease Term 1901 respectively;

(c) in relation to SEL 26825 (current), the interest of Newmont Tanami Pty Ltd granted under the *Mining Act* (NT);

(d) in relation to EL 26228 (current), the interest of Nupower Resources Ltd granted under the *Mining Act* (NT);

(e) in relation to EL 27138 (current), the interest of Toro Energy Ltd granted under the *Mining Act* (NT);

(f) the rights and interests of NT Gas Pty Ltd:

(i) as the beneficiary of the rights and interests under an energy supply easement granted to the Northern Territory of Australia for the purpose of the construction, operation and maintenance of the Amadeus Basin to Darwin gas pipeline and related infrastructure; and

(ii) as the holder of Pipeline Licence No. 4 granted under the *Energy Pipelines Act* (NT);

(g) in relation to NT Portion 3375 (part), the rights of Aboriginal persons (whether or not native title holders) pursuant to the reservation in favour of Aboriginal people contained in the pastoral leases and identified in ss 38(2) to 38(6) of the *Pastoral Land Act 1992* (NT);

(h) the rights of Aboriginal persons (whether or not native title holders) by virtue of the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT);

(i) 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;

(j) 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

12. 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 Portion 4336 (part) and paragraph 7 in relation to NT Portion 3375 (part) is inconsistent with the existence, enjoyment or exercise of the other rights and interests referred to in paragraph 11, 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.

13. In relation to NT Portion 5017 (part) and NT Portion 5687 (part), the relationship between the native title rights and interests referred to in paragraph 7 and the interest of the AustralAsia Railway Corporation referred to in paragraph 11 is that:

(a) the leases granted to the Corporation are 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 grants;

(c) if the grants or their effects are wholly removed or otherwise wholly cease to operate, the native title rights and interests will again have full effect;

(d) if the grants or their effects are removed to an extent or otherwise cease to operate only to an extent, the native title rights and interests will again have effect to that extent.

Other matters

14. 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* (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)).

15. Unless the contrary intention appears, a word or expression used in the *Native Title Act 1993* (Cth) has the same meaning in this Determination as it has in the Act.

16. 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.

REGISTER ATTACHMENTS:

1. Schedule A - Determination Area, 2 pages - A4, 19/08/2020

2. Schedule B - Map of the Determination Area, 1 page - A4, 19/08/2020

3. Schedule C - Areas where native title does not exist, 1 page - A4, 19/08/2020

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.