



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD41/2019
NNTT number: WC1996/075

Application Name: Josephine Farrer & Ors v State of Western Australia & Ors (Ngarrawanji)

Application Type: Claimant

Application filed with: National Native Title Tribunal

Date application filed: 25/06/1996

Current status: Dismissed - 28/04/2022

Registration information: Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.

Date claim entered on Register of Native Title Claims: 25/06/1996

Registration decision status: Accepted for registration

Registration history: Registered from 25/06/1996 to 04/05/2022

Date claim / part of claim determined: 28/04/2022

Applicants: Josephine Farrer, Matt Dawson, Phyllis Wallaby, Marty Stevens, Mark Bin Bakar, Gregory Donald Tait

Address(es) for Service: Justine Toohey, Principal Legal Officer
Kimberley Land Council
11 Gregory Street (PO Box 2145)
BROOME WA 6725
Phone: (08) 9194 0100
Fax: (08) 9193 6279

Additional Information

On 21 May 2019, the Federal Court of Australia made a determination that native title exists in parts of the application area. See *Farrer on behalf of the Ngarrawanji Native Title Claim Group v State of Western Australia* [2019] FCA 655. That determination is attached to this Extract. The determination was to take effect upon the nomination of a prescribed body corporate. On 8 July 2020, the Federal Court of Australia made orders that the remaining part of this application be dismissed, with the dismissal to come into effect immediately before the PBC nomination was made. On 28 April 2022, the Ngarrawanji People nominated the Ngarrawanji Aboriginal Corporation as the prescribed body corporate for the Ngarrawanji common law holders. The determination therefore came into effect on 28 April 2022 and the remaining part of this application is now dismissed.

Persons claiming to hold native title:

The claim is brought on behalf of those Aboriginal people who hold in common the body of traditional laws and customs concerning the claim area. Those people are the biological descendants of:

Pompey Dalbunji and Maggie Ngurarriya; Sarah Nellie; Ngularraji and Polly Gulungul; Linmarji; Ginger Mick and Dora; Midmariya and Topsy Wungalarril; Nellie Warmala; and Old Duncan.

Native title rights and interests claimed:

The native title rights and interests claimed are the rights to the possession, occupation, use and enjoyment as against the whole world (subject to any native title rights and interests which may be shared with any others who establish that they are native title holders) of the area, and in particular comprise:

- (a) rights to possess, occupy, use and enjoy the area;
- (b) the right to make decisions about the use and enjoyment of the area;
- (c) the right of access to the area;
- (d) the right to control the access of others to the area;
- (e) the right to use and enjoy resources of the area;
- (f) the right to control the use and enjoyment of others of resources of the area;
- (g) the right to trade in resources of the area;
- (h) the right to receive a portion of any resources taken by others from the area;
- (i) the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- (j) the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Subject to:

- (i) To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.
- (ii) The claim area does not include any offshore place.
- (iii) the applicants do not make a claim to native title rights and interests which confer possession, occupation, use and enjoyment to the exclusion of all others in respect of any areas in relation to which a previous non-exclusive possession act, as defined in section 23F of the NTA, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia and a law of that State has made provision as mentioned in section 231 in relation to the act;
- (iv) Paragraph (iii) above is subject to such of the provisions of sections 47, 47A and 47B of the Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing.
- (v) The said native title rights and interests are not claimed to the exclusion of any other rights or interests validly

created by or pursuant to the common law, a law of the State or a law of the Commonwealth.

Application Area: **State/Territory:** Western Australia
Brief Location: Moola Boola, NE Kimberley
Primary RATSIB Area: Kimberley
Approximate size: 3979.4519 sq km
(Note: There may be areas within the external boundary of the application that are not claimed.)
Does Area Include Sea: No

Area covered by the claim (as detailed in the application):

The external boundaries of the claim are set out in the map attached (Attachment "C") and are described in Attachment "B".

Schedule B

Internal boundaries:

(1) The Applicants exclude from the claim any areas covered by valid acts on or before 23 December 1996 comprising such of the following as are included as extinguishing acts within the NTA, as amended, or Titles Validation Act 1994, as amended, at the time of the Registrar's consideration:

Category A past acts, as defined in NTA s228 and s229;

Category A intermediate period acts as defined in NTA s232A and s232B.

(2) The Applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in section 23B of the NTA, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia and a law of that State has made provision as mentioned in section 23E in relation to the act.

(3) The Applicants exclude from the claim areas in relation to which native title rights and interest have otherwise been extinguished, including areas subject to:-

(a) an act authorised by legislation which demonstrates the exercise of permanent adverse dominion in relation to native title; or

(b) actual use made by the holder of a tenure other than native title which is permanently inconsistent with the continued existence of native title.

To avoid any uncertainty, the Applicants exclude from the claim area any of the areas contained within the following descriptions or tenures which have been validly granted, set out in Schedule B1.

Schedule B1

B1.1 Any former or current unqualified grant of an estate in fee simple and all other freehold land.

B1.2 A Lease which is currently in force, in respect of an area not exceeding 5,000 square metres; upon which a dwelling house, residence, building or work is constructed; and which comprises-

(1) a Lease of a Worker's Dwelling under the Workers' Homes Act 1911-1928;

(2) a 999 Year Lease under the Land Act 1898;

(3) a Lease of a Town Lot or Suburban Lot pursuant to the Land Act 1933 (WA), s117; or

(4) a Special Lease under s 117 of the Land Act 1933 (WA)

B1.3 A Conditional Purchase Lease currently in force in the Agricultural Areas of the South West Division under clauses 46 and 47 of the Land Regulations 1887 which includes a condition that the lessee reside on the area of the lease and upon which a residence has been constructed.

B1.4 A Conditional Purchase Lease of cultivable land currently in force under Part V, Division (1) of the Land Act 1933 (WA) in respect of which habitual residence by the lessee is a statutory condition in accordance with the

National Native Title Tribunal

Page 3 of 4

Division and upon which a residence has been constructed.

B1.5 A Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954.

B1.6 A Permanent public work and the land or waters on which a public work is constructed, established or situated within the meaning given to that phrase by the Native Title Act 1993 (Cth) s251D.

B1.7 A public road.

(4) Paragraphs (1) to (3) above are subject to such of the provisions of sections 47, 47A and 47B of the Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.

(5) The area also includes Water Reserve Nos. 1592 and 1595 contained within the boundaries of the lease.

(6) The area also includes Reserve Nos 39512, 39513 and 41019.

(7) The area also includes a portion of vacant Crown land on the southern boundary of Moola Bulla pastoral lease (PL 3114/1101).

Attachments:

1. Description of External Boundary, Attachment B of the Application, 1 page - A4, 10/09/1999
2. Map of the Claim Area, Attachment C of the Application, 1 page - A4, 10/09/1999
3. Ngarrawanji Native Title Determination, 38 pages - A4, 21/05/2019

End of Extract