



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD127/1997
NNTT number: WC1996/089

Application Name: Valerie Holborow & Ors v State of Western Australia & Ors (Yaburara & Mardudhunera)

Application Type: Claimant

Application filed with: National Native Title Tribunal

Date application filed: 01/08/1996

Current status: Full Approved Determination - 27/07/2018

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: 01/08/1996

Registration decision status: Accepted for registration

Registration history: Registered from 1/08/1996 to 9/08/2018,

Applicants: Valerie Holborow, Kevin Cosmos, Robert Boona

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Additional Information

Not applicable

Persons claiming to hold native title:

The claim is brought on behalf of the descendents of:

- (a) Mirbin Lowe
- (b) Willy Cooper
- (c) Alf Boona
- (d) Woggi
- (e) Tutparinya
- (f) Pantun
- (g) Eva
- (h) Mabel
- (i) Jessie
- (j) Toby

who recognise themselves, and are recognised by a substantial number of those other Aboriginal people who are descendents of one or more of the above ancestors, as members of the Mardudhunera community or group.

Native title rights and interests claimed:

Subject to laws and customs

The native title rights and interests claimed in this application are subject to and exercisable in accordance with:

1. The common law, the laws of the State of Western Australia and the Commonwealth of Australia; and
2. Valid interests conferred under those laws, and
3. The body of traditional laws and customs of the Aboriginal society under which rights and interests are possessed and by which the native title claim group have a connection to the area of land and waters the subject of this application.

Area A rights

The native title rights and interests in relation to Area A comprise:

- (1) The right to possess, occupy, use and enjoy the area as against the world;
- (2) A right to occupy the area;
- (3) A right to use the area;
- (4) A right to enjoy the area;
- (5) A right to be present on or within the area;
- (6) A right to be present on or within the area in connection with the society's economic life;
- (7) A right to be present on or within the area in connection with the society's religious life;
- (8) A right to be present on or within the area in connection with the society's cultural life;
- (9) A right to hunt in the area;
- (10) A right to fish in the area;
- (11) A right to make decisions about the use of the area by members of the Aboriginal society to which the native title claim group belong;

- (12) A right to make decisions about the use of the area by persons who are not members of the Aboriginal society to which the native title claim group belong;
- (13) A right to make decisions about the enjoyment of the area by members of the Aboriginal society to which the native title claim group belong by persons who are members of the Aboriginal society to which the native title claim group belong;
- (14) A right to make decisions about the enjoyment of the area by members of the Aboriginal society to which the native title claim group belong by persons who are not members of the Aboriginal society to which the native title claim group belong;
- (15) A right of access to the area;
- (16) A right to live within the area;
- (17) A right to reside in the area;
- (18) A right to erect shelters upon or within the area;
- (19) A right to camp upon or within the area;
- (20) A right to move about the area;
- (21) A right to engage in cultural activities within the area;
- (22) A right to conduct ceremonies within the area;
- (23) A right to participate in ceremonies within the area;
- (24) A right to hold meetings within the area,
- (25) A right to participate in meetings within the area,
- (26) A right to teach as to the physical attributes of the area;
- (27) A right to teach as to the significant attributes of the area;
- (28) A right to teach upon the area as to the significant attributes of the area;
- (29) A right to teach as to the significant attributes within the area of the Aboriginal society connected to the area in accordance with its laws and customs;
- (30) A right to control access of others to the area;
- (31) A right to control access of others to the area except such person as may be exercising a right accorded by the common law, statute law of the Commonwealth or the State of Western Australia or a lawful grant by the British sovereign or its successor;
- (32) A right to take resources, other than minerals, petroleum and gas used for sustenance from the area;
- (33) A right to take resources, other than minerals, petroleum and gas, used for sustenance within the area;
- (34) A right to gather resources, other than minerals, petroleum and gas, used for sustenance within the area;
- (35) A right to use and/or enjoy resources, other than minerals, petroleum and gas, used for sustenance within the area;
- (36) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for food, on, in, under or within the area;
- (37) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for shelter, on, in or within the area;
- (38) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for healing on, in or within the area;

- (39) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for decoration on, in or within the area;
- (40) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for social purposes on, in or within the area;
- (41) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for cultural, religious, spiritual, ceremonial and/or ritual purposes on, in or within the area;
- (42) A right to take fauna;
- (43) A right to take flora (including timber);
- (44) A right to take soil;
- (45) A right to take sand;
- (46) A right to take stone and/or flint;
- (47) A right to take clay;
- (48) A right to take gravel;
- (49) A right to take ochre;
- (50) A right to take water;
- (51) A right to control the taking, use and enjoyment by others of the resources of the area, including for the said purposes (set out at sub-paragraphs (32) -(41) above) and/or in the said form (set out at sub-paragraphs (42) -(50) above), other than minerals, petroleum and gas and any resource taken in exercise of a statutory right or common law right, including the public right to fish;
- (52) A right to manufacture from and trade in the said resources of the area, upon or within the area, other than minerals, petroleum and gas including the manufacture of objects, materials or goods for sustenance, and/or food, shelter, healing, decoration, social, cultural, religious, spiritual, ceremonial and/or ritual purposes and/or including objects, materials or goods in the form of tools, weapons, clothing, shelter and/or decoration;
- (53) A right to receive a portion of the said resources (other than minerals, petroleum and gas) taken by other persons who are members of the Aboriginal society from the area;
- (54) A right to receive a portion of the said resources (other than minerals, petroleum and gas) taken by other persons other than those who are members of the Aboriginal society from the area;
- (55) A right, in relation to any activity occurring on the area, to
- (i) maintain;
 - (ii) conserve; and/or
 - (iii) protect
- significant places and objects located within the area, by preventing, by all reasonable lawful means, any activity which may injure, desecrate, damage, destroy, alter or misuse any such place or object;
- (56) A right, in relation to any activity occurring on the area, to -
- (i) maintain;
 - (ii) conserve; and/or
 - (iii) protect
- significant ceremonies, artworks, song cycles, narratives, beliefs or practices by preventing, by all reasonable lawful means any activity occurring on the area which may injure, desecrate, damage, destroy, alter or misuse any such ceremony, artwork, song cycle, narrative, belief or practice;

(57) A right, in relation to a use of the area or an activity within the area, to:

- (i) prevent any use or activity which is unauthorised in accordance with traditional laws and customs
- (ii) prevent any use or activity which is inappropriate in accordance with traditional laws and customs

in relation to significant places and objects within the area or ceremonies, artworks, song cycles, narratives, beliefs or practices carried out within the area by all reasonable lawful means, including by the native title holders providing all relevant persons by all reasonable means with information as to such uses and activities, provided that such persons are able to comply with the requirements of those traditional laws and customs while engaging in reasonable use of the area and are not thereby prevented from exercising any statutory or common law rights to which that person may be entitled

(58) A right to enjoy all the features, benefits and advantages inherent in the environment of the area;

(59) A right of individual members of the native title holding group or groups to be identified and acknowledged, in accordance with the traditional laws adhered to and traditional customs observed by the group or groups, as the holders of native title rights in relation to the land and waters of the area; and

(60) A right of the group or groups who hold common or group native title rights and interests to identify and acknowledge individual members of the native title holding group, in accordance with the traditional laws adhered to and traditional customs observed by the group or groups, as the holders of native title rights in relation to the land and waters of the area.

Area B rights

The native title rights and interests which are claimed in relation to Area B are all the rights claimed above in relation to Area A, except the right to possess, occupy, use and enjoy the area as against the world and the rights set out at paragraph (12), (14), (30), (31) and (51).

The rights held by the native title claim group in accordance with traditional laws acknowledged and traditional customs observed by them and, held by them, in accordance with those laws and customs, subject to the rights and interests of others which are held in accordance with law and custom, comprise the following:

- (a) The right to speak for the area covered by the application;
- (b) The right to be asked permission to use the land and waters of the area covered by the application;
- (c) The right to make decisions about the use, enjoyment and management of the land and waters of the area covered by the application;
- (d) The right to live on the area covered by the application;
- (e) The right to hunt and gather and to take water and other resources (including ochre) on the area covered by the application;
- (f) The right to use and enjoy resources of the area covered by the application;
- (g) The right to control the access to and activities conducted by others on the lands and waters of the area covered by the application;
- (h) The right to maintain and protect areas of cultural significance to the native title claim group on the area covered by the application; and
- (i) The right to participate, engage in and conduct ceremonial activities and other cultural activities on the area covered by the application.

Application Area: **State/Territory:** Western Australia
Brief Location: Vicinity of Dampier, Pilbara WA
Primary RATSIB Area: Pilbara
Approximate size: 9524.1544 sq km
(Note: There may be areas within the external boundary of the application that are not claimed.)
Does Area Include Sea: Yes

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

The external boundaries of land and waters covered by the application are as set out in the map at Attachment 'C' and are set out in the document entitled "Description of External Boundary" which is annexed as Attachment 'B'.

Areas of land and waters within those boundaries that are not covered by the application

- (1) Subject to (4), the Applicant excludes from the area of land and waters covered by the application any areas that are covered by any of the following acts as these are defined in either the *Native Title Act 1993* (Cth), as amended (where the act in question is attributable to the Commonwealth), or *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA), as amended, (where the act in question is attributable to the State of Western Australia) at the time of the Registrar's consideration:
 - (a) Category A past acts;
 - (b) Category A intermediate period acts;
 - (c) Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests.
 - (d) Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests.
- (2) Subject to (4), the Applicant excludes from the area of land and waters covered by the application any areas in relation to which:
 - (a) a "previous exclusive possession act", as defined in section 23B of the NTA, was done and the act was an act attributable to the Commonwealth, or
 - (b) a "relevant act" as that term is defined in section 12I of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) was done and the act is attributable to State of Western Australia; or
 - (c) a previous exclusive possession act under a section s. 23B(7) of the NTA was done in relation to the area and the act was attributable to the State of Western Australia.
- (3) Subject to (4), the Applicant also excludes from the area of land and waters covered by the application areas in relation to which native title rights and interest have otherwise been wholly extinguished.
- (4) The area of land and waters covered by the application includes any area in relation to which the non-extinguishment principle (as defined in section 238 of the Native Title Act 1993) applies, including any area to which sections 47, 47A and 47B of the NTA apply, which includes such areas as may be listed in Schedule L.
- (5) Notwithstanding anything contained elsewhere in this application (including the attachments to it), the Applicant excludes from the area of land and waters covered by the application those areas of land and waters that were excluded from the area of land and waters included in the original applications WAG 127 of 1997 (WC96/89) lodged with the Native Title Tribunal on 1 August, and areas the subject of an order of the Federal Court of Australia dismissing the claim in relation to part of the area originally claimed on 2

May 2005 and the subject of an order of the Federal Court of Australia strike out part of the area claimed on 23 October 2009.

More information can be provided and labelled as "Attachment B"

- Attachments:**
1. Map of amended Claim Area, Attachment C of the Application, 1 page - A4, 23/10/2009
 2. Amended Technical Description of Boundary, Attachment B of the Application, 15 pages - A4, 23/10/2009

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