



# Extract from Schedule of Native Title Applications

---

**Application Reference:** Federal Court number: WAD6192/1998  
NNTT number: WC1997/071

**Application Name:** Malcolm Ryder & Ors and State of Western Australia & Ors (Yued)

**Application Type:** Claimant

**Application filed with:** National Native Title Tribunal

**Date application filed:** 22/08/1997

---

**Current status:** Dismissed - 22/07/2022

**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:** 22/08/1997

**Registration decision status:** Accepted for registration

**Registration history:** Registered from 22/08/1997 to 27/07/2022,

**Date claim / part of claim determined:** 01/12/2021

---

**Applicants:** Malcolm Ryder, Charlie Shaw, Dennis Jetta, May Maguire

**Address(es) for Service:** C/o South West Aboriginal Land & Sea Council Aboriginal Corporation  
Level 2  
100 Royal Street  
East Perth WA 6004

## Additional Information

On 1 December 2021, the Federal Court made a determination that native title exists in parts of the application area - see *Bennell v State of Western Australia* [2021] FCA 1508. That determination was registered on the National Native Title Register (NNTR) on 3 December 2021. Pursuant to s 190(4)(e) the application remains on the Register of Native Title Claims only to the extent that it relates to the undetermined area. A map and technical description showing the area of the application that remains to be determined, as interpreted by the National Native Title Tribunal, are attached for information only. These attachments do not form part of the application.

---

## Persons claiming to hold native title:

The native title claim group comprises all those persons who are:

1. biological or adopted descendants of any of the following persons:

- Fanny Shaw (Jubitch), daughter of Boolabung;
- Balumara;
- Jury Wongan, mother of Ricardo Wallowallo; or

2. biological or adopted descendants of the unions between any of the following couples:

- James Stack and Mary Taylor;
- Alfred Taylor and Sarah Ilbichan;
- Utonga and Yuroba;
- Paul Jetta and Mary Theresa Warbuk;
- George Shaw and Mary Ann Bailapon;
- John Calinga and Upona;
- Mindemurra and Menberan;
- Edward Wilkes and Cecelia Munderan;
- Madeegro (William Worrel) and Sarah;
- Mary Ellen/Helen Tainan and Patrick Yappo of Culham;
- Sarah Bundaran of Wyenning and white settler John Ryder;
- Alice Taylor and Tommy Nettle;
- Edith Jarrahad and George Anderson;
- Mary Wirbina and Joannes Macpherson;
- Henry Indich and Elizabeth Tjulbian;
- Jindinyer and Mongal/Mingal;
- Johnny Narrioll/Narriel/Narrier and Emma Breasley.

3. Paragraphs 1 and 2 above include the biological descendants of persons adopted in any intervening generation.

4. A person has been "adopted" by another person or persons for the purpose of paragraphs 1 to 3 above if they have been reared from childhood by ("grown up by") that person or persons.

#### **Native title rights and interests claimed:**

##### The Qualifications

The applicants claim in relation to the claim area, including land and waters, the native title rights and interests set out below ("the Rights and Interests") subject to the following qualifications.

(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) To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of Western Australia or accorded under international law in relation to the whole or any

part of the offshore place.

(iii) The applicants do not make 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 23I in relation to the act.

(iv) Paragraph (iii) above is subject to such of the provisions of sections 47, 47A and 47B of the NTA 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.

(v) The native title rights and interests claimed are subject to any valid rights created under the common law or a law of the State or the Commonwealth.

#### The Rights and Interests

Subject to the above qualifications, the rights and interests claimed in relation to the claim area, including land and waters, are:

- (a) rights and interests to exclusively possess, occupy, use and enjoy the area;
- (b) the right to live within the area;
- (c) not registered;
- (d) the right of access to the area;
- (e) not registered;
- (f) the right to use and enjoy resources of the area;
- (g) not registered;
- (h) the right to conduct ceremonies within the area;
- (i) the right to maintain and protect places of importance under traditional laws, customs and practices in the area;
- (j) the right to teach and pass on knowledge of the claimant group's traditional laws and customs pertaining to the area and knowledge of places in the area;
- (k) the right to learn about and acquire knowledge concerning, the claimant group's traditional laws and customs pertaining to the area and knowledge of places in the area;
- (l) the right to manage, conserve and look after the land, waters and resources; and
- (m) the right to exchange animals and fish located within the claim area with third parties for other things.

**Application Area:** **State/Territory:** Western Australia  
**Brief Location:** Northern Sand Plain, Western Australia  
**Primary RATSIB Area:** South West  
**Approximate size:** 3183.6307 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 the claim are set out in the map attached as Attachment C to the application and a technical description of the external boundary attached as Attachment B to the application.

#### 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 Native Title Act 1993, as amended,

or the Titles Validation Act 1994, as amended, at the time of the Registrar's consideration:

- (a) Category A past acts, as defined in NTA section 229; and
- (b) Category A intermediate period acts as defined in NTA section 232B.

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 as at the time of the Registrar's consideration.

3. The applicants exclude from the claim any areas in relation to which native title rights and interests 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,

AND, to avoid any uncertainty, the applicants exclude from the claim:

- (c) an unqualified grant of an estate in fee simple; or
- (d) 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:
  - i) a Lease of a Worker's Dwelling under the Worker's Homes Act 1911-1928; or
  - ii) a 999 year Lease under the Land Act 1898; or
  - iii) a Lease of a Town Lot or Suburban Lot pursuant to section 117 of the Land Act 1933 (WA); or
  - iv) a Special Lease under section 117 of the Land Act 1933 (WA); or
  - (e) 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; or
  - (f) 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 Division and upon which a residence has been constructed; or
  - (g) a Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954; or
  - (h) a permanent public work; or
  - (i) an existing public road or street used by the public.

4. Paragraphs (1), (2) and (3) above are subject to such of the provisions of sections 47, 47A and 47B of the NTA 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.

- Attachments:**
- 1. Technical Description of External Boundary, Attachment B of the Application, 5 pages - A4, 07/07/1999
  - 2. Map of Claim Area (Annexure A), Attachment C of the Application, 1 page - A4, 07/07/1999
  - 3. Description of the remaining area, 3 pages - A4, 01/12/2021
  - 4. Map of the remaining area, 1 page - A4, 01/12/2021

**NNTT Contact Details**

**Address:**

National Native Title Tribunal  
Perth Office  
Level 5, Commonwealth Law Courts  
1 Victoria Avenue  
PERTH WA 6000

National Native Title Tribunal

Extract from Schedule of Native Title Applications

WAD6192/1998

Extract Created: 28/07/2022 22:20 (WST)

Further information: National Native Title Tribunal 1800 640 501

Page 4 of 5

**Telephone:**

GPO Box 9973  
PERTH WA 6848

**Freecall:**

+61 8 9425 1000

**Fax:**

1800 640 501

**Web Page:**

+61 8 9425 1193

[www.nntt.gov.au](http://www.nntt.gov.au)

---

End of Extract