



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD6002/2002
NNTT number: WC2002/003

Application Name: Victor Willis & Others v State of Western Australia (Pilki People)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 12/08/2002

Current status: Full Approved Determination - 05/05/2016

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: 18/04/2005

Registration decision status: Accepted for registration

Registration history: Registered from 18/04/2005 to 13/05/2016,

Date claim / part of claim determined: 02/12/2014

Applicants: Victor Willis, Name withheld for cultural reasons, Daniel (Stevie) Sinclair, Betty Kennedy

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Additional Information

On 2 December 2014 a determination of native title was made by the Federal Court: Willis on behalf of the Pilki People v State of Western Australia (No 2) [2014] FCA 1293. The determination is to take effect immediately upon the making of a determination under s 56(1) or s 57(2) of the Native Title Act 1993 (Cth) as the case may be [i.e. determination of a prescribed body corporate]. Once in effect, the determination will then be entered on the National Native Title Register and this application will be removed from the Register of Native Title Claims.

Persons claiming to hold native title:

Native title holders (s 225(a))

2. The native title is held by the persons described in Schedule 2 (native title holders).

Schedule 2 - Native Title Holders

The persons referred to in Order 2 are:

(1) The Pilki Native Title Holders are the persons who:

- (a) have rights in part or all of the Determination Area through: descent from an ancestor born within the area; conception and/or being born within the area; having ritual authority to make decisions about religious locations and land within the area; and
- (b) are recognised under their traditional laws and customs by other Pilki native title holders as having rights in the Determination Area.

(2) At the date of this Determination the persons referred to in (1) includes the following:

(a) the descendants of the following people:

- Tjiru (Kennedy family)
- Tarrpi (Willis family)
- Ulan (West family)
- Palapala (Barton family)
- Wiltjawarra (Sinclair, Gordon family links with Scott, Felton, Willis)
- Ngunimpi (Scott, Winter and Hogan family)
- Nganawarra (Scott family)
- Utjil (Graham family)
- Kukukuku (Scott family)
- Nakarra (Scott family - links to Brown, Macarthur, Laidlaw)
- Pipin (Stokes, Forrest, Tucker, Wesley, McCarthy family)
- Ninakata (Bilsen family)
- Kuruyilinya (Macathur, Laidlaw)
- Angkatji (Currie family)

- Minimimpi (Dimer family)
- Jimmy Kangaroo (Flynn family)
- Dean and Ruby (Walker and Nudding family)
- Tjartjanya and Iame Charlie (Carmody and Edwards family)
- Lily, Hedley and Robbie (Robinson/Franks family)
- Felton (Rice, Anderson family)
- Wimpana (Lynch family)
- Nunayi (Ridley family); and
- Ruby and Adana (Dodd family)

(b) the following people:

- Roy Underwood
- Ned Grant
- Fred Grant
- Mark Anderson (already listed spouse in Felton/Rice family)
- Lawrence Pennington (spouse in Felton/Rice family)
- Leonard Walker
- Ian Rictor
- Debbie Hansen
- Elaine Thomas
- Angelina Woods

Temporary Note - The list of people in 2(b) will need to be finalised immediately prior to the determination being made

Native title rights and interests claimed:

The nature and extent of native title rights and interests (s225(b); s225(e))

3. Subject to Orders 4, 5 and 6 the nature and extent of the native title rights and interests is the right of possession, occupation, use and enjoyment as against the whole world.

Qualifications on native title rights and interests (s225(b); s225(e))

4. The native title rights and interests are exercisable in accordance with, and subject to, the:

(a) traditional laws and customs of the native title holders; and

(b) laws of the State and the Commonwealth, including the common law.

5. For the avoidance of doubt the nature and extent of native title rights and interests in relation to water in any watercourse, wetland or underground water source as defined in the *Rights in Water and Irrigation Act 1914* (WA) as at the date of this determination is the non-exclusive right to take, use and enjoy that water.

6. Notwithstanding anything in this determination, there are no native title rights and interests in the Determination Area, in or in relation to:

(a) minerals as defined in the *Mining Act 1904* (WA) (repealed) and the *Mining Act 1978* (WA); or

(b) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and in the *Petroleum and Geothermal Resources Energy Act 1967* (WA); or

(c) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

Society and the laws and customs

5. The members of the claim group and their antecedents respectively are, and have been since sovereignty, part of a body of persons united in and by their acknowledgment and observance of a body of laws and customs. Those laws and customs include the laws and customs referred to in paragraphs [6] and [17] below.

Laws and customs relating to land and waters

6. The body of laws and customs of the predecessors and members of the claim group relating to land and waters, which laws and customs are not neatly divisible from and do not operate in isolations from the laws and customs referred to in [17], are as generally described in paragraphs [7]-[16] below.

7. Rights and interests in relation to land and waters are possessed by persons who through:

(a) descent from an ancestor born in an area;

(b) conception and/or being born within the area;

(c) having ritual authority to make decisions about religious locations and land within the area, and

Who are recognised under the laws and customs applicable in the claim area as having rights in the area, by others who have rights in the area.

8. Persons who possess rights or interests in an area, subject to and in accordance with the laws and customs referred to in [9]-[28], are entitled to regard the area as their own and in particular to:

(a) access, remain in and use the area;

(b) access resources and to take for any purpose resources of the area; and

(c) control access to and use of the area and the resources of the area by others, including so as to maintain and protect places and objects of significance.

9. Persons who possess rights or interests in an area do not have equal authority in relation to, and are not equally entitled to speak for or participate in decision making about, the area. Rather, such authority is conceded to one or more of them having regard to a range of factors, in particular:

(a) their age, gender, social and/or ritual knowledge and seniority, knowledge of the country and its resources, the extent to which they actively participate or have actively participated in the care and use of the area; and

(b) the extent to which the person asserts such authority and in turn the extent to which the assertion of authority is accepted by others.

10. Persons who hold rights or interests in an area have responsibilities and, concomitantly, rights to 'look after', care for, protect and maintain the area including its important sites and spiritual features.

11. The extent of responsibility permitted and expected to be exercised by a person is qualified on the basis of age, gender and ritual status, knowledge and authority.

12. Visitors who are not strangers would not ordinarily be refused access or expressly have conditions imposed on access but would be expected to know or ask about the locations of, and any rules relating to access to sites; or may be accompanied by a person possessing rights or interests in and knowledge of, or authority in respect of, the area.

13. Strangers can be refused access or have conditions imposed on access to sites in an area or be accompanied by persons recognised as possessing rights or interests in and knowledge of, or authority in respect of, the area.

14. Strangers wishing to visit an area ideally must ask permission from a person or persons who possess rights or interests in, and have knowledge of or authority in respect of the area.

15. Permission is implied for related or known persons who observe the same system or laws and customs, when travelling through an area, to take meat and water and to camp on the area for the purposes of their journey.

16. Access to some places, sites and areas is restricted on the basis of age, gender and ritual knowledge and authority.

Other laws and customs

17. Other laws and customs of the claim group and their predecessors include the law and customs referred to in paragraphs [18]-[22] below.

Tjukurrpa

18. Beliefs in and about *Tjukurrpa* are widespread; including *Tjukurrpa* are responsible for the existence and form of the landscape and rules by which people live and society is organized; and continue to be a presence or influence.

19. *Tjukurrpa* believe to be associated with the claim area include:

<u>Tjukurrpa</u>	<u>Translation</u>
<i>Wati Marlu</i>	Red Kangaroo
<i>Minyma Tjuta</i>	Seven Sisters
<i>Wati Nyiiru and son</i>	Man and son
<i>Wati Kalaya</i>	Emu Man
<i>Wati Nyiaru</i>	Mountain Devil Woman
<i>Minym Milpali</i>	Sand Goanna
<i>Wati Kutjara</i>	Two Men
<i>Minyma Karritjari</i>	Woman named Karritjari
<i>Wati Wanampi</i>	Water Snake Man
<i>Wati Kuniya</i>	Python Man

Kinship

20. A person is enabled to relate to all persons in his or her social universe through a relatively limited number of kin terms, each of which applies to a relatively large number of persons who are deemed to be 'alike' (**kinship system**).

21. A person should behave towards all persons to whom a particular kin term applied in same manner.

22. The kinship system also:

(a) accommodates both a four-section system of social classification and a two section system of classification;

(b) maintains a distinction between two socially defined groups in which people are classified as sun (*Tjintultilpa*) or shade (*Ngumpumpaurrunkatja*), which terms apply to generation levels;

(c) recognises notions of 'closeness' and 'distance'.

23. Marriages ideally occur between people of same generations provided they are not close relations.

Ceremony and ritual knowledge

24. Both public and closed ceremonies associated with the *Tjukurrpa* are performed.

25. Male initiation rituals are performed. Females undergo a less formal kind of initiation. Through such an introduction into adulthood the new adults learn the *Tjukurrpa* of their community and country.

26. Initiation confers and enhanced status on a person; including in relation to matters of secret and sacred knowledge and access to and responsibility for the *Tjukurrpa* and places and areas associated with *Tjukurrpa*; and including in relation to authority in decision making country.

Restricting and transmitting knowledge

27. Cultural, spiritual and practical knowledge is to be passed on from generation to generation, generally by word of mouth, demonstration and common practice.

28. Access to and disclosure of knowledge of the spiritual significance of sites and ritual associated with some places is restricted on the basis of gender, age and ritual status.

The laws and customs are normative

29. The laws and customs referred to in [6] and [17] above (**the laws and customs**) are normative by reason of a:

(a) commitment to the *Tjukurrpa* and fear of consequences of ignoring the tenets of *Tjukurrpa* including fear of risking damaging both people and country;

(b) requirement of respect for elders and others with ritual status or authority; and

(c) fear of social and spiritual consequences of a breach of the laws and customs.

The laws and customs are traditional

30. By reason of the matters set out in [31]-[34] below, the laws and customs referred to in [6] and [17] above are traditional (**the traditional laws and customs**).

31. Knowledge of, and the requirement for, the acknowledgment and observance of the laws and customs above has been - and thereby those laws and customs have been - passed from generation to generation of the antecedents and members of the claim group, usually by word of mouth and common practice from sovereignty to today.

32. Acknowledgment and observance of the laws and customs, in particular in relation to the claim area, and in particular by antecedents of and persons in the claim group, has continued substantially uninterrupted from sovereignty to today.

33. The laws and customs are, and without substantial interruption since sovereignty, have been given normative force by continuation of the factors referred to in [29] above.

34. The origins of the laws and customs applicable in the claim area today are to be found in the normative rules of the society whose laws and customs were applicable in the claim area at sovereignty and in particular of the antecedents of the claim group that existed at sovereignty.

35. The laws and customs acknowledged and observed today by the claim group derive from a normative system that has had a continuous existence and vitality since sovereignty.

Acknowledgement and observance of the laws and customs

36. The traditional laws and customs referred to in [30] above are acknowledged and observed by the members of the claim group, including as referred to in [39] below.

Rights and interests possessed under the traditional laws and customs

37. Rights and interests in relation to the claim area that exist under, and which may be held and exercised subject to and in accordance with, the traditional laws and customs (apart from extinguishment, and recognition by the common law) are rights of ownership of the claim area, being rights to:

(a) access, remain in and use the claim area;

(b) access resources and to take for any purpose resources of the claim area

(c) control access to and use of the claim area and the resources of the claim area by others, including so as to maintain and protect places and objections of significance,

(the traditional rights and interests).

Possessors of the traditional rights and interests

38. The traditional rights and interests are possessed under the traditional laws and customs by the members of the claim group.

Connection by the laws and customs

39. The members of the claim group have a connection with the claim area by the traditional laws or customs:

(a) under which the traditional rights and interests have been transmitted to them by descent or their own birth or conception - by exercising those rights by accessing, using and remaining on the claim area and utilising its resources as they see fit and as and when they are able to do so;

(b) under which they have authority to speak for and make decisions about the claim area - by the transmission and acquiring of such authority and the exercise of the authority and the right to speak for country and make decisions about it;

(c) by which the claim area is associated with the *Tjukurrpa* and related narratives - by maintaining the commitment to the *Tjukurrpa* including through ceremonial practice, the appropriate transmission of ritual knowledge and the care and protection of sites associated with the *Tjukurrpa*;

(d) which require such sites, and the claim area generally, to be 'looked after', cared for or protected - by fulfilling that requirement and exercising the concomitant right as and when they are able to do so;

(e) relating to visitors and strangers - by permitting and supervising the access of visitors and strangers to their country and not refusing to allow other related to or known persons who observe the same system of traditional laws and customs to take meat and water or to camp on the area when travelling through the claim area.

Native title rights and interests

40. The nature and extent of the traditional rights and interests possessed by the members of the claim group under the traditional laws and customs which:

- (a) have not been extinguished;
 - (b) are recognisable by the common law; and
 - (c) are native title rights within the meaning of section 223(1) of the *Native Title Act*,
- as is set out in the determination sought at Order [3] (**native title rights and interests**).

41. When the claim was made each of the areas referred to in Schedule 5 of the determination sought was occupied by one or more persons on whose behalf the claim is made.

Other interests

42. The nature and extent of other interests that exist in relation to the claim area are as referred to in Order [7] of the determination sought.

43. The relationship between the native title rights referred to in [40] above and the other interests referred to in [42] above (taking into account the effect of the *Native Title Act*) is as set out in Order [8] of the determination sought.

Application Area: **State/Territory:** Western Australia
Brief Location: South east desert region
Primary RATSIB Area: Central Desert
Approximate size: 17848.8400 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):

See Attachment B

Attachments: 1. Attachment B - Technical Description, 2 pages - A4, 19/09/2013
2. Attachment C - Map of Area, 1 page - A4, 19/09/2013

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