



# Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: WAD6006/2003

NNTT number: WC2003/006

**Application Name:** Anthony Bennell & Ors v State of Western Australia & Ors (Single Noongar Claim (Area 1))

**Application Type:** Claimant

**Application filed with:** Federal Court of Australia

**Date application filed:** 06/10/2003

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**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.

**Registration decision status:** Not Accepted for registration

**Registration history:** -

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

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**Applicants:** Anthony Bennell, Alan Blurton, Name withheld for cultural reasons, Martha Borinelli, Name withheld for cultural reasons, Glen Colbung, Donald Collard, Clarrie Collard-Ugle, Albert Corunna, Shawn Councillor, Dallas Coyne, Dianna Coyne, Margaret Culbong, Edith De Giambattista, Rita Dempster, Aden Eades, Trevor Eades, Doolann-Leisha Eattes, Essard Flowers, Gregory Garlett, John Garlett, Ted Hart, George Hayden, Reg Hayden, John Hayden, Val Headland, Eric Hayward, Jack Hill, Oswald Humphries, Robert Isaacs, Allan Jones, James Khan, Justin Kickett, Eric Krakouer, Barry McGuire, Wally McGuire, Winnie McHenry, Peter Michael, Theodore Michael, Samuel Miller, Diane Mippy, Fred Mogridge, Harry Narkle, Doug Nelson, Joe Northover, Clive Parfitt, John Pell, Kathleen Penny, Carol Pettersen, Fred Pickett, Rosemary Pickett, Phillip Prosser, Bill Reidy, Robert Riley, Lomas Roberts, Mal Ryder, Ruby Ryder, Charlie Shaw, Iris Slater, Barbara Stam

**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. The application remains on the Schedule of Native Title Determination Applications 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.

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### Persons claiming to hold native title:

This application is made on behalf of all Noongar people who are described as:

The descendants of the Noongar apical ancestors listed in Attachment A1;

The members of the Noongar families whose surnames are listed in Attachment A2;

The descendants, of the Noongar ancestors of families whose surnames are listed in Attachment A2;

The members of the Noongar families whose surnames are listed in Attachment A3;

The descendants, of the Noongar ancestors of families whose surnames are listed in Attachment A3;  
and

All other Noongar people identifying and accepted in accordance with Noongar customs and traditions as understood by Noongar people and handed down by Noongar Elders.

Identification of a Noongar person is through biological descent from a Noongar person but can include people incorporated into the Noongar community through adoption, in accordance with Noongar custom and tradition.

Identification of a Noongar family is through biological descent from a Noongar person but can include people incorporated into the Noongar community through adoption, marriage or defacto marriage and in accordance with Noongar custom and tradition.

### Native title rights and interests claimed:

The applicants claim the right to occupation, use and enjoyment of the lands and waters in accordance with and subject to their traditional laws and customs (or current laws and customs as they have adapted and changed from those traditional laws and customs).

The applicants acknowledge that these rights may co-exist with other statutory or common law rights in relation to some lands and waters, subject to the force and operation of laws of the Commonwealth and the State.

The right to occupation, use and enjoyment of the lands and waters includes the right to:

(a) live on and access the area;

(b) use and conserve the natural resources of the area for the benefit of the native title holders;

(c) maintain, use, manage and enjoy the area for the benefit of the native title holders, that is to:

i) maintain and protect sites of significance to the native title holders and other Aboriginal people within the meaning of that term in the Native Title Act 1993;

ii) inherit, dispose of or give native title rights and interests to others provided that such persons are Aboriginal people within the meaning of that term in the Native Title Act 1993;

iii) right to determine and regulate membership of, and recruitment to, the native title holding group, provided that such persons must be Aboriginal people within the meaning of that term in the Native Title Act 1993.

iv) regulate among and resolve disputes between, the native title holders in relation to the rights of possession, occupation, use and enjoyment of the area;

v) conduct social, religious, cultural and economic activities on the area;

vi) exercise and carry out economic life on the area, including harvesting, fishing, cultivating, management and exchange of economic resources;

(d) conserve, use and enjoy the natural resources of the area, for social, cultural, economic, religious, spiritual, customary and traditional purposes; and make decisions about and to control the access to, and the use and enjoyment of, the area and its natural resources by the native title holders;

(e) the right to control access and use between the native title holders and any other Aboriginal people who seek access to, or use of, the claim area in accordance with the traditional law and custom;

(f) the right to teach and pass on knowledge of the applicant group's traditional laws and customs pertaining to the area and knowledge of places in the area;

(g) the right to learn about and acquire knowledge concerning, the applicant group's traditional laws and customs pertaining to the area and knowledge of places in the area.

In relation to:

(a) any areas where there has been no previous extinguishment of native title;

(b) any area of natural water resources that is found not to be tidal;

(c) any areas affected by category C and D past and intermediate period acts;

(d) s47 Pastoral leases held by native title claimants;

(e) s47A Reserves act covered by claimant applications; and/or

(f) s47B Vacant Crown Land Covered by claimant applications,

the applicant claims exclusive possession, occupation, use and enjoyment of those areas.

**Application Area:**

**State/Territory:** Western Australia

**Brief Location:** Lower South West region of WA

**Primary RATSIB Area:** South West

**Approximate size:** 524.8606 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):**

a) Description of the boundaries of the area covered by the application. The boundary of the area covered by the application is described in Attachment B to this application.

b) Description of any areas within those boundaries that are not covered by the application.

(1) Subject to (2), the areas of land and waters within the boundary that are not covered by the application are those areas:

(a) that are or were subject to 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):

(i) Category A past acts

(ii) Category A intermediate period acts

(iii) Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests.

(iv) Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or

exercise of any native title rights or interests.

(b) in relation to which

(i) a 'previous exclusive possession act', as defined in section 23B of the NTA, had been done and the act is attributable to the Commonwealth;

(ii) a 'relevant act' as that term is defined in section 121 of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) had been done and the act is attributable to State of Western Australia;

(iii) a previous exclusive possession act under a section s. 23B(7) of the NTA was done in relation to the area and the act is attributable to the State of Western Australia;

(iv) native title rights and interests are otherwise wholly extinguished.

(2) Notwithstanding anything contained elsewhere in this application, including any attachments to it, the area of land and waters covered by the application includes any area within the boundary 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, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.

### Combination Details

Date of order to combine: 09/10/2003

This application is a combination of the following applications:

Application number(s)	Application name	Date application lodged/filed	Date claim entered on Register*	Registration History
WAD6006/2003, WC2003/005	Anthony Bennell, Alan Burton, Alan Bolton & Ors (SNC) -v- State of Western Australia	10/09/2003	N/A	
WAD142/1998, WC1999/006	Richard Wilkes & Ors and State of Western Australia & Ors (Combined Metro Working Group)	26/03/1999	N/A	Registered from 12/05/1999 to 26/11/2004

\*For further information on pre-combined applications, see the Schedule extract for each pre-combined application.

### Attachments:

1. Description of external boundary, Attachment B of the Application, 6 pages - A4, 06/10/2003
2. List of Noongar Apical Ancestors, Attachment A1 of the Application, 4 pages - A4, 06/10/2003
3. List of Noongar Family names, Attachment A2 of the Application, 2 pages - A4, 06/10/2003
4. List of additional Noongar Family names, Attachment A3 of the Application, 5 pages - A4, 06/10/2003
5. Map of claim area, Attachment C of the Application, 1 page - A4, 06/10/2003
6. Description of the remaining area, 2 pages - A4, 01/12/2021
7. Map of the remaining area, 1 page - A4, 01/12/2021

### NNTT Contact Details

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