



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6004/2004
NNTT Number: WCD2005/002

Determination Name: [Stanley Mervyn, Adrian Young, and Livingston West and Ors, on behalf of the Peoples of the Ngaanyatjarra Lands v The State of Western Australia and Ors](#)

Date(s) of Effect: 29/06/2005

Determination Outcome: Native title exists in the entire determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date: 29/06/2005

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Yarnangu Ngaanyatjarraku Parna (Aboriginal Corporation) RNTBC
Trustee Body Corporate
C/- Mr Alex Knight
Manager, Land and Culture Program, Ngaanyatjarra Council
(Aboriginal Corporation)
PO Box 644
ALICE SPRINGS Northern Territory 0871

Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The People of the Ngaanyatjarra Lands, being the identified people and their descendants AND the descendants (only) of other identified people, as detailed in Schedule 3.

MATTERS DETERMINED:

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of Native Title (s225)

1. Native title exists in relation to the Determination Area. (As defined in Order 11)

The Native Title Holders (s225(a))

2. The native title is held by the persons described in Schedule 3 (native title holders). (See Attachment 2 - SCHEDULE 3)

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

3. Subject to paragraphs 5, 6 and 7, the nature and extent of the native title rights and interests held in relation to Reserve 24980 (Warburton Range Stock Route) [being an area where there has been partial extinguishment of native title] are:

- (a) the right to enter and remain;
- (b) the right to take fauna and flora;
- (c) the right to take water for personal, domestic, or non-commercial communal purposes;
- (d) the right to take other natural resources such as ochre, stones, soils, wood and resin; and
- (e) the right to care for, maintain and protect from physical harm, particular sites and areas of significance to the native title holders.

4 Subject to paragraphs 5, 6 and 7, the nature and extent of the native title rights and interests in each other part of the Determination Area [being areas where there has been no extinguishment of native title or areas where any extinguishment must be disregarded] are:

- (a) except in relation to flowing and subterranean water - the right of possession, occupation, use and enjoyment to the exclusion of all others; and
- (b) the right to take flowing and subterranean water for personal, domestic, or non-commercial communal purposes.

5. The native title rights and interests described in paragraphs 3 and 4(b) do not confer possession, occupation, use and enjoyment on the native title holders to the exclusion of all others.

6. The native title rights and interests are:

- (a) exercisable in accordance with the traditional laws and customs of the native title holders; and
- (b) subject to the laws of the State and the Commonwealth including the common law.

7. Notwithstanding anything in this determination the native title rights and interests include the right to take and use ochre to the extent that ochre is not a mineral pursuant to the Mining Act 1904 (WA), but do not include other minerals and petroleum as defined in the Mining Act 1904 (WA), the Mining Act 1978 (WA) as in force at the date of this determination, the Petroleum Act 1936 (WA) and the Petroleum Act 1967 (WA) as in force at the date of this determination.

Areas to which ss47A and 47B apply

8. Sections 47A and 47B of the Native Title Act apply to disregard any prior extinguishment in relation to the areas described in Schedule 5.

SCHEDULE 5 - AREAS TO WHICH ss47A AND 47B APPLY

Section 47a

1. Section 47A of the Native Title Act applies to the following areas within the Determination Area:

- (a) Reserve 17614 for the purpose of "Use and Benefit of Aboriginal Inhabitants" vested pursuant to section 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 3 August 1973;
- (b) Reserve 21471 for the purpose of "Use and Benefit of Aboriginal Inhabitants" vested pursuant to section 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 16 November 1973;
- (c) Reserve 24923 for the purpose of "Use and Benefit of Aboriginal Inhabitants" vested pursuant to section 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 11 November 1988;

- (d) Reserve 24966 for the purposes of "Use and Benefit of Aboriginal Inhabitants and Meteorological Station" vested pursuant to section 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 13 September 1991;
- (e) Reserve 29452 for the purpose of "Use and Benefit of Aboriginal Inhabitants" vested pursuant to section 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 11 November 1988;
- (f) Reserve 40784 for the purpose of "Use and Benefit of Aboriginal Inhabitants" vested pursuant to section 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 11 November 1988;
- (g) Reserve 40785 for the purpose of "Use and Benefit of Aboriginal Inhabitants" vested pursuant to section 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 11 November 1988;
- (h) Reserve 40787 for the purpose of "Use and Benefit of Aboriginal Inhabitants" vested pursuant to section 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 11 November 1988; and

Section 47B

1. Section 47B of the Native Title Act applies to the areas of unallocated Crown Land shown on the plans attached to Schedule 1 within the Determination Area.

Nature and extent of other rights and interests in relation to the Determination Area (s225(c))

9. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 4. (See Attachment 3 - SCHEDULE 4)

Relationship between the native title rights and interests and other interests (s225(d))

10. The relationship between the native title rights and interests described in paragraphs 3 and 4 and the other interests referred to in paragraph 9 ("the other rights and interests") is that:

- a) to the extent that any of the other rights and interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the other rights and interests to the extent of the inconsistency during the currency of the other rights and interests; and otherwise,
- b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the other rights and interests, and the other rights and interests, and the doing of any activity required or permitted to be done by or under the other rights and interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them.

Definitions and interpretation

11. In this determination, unless the contrary intention appears:

"Determination Area" means the land and waters described in Schedule 1 and depicted on the plans attached to Schedule 1; (See Attachment 1 - SCHEDULE 1)

"flowing and subterranean water" means the following water within the Determination Area:

- (a) water which flows, whether permanently, intermittently or occasionally, within any river, creek, stream or brook;
- (b) any natural collection of water into, through, or out of which a river, creek, stream or brook flows; and
- (c) water from and including an underground water source, including water that percolates from the ground;

"land" and "waters" respectively have the same meanings as in the Native Title Act 1993 (Cth);

"Native Title Act" means the Native Title Act 1993 (Cth);

"water" includes flowing and subterranean water.

EXCLUSIONS FROM THE DETERMINATION AREA

SCHEDULE 2 - EXCLUSIONS

The following areas are excluded from the Determination Area:

- (a) Reserve 34606 (Gibson Desert Nature Reserve) for the purpose of "Conservation of Flora and Fauna" vested in and held in trust by the Western Australian Wildlife Authority pursuant to section 33 of the Land Act 1933 (WA) on 22

April 1977 shown hatched in green on the plans attached to Schedule 1;

(b) The Giles Meteorological Station including adjacent areas (Station) made up of:

(i) the buildings, structures and other improvements (including access roads, bores, water tanks, water towers and fuel tanks) on Milyuga Location 1;

(ii) land or waters adjacent to the Station the use of which is necessary for, or incidental to the construction, establishment or operation of the Station including, three (3) bores and one (1) pipeline situated on adjoining Reserve 17614;

(c) any other public works as that expression is defined in the Native Title Act and the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) and to which section 12J of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) or section 23C(2) of the Native Title Act applies, within the external boundary of the Determination Area including the land and waters defined in section 251D of the Native Title Act.

REGISTER ATTACHMENTS:

1. Attachment 1 - SCHEDULE 1 - DETERMINATION AREA - Technical description, 10 pages
- A4, 29/06/2005
2. Attachment 2 - SCHEDULE 3 - NATIVE TITLE HOLDERS, 34 pages - A4, 29/06/2005
3. Attachment 3 - SCHEDULE 4 - OTHER INTERESTS, 13 pages - A4, 29/06/2005

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.