



# Extract from the National Native Title Register

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## Determination Information:

<b>Determination Reference:</b>	Federal Court Number(s): WAD357/2013; WAD216/2018; WAD18/2019 NNTT Number: WCD2018/004
<b>Determination Name:</b>	<a href="#">Rita Augustine &amp; Ors and State of Western Australia &amp; Ors (Jabirr Jabirr/Ngumbarl)</a>
<b>Date(s) of Effect:</b>	2/05/2018
<b>Determination Outcome:</b>	Native title exists in parts of the determination area

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

<b>Determination Date:</b>	02/05/2018
<b>Determining Body:</b>	Federal Court of Australia

### ADDITIONAL INFORMATION:

On 2 May 2018, the Federal Court of Australia made orders that native title exists in parts of the determination area. Among other things, the Court ordered that:

3. Within 12 months of the date on which these orders are made, a representative of the common law holders of native title shall:

(a) indicate whether the common law holders intend to have the native title held in trust; and

(b) nominate, in writing given to the Federal Court, a prescribed body corporate:

(i) to be trustee of the native title rights and interests; or

(ii) otherwise perform the functions set out in section 57(3) of the *Native Title Act*, including within the nomination the written consent of the body corporate.

4. In the event that there is no nomination within 12 months of the date on which these orders are made, or such later time as the Court may order, the matter is to be listed for further directions.

An appeal was made to the Full Court of the Federal Court of Australia, and on 20 December 2018, the Full Court made the following orders:

1. The appeal be allowed.

2. Schedule 6, item 8(h) of the determination of native title made in proceeding WAD357/2013 on 2 May 2018 be set aside.

3. The appellant to prepare a minute of proposed amended determination in accordance with the reasons of the Court.

On 29 January 2019, further orders were made by the Full Court of the Federal Court of Australia which stated the following:

1. The Determination of Native Title made by Justice North on 2 May 2018 in WAD 357 of 2013 and WAD 374 of 2013, being Attachment A to the orders made in those proceedings on 2 May 2018, be amended to take the form of the Amended Determination of Native Title contained in Attachment A in order to give effect to the Full Court's reasons for judgment published on 20 December 2018 in *Manado on behalf of the Bindunbur Native Title Claim Group v State of Western Australia* [2018] FCAFC 238.

On 4 April 2019, the Federal Court made further orders which stated the following:

1. Order 3 of the Orders made in these proceedings (formerly known as WAD357/2013) on 2 May 2018, be varied to remove the words "Within 12 months of the date on which these orders are made" and replace them with "By 5 July 2019".

On 21 August 2019, further orders were made by the Federal Court which stated the following:

1. The Gogolanyngor Aboriginal Corporation RNTBC (ICN: 8947) shall hold the determined native title (being the native title rights and interests determined by Order 2 made by his Honour North J on 2 May 2018) on trust for the native title holders pursuant to section 56(2)(b) of the *Native Title Act 1993* (Cth).

An appeal was made to the High Court of Australia, and on 18 March 2020, the High Court made the following orders:

1. Appeal allowed.

2. Set aside the orders of the Full Court of the Federal Court of Australia made on 20 December 2018 and in their place order that the appeal to the Full Court be dismissed.

#### **REGISTERED NATIVE TITLE BODY CORPORATE:**

Gogolanyngor Aboriginal Corporation  
Trustee Body Corporate  
PO Box 2145  
Broome Western Australia 6725

*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](http://www.oric.gov.au)*

#### **COMMON LAW HOLDER(S) OF NATIVE TITLE:**

##### **Native title holders [s 225(a)]**

3. The rights and interests comprising the native title are held by Jabirr Jabirr/Ngumbarl people, being the people described in Schedule 3 (**native title holders**).

##### **Schedule 3 – Native Title Holders**

[See paragraph 3 of the Determination]

##### **Jabirr Jabirr/Ngumbarl people**

Jabirr Jabirr/Ngumbarl people are the living persons who are the descendants of one or more of the following ancestors, including by adoption in accordance with the traditional laws and customs of the native title holders:

Gadalargan; Murrjal; Dorothy Kelly; Liddy Kenagai; Liddy Skinner; Bornal; Wallai William & Mary Nelagumia; Senanus; Frank Walmandu; Sophie McKenzie; Frank Dixon (aka Frank Dinghi); Nabi; Appolonia; Dorothy (sister of Senanus); Agnes Imbarr; Deborah & Jacky; Ethyl Jacky; Alice Darada; Milare & Kelergado; Matilda; Louisa; Flora; Madeline; Fred/Friday Walmadang; and Walamandjin.

#### **MATTERS DETERMINED:**

##### **THE COURT ORDERS THAT:**

1. Proceeding WAD374/2013 (the Goolarabooloo proceeding) be dismissed.

2. There be a determination of native title in the form attached as Attachment A to these orders.
3. Within 12 months of the date on which these orders are made, a representative of the common law holders of native title shall:
  - (a) indicate whether the common law holders intend to have the native title held in trust; and
  - (b) nominate, in writing given to the Federal Court, a prescribed body corporate:
    - (i) to be trustee of the native title rights and interests; or
    - (ii) otherwise perform the functions set out in section 57(3) of the *Native Title Act*, including within the nomination the written consent of the body corporate.
4. In the event that there is no nomination within 12 months of the date on which these orders are made, or such later time as the Court may order, the matter is to be listed for further directions.
5. The following area is not included in the determination area and the proceeding be adjourned in relation to it: All that land comprising that portion of Lot 259 as shown on Deposited Plan 220696 that is wholly within the external boundary of Exploration Licence E04/1624 (as defined by The Department of Mines, Industry Regulation and Safety as at 23rd September 2013).

**THE COURT DETERMINES THAT:**

**Existence of native title [s 225]**

1. Native title rights and interests exist in those parts of the Determination Area described in Schedule 2 Part 1 (**native title areas**).
2. Native title rights and interests do not exist in those parts of the Determination Area described in Schedule 2 Part 2.

**Native title holders [s 225(a)]**

3. The rights and interests comprising the native title are held by Jabirr Jabirr/Ngumbarl people, being the people described in Schedule 3 (**native title holders**).

**Nature and extent of native title [s 225(b) and (e)]**

4. Subject to paragraphs 7 and 8, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 4 (being areas where any extinguishment must be disregarded) is the right of possession, occupation, use and enjoyment of that part as against the whole world.
5. Subject to paragraphs 6, 7 and 8, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 5 (being land and waters where there can only be partial recognition; or where there has been partial extinguishment other than where such extinguishment must be disregarded) are the following rights:
  - (a) the right to have access to, remain in and use that part;
  - (b) the right to access and take for any purpose the resources in that part; and
  - (c) the right to protect places, areas and things of traditional significance in that part.
6. The native title rights and interests referred to in paragraph 5 do not confer:
  - (a) possession, occupation, use and enjoyment of those parts of the Determination Area on the native title holders to the exclusion of all others; or
  - (b) a right to control the access of others to the land or waters of those parts of the Determination Area.
7. 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.
8. Notwithstanding anything in this determination, there are no native title rights and interests in the native title areas in or in relation to:

(a) pursuant to the *Mining Act 1904* (WA), gold, silver, other precious metals, precious stones and all other minerals; or

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

#### **Other interests [s 225(c) and 225(d)]**

9. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 6 (**other interests**).

10. The relationship between the native title rights and interests and the other interests is as follows:

(a) the other interests co-exist with the native title rights and interests;

(b) the determination does not affect the validity of those other interests; and

(c) to the extent of any inconsistency, the native title rights and interests yield to the other interests.

#### **Areas where extinguishment is disregarded [s 47B]**

11. Section 47B of the *Native Title Act* applies to disregard any prior extinguishment in relation to the parts of the determination area described in Schedule 4.

#### **Definitions and interpretation**

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

'**Determination Area**' means the land and waters described in Schedule 1 Part 1, but does not include the area described in Schedule 1 Part 2;

'**high water mark**' means the mean high water mark at common law;

'**land**' and '**waters**' respectively have the same meanings as in the *Native Title Act*,

'**Native Title Act**' means the *Native Title Act 1993* (Cth) as amended as at the date of this Determination; and

'**State**' means the State of Western Australia.

In the event of an inconsistency between the written description of an area in Schedules 1, 2, 4 or 5 and an area depicted on the maps in Schedule 7, the written description prevails.

#### **REGISTER ATTACHMENTS:**

1. WCD2018/004 Schedule 1 - Determination Area, 6 pages - A4, 02/05/2018

2. WCD2018/004 Schedule 2 - The areas where native title does and does not exist, 5 pages - A4, 02/05/2018

3. WCD2018/004 Schedule 4 - Where Native Title is Exclusive Possession, 6 pages - A4, 02/05/2018

4. WCD2018/004 Schedule 5 - Where Native Title is not Exclusive Possession, 2 pages - A4, 02/05/2018

5. WCD2018/004 Schedule 6 - Other Interests, 6 pages - A4, 02/05/2018

6. WCD2018/004 Schedule 7 - The Maps, 7 pages - A4, 02/05/2018

*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.*