



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6169/1998; WAD232/2009; WAD47/2014
NNTT Number: WCD2018/015

Determination Name: [Gordon \(on behalf of the Kariyarra Native Title Claim Group\) v State of Western Australia](#)

Date(s) of Effect: 13/12/2018

Determination Outcome: Native title exists in parts of the determination area

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

Determination Date: 13/12/2018

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Kariyarra Aboriginal Corporation
Trustee Body Corporate
2/29 Steel Loop
Wedgefield
South Hedland Western Australia 6722

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:

Native title holders: s 225(a) *Native Title Act*

(3) The native title in the Determination Area is held by the Native Title Holders.

SCHEDULE SEVEN

NATIVE TITLE HOLDERS (PARAGRAPH 3)

(1) The Native Title Holders are those persons who comprise the Kariyarra community, being those Aboriginal persons who:

(a) are a descendant, by cognatic descent, from one or more of the following apical ancestors:

- (i) Jinapi;
 - (ii) Wirtinpangu (Jimmy);
 - (iii) Dougal Robinson;
 - (iv) Puyubungu;
 - (v) Yanki Williams;
 - (vi) Topsy McKenna;
 - (vii) Fanny;
 - (viii) Nyitji;
 - (ix) Maggie;
 - (x) Tommy Anderson;
 - (xi) Fauntleroy (Pontroy); and
- (b) recognise themselves as having rights and interests in the Determination Area under Kariyarra traditional law and custom; and
- (c) are recognised by other members of the Kariyarra community as having rights and interests in the Determination Area under Kariyarra traditional law and custom.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In relation to the Determination Area, there be a determination of native title in WAD6169/1998, WAD232/2009 and WAD47/2014 in the terms provided for in Attachment A.
2. The Kariyarra Aboriginal Corporation (ICN 8355) shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the *Native Title Act 1993* (Cth).

ATTACHMENT A

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title: s 225 *Native Title Act*

- (1) Subject to paragraph 2, native title exists in the Determination Area in the manner set out in paragraphs 4 and 5 of this determination.
- (2) Native title does not exist in those parts of the Determination Area which are:
 - (a) identified in Schedule Four; or
 - (b) seaward of the lowest astronomical tide of the mainland coast.

Native title holders: s 225(a) *Native Title Act*

- (3) The native title in the Determination Area is held by the Native Title Holders.

The nature and extent of native title rights and interests: s 225(b) and s 225(e) *Native Title Act*

Exclusive rights and interests

- (4) Subject to paragraphs 6, 8, 9 and 12 the nature and extent of the native title rights and interests in relation to the Exclusive Area is:

- (a) except in relation to flowing and underground water, the right to possession, occupation, use and enjoyment to the exclusion of all others; and
- (b) in relation to flowing and underground water, the right to use and enjoy the flowing and underground water, including:
 - (i) the right to hunt on, fish from, take and use the traditional resources of the flowing and underground water; and
 - (ii) the right to take and use the flowing and underground water.

Non-exclusive rights and interests

- (5) Subject to paragraphs 6, 7, 8, 9 and 12 the nature and extent of the native title rights and interests in relation to the Non-Exclusive Area is that they confer the following non-exclusive rights on the Native Title Holders:
 - (a) the right to live on, being to enter and remain on, and to camp and erect temporary shelters and other structures for that purpose, and to travel over and visit, the Non-Exclusive Area;
 - (b) the right to hunt on, fish from, take and use traditional resources of the Non-Exclusive Area;
 - (c) the right to take and use water;
 - (d) the right to engage in cultural activities, including:
 - (i) visiting, caring for and maintaining places and objects of cultural or spiritual importance and protecting those places by carrying out lawful activities to preserve their physical or spiritual integrity; and
 - (ii) conducting ceremonies, burials and ritual;
 - (e) the right to be accompanied on to the Non-Exclusive Area by those people who, though not Native Title Holders and who (for the avoidance of doubt) cannot themselves exercise any native title rights, are:
 - (i) the spouses, parents or children of the Native Title Holders; or
 - (ii) people required by traditional law and custom for the performance of ceremonies or cultural activities; and
 - (f) a right to speak for and make decisions about the use of the Non-Exclusive Area by members of the Aboriginal society to which the Native Title Holders belong.

Qualifications on the native title rights and interests

- (6) The native title rights and interests are subject to and exercisable in accordance with:
 - (a) the laws of the State and the Commonwealth, including the common law; and
 - (b) the traditional laws and customs of the Native Title Holders.
- (7) The native title rights and interests in relation to the Non-Exclusive Area are exercisable for personal, domestic, and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes) but not for commercial purposes.
- (8) Notwithstanding anything in this determination there are no native title rights and interests in the Determination Area in relation to:
 - (a) minerals as defined in the *Mining Act 1904* (WA) (repealed) and in the *Mining Act 1978* (WA), except to the extent that ochre is not a mineral pursuant to the *Mining Act 1904* (WA);
 - (b) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and in the *Petroleum and Geothermal Energy Resources Act 1967* (WA);
 - (c) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA); or
 - (d) water lawfully captured by the holders of the Other Interests.

- (9) The native title rights and interests set out in paragraphs 4(b) and 5 do not confer:
- (a) possession, occupation, use and enjoyment on the Native Title Holders to the exclusion of all others; or
 - (b) a right to control the access to, or use of, those parts of the Determination Area or its resources.

Areas to which s 47A or s 47B of the *Native Title Act* apply

- (10) Section 47A and s 47B of the *Native Title Act* apply to disregard any prior extinguishment in relation to the land and waters described in Schedule Five.

The nature and extent of any Other Interests

- (11) The nature and extent of the Other Interests are described in Schedule Six.

Relationship between native title rights and Other Interests

- (12) Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraphs 4 and 5 and the Other Interests is that:
- (a) to the extent that any of the Other 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 Interests to the extent of the inconsistency during the currency of the Other 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 Interests, and the Other Interests, and the doing of any activity required or permitted to be done by or under the Other 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

- (13) In this determination, unless the contrary intention appears:

“Determination Area” means the land and waters described in Schedule One and depicted on the maps at Schedule Two;

“Exclusive Area” means those lands and waters of the Determination Area described in Schedule Three (which areas are generally shown as shaded green on the maps at Schedule Two);

“flowing 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; and
- (b) any natural collection of water into, through, or out of which a river, creek, stream or brook flows;

“land” has the same meaning as in the *Native Title Act* and, for the avoidance of doubt, includes any natural collection of water found on the land which does not fall within the definition of “waters”;

“Native Title Act” means the *Native Title Act 1993* (Cth);

“Native Title Holders” means the people referred to in Schedule Seven;

“Non-Exclusive Area” means those lands and waters of the Determination Area which are not Exclusive Areas or described in paragraph 2 as an area where native title does not exist (which areas are generally shown as shaded yellow on the maps at Schedule Two);

“Other Interests” means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Schedule Six and referred to in paragraph 11;

“resources” means flora, fauna, and other natural resources such as shells, soil, sand, gravel, stone, flint, clay, charcoal, wood, resin and ochre (except, for the avoidance of doubt, ochres for use in the

manufacture of porcelain, fine pottery or pigments which are minerals pursuant to the *Mining Act 1904* (WA) (repealed));

“**Titles Validation Act**” means the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA);

“**underground water**” means water from and including an underground water source, including water that percolates from the ground; and

“**waters**” has the same meaning as in the *Native Title Act* and includes flowing and underground water.

- (14) In the event of any inconsistency between the written description of an area in Schedule One, Three, Four, Five or Six and the area as depicted on the maps at Schedule Two the written description prevails.

REGISTER ATTACHMENTS:

1. Schedule One - Determination Area, 8 pages - A4, 13/12/2018
2. Schedule Two - Maps Of The Determination Area, 34 pages - A4, 13/12/2018
3. Schedule Three - Exclusive Area, 1 page - A4, 13/12/2018
4. Schedule Four - Areas Where Native Title Does Not Exist (Paragraph 2(a)), 59 pages - A4, 13/12/2018
5. Schedule Five - Areas To Which Sections 47A And 47B Of The Native Title Act Apply (Paragraph 10), 2 pages - A4, 13/12/2018
6. Schedule Six - Other Interests (Paragraph 11), 15 pages - A4, 13/12/2018

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.