



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD16/2019
NNTT Number: WCD2020/009

Determination Name: [Carter on behalf of the Warrwa Mawadjala Gadjidgar and Warrwa People Native Title Claim Groups v State of Western Australia](#)

Date(s) of Effect: 1/12/2020

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: 01/12/2020

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

In *Carter on behalf of the Warrwa Mawadjala Gadjidgar and Warrwa People Native Title Claim Groups v State of Western Australia* [2020] FCA 1702, Justice Banks-Smith delivered a joint judgment in relation to two adjacent determinations of native title: WAD16/2019 Warrwa Mawadjala Gadjidgar and WAD33/2019 Warrwa Combined. Separate orders were published with the judgment for each determination and accordingly, the two determinations have separate entries on the National Native Title Register.

REGISTERED NATIVE TITLE BODY CORPORATE:

Warrwa People Aboriginal Corporation
Trustee Body Corporate
Kimberley Land Council Office
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

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 EIGHT

NATIVE TITLE HOLDERS (PARAGRAPH 3)

1. The Native Title Holders are:

(a) those Aboriginal persons who are:

(i) descended from one or more of the people listed in clause 2 of this Schedule; or

(ii) recognised by the descendants of the people listed in clause 2 of this Schedule as having traditional rights and interests in the Determination Area under traditional law and custom; and

(b) Tommy May (Ngarralja), who is a named custodian only for the Determination Area, and is recognised by the Native Title Holders to hold specific, non-transferable rights and interests in the Determination Area.

2. The people referred to in clause 1(a)(i) of this Schedule are those Aboriginal persons who are the biological or adopted descendants of the following apical ancestors:

(a) Topsy Mouwudjala;

(b) Gudayi and Bobby Ah Choo; and

(c) Nani.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In relation to the Determination Area, there be a determination of native title in terms of the determination as provided for in Attachment A to these orders.

2. The Warrwa People Aboriginal Corporation shall hold the determined native title in trust for the native title holders pursuant to s 56(2) of the *Native Title Act*.

ATTACHMENT A - Warrwa Mawadjala Gadgigar

DETERMINATION

Note: defined terms are set out in paragraph 14 below.

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 that are identified in Schedule Five.

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 native title rights and interests

4. Subject to paragraphs 7, 8, 9 and 10 the nature and extent of the native title rights and interests in relation to the Exclusive Area referred to in Schedule Three is the right to possession, occupation, use and enjoyment of the Exclusive Area as against the whole world.

Non-exclusive native title rights and interests

5. Subject to paragraphs 6, 7, 8, 9 and 10 the nature and extent of the native title rights and interests in relation to the Non-Exclusive Area referred to in Schedule Four are the following:

(a) the right to have access to, remain in and use that part. For the avoidance of doubt, some of the ways in which

that right may be exercised include but are not limited to the following activities:

- (i) to access and move freely through and within that part;
- (ii) to live, being to enter and remain on, camp and erect temporary shelters and other structures for those purposes on that part;
- (iii) to light controlled contained fires but not for the clearance of vegetation;
- (iv) to engage in cultural activities in that part, including the transmission of cultural heritage knowledge; and
- (v) to hold meetings in that part.

(b) the right to access and take for any purpose the resources on that part. For the avoidance of doubt, one of the ways in which that right may be exercised includes but is not limited to the following activity:

- (i) to access and take water other than water which is lawfully captured or controlled by the holders of pastoral leases.

(c) the right to protect places, areas and objects of traditional significance on that part. For the avoidance of doubt, some of the ways in which that right may be exercised include but are not limited to the following activities:

- (i) to conduct and participate in ceremonies in that part; and
- (ii) to conduct burials and burial rites and other ceremonies in relation to death in that part; and
- (iii) to visit, maintain and protect from physical harm, areas, places and sites of importance 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; nor
- (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 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.

8. 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 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)*; or
- (c) water lawfully captured or controlled by the holders of the Other Interests.

9. The native title rights and interests are subject to the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*.

10. For the avoidance of doubt, the native title rights and interests set out in paragraphs 4 and 5 do not confer exclusive rights 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.

Areas where extinguishment is disregarded: s 47A or s 47B Native Title Act

11. Section 47A and s 47B of the *Native Title Act* apply to disregard any prior extinguishment in relation to the areas described in Schedule Six.

The nature and extent of any Other Interests: s 225(c) Native Title Act

12. The nature and extent of the Other Interests are described in Schedule Seven.

Relationship between native title rights and Other Interests: s 225(d) Native Title Act

13. The relationship between the native title rights and interests described in paragraphs 4 and 5 and the Other

Interests is as follows:

- (a) the Other Interests co-exist with the native title rights and interests;
- (b) this 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 and the existence and exercise of native title rights and interests cannot prevent activities permitted under the Other Interests.

Definitions and Interpretation

14. 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 (being areas where any extinguishment must be disregarded) which are not Non Exclusive Areas or described in paragraph 2 as an area where native title does not exist. Exclusive Areas are generally shown as shaded green on the maps at Schedule Two;

'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);

'Native Title Holders' means the people described in Schedule Eight and referred to in paragraph 3;

'Non-Exclusive Area' means those lands and waters of the Determination Area described in Schedule Four (being areas where there can only be partial recognition of native title). Non-Exclusive 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 Seven and referred to in paragraph 12;

'State' means the State of Western Australia; and

'Titles Validation Act' means the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA).

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

REGISTER ATTACHMENTS:

1. Schedule One - Determination Area, 2 pages - A4, 01/12/2020
2. Schedule Two - Maps of the Determination Area, 3 pages - A4, 01/12/2020
3. Schedule Three - Exclusive Native Title Areas, 1 page - A4, 01/12/2020
4. Schedule Four - Non-Exclusive Native Title Areas, 1 page - A4, 01/12/2020
5. Schedule Five - Areas where native title does not exist (paragraph 2), 2 pages - A4, 01/12/2020
6. Schedule Six - Areas to which sections 47A or 47B Native Title Act apply (paragraph 11), 1 page - A4, 01/12/2020
7. Schedule Seven - Other Interests (paragraph 12), 3 pages - A4, 01/12/2020

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.