



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6019/1998
NNTT Number: WCD2001/002

Determination Name: [Brown -v- State of Western Australia](#)

Date(s) of Effect: 19/10/2001

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 19/10/2001

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Tjamu Tjamu Aboriginal Corporation RNTBC
Trustee Body Corporate
C/- CDNTS Ltd,
76 Wittenoom Street,
EAST PERTH WA 6004

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 native title rights and interests are held by the Kiwirrkurra people as the common law holders of the native title rights and interests.

MATTERS DETERMINED:

The Court orders, declares and determines, with the consent of the parties that:

1. The Determination Area is the land and waters described and depicted in the First Schedule.
2. Native title exists in relation to the Determination Area.

3. The native title rights and interests are held by the Kiwirrkurra people as the common law holders of the native title rights and interests. The Kiwirrkurra people are those people described in the Second Schedule.

4. Subject to paragraphs 5, 6, 7 and 8:

(1) the nature and extent of the native title rights and interests held by the Kiwirrkurra people in relation to the Determination Area are the right to possess, occupy, use and enjoy the land and waters of the Determination Area to the exclusion of all others, including:

(a) the right to live on the Determination Area;

(b) the right to make decisions about the use and enjoyment of the land and waters of the Determination Area;

(c) the right to hunt and gather, and to take water and other traditionally accessed resources (including ochre) for the purpose of satisfying their personal, domestic, social, cultural, religious, spiritual and communal needs;

(d) the right to control access to, and activities conducted by others on, the land and waters of the Determination Area;

(e) the right to maintain and protect sites which are of significance to the Kiwirrkurra people under their traditional laws and customs; and

(f) the right as against any other Aboriginal group or individual to be acknowledged as the traditional Aboriginal owners of the Determination Area.

(2) the native title rights and interests are exercisable in accordance with the traditional laws and customs of the Kiwirrkurra people.

5. Notwithstanding anything in this determination:

(a) the native title rights and interests (in accordance with the decision of the Federal Court in *Western Australia v Ward* (2000) 99 FCR 316 include ochre but do not include other minerals and petroleum as defined in the Mining Act 1904 (WA), the Mining Act 1978 (WA), the Petroleum Act 1936 (WA) and the Petroleum Act 1967 (WA); and

(b) the native title rights and interests only confer on the Kiwirrkurra people such rights in relation to flowing and subterranean waters as exist at law;

(c) nothing in this paragraph is intended to affect the rights of the Kiwirrkurra people (including any registered native title body corporate) under subsections 13(1) and 13(5) and the item "Revised native title determination application" in the table in subsection 61(1) of the Native Title Act.

6. The nature and extent of other interests in relation to the Determination Area are those set out in the Third Schedule.

7. The native title rights and interests are subject to and exercisable in accordance with the laws of the State and the Commonwealth including the common law.

8. The relationship between the native title rights and interests referred to in paragraph 4 in the land and waters described in the First Schedule and the other rights and interests referred to in paragraph 6 ("the other rights and interests") is that:

(a) the other rights and interests and the doing of any activity in exercise of the rights conferred by or held under the other rights and interests co-exist with the native title rights and interests except to the extent that the other rights and interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its 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; and

(b) for the avoidance of doubt, 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.

FIRST SCHEDULE

The Determination Area is ALL those areas of land and waters in the State of Western Australia contained within the boundaries of the following description:

All those lands and waters commencing at the westernmost northwestern corner of Special Lease 3116/10897 and

extending easterly along the northern boundary of that Special Lease and the northern boundary of Reserve 40786 and again along the northern boundary of Special Lease 3116/10897 and onwards to the State Border at Lat 22.246820 South; Thence south along that border to Lat 23.498578 South; Thence westerly to the westernmost western boundary of Special Lease 3116/10897 at Lat 23.498607 South; Thence north along that boundary to the commencement point;

which Determination Area is outlined blue on the Plan annexed to this Schedule.

SECOND SCHEDULE

The Kiwirrkurra people are:

those people who hold in common the body of traditional law and culture governing the Determination Area and who hold native title rights and interests in the Determination Area at the following three levels:

(a) The total group level:

Here all the Kiwirrkurra people hold in common the native title rights (amounting to ownership) of the total land area of the Determination Area. This is the most important level of the system, for in the final analysis the total group is the decision-making body, and the rights of the total group in the overall land area are the over-riding ones.

(b) The individual level:

Here each individual among the Kiwirrkurra people has his or her particular rights in individual places in the Determination Area. For each individual, such places may be concentrated in a certain part of the Determination Area or they may be in different parts of it. These rights of the individual may have been obtained directly (by conception, birth and the like) or by virtue of a direct connection of one or more of that person's antecedents. The total group of Kiwirrkurra people must take into account the individual level of connection in any instance of the exercise of native title rights.

(c) The local group level:

Here the Kiwirrkurra people may be seen as belonging to a set of local groups each of which is associated with a particular localised area within the Determination Area.

The membership of the local groups comprises the bilateral descendants of an antecedent set of siblings which is associated with the area concerned. There are twenty such local groups among the Kiwirrkurra people, and the sets of antecedent siblings from which these groups derive is set out here. As is the case with the individual level of connection, the total group of Kiwirrkurra people must take into account the local group level of connection in any instance of the exercise of native title rights.

Antecedents of Local Group 1 (Kiwirrkurra area and east)

Watjapayi tjangala (the father of the applicant Jimmy Brown)

Nangurri nangala

Minpurru tjangala

Wuta Wuta tjangala

Yartipayi tjangala

Kalutara/Wintarru tjangala

Anmanari nangala

Papalya nangala

Wangalya nangala

Narnu nangala

Pilamartitja tjangala

Pipantji tjangala

Ngilkirr tjangala

Tjinyirji tjangala
Yuwiyuwi tjangala
Manturnya tjangala
Kakalyi nangala
Roger tjangala
Livingstone tjangala
Walter Brown tjangala
Donovan Brown tjangala
Thompson Brown tjangala
Roger Brown tjangala
Harry Brown tjangala
Jonathan Brown tjangala
Ian Brown tjangala
Joey Brown tjangala
Maria Turner nangala
Alistair Turner tjangala
Lance Turner tjangala
Ray James tjangala
Yunurupa nangala
Mathua James nangala
Georg Yapa tjangala
Antecedents of Local Group 2 (Winparrku Tarkurr to Lake Mackay)
Lantil tjanangka
Tuntji tjanangka
Arthur Partuta tjanangka
Kurutilit tjanangka
Mutikalka tjanangka
Antecedents of Local Group 3 (Kiwirrkurra area towards Lake Mackay)
Malpamurtu tjakamarra
Tjilpakarnu tjakamarra
Kununginya tjakamarra
Wanarritjarra tjakamarra
Tjititjiti tjakmarra
Antecedents of Local Group 4 (west sector to Pollock Hills area and north)
Tjukuti tjakamarra

George West tjakamarra

Paul West tjakamarra

Antecedents of Local Group 5 (Yumari to south-east claim area)

Yirtjuru tjapangarti

Nyilari tjapangarti

Rartji tjapangarti

Yawalyuru tjapangarti

Antecedents of Local Group 6 (Dover's Hills area)

Charlie Tarawa tjungarrayi

Tjuta tjungurrayi

Antecedents of Local Group 7 (Dover's Hill area)

Talpana tjampitjinpa

Tjuparrku tjampitjinpa

Tjangantjukurpa tjampitjinpa

Henry tjampitjinpa

Reginald tjampijinpa

Sarn tjampitjinpa

Antecedents of Local Group 8 (Dover's Hill area)

Mikini (McKinnon) tjupurrula

Billy Barku tjupurrula

Tjatuli napurrula

Murphy tjupurrula

Antecedents of Local Group 9 (Angas Hills to west side of Pollock Hills)

Tjurti tjapaltjarri

Tjampi tjampi tjapaltjarri

Natiki Kuli tjapaltjarri

Tjalyuri tjapaltjarri

George Tjampu tjapaltjarri

Murmuya napaltjarri

Antecedents of Local Group 10 (Ngatarn area and south (SE Claim area))

Yala yala Gibson tjungurrayi

Willy Ngitjita tjungurrayi

Melba nungurrayi

Wakarnintja tjungurrayi

Tjikutja nungurrayi

Antecedents of Local Group 11 (Lake MacDonald area and south)

Piningka tjungurrayi

Kawartalnga tjungurrayi

Lungkarta tjungurrayi

Antecedents of Local Group 12 (central area inc. Kiwirrkurra)

Karukaru tjungurrayi

Waku tjungurrayi

Kuku tjungurrayi

Yirrimatitja tjungurrayi

Manyinya nungurrayi

Yumpulurru tjungurrayi

Antecedents of Local Group 13 (Kanapilyirr and north (NE Claim area))

Nyurri tjangala

Marrukurru tjangala

Langanyirtu tjangala

Tjapantjarra tjangala

Wartatjanu tjangala

Nyilunnga tjangala

Tjinanyi tjangala

Pakartjirri tjangala

Pikanatju tjangala

Papayi tjangala

Antecedents of Local Group 14 (Parrayilpil area (NE Claim area))

Bob Dingo tjapanangka

Yuendumu George tjapanangka

Bill Larry tjapanangka

Yanurl napanangka

Antecedents of Local Group 15 (Western sector - central Jupiter Well area)

Nanyuma napangarti

Charlie tjapangarti

Kanya tjapangarti

Pampartu napangarti

Kalyurri napangarti

Antecedents of Local Group 16 (Western sector)

Tjuulnga tjapaltjarri

Tjinapilpa tjapaltjarri

Mantjarlin tjapaltjarri

Parrkulya tjapaltjarri

Manya Ward napaltjarri

Nyunmul tjapaltjarri

Antecedents of Local Group 17 (Western sector, northern area)

Wingurru tjangala

Nawipayi tjangala

Nawunnga tjangala

Walayipayi tjangala

Weewungi tjangala

father of Parnayi tjampitjinpa

Yawarla nangala

Wayala tjangala

Lungunyalku tjangala

Wirrangarri tjangala

Nyakapantja tjangala

father of Eunice Eubena nampitjinpa

Antecedents of Local Group 18 (Western sector, northern area)

Tjinakarli tjapangarti

Gimme tjapangarti

Ngamapu napangarti

Yila tjapangarti

Wimitja tjapangarti

Kiilpa tjapangarti

Wanapayi tjapangarti

Les Tobacco tjapangarti

Betty napangarti

Marie Claire napangarti

Kurrpali napangarti

Tuckerbox tjapangarti

Antecedents of Local Group 19 (Western sector, northern to southern area)

Wutja tjupurrula

Nyangu tjupurrula

Ngalyakanpal napurrula

Piyungka napurrula

Ngapulyn Morgan napurrula

Antecedents of Local Group 20 (Western sector, northern area)

Nganyurti tjungurrayi

Yatju nungurrayi

Pinamparli nungurrayi

THIRD SCHEDULE

The nature and extent of other interests in relation to the Determination Area are:

Reserves for the "use and benefit of Aboriginal inhabitants"

(a) Reserves 40783, 40786 and part of 24923, all classified as class "A" reserves under the Land Administration Act 1997, and under the control and management of the Aboriginal Lands Trust pursuant to section 46 of the Aboriginal Affairs Planning Authority Act 1972;

(b) The rights and interests of the Lessee, being the Ngaanyatjarra Land Council (Aboriginal Corporation) of Lease 245 of Reserves 40783 and 40786 made on 29 November 1988 for a term of 99 years between the Aboriginal Lands Trust, the Minister for Aboriginal Affairs, the Aboriginal Affairs Planning Authority and the Ngaanyatjarra Land Council (Aboriginal Corporation), as far as the Lessee's rights and interests affect the native title rights and interests of the common law holders;

(c) The rights and interests of the Lessee, being the Ngaanyatjarra Land Council (Aboriginal Corporation) of Lease 243 of Reserve 24923 made on 29 November 1988 for a term of 99 years between the Aboriginal Lands Trust, the Minister for Aboriginal Affairs, the Aboriginal Affairs Planning Authority and the Ngaanyatjarra Land Council (Aboriginal Corporation), as far as the Lessee's rights and interests affect the native title rights and interests of the common law holders;

(d) The rights and interests of the Lessee, being the Aboriginal Lands Trust of Special Lease 3116/10897 made on 20 August 1992 for a term of 50 years between the Minister for Lands and the Aboriginal Lands Trust, pursuant to section 116 of the Land Act 1933(WA), as far as the Lessee's rights and interests affect the native title rights and interests of the common law holders;

(e) The rights and interests of the Sub-Lessee, being the Ngaanyatjarra Land Council (Aboriginal Corporation) of Sub-Lease 249 of Special Lease 3116/10172 (subsequently replaced by Special Lease 3116/10897), made on 29 November 1988 for a term of 50 years between the Aboriginal Lands Trust and the Ngaanyatjarra Land Council (Aboriginal Corporation), as far as the Sub-Lessee's rights and interests affect the native title rights and interests of the common law holders;

Telstra

(f) the interests of Telstra Corporation Limited:

(i) as the owner and operator of the telecommunications facilities installed within the Determination Area, including the Tietkins DRCS Radio Transmitter, Jazza DRCS Radio Transmitter, Angas DRCS Radio Transmitter, Pollock Hills DRCS Radio Transmitter, Top Up Rise DRCS Radio Transmitter, Nyinmi DRCS Radio Transmitter, customer radio terminals and cabling; and

(ii) created pursuant to the Post and Telegraph Act 1901 (Cth), the Telecommunications Act 1975 (Cth), the Australian Telecommunication Corporation Act 1989 (Cth), the Telecommunications Act 1991 (Cth) and the Telecommunications Act 1997 (Cth).

Other rights and interests

(g) Any other rights and interests granted by the Crown pursuant to statute or by any valid executive or legislative act, which are current at the date of this determination.

(h) Any other rights or interests held by or under the Crown by the force and operation of the laws of the State or the Commonwealth as may be current at the date of this determination, including the force and operation of the Rights in Water and Irrigation Act 1914.

(i) Rights and interests of members of the public arising under the common law.

(j) A right of any employee or agent of the State, its agencies and instrumentalities, and of the Shire of East Pilbara, its employees and agents, to access the Determination Area (subject to the laws of the State) for the bona fide performance of their duties.

REGISTER ATTACHMENTS:

1. Attachment A - Map of Determination Area, 1 page - A4, 19/10/2001

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.