



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6007/2001
WAD126/2005
NNTT Number: WCD2015/003

Determination Name: [Chubby on behalf of the Puutu Kunti Kurrama People and the Pinikura People #1 and #2](#)

Date(s) of Effect: 20/01/2016

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: 02/09/2015

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

This determination was to take effect immediately upon the making of a determination under s 56(1) of the *Native Title Act 1993* (Cth).

A prescribed body corporate was nominated in accordance with Order 1 by the Federal Court on 20 January 2016, therefore this determination takes effect from this date.

REGISTERED NATIVE TITLE BODY CORPORATE:

The PKKP Aboriginal Corporation RNTBC
Trustee Body Corporate
PO BOX 130
KARRATHA Western Australia 6714

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 in the Determination Area is held by the Puutu Kunti Kurrama and Pinikura People. The Puutu Kunti Kurrama and Pinikura People are the people referred to in Schedule Five.

The Puutu Kunti Kurrama and Pinikura People means the Puutu Kunti Kurrama people and the Pinikura people as described below.

The Puutu Kunti Kurrama people are those persons who:

(a) descended from one or more of the following ancestors:

Ngarupunga [Ngarupungu], Kitty, Jukaan Tommy Ashburton, Ina Winnie Ashburton, Punch Ashburton, Katarra Dick Ashburton, and Kalkardi Dinah; and

(b) identify themselves as Puutu Kunti Kurrama in accordance with the traditional laws acknowledged and the traditional customs observed by Puutu Kunti Kurrama people; and

(c) are accepted in accordance with the traditional laws acknowledged and the traditional customs observed as Puutu Kunti Kurrama people.

The Pinikura people are those persons who:

(a) descended from one or more of the following ancestors:

Kaita, Markakurru Topsy Williams, Bonnie, Winnie Hayes(Hicks) and Punch Hughes [Kalpanthalu];

(b) identify themselves as Pinikura in accordance with the traditional laws acknowledged and the traditional customs observed by Pinikura people; and

(c) are accepted in accordance with the traditional laws acknowledged and the traditional customs observed as Pinikura people.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In relation to the Determination Area, there be a determination of native title in WAD 6007 of 2001 and WAD 126 of 2005 in terms of the Determination as provided for in Attachment A. The Determination is to take effect immediately upon the making of a determination under s 56(1) of the *Native Title Act 1993* (Cth) provided that within 6 months of the date upon which these orders are made:

(a) a representative of the common law holders of the native title rights and interests shall nominate in writing to the Federal Court (and copied to the parties) a prescribed body corporate to hold the native title rights and interests held in trust on behalf of the native title holders; and

(b) the representative of the common law holders shall include within the nomination:

(i) the written consent of the body corporate; and

(ii) a statement that either:

(i) the rule book at Attachment B; or

(ii) the rule book at Attachment B as amended and approved in writing by the State of Western Australia in

its capacity as First Respondent to the proceedings,

has been adopted by the members of the corporation and, if necessary, approved by the Registrar of Indigenous Corporations.

2. If a prescribed body corporate is nominated in accordance with order 1, it 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).

3. If a prescribed body corporate is not nominated in accordance with order 1 within the time specified, or such later time as the Court may order, the Determination will not take effect and the matter is to be listed for further directions.

4. The parties have liberty to apply in relation to these orders at any time prior to the Determination taking effect.

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 paragraph 4 of this determination.

2. Native title does not exist in those parts of the Determination Area the subject of the interests identified in Schedule Three which are shown as generally shaded pink on the maps at Schedule Two.

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

3. The native title in the Determination Area is held by the Puutu Kunti Kurrama and Pinikura People. The Puutu Kunti Kurrama and Pinikura People are the people referred to in Schedule Five.

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

4. Subject to paragraphs 2, 5, 6 and 8 the nature and extent of the native title rights and interests in relation to the Determination Area are that they confer the following non-exclusive rights on the Puutu Kunti Kurrama and Pinikura People, including the right to conduct activities necessary to give effect to them:

- (a) the right to enter and remain on the land, camp, erect temporary shelters, and travel over and visit any part of the land and waters of the Determination Area;
- (b) the right to hunt, fish, gather, take and use the traditional resources of the land;
- (c) the right to take and use water;
- (d) the right to engage in cultural activities on the Determination Area, including:
 - (i) visiting places of cultural or spiritual importance and maintaining, caring for, and protecting those places by carrying out lawful activities to preserve their physical or spiritual integrity; and
 - (ii) conducting ceremony and ritual, and the transmission of cultural knowledge; and
- (e) the right to be accompanied onto the Determination Area by those people who, though not native title holders, and who (for the avoidance of doubt) cannot themselves exercise any native title right in the Determination Area, are:
 - (i) 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 on the Determination Area.

Qualifications on the native title rights and interests

5. The native title rights and interests set out in paragraph 4:

- (a) are subject to and exercisable in accordance with:
 - (i) the laws of the State and the Commonwealth, including the common law; and
 - (ii) the traditional laws and customs of the Puutu Kunti Kurrama and Pinikura People for personal, domestic and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes) but not for commercial purposes; and
- (b) do not confer any rights in relation to:
 - (i) minerals as defined in the *Mining Act 1904* (WA) (repealed) and in the *Mining Act 1978* (WA);
 - (ii) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and in the *Petroleum and Geothermal Energy Resources Act 1967* (WA);
 - (iii) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA); or
 - (iv) water captured by the holders of the Other Interests pursuant to those Other Interests.

6. The native title rights and interests set out in paragraph 4 do not confer:
- (a) possession, occupation, use and enjoyment on the Puutu Kunti Kurrama and Pinikura People to the exclusion of all others; or
 - (b) a right to control the access to, or use of, the land and waters of the Determination Area or its resources.

The nature and extent of any other interests (s 225(c) *Native Title Act*)

7. The nature and extent of the Other Interests are described in Schedule Four.

Relationship between native title rights and other interests (s 225(d) *Native Title Act*)

8. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraph 4 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.

Liberty to Apply

9. The parties have liberty to apply to:
- (a) establish the precise location and boundaries of the public works and adjacent land and waters identified in relation to any part or parts of the Determination Area referred to in clause 4 of Schedule Three of this determination; and
 - (b) clarify the relationship between the native title rights and interests set out in paragraph 4 and Easement F924685 referred to in clause 3(b) of Schedule Four of this determination if a court of competent jurisdiction should find that its creation did not affect native title.

Definitions and Interpretation

10. 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;

“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 Puutu Kunti Kurrama and Pinikura People as described in Schedule Five and referred to in paragraph 3;

“Other Interests” means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Schedule Four and referred to in paragraph 7;

“resources” means flora, fauna, and other natural resources such as charcoal, stone, soil, wood, resin, sand, clay, gravel 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));

“use” includes by way of share and exchange, but does not include use by way of trade;

“waters” has the same meaning as in the *Native Title Act*.

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

SCHEDULE ONE

DETERMINATION AREA

[See NNTR attachment 1: “Schedule One - Determination Area”]

SCHEDULE TWO

MAPS OF THE DETERMINATION AREA

[See NNTR attachment 2: “Schedule Two - Maps of the Determination Area”]

SCHEDULE THREE

AREAS WHERE NATIVE TITLE DOES NOT EXIST (Paragraph 2)

Native title does not exist in relation to land and waters the subject of the following interests within the Determination Area which, with the exception of public works (as described in clause 4 of this Schedule), are generally shown as shaded in pink on the maps at Schedule Two:

1. Freehold

Lot 2 on Deposited Plan 130398 being the whole of the land currently the subject of certificate of title volume 959 folio 23.

Lot 1 on Deposited Plan 253489 being the whole of the land currently the subject of certificate of title volume 2209 folio 879.

2. Dedicated roads and roads set aside, taken or resumed

Dedicated roads, roads set aside, taken or resumed or roads which are to be considered 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)*), including the following:

Road No 14619 (Nanutarra-Wittenoom Road) dedicated by notice published in the *Government Gazette* on 3 March 1972;

Road No 8385 dedicated by notice published in the *Government Gazette* on 17 January 1930;

Road No 8477 dedicated by notice published in the *Government Gazette* on 4 April 1930;

Road No 8476 dedicated by notice published in the *Government Gazette* on 4 April 1930;

Road No 8474 dedicated by notice published in the *Government Gazette* on 4 April 1930;

Road No 8469 dedicated by notice published in the *Government Gazette* on 4 April 1930;

Road No 7911 dedicated by notice published in the *Government Gazette* on 17 January 14 September 1928;

Road No 440 dedicated by notice published in the *Government Gazette* on 7 September 1894;

Road No 258 dedicated by notice published in the *Government Gazette* on 8 September 1887; and

Road No 257 dedicated by notice published in the *Government Gazette* on 8 September 1887.

3. Reserves

Reserve 37596 (Quarry) vested under section 33 of the *Land Act 1933* (WA) (repealed).

4. Public Works

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) (including the land and waters on which a public work is constructed, established or situated as described in section 251D of the *Native Title Act*) 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.

SCHEDULE FOUR

OTHER INTERESTS (Paragraph 7)

The nature and extent of the Other Interests in relation to the Determination Area as at the date of this determination are:

1. Reserves

(a) The following reserves:

Reserve No.	Current Purpose
1108	Watering Place
1111	Watering Place
1235	Watering Place for Travellers & Stock
1236	Watering Place for Travellers & Stock
4700	Water
9701	De Grey Mullewa Stock Route

17673	Addition to De Grey Mullewa Stock Route
40902	Geodetic Station
40903	Geodetic Station
40904	Geodetic Station
40905	Geodetic Station
40906	Geodetic Station
40907	Geodetic Station
40908	Geodetic Station
46122	Conservation Park

(b) The rights and interests of persons who have the care, control and management of the reserves identified in subclause (a) above;

(c) The rights and interests of persons entitled to access and use the reserves identified in subclause (a) above for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights; and

(d) The rights and interests of persons holding leases over areas of the reserves identified in subclause (a) above.

2. Pastoral Leases

The following pastoral leases and the rights and interests of the holders from time to time of those pastoral leases:

Pastoral Lease	Station Name
3114/0647 (PL N050360)	Wyloo
3114/1014 (PL N050594)	Glenflorrie
3114/1096 (PL N049833)	Nanutarra
3114/1166 (PL N050372)	Rocklea
3114/1218 (PL N050036)	Ashburton Downs
3114/1236 (PL N049418)	Kooline
3114/1262 (PL N049852)	Red Hill
3114/1267 (PL N050169)	Mount Stuart
3114/1277 (PL N050438)	Hamersley
398/782 (PL N050545)	Cheela Plains

3. Mining Tenements and Petroleum Interests

(a) The following mining tenements under the *Mining Act 1904* (WA) (repealed) and the *Mining Act 1978* (WA) and the rights and interests of the holders from time to time of those mining tenements:

(i) Mining Leases

Tenement ID	Tenement ID	Tenement ID
M 08/7	M 08/315	M 08/477
M 08/99	M 08/455	M 08/495
M 08/149	M 08/456	M 47/1430
M 08/196	M 08/468	M 47/1488
M 08/222	M 08/469	M 47/1489

(ii) Exploration Licences

Tenement ID	Tenement ID	Tenement ID	Tenement ID
E 08/691	E 08/2131	E 47/468	E 47/1783
E 08/1166	E 08/2132	E 47/469	E 47/1784
E 08/1187	E 08/2145	E 47/470	E 47/1785
E 08/1189	E 08/2146	E 47/472	E 47/1786
E 08/1283	E 08/2157	E 47/662	E 47/1787
E 08/1292	E 08/2199	E 47/778	E 47/1788
E 08/1330	E 08/2200	E 47/780	E 47/1832
E 08/1393	E 08/2251	E 47/781	E 47/1846
E 08/1408	E 08/2252	E 47/783	E 47/1850
E 08/1516	E 08/2258	E 47/892	E 47/1861
E 08/1627	E 08/2271	E 47/942	E 47/1863
E 08/1628	E 08/2293	E 47/1038	E 47/1869
E 08/1629	E 08/2294	E 47/1134	E 47/1879
E 08/1631	E 08/2295	E 47/1141	E 47/1914
E 08/1649	E 08/2296	E 47/1154	E 47/1988
E 08/1650	E 08/2332	E 47/1194	E 47/2035
E 08/1712	E 08/2364	E 47/1195	E 47/2037
E 08/1741	E 08/2393	E 47/1196	E 47/2143
E 08/1744	E 08/2395	E 47/1218	E 47/2160
E 08/1745	E 08/2416	E 47/1277	E 47/2171

E 08/1763	E 08/2418	E 47/1299	E 47/2215
E 08/1842	E 08/2420	E 47/1300	E 47/2236
E 08/1843	E 08/2482	E 47/1301	E 47/2268
E 08/1844	E 08/2485	E 47/1302	E 47/2292
E 08/1845	E 08/2490	E 47/1351	E 47/2327
E 08/1878	E 08/2496	E 47/1373	E 47/2333
E 08/1915	E 08/2498	E 47/1395	E 47/2378
E 08/1916	E 08/2499	E 47/1396	E 47/2442
E 08/1933	E 08/2512	E 47/1415	E 47/2587
E 08/1949	E 08/2542	E 47/1448	E 47/2636
E 08/1950	E 08/2555	E 47/1500	E 47/2729
E 08/1961	E 08/2556	E 47/1533	E 47/2759
E 08/1964	E 08/2558	E 47/1535	E 47/2834
E 08/1985	E 08/2559	E 47/1549	E 47/2909
E 08/1986	E 08/2560	E 47/1553	E 47/2910
E 08/1997	E 08/2565	E 47/1649	E 47/2911
E 08/2000	E 08/2566	E 47/1650	E 47/2912
E 08/2003	E 08/2567	E 47/1677	E 47/2987
E 08/2034	E 08/2568	E 47/1679	E 47/3057
E 08/2040	E 08/2570	E 47/1682	E 47/3080
E 08/2055	E 08/2627	E 47/1693	E 47/3081
E 08/2056	E 08/2652	E 47/1703	E 47/3117
E 08/2065	E 08/2653	E 47/1725	E 47/3133
E 08/2067	E 08/2658	E 47/1728	E 47/3150
E 08/2114	E 47/16	E 47/1773	E 47/3151
E 08/2130	E 47/45	E 47/1779	E 47/3152

(iii) Prospecting Licences

Tenement ID	Tenement ID	Tenement ID
P 08/516	P 47/1340	P 47/1639
P 08/531	P 47/1342	P 47/1645
P 08/532	P 47/1390	P 47/1647
P 08/543	P 47/1391	P 47/1649
P 08/546	P 47/1392	P 47/1650

P 08/556	P 47/1393	P 47/1663
P 08/565	P 47/1394	P 47/1664
P 08/646	P 47/1395	P 47/1665
P 08/653	P 47/1396	P 47/1666
P 47/1237	P 47/1397	P 47/1667
P 47/1270	P 47/1398	P 47/1668
P 47/1278	P 47/1399	P 47/1669
P 47/1313	P 47/1400	P 47/1670
P 47/1316	P 47/1401	P 47/1671
P 47/1317	P 47/1402	P 47/1672
P 47/1318	P 47/1403	P 47/1673
P 47/1328	P 47/1404	P 47/1674
P 47/1330	P 47/1423	P 47/1675
P 47/1332	P 47/1427	P 47/1693
P 47/1333	P 47/1474	P 47/1694
P 47/1334	P 47/1545	
P 47/1336	P 47/1554	
P 47/1338	P 47/1637	
P 47/1339	P 47/1638	

(iv) Miscellaneous Licences

Tenement ID	Tenement ID	Tenement ID
L 08/12	L 08/56	L 08/107
L 08/13	L 08/63	L 08/113
L 08/14	L 08/69	L 08/124
L 08/15	L 08/81	L 47/141
L 08/26	L 08/85	L 47/153
L 08/31	L 08/91	L 47/184
L 08/44	L 08/92	L 47/185
L 08/46	L 08/103	L 47/232

(v) Retention Licences

Tenement ID

R 47/7

(vi) **General Purpose Lease**

Tenement ID

G 47/1227

(b) The agreement as amended and ratified by the *Goldfields Gas Pipeline Agreement Act 1994* (WA) and rights and interests comprised in, conferred under or in accordance with, or pursuant to that agreement, including the following interests:

Tenement ID	Tenement Type
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PL24	Pipeline Licence
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F924685	Easement
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(c) The agreement as amended and ratified by the *Iron Ore (Hamersley Range) Agreement Act 1963* (WA) and rights and interests comprised in, conferred under or in accordance with, or pursuant to that agreement, including the following mining tenement:

Tenement ID	Tenement Type
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AML 7000004	Mining lease
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4. Access to Mining and Petroleum Areas

(a) Without limiting the operation of any other clause in Schedule Four, but subject to clause 4(b) below, any rights of the holders from time to time of a mining tenement or petroleum interest including those referred to in clause 3 of Schedule Four to use (including by servants, agents and contractors) such portions of existing roads and tracks in the Determination Area as necessary to have access to the area the subject of the mining tenement or petroleum interest for the purposes of exercising the rights granted by that tenement or interest.

(b) Nothing in clause 4(a) above allows any upgrade, extension, widening or other improvement to the road or track other than work done to maintain it in reasonable repair and in order to leave it in substantially the same condition as it was prior to its use pursuant to clause 4(a).

(c) Nothing in Schedule Four will limit the rights of the holders from time to time of mining tenements or petroleum interests, including those referred to in clause 3 of Schedule Four, including, without limitation, any right to exclude members of the public from entering onto the land and waters the subject of any mining tenement or petroleum interest.

5. Indigenous Land Use Agreements

(a) The *RTIO and PKKP People Indigenous Land Use Agreement (Area Agreement)* dated 15 November 2012, and registered on the Register of Indigenous Land Use Agreements on 24 April 2013 (Tribunal No. WI2012/011), and the rights and interests comprised in, conferred under, or in accordance with, or pursuant to, that ILUA.

6. Other

The following rights and interests:

- (a) Rights and interests, including licences and permits, granted by the Crown in right of the State or of the Commonwealth pursuant to statute or otherwise in the exercise of its executive power and any regulations made pursuant to such legislation;
- (b) Rights and interests held by reason of the force and operation of the laws of the State or of the Commonwealth, including but not limited to, the force and operation of the *Rights in Water and Irrigation Act 1914* (WA);
- (c) Rights and interests of members of the public arising under the common law, including but not limited to:
 - (i) the public right to fish;
 - (ii) the public right to navigate; and
 - (iii) the right of any person to use and enjoy any roads in the Determination Area (subject to the laws of the State) over which, as at the date of this determination, members of the public have a right of access under the common law;
- (d) The right to access the Determination Area by:
 - (i) an employee, agent or instrumentality of the State;
 - (ii) an employee, agent or instrumentality of the Commonwealth; and
 - (iii) an employee, agent or instrumentality of any local government authority,as required in the performance of his or her statutory or common law duty;
- (e) So far as confirmed pursuant to section 212(2) of the *Native Title Act* and section 14 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) as at the date of this Determination, any existing public access to, and enjoyment of, the following places in the Determination Area:
 - (i) waterways;
 - (ii) beds and banks or foreshores of waterways;
 - (iii) coastal waters;
 - (iv) beaches;
 - (v) stock routes; and
 - (vi) areas that were public places at the end of 31 December 1993;
- (f) Any other:

- (i) legal or equitable estate or interest in the land or waters; or
- (ii) right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:
 - (A) the land or waters; or
 - (B) an estate or interest in the land or waters; or
- (iii) restriction on the use of the land or waters, whether or not annexed to other land or waters.

SCHEDULE FIVE

NATIVE TITLE HOLDERS (Paragraph 3)

The Puutu Kunti Kurrama and Pinikura People means the Puutu Kunti Kurrama people and the Pinikura people as described below.

The Puutu Kunti Kurrama people are those persons who:

- (a) descended from one or more of the following ancestors:
Ngarupunga [Ngarupungu], Kitty, Jukaan Tommy Ashburton, Ina Winnie Ashburton, Punch Ashburton, Katarra Dick Ashburton, and Kalkardi Dinah; and
- (b) identify themselves as Puutu Kunti Kurrama in accordance with the traditional laws acknowledged and the traditional customs observed by Puutu Kunti Kurrama people; and
- (c) are accepted in accordance with the traditional laws acknowledged and the traditional customs observed as Puutu Kunti Kurrama people.

The Pinikura people are those persons who:

- (a) descended from one or more of the following ancestors:
Kaita, Markakurru Topsy Williams, Bonnie, Winnie Hayes (Hicks) and Punch Hughes [Kalpanthalu];
- (b) identify themselves as Pinikura in accordance with the traditional laws acknowledged and the traditional customs observed by Pinikura people; and
- (c) are accepted in accordance with the traditional laws acknowledged and the traditional customs observed as Pinikura people.

REGISTER ATTACHMENTS:

1. Schedule One - Determination Area, 20 pages - A4, 02/09/2015

2. Schedule Two - Maps of the Determination Area, 7 pages - A4, 02/09/2015

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.