



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6033/1998; WAD382/2017; WAD28/2019
NNTT Number: WCD2018/002

Determination Name: [Hamlett on behalf of the Wajarri Yamatji People \(Part B\) v State of Western Australia](#)

Date(s) of Effect: 29/07/2021

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: 23/04/2018

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 29 July 2021, the Federal Court ordered that the orders dated 23 April 2018 be amended as follows:

Schedule 6 of the Part B Determination that is Attachment A to the orders is amended by inserting after paragraph (a) (35) the following:

- "36. Polly (mother of Paddy Donnelly);
37. Angelina (mother of Alice Darby);
38. Topsy (mother of Mary Wheelock)."

Schedule 6 of this determination has been amended accordingly.

Also on 29 July 2021, the Federal Court ordered the Wajarri Yamaji Aboriginal Corporation (ICN 7878) to hold the determined native title in trust for the Wajarri Yamatji common law holders pursuant to s 56(2)(b) of the *Native Title Act 1993* (Cth). Therefore, this determination is in effect from 29 July 2021.

REGISTERED NATIVE TITLE BODY CORPORATE:

Wajarri Yamaji Aboriginal Corporation RNTBC
Trustee Body Corporate
235A Flores Road
Spalding Western Australia 6530

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

ORIGINAL REGISTERED NATIVE TITLE BODY CORPORATE(S):

Wajarri Yamaji Aboriginal Corporation

Note: details of the Corporation name change can be found on the Office of the Registrar of Indigenous Corporations website 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 Part B Determination Area is held by the Wajarri Yamatji. The Wajarri Yamatji are the people referred to in Schedule Six.

SCHEDULE SIX

NATIVE TITLE HOLDERS (Paragraph 3)

The Wajarri Yamatji means those persons who:

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

1. Kia (also known as Murgoo Fred), Innie (also known as Annie), Rosie English (also known as Yangudgi), Badja and Kadjba (siblings)
2. Baljarba (also known as Jim Crow) (married Badja)
3. Mogagee (also known as Daniel Dann) (married Annie)
4. Jinatharra (also known as Bobby Clark)
5. Tommy Glass
6. Wannanu (also known as Waurene Porter)
7. Billelia (also known as Nellie) (mother of Fred Simpson)
8. English Edwards and Mary Jane (also known as Mununmarie)
9. Yanbaree
10. Kitty Gilbert
11. Dija
12. Mary from Twin Peaks
13. Emily (mother of Lizzie Worth)
14. Ivy, Robby and Simon Walgar (siblings)
15. Tommy and Fanny Jones
16. Frances, Tiger, unnamed and Boomer Ryan (siblings)
17. Molly (married unnamed Ryan)
18. Caroline (mother of Lena Sullivan)
19. Budjeeyona and Jinny
20. Jinty (also known as Cindy Tyson nee Sullivan)
21. Amy Porter and Jigaroo
22. Polly Parker
23. Frank Franklin (also known as Punch)
24. Charlie Dongara
25. Eniwani Jimmy and Jenny (also known as Jinnie)
26. William Jones and Sarah
27. Julia (mother of Cecil Lane)
28. Jimmy and Judy
29. Bunnabuddy (also known as Daisy) and Molly (siblings)
30. Jibija (also known as Rosie Jones)
31. Moweramarra (also known as Caroline) (mother of Ruby Nairn)
32. Nyuga and Isaac
33. Jane Towser
34. Coolya (also known as Judy)
35. Jubjub (also known as Janie Narry)
36. Polly (mother of Paddy Donnelly)
37. Angelina (mother of Alice Darby)
38. Topsy (mother of Mary Wheelock)

where descent can be either by birth or adoption in accordance with the traditional laws acknowledged and the traditional customs observed by the Wajarri Yamatji;

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

(c) are accepted as Wajarri Yamatji in accordance with the traditional laws acknowledged and the traditional customs observed by the Wajarri Yamatji.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. No determination is made in respect of the excluded area. Proceedings WAD 6033 of 1998 and WAD 382 of 2017, to the extent that they cover that area, continue in case management before a Registrar of the Court.

2. Pursuant to sub-section 67(1) of the *Native Title Act*, proceedings WAD 6033 of 1998 and WAD 382 of 2017, to the extent that they cover the Part B Determination Area, be determined together.

3. In relation to the Part B Determination Area, there be a determination of native title in terms of the Part B Determination as provided for in Attachment A. The Part B Determination is to take effect immediately upon the making of a determination under section 56(1) or section 57(2) of the *Native Title Act* as the case may be.

4. By 18 July 2018, a representative of the common law holders of the native title rights and interests shall indicate whether they intend to have the native title rights and interests held in trust and, if so, by whom. They are invited to do so by:

(a) nominating in writing to the Court a prescribed body corporate to be trustee of the native title rights and interests; and

(b) including within the nomination the written consent of the body corporate.

5. If a prescribed body corporate is nominated in accordance with order 4, it will hold the native title rights and interests referred to in order 3 in trust for the common law holders of the native title rights and interests.

6. If there is no nomination within the time specified in order 4, or such later time as the Court may order, the matter is to be listed for further directions.

7. There be no determination in relation to:

(a) the balance of the area covered by the Wajarri Yamatji #2 Application (which includes the area covered by the Wajarri Yamatji #4 Application); or

(b) the Wajarri Yamatji Application to the extent that it covers that area.

Both proceedings be adjourned to a directions hearing on a date to be fixed.

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 Part B Determination Area in the manner set out in paragraph 4 of this determination.

2. Native title does not exist in those parts of the Part B 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 Part B Determination Area is held by the Wajarri Yamatji. The Wajarri Yamatji are the people referred to in Schedule Six.

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

4. Subject to paragraphs 2, 5, 6 and 9, the nature and extent of the native title rights and interests in relation to:

(a) the Exclusive Area are that they confer the right to possession, occupation, use and enjoyment on the Wajarri Yamatji to the exclusion of all others; and

(b) the Non-Exclusive Area are that they confer the following non-exclusive rights on the Wajarri Yamatji, including the right to conduct activities necessary to give effect to them:

(i) 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 Part B Determination Area;

(ii) the right to hunt, fish, gather, take and use the resources of the land;

(iii) the right to take and use water;

(iv) the right to engage in cultural activities on the Part B Determination Area, including:

(A) visiting places of cultural or spiritual importance and maintaining, caring for, and protecting those places by carrying out activities to preserve their physical or spiritual integrity; and

(B) conducting and participating in ceremony and ritual, and the transmission of cultural knowledge;

(v) the right to light contained and controlled fires for domestic, cultural and spiritual purposes but not for the clearance of vegetation;

(vi) the right to conduct burials and burial rites and other ceremonies in relation to death; and

(vii) the right to be accompanied on to the Part B Determination Area by those persons who, though not native title holders, are:

(A) spouses, partners, parents or children of the native title holders;

(B) people who are members of the immediate family of a spouse, partner, parent or child of a native title holder; or

(C) people entering the Part B Determination Area in connection with the performance of ceremonies or cultural activities in accordance with traditional laws and customs.

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 of Western Australia and the Commonwealth, including the common law; and

(ii) the traditional laws and customs of the Wajarri Yamatji; and

(b) do not confer exclusive rights in relation to water in any watercourse, wetland or underground water source as is defined in the *Rights in Water and Irrigation Act 1914 (WA)* as at the date of this Determination; and

(c) 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(b) do not confer:

(a) possession, occupation, use and enjoyment on the Wajarri Yamatji to the exclusion of all others; or

(b) a right to control the access to, or use of, the land and waters of the Part B Determination Area or its resources.

Areas to which ss.47, 47A and 47B of the Native Title Act apply

7. Sections 47, 47A and 47B of the *Native Title Act*, as the case may be, apply to disregard any prior extinguishment in relation to the areas described in Schedule Four.

The nature and extent of any other interests

8. The nature and extent of the Other Interests are described in Schedule Five.

Relationship between native title rights and other interests

9. 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

10. The parties have liberty to apply to 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 Part B Determination Area referred to in paragraph 5 of Schedule Three of this determination.

Definitions and interpretation

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

"Part B Determination Area" means the land and waters described in Schedule One and depicted on the maps at Schedule Two;

"Exclusive Area" means those parts of the Part B Determination Area referred to in paragraph 1 of Schedule Four (being the area shaded green on the maps in 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);

"Non-Exclusive Area" means those parts of the Part B Determination Area where native title exists that are not in the Exclusive Area (being the area shaded orange on the maps in Schedule Two);

"Other Interests" means the legal or equitable estates or interests and other rights in relation to the Part B Determination Area described in Schedule Five and referred to in paragraph 8;

"resources" means flora, fauna, and other natural resources such as charcoal, stone, soil, 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 the *Mining Act 1904* (WA) (repealed));

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

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

REGISTER ATTACHMENTS:

1. WCD2018/002 Schedule One - Determination Area, 6 pages - A4, 23/04/2018
2. WCD2018/002 Schedule Two - Maps of the Part B Determination Area, 16 pages - A4, 23/04/2018
3. WCD2018/002 Schedule Three - Areas Where Native Title Does Not Exist (Paragraph 2), 9 pages - A4, 23/04/2018

4. WCD2018/002 Schedule Four - Areas To Which Sections 47, 47A and 47B of the Native Title Act Apply (Paragraph 7), 2 pages - A4, 23/04/2018

5. WCD2018/002 Schedule Five - Other Interests (Paragraph 8), 6 pages - A4, 23/04/2018

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.