



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6017/1996; WAD114/2005; WAD215/2017
NNTT Number: WCD2005/001

Determination Name: [Yindjibarndi Aboriginal Corporation RNTBC v State of Western Australia](#)

Date(s) of Effect: 2/05/2005, 27/08/2007, 2/10/2020

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: 02/05/2005

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 2 May 2005, the Federal Court of Australia made a determination of native title by consent in *Daniel v State of Western Australia* [2005] FCA 536 (Federal Court File No.: WAD6017/1996, NNTT File No.: WCD2005/001).

On 27 August 2007, the Full Court of the Federal Court of Australia allowed, in part, an appeal of the *Daniel* determination, handing down an amended determination in *Moses v State of Western Australia* [2007] FCAFC 78 (Federal Court File No.: WAD114/2005, NNTT File No.: WCD2005/001).

A revised native title determination application to vary the *Moses* determination was filed in the Federal Court of Australia on 15 May 2017: *Yindjibarndi Aboriginal Corporation RNTBC v State of Western Australia* (Federal Court File No.: WAD215/2017, NNTT File No.: WR2017/001).

On 2 October 2020, the Federal Court ordered the determination made on 27 August 2007 be varied. The determination of native title as varied took effect from 2 October 2020.

This Register entry contains the details of the determination as varied.

REGISTERED NATIVE TITLE BODY CORPORATE:

Yindjibarndi Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 111
ROEBOURNE Western Australia 6718

Ngarluma Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 830
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:

Native title holders

5. The native title rights and interests which exist in the Determination Area are held by:

- (a) **'Ngarluma People'** (as defined in the Third Schedule) in relation to the Ngarluma Native Title Area; and
- (b) **'Yindjibarndi People'** (as defined in the Third Schedule) in relation to the Yindjibarndi Native Title Area.

THIRD SCHEDULE

NATIVE TITLE HOLDERS

'Ngarluma People' are Aboriginal persons who recognise themselves as, and are recognised by other Ngarluma People as, members of the Ngarluma language group.

'Yindjibarndi People' are Aboriginal persons who recognised themselves as, and are recognised by other Yindjibarndi People as, members of the Yindjibarndi language group.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. The substituted determination effected by Order 2 made by the Court in proceeding WAD 114 of 2005 on 27 August 2007 be varied as follows:

(a) In paragraph 4, first line, replace "The native title rights and interests:" with:

"The native title rights and interests in the Ngarluma Native Title Area (including, for the avoidance of doubt, that part of the Yindjibarndi Native Title Area which overlaps the Ngarluma Native Title Area):"

(b) Insert new paragraphs 4A and 4B as follows:

"4A The native title rights and interests in Yindjibarndi Native Title Area are subject to and exercisable in accordance with the traditional laws and customs of the Yindjibarndi People."

"4B The native title rights and interests in those parts of the Yindjibarndi Native Title Area which do not either form part of the Yindjibarndi Exclusive Possession Area or overlap with the Ngarluma Native Title Area do not confer possession, occupation, use and enjoyment of that land or waters on the Yindjibarndi People to the exclusion of all others."

(c) In paragraph 5, delete the words "non-exclusive" in the first line;

(d) In paragraph 7, in the first line add the words "4A, 4B," after the words "paragraphs 4,";

(e) In paragraph 7, in the second and third lines, replace "in relation to the Yindjibarndi Native Title Area" with:

"in relation to those parts of the Yindjibarndi Native Title Area which do not form part of the Yindjibarndi Exclusive Possession Area"

(f) Insert new paragraph 7A as follows:

"Subject to paragraphs 13 – 15 inclusive, the Yindjibarndi People have the right to the possession, occupation, use and enjoyment of the Yindjibarndi Exclusive Possession Area to the exclusion of all others."

(g) Insert paragraph 14A as follows:

“14A. The native title rights in paragraph 7A 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.”

(h) In paragraph 15, delete the words “non-exclusive” in the first line;

(i) In paragraph 17, delete the words “non-exclusive” in the first line;

(j) In the definition of “Yindjibarndi Total Extinguishment Area” in the First Schedule at (8) (“Reserves containing public works), delete the reference to “12260”.

(k) In the First Schedule add the following definition after the definition of the “Yindjibarndi Area”:

‘Yindjibarndi Exclusive Possession Area’ means the following land and waters:

Area - Location/Tenure No. - But not including the following areas:

85 - Reserve 40617

82 - West of Mallina - Not part which falls within the Ngarluma Area

99 - South of Mt Welcome - Not part which falls within the Ngarluma Area

110A - Coolawanyah

110B - Coolawanyah

110C - South of Coolawanyah - Not part which falls within the Hamersley Ranges Area

114 - East of Res 30071 - Not part which falls within the Ngarluma Area

(l) Replace the first of the 15 maps which are Attachment 2 to the First Schedule with the first of the 15 maps contained in Attachment 2 to the First Schedule of the Varied Determination of Native Title provided for in Attachment A.; and

(m) Add the following areas to the table of Section 47B Areas in the Fifth Schedule:

Area No. - Location (general) - Extinguishing act(s) disregarded - But not including the following areas:

82 - West of Mallina - Creation of any prior interest - Not part which falls within the Ngarluma Area

99 - South of Mt Welcome - Creation of any prior interest - Not part which falls within the Ngarluma Area

110A - Coolawanyah - Creation of any prior interest

110B - Coolawanyah - Creation of any prior interest

110C - South of Coolawanyah - Creation of any prior interest - Not part which falls within the Hamersley Ranges Area

114 - East of Res 30071 - Creation of any prior interest - Not part which falls within the Ngarluma Area

2. The determination of native title as varied by order 1 above is in the form of the Varied Determination of Native Title provided for in Attachment A.

ATTACHMENT A

VARIED DETERMINATION OF NATIVE TITLE

THE COURT ORDERS AND DETERMINES THAT:

Determination Area

1. The ‘**Determination Area**’ is the land and waters described and depicted in the First Schedule.

Existence of native title

2. Native title does not exist in relation to the following parts of the Determination Area:

(a) the ‘**Burrup**’ (as described and depicted in the First Schedule);

(b) ‘**Offshore Waters**’ (as described and depicted in the First Schedule);

(c) ‘**Depuch Island**’ (as described and depicted in the First Schedule);

(d) the ‘**Hamersley Ranges Area**’ (as described and depicted in the First Schedule);

(e) the ‘**Total Extinguishment Area**’ (as described and depicted in the First Schedule).

3. Subject to paragraph 2 above, native title rights and interests exist in the following parts of the Determination Area:

(a) **'Ngarluma Native Title Area'** (as defined in the First Schedule); and

(b) **'Yindjibarndi Native Title Area'** (as defined in the First Schedule),

including the **'Section 47A Area'** and the **'Section 47B Area'** (as described in the Fifth Schedule) in respect of which extinguishment is disregarded in accordance with sections 47A and 47B of the *Native Title Act 1993* (Cth).

4. The native title rights and interests in the Ngarluma Native Title Area (including, for the avoidance of doubt, that part of the Yindjibarndi Native Title Area which overlaps the Ngarluma Native Title Area):

(a) do not confer possession, occupation, use and enjoyment of land or waters on the native title holders to the exclusion of others; and

(b) are not exercisable otherwise than in accordance with and subject to traditional laws and customs for personal, domestic and non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes).

4A The native title rights and interests in Yindjibarndi Native Title Area are subject to and exercisable in accordance with the traditional laws and customs of the Yindjibarndi People.

4B The native title rights and interests in those parts of the Yindjibarndi Native Title Area which do not either form part of the Yindjibarndi Exclusive Possession Area or overlap the Ngarluma Native Title Area do not confer possession, occupation, use and enjoyment of that land or waters on the Yindjibarndi People to the exclusion of all others.

Native title holders

5. The native title rights and interests which exist in the Determination Area are held by:

(a) **'Ngarluma People'** (as defined in the Third Schedule) in relation to the Ngarluma Native Title Area; and

(b) **'Yindjibarndi People'** (as defined in the Third Schedule) in relation to the Yindjibarndi Native Title Area.

Native title rights and interests

6. Subject to paragraphs 4 and 8 to 15 inclusive, the Ngarluma People have the following non-exclusive native title rights and interests in relation to the Ngarluma Native Title Area:

(a) A right to access (including to enter, to travel over and remain);

(b) A right to engage in ritual and ceremony (including to carry out and participate in initiation practices);

(c) A right to camp and to build shelters (including boughsheds, mias and humpies) and to live temporarily thereon as part of camping or for the purpose of building a shelter;

(d) A right to fish from the waters;

(e) A right to collect and forage for bush medicine;

(f) A right to hunt and forage for and take fauna (including fish, shell fish, crab, oysters, sea turtle, dugong, goanna, kangaroo, emu, bush turkey, echidna, porcupine, witchetty grub, swan);

(g) A right to forage for and take flora (including timber logs, branches, bark and leaves, gum, wax, Aboriginal tobacco, fruit, peas, pods, melons, bush cucumber, seeds, nuts, grasses, potatoes, wild onion and honey);

(h) A right to take black, yellow, white and red ochre;

(i) A right to take water for drinking and domestic use;

(j) A right to cook on the land including light a fire for this purpose;

(k) A right to protect and care for sites and objects of significance in the Ngarluma Native Title Area (including a right to impart traditional knowledge concerning the area, while on the area, and otherwise, to succeeding generations and others so as to perpetuate the benefits of the area and warn against behaviour which may result in harm, but not including a right to control access or use of the land by others).

7. Subject to paragraphs 4, 4A, 4B and 8 to 15 inclusive, the Yindjibarndi People have the following non-exclusive native title rights and interests in relation to those parts of the Yindjibarndi Native Title Area which do not form part of the Yindjibarndi Exclusive Possession Area:

- (a) A right to access (including to enter, to travel over and remain);
- (b) A right to engage in ritual and ceremony (including to carry out and participate in initiation practices);
- (c) A right to camp and to build shelters (including boughsheds, mias and humpies) and to live temporarily thereon as part of camping or for the purpose of building a shelter;
- (d) A right to fish from the waters;
- (e) A right to collect and forage for bush medicine;
- (f) A right to hunt and forage for and take fauna (including fish, shell fish, crab, oysters, goanna, kangaroo, emu, turkey, echidna, porcupine, witchetty grub and swan but not including dugong or sea turtle);
- (g) A right to forage for and take flora (including timber logs, branches, bark and leaves, gum, wax, Aboriginal tobacco, fruit, peas, pods, melons, bush cucumber, seeds, nuts, grasses, potatoes, wild onion and honey);
- (h) A right to take black, yellow, white and red ochre;
- (i) A right to take water for drinking and domestic use;
- (j) A right to cook on the land including light a fire for this purpose;
- (k) A right to protect and care for sites and objects of significance in the Yindjibarndi Native Title Area (including a right to impart traditional knowledge concerning the area, while on the area, and otherwise, to succeeding generations and others so as to perpetuate the benefits of the area and warn against behaviour which may result in harm, but not including a right to control access or use of the land by others).

7A Subject to paragraphs 13 to 15 inclusive, the Yindjibarndi People have the right to the possession, occupation, use and enjoyment of the Yindjibarndi Exclusive Possession Area to the exclusion of all others.

8. The non-exclusive native title rights and interests in relation to the '**Inter-tidal Zone**' (defined in the First Schedule) do not include the rights in subparagraphs (b), (c), (e), (g), (h), (i), (j) or (k) of paragraph 6 above.

9. The non-exclusive native title rights and interests in relation to the '**Offshore Islands**' (defined in the First Schedule) do not include any of the native title rights and interests in subparagraphs (a)-(j) of paragraph 6 above.

10. The non-exclusive native title rights and interests in relation to the '**Cemetery Reserve Area**' (defined in the First Schedule) do not include:

- (a) the right to engage in ritual and ceremony referred to in subparagraph (b) of paragraph 6 above, save to the extent it relates to ritual and ceremony for the dead; or
- (b) any of the rights in subparagraphs (c), (d), (h), (j) and (k) of paragraph 6 above.

11. The non-exclusive native title rights and interests in relation to the '**Telstra Area**' (defined in the First Schedule) do not include:

- (a) a right to remain (part of right (a) in paragraphs 6 and 7 above); and
- (b) right (c) in paragraphs 6 and 7 above.

12. The non-exclusive native title rights and interests in relation to the '**Telstra Cable Routes**' (defined in the First Schedule) do not include right (h) in paragraphs 6 and 7 above, to the extent that the right involves digging beneath the surface of that land.

Qualifications

13. Notwithstanding anything in this determination, there are no native title rights and interests in or in relation to:

- (a) minerals (including ochres to the extent they are minerals) as defined in the *Mining Act 1904* (WA), or in the *Mining Act 1978* (WA) before the date of this determination; or
- (b) petroleum as defined in the *Petroleum Act 1936* (WA), or in the *Petroleum Act 1967* (WA) before the date of this

determination.

14. There are no native title rights and interests in respect of '**Subterranean Waters**' (as defined in the First Schedule) in the Determination Area.

14A. The native title rights in paragraph 7A 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.

15. 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.

Other interests

16. The nature and extent of other interests in those parts of the Determination Area where native title exists are set out in the Second Schedule.

17. The relationship between the native title rights and interests and the other interests referred to in paragraph 16 is that:

(a) to the extent that any other interest is a category D past act, a category D intermediate period act or a future act under the *Native Title Act 1993* (Cth), or is an act to which sections 47A or 47B *Native Title Act 1993* (Cth) applies, and is inconsistent with the continued existence, enjoyment or exercise of the native title rights or 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 interests to the extent of the inconsistency during the currency of those other interests;

(b) in the case of mining leases, pastoral leases, easements and licences granted prior to 1 January 1994, the construction or erection of an improvement required or permitted under such a lease or easement or licence will prevent the exercise of the non-exclusive native title rights and interests at the location of that improvement to the extent that the exercise of those rights are inconsistent with the improvement for so long as the holder of the lease, easement or licence retains the improvement; and

(c) otherwise, the existence and exercise of the native title rights and interests does 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 may prevent any exercise of the native title rights and interests, but does not extinguish them.

REGISTER ATTACHMENTS:

1. WCD2005/001 First Schedule - Definitions , 29 pages - A4, 02/10/2020
2. WCD2005/001 First Schedule - Attachment 1 - External Boundary Description, 7 pages - A4, 02/10/2020
3. WCD2005/001 First Schedule - Attachment 2 - Maps, 15 pages - A3, 02/10/2020
4. WCD2005/001 Second Schedule - Other Interests, 7 pages - A4, 02/10/2020
5. WCD2005/001 Fourth Schedule - Overlapping Claims, 2 pages - A4, 02/10/2020
6. WCD2005/001 Fifth Schedule - Section 47A and 47B Native Title Act Areas, 3 pages - A4, 02/10/2020

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.