



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD278/2018; WAD373/2018
NNTT Number: WCD2021/004

Determination Name: [Dann on behalf of the Wajarri Yamatji People \(Part D\) 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: 29/07/2021

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Wajarri Yamaji Aboriginal Corporation
Trustee Body Corporate
PO Box 221
Geraldton 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

COMMON LAW HOLDER(S) OF NATIVE TITLE:

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

3. The native title in the Part D Determination Area is held by the Wajarri Yamatji. The Wajarri Yamatji are the people referred to in Schedule Seven.

SCHEDULE SEVEN

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. Proceedings WAD 28 of 2019 and WAD 382 of 2017 be dismissed to the extent that they cover the area of proceeding WAD 373 of 2018.
2. Pursuant to sub-section 67(1) of the *Native Title Act*, proceedings WAD 278 of 2018 and WAD 373 of 2018 be determined together.
3. In relation to the Part D Determination Area, there be a determination of native title in WAD 278 of 2018 and WAD 373 of 2018 as provided for in Attachment A.
4. In respect of the Part D Determination Area the Wajarri Yamaji Aboriginal Corporation (ICN 7878) shall hold the determined native title in trust for the Wajarri Yamatji People pursuant to section 56(2)(b) of the *Native Title Act*.

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 D 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 Part D Determination Area the subject of the interests identified in Schedule Four.

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

3. The native title in the Part D Determination Area is held by the Wajarri Yamatji. The Wajarri Yamatji are the people referred to in Schedule Seven.

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

Exclusive rights and interests

4. Subject to paragraphs 2, 6 and 10, the nature and extent of the native title rights and interests in relation to the Exclusive Area is that they confer the right to possession, occupation, use and enjoyment on the Wajarri Yamatji to the exclusion of all others.

Non-exclusive rights and interests

5. Subject to paragraphs 2, 6, 7 and 10, the nature and extent of the native title rights and interests in relation to 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:

(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 Non- Exclusive Area;

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

(c) the right to take and use water;

(d) the right to engage in cultural activities on the Non- Exclusive Area, including:

(i) 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

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

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

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

(g) the right to be accompanied on to the Non- Exclusive Area by those persons who, though not native title holders, are:

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

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

(iii) people entering the Non- Exclusive 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

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

(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 Wajarri Yamatji; 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.

7. The native title rights and interests set out in paragraph 5 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 D Determination Area or its resources.

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

8. Section 47B of the *Native Title Act* applies to disregard any prior extinguishment in relation to the areas described in Schedule Five.

The nature and extent of any other interests

9. The nature and extent of the Other Interests are described in Schedule Six.

Relationship between native title rights and other interests

10. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraphs 4 and 5 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

11. The parties have liberty to apply to establish the precise location and boundaries of any public works and adjacent land and waters identified in relation to any part or parts of the Part D Determination Area referred to in Schedule Four of this determination.

Definitions and interpretation

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

"Part D 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 Part D Determination Area described in Schedule Three (which areas are generally shown as 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";

"Non- Exclusive Area" means those lands and waters of the Part D Determination Area which are not Exclusive Areas or described in paragraph 2 as an area where native title does not exist (which areas are generally shown as shaded yellow on the maps at Schedule Two);

"Native Title Act" means the *Native Title Act 1993* (Cth);

"Other Interests" means the legal or equitable estates or interests and other rights in relation to the Part D Determination Area described in Schedule Six and referred to in paragraph 9;

"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 to the *Mining Act 1904* (WA) (repealed));

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

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

REGISTER ATTACHMENTS:

1. WCD2021/004 Schedule One – Part D Determination Area, 2 pages - A4, 29/07/2021
2. WCD2021/004 Schedule Two – Maps Of The Part D Determination Area, 3 pages - A4, 29/07/2021
3. WCD2021/004 Schedule Three – Exclusive Area (Paragraph 4), 1 page - A4, 29/07/2021
4. WCD2021/004 Schedule Four – Areas Where Native Title Does Not Exist (Paragraph 2), 1 page - A4, 29/07/2021
5. WCD2021/004 Schedule Five – Areas To Which Section 47B Of The Native Title Act Apply (Paragraph 8), 1 page - A4, 29/07/2021
6. WCD2021/004 Schedule Six - Other Interests (Paragraph 9), 4 pages - A4, 29/07/2021

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.