



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6001/2001
NNTT Number: WCD2017/008

Determination Name: [K.D. \(deceased\) on behalf of the Mirning People v State of Western Australia \(No 4\)](#)

Date(s) of Effect: 19/03/2019

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: 24/10/2017

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 24 October 2017 the Federal Court of Australia made a determination in respect of part of the application area that native title exists in parts of the determination area – see *K.D. (deceased) on behalf of the Mirning People v State of Western Australia (No 4)* [2017] FCA 1225.

Order 2 of the determination provides that 'The determination is to take effect immediately upon the making of a determination under section 56(1) or 57(2) of the *Native Title Act 1993* (Cth) as the case may be.' [determination of a Prescribed Body Corporate].

On 19 March 2019 Justice Robertson ordered that the Mirning Traditional Lands Aboriginal Corporation be the prescribed body corporate for this determination, and therefore this determination is in effect as from 19 March 2019.

REGISTERED NATIVE TITLE BODY CORPORATE:

Mirning Traditional Lands Aboriginal Corporation RNTBC
Agent Body Corporate
14 Throssell Street
Kalgoorlie Western Australia 6430

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 Determination Area is held by the Mirning People and by persons, including members of the Spinifex People, who hold mythical or ritual totemic knowledge in the Determination Area. The native title holders are the people described in Schedule Six.

SCHEDULE SIX

Description of the Native Title Holders

The Native Title Holders (referred to in paragraph 3) are:

1. the Mirning people, being those persons who are the descendants of:

Jack Mountain = Rosie Yalgoo

Alice Bigfoot

Lucy => Mick Schultz and Pom Pom

Clara Giles

Sally Broome

Maggie

Tjabilja

Gumillya 'Carmelia' Button

Gordon Naley

Dick Stott

Note: x = y means x and y were married/de facto;

where descent can be either by birth or adoption in accordance with Mirning tradition and custom (adoption, under Mirning tradition and custom, refers to the situation where the child is "grown up" by a relative or someone without a biological relationship. This applies regardless of whether or not the child has been formally adopted under the non-Aboriginal legal system),

AND are recognised by other native title holders as having realised their rights under the traditional laws and customs of the native title holders through knowledge, association and familiarity with the Determination Area;

AND

2. Those persons, including members of the Spinifex People, who:

a. hold mythical or ritual totemic knowledge and experience of *Tjukurpa* (Dreaming) associated with any part of the Determination Area so as to give rise to rights and responsibilities in relation to such part(s) of the Determination Area;

AND

b. are recognised by the other holders of ritual totemic knowledge as having native title rights and interests within the Determination Area by virtue of that knowledge and experience;

such persons being, as at the date of this Determination:

- | | | | |
|------|---------------------|-------|-----------------------|
| i. | Stuart Baker | ix. | Jeremy (Anton) Currie |
| ii. | Rohan (Scott) Baird | x. | Justin Currie |
| iii. | Christopher Bennell | xi. | Glen Davies |
| iv. | Byron Brooks | xii. | Alex Donnegan |
| v. | Richard Brooks | xiii. | Ashley (Troy) Franks |
| vi. | Lee Brown | xiv. | Delwyn Franks |
| vii. | Derek Coleman | xv. | Jarrett Franks |

viii.	Dwayne Coleman	xvi.	Justin Graham
xvii.	Ned Grant	xxxiv.	James Peel
xviii.	Fred Grant	xxxv.	Lawrence Pennington
xix.	Craig Hansen	xxxvi.	Stanley Presley
xx.	Damien (Ethan) Hansen	xxxvii.	Ben Reynolds
xxi.	Milton Hansen	xxxviii.	Damien Rictor
xxii.	Troy Hansen	xxxix.	Ian Rictor
xxiii.	Bruce Hogan	xl.	Noeli (Willy) Rictor
xxiv.	Kimberley Hogan	xli.	Winmati Roberts
xxv.	Michael Hogan	xlii.	Lydon Stevens
xxvi.	Parka Hogan	xliii.	Michael Stevens
xxvii.	Simon Hogan	xliv.	Peter Thomas
xxviii.	Travis Hogan	xlv.	Gregory Thompson
xxix.	Trevor Hogan	xlvi.	Leslie Thompson
xxx.	Dirk Jackson	xlvii.	Roy Underwood
xxxi.	William Jackson	xlviii.	Dino Walker
xxxii.	James Minning	xlix.	Leonard Walker
xxxiii.	Bernard Nixon	l.	Dennis Watson

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. There be a determination of native title in WAD 6001 of 2001 in terms of the determination as set out in Attachment A.
2. The determination is to take effect immediately upon the making of a determination under section 56(1) or 57(2) of the *Native Title Act 1993* (Cth) as the case may be.
3. Within 12 months of the date upon which these orders are made, 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 or by agent. They are invited to do so by:
 - (a) nominating in writing to the Federal Court a prescribed body corporate to be trustee or agent of the native title rights and interest; and
 - (b) including within the nomination the written consent of the body corporate.
4. If a prescribed body corporate is nominated in accordance with order 3, it will hold the native title rights and interests described in order 1 in trust or as agent (as the case may be), for the common law holders of the native title rights and interests.
5. In the event that there is no nomination within the time specified in order 3, or such later time as the Court may order, the matter is to be listed for further directions.

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 relation to those parts of the Determination Area identified in Schedule Three.

2A. In relation to the Excluded Area as described in Schedule One, no determination be made and the matter is to continue in case management by a Registrar of the Court.

Native Title Holders (s 225(a) Native Title Act)

3. The native title in the Determination Area is held by the Mirning People and by persons, including members of the Spinifex People, who hold mythical or ritual totemic knowledge in the Determination Area. The native title holders are the people described in Schedule Six.

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

4. Subject to paragraphs 6, 7 and 10, 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 and interests on the Native Title Holders:

- (a) the right to access the land and waters;
- (b) the right to use and enjoy resources from the land and waters;
- (c) the right to practice traditional religious customs;
- (d) the right to maintain and protect from harm particular sites and areas of traditional and cultural significance to the Native Title Holders; and
- (e) the right to be accompanied on to the area by those persons who, although not native title holders, are:
 - (i) spouses or partners of native title holders;
 - (ii) people who are members of the immediate family of a spouse or partner of a native title holder;
 - (iii) people reasonably required by the native title holders under traditional law and custom for the performance of ceremonies or cultural activities on the Determination Area; or
 - (iv) people who have specialised knowledge based on their training, study or experience who are reasonably requested by native title holders to observe or record traditional activities or otherwise to investigate matters of cultural significance on the Determination Area, in connection with the exercise of native title rights and interests.

5. Subject to paragraphs 6, and 10 the nature and extent of the native title rights and interests in relation to the Exclusive Area are that they confer the right to possession, occupation, use and enjoyment on the Native Title Holders to the exclusion of all others.

Qualifications on native title rights and interests

6. The native title rights and interests set out in paragraphs 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 Native Title Holders for the purpose of satisfying their personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs, but not for commercial purposes; 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 the *Mining Act 1978* (WA);
 - (ii) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and 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 4 (a)-(e) do not confer:

(a) possession, occupation, use and enjoyment of the land or waters of the Determination Area on the Native Title Holders to the exclusion of all others; nor

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

Ares to which s 47B of the *Native Title Act* applies

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

The nature and extent of Other Interests (s 225(d) *Native Title Act*)

9. The nature and extent of the Other Interests in relation to the Determination Area are described in Schedule Five and Schedule Five (A).

Relationship between native title rights and Other Interests (s 225(d) *Native Title Act*)

10. 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 and cannot be enjoyed or exercised 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 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, subject to the operation of section 24JB(2) of the *Native Title Act*, do not extinguish them.

Definitions and Interpretation

11. 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;

"Excluded Area" means the land and waters described as the "Excluded Area" in Schedule One.

"Exclusive Area" means that part of the Determination Area to which s 47B of the *Native Title Act* applies as described in Schedule 4 and shaded blue on the maps in Schedule 2.

"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 persons described in paragraph 3 above;

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

"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. Schedule One - Determination Area, 2 pages - A4, 24/10/2017

2. Schedule Two - Maps of the Determination Area, 8 pages - A4, 24/10/2017
3. Schedule Three - Areas Where Native Title Does Not Exist, 4 pages - A4, 24/10/2017
4. Schedule Four - Areas to which Section 47B of the Native Title Act Applies, 1 page - A4, 24/10/2017
5. Schedule Five - Other Interests, 4 pages - A4, 24/10/2017
6. Schedule Five (A), 1 page - A4, 24/10/2017
7. Annexure One - Map, 1 page - A4, 24/10/2017

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.