



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6255/1998
NNTT Number: WCD2018/009

Determination Name: [Wiggan on behalf of the Mayala People v State of Western Australia](#)

Date(s) of Effect: 25/06/2019

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: 04/10/2018

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 4 October 2018, orders were made which stated the following:

3. The determination is to take effect immediately upon the making of a determination under s 56(1) or s 57(2) of the *Native Title Act* (Cth) as the case may be [i.e. the determination of a prescribed body corporate (PBC)].
4. 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 an 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.

On 25 June 2019, the applicant filed two notices in the Federal Court of Australia (Federal Court), one which nominated Mayala Inninalang Aboriginal Corporation (MIAC) as the PBC and another which provided MIAC's written consent to the nomination.

On 6 November 2019, the Federal Court notified the Native Title Registrar of this nomination.

Accordingly, this determination is in effect from 25 June 2019.

REGISTERED NATIVE TITLE BODY CORPORATE:

Mayala Inninalang Aboriginal Corporation
Trustee Body Corporate
PO Box 2145
Broome Western Australia 6275

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: section 225(a) Native Title Act

3. The native title in the Determination Area is held by the Native Title Holders.

SCHEDULE SEVEN

NATIVE TITLE HOLDERS

1. The Native Title Holders are those Aboriginal persons who are the descendants (including such people descended by adoption as are recognised and accepted in accordance with traditional law and custom) of the following persons:

- (a) Kudumili;
- (b) Galawa;
- (c) Ngalgarrgard;
- (d) Jabadayim, including Jabadayim's adopted son Jacob Sesar; and
- (e) Ulgirr/Oolgir.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In relation to the Determination Area, there be a determination of native title in WAD 6255 of 1998 in the terms provided for in Attachment A.
2. Insofar as WAD 6255 of 1998 relates to land and waters outside the Determination Area (being the Excluded Area as described in Schedule One to the determination), it is dismissed and no determination is made in relation to the land and waters comprised in that area.
3. The determination is to take effect immediately upon the making of a determination under s 56(1) or s 57(2) of the *Native Title Act 1993* (Cth) as the case may be.
4. 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 an 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.
5. If a prescribed body corporate is nominated in accordance with order 4, 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.
6. In the event that 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.

ATTACHMENT A

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title: section 225 Native Title Act

1. Subject to paragraph 2, native title exists in the 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 Determination Area that are identified in Schedule Four.

Native title holders: section 225(a) Native Title Act

3. The native title in the Determination Area is held by the Native Title Holders.

The nature and extent of native title rights and interests: sections 225(b) and 225(e) Native Title Act

Exclusive native title rights and interests

4. Subject to paragraphs 7, 8 and 9 the nature and extent of the native title rights and interests in relation to the Exclusive Area is the right to possession, occupation, use and enjoyment of the Exclusive Area as against the whole world.

Non-exclusive native title rights and interests

5. Subject to paragraphs 6, 7, 8 and 9 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 Native Title Holders:

- (a) the right to have access to, remain on and use that part;
- (b) the right to access and take the resources on that part; and
- (c) the right to protect places, areas and things of traditional significance on that part.

Qualifications on the native title rights and interests

6. The native title rights and interests set out in paragraph 5 do not confer:

- (a) possession, occupation, use and enjoyment of those parts of the Non-Exclusive Area on the Native Title Holders to the exclusion of all others; or
- (b) a right to control access to, or the use of, the land and waters of those parts of the Non-Exclusive Area.

7. The native title rights and interests are subject to and exercisable in accordance with:

- (a) the laws of the State and the Commonwealth, including the common law; and
- (b) the traditional laws and customs of the Native Title Holders.

8. Notwithstanding anything in this determination, there are no native title rights and interests in the Determination Area in or in relation to:

- (a) minerals as defined in the *Mining Act 1904 (WA)* (repealed) and in the *Mining Act 1978 (WA)*, except to the extent that ochre is not a mineral pursuant to the *Mining Act 1904 (WA)*;
- (b) petroleum as defined in the *Petroleum Act 1936 (WA)* (repealed) and in the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*; or
- (c) water lawfully captured by the holders of the Other Interests.

9. For the avoidance of doubt, the native title rights and interests set out in paragraphs 4 and 5 do not confer exclusive rights in relation to water in any watercourse, wetland or underground water source as defined in the *Rights in Water and Irrigation Act 1914 (WA)* as at the date of this determination.

Application of sections 47A or 47B of the Native Title Act

10. Sections 47A and 47B of the *Native Title Act* apply to disregard any prior extinguishment in relation to the areas described in Schedule Five.

The nature and extent of any Other Interests

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

Relationship between native title rights and Other Interests

12. The relationship between the native title rights and interests described in paragraphs 4 and 5 and the Other Interests is that:

(a) the determination does not affect the validity of those Other Interests;

(b) to the extent of any inconsistency between the Other Interests and 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

(c) otherwise, the Other Interests co-exist with the native title rights and interests. To avoid doubt, the existence and exercise of 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 an activity required or permitted under those Other Interests prevails over the native title rights and interests and their exercise, but does not extinguish them.

Definitions and Interpretation

13. 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 which, for the avoidance of doubt, does not include the Excluded Area described therein;

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

"Exclusive Area" means those lands and waters of the Determination Area (being areas where any extinguishment must be disregarded) which are not Non-Exclusive Areas or described in paragraph 2 as an area where native title does not exist, which areas are generally shown as shaded green on the maps at Schedule Two;

"high water mark" means the mean high water mark at common law;

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

"land" and **"waters"** respectively have the same meanings as in the *Native Title Act*;

"Native Title Holders" means the people described in Schedule Seven and referred to in paragraph 3;

"Non-Exclusive Area" means those lands and waters of the Determination Area described in Schedule Three (being land and waters where there can only be partial recognition), which areas are generally shown as shaded yellow on the maps at Schedule Two;

"Other Interests" means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Schedule Six and referred to in paragraph 11; and

"Titles Validation Act" means the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA).

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

REGISTER ATTACHMENTS:

1. WCD2018/009 Schedule One - Determination Area, 9 pages - A4, 04/10/2018
2. WCD2018/009 Schedule Two - Maps Of The Determination Area, 5 pages - A4, 04/10/2018
3. WCD2018/009 Schedule Three - Non-Exclusive Native Title Areas, 1 page - A4, 04/10/2018
4. WCD2018/009 Schedule Four - Areas Where Native Title Does Not Exist, 1 page - A4, 04/10/2018
5. WCD2018/009 Schedule Five - Areas To Which Section 47A or 47B Native Title Act Apply, 1 page - A4, 04/10/2018
6. WCD2018/009 Schedule Six - Other Interests, 3 pages - A4, 04/10/2018

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.