



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD26/2019
NNTT Number: WCD2019/011

Determination Name: [Eaton on behalf of the Nyamal People #10 v State of Western Australia](#)

Date(s) of Effect: 24/09/2019

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: 24/09/2019

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Nyamal Aboriginal Corporation
Trustee Body Corporate
PO Box 110
Port Hedland Western Australia 6721

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 Nyamal People.

SCHEDULE SEVEN

NYAMAL PEOPLE (Paragraph 3)

The Nyamal People are those persons who:

(a) are descended from Ngurrpangu @ Sally, Yirlikurani @ William Ball, Jarlapangu @ Billy Ball, Minparingu @ Daisy McColl, Wijiringu @ Joey, Ngamalykarinya @ Eginbah Murphy, Kutjikurtapa @ Fred Mitchell, Pularmu @ Albert, Martuwataranu @ Maryanne, Minjkarli @ Jimmy Woodman, Pularjiyi, Putangaja, Mikarnipirti, Mayinkapirti,

Walykanpangu, Kujari @ Jenkins, Ngamalangu @ Nellie, Kalpimarra, Yirapinya, Warnangykuranya @ Tommy, Yatawaranu @ Yarriwawurru @ Dinah, Goondy @ Goondanee, Pilunjuji, Nyantipunu, Paddy Bung Bong, Amy Mirabung, Old Maybai, Mary (mother of Stella Ball), Minnie (mother of Allen Mitchell), Punkarli (mother of Alice Mitchell), Winturu, Susan Pontroy, Martin Pontroy or Jack Pontroy or are adopted by such biological descendants in accordance with the traditional laws acknowledged and the traditional customs observed by the Nyamal People; and

(b) identify themselves as Nyamal under traditional law and custom and are so identified by other Nyamal People as Nyamal.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In relation to the Determination Area, there be a determination of native title in WAD 26 of 2019 in the terms provided for in Attachment A.

2. The Nyamal Aboriginal Corporation (ICN 8770) shall hold the determined native title in trust for the native title holders pursuant to section 56(2)(b) of the *Native Title Act 1993* (Cth).

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 and which are generally shown as shaded pink on the maps at Schedule Two.

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

3. The native title in the Determination Area is held by the Nyamal People.

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

Exclusive rights and interests

4. Subject to paragraphs 6, 7, 8 and 11 the nature and extent of the native title rights and interests in relation to the Exclusive Area is:

(a) except in relation to flowing and underground waters, the right to possession, occupation, use and enjoyment to the exclusion of all others; and

(b) in relation to flowing and underground waters, the right to use and enjoy the flowing and underground waters, including:

(i) the right to hunt on, fish from, take and use the traditional resources of the flowing and underground waters; and

(ii) the right to take and use the flowing and underground waters.

Non-exclusive rights and interests

5. Subject to paragraphs 6, 7, 8 and 11 the nature and extent of the native title rights and interests in relation to the Non-Exclusive Area is that they confer the following non-exclusive rights on the Nyamal People, including the right to conduct activities necessary to give effect to them:

(a) the right to live, being to enter and remain, camp and erect temporary shelters and other temporary structures for that purpose and to travel over and visit any part of the Non-Exclusive Area;

(b) the right to hunt, fish, gather and use the traditional resources of the Non-Exclusive Area;

(c) the right to take and use water on the Non-Exclusive Area; and

(d) the right to engage in cultural activities and the transmission of cultural knowledge on the Non-Exclusive Area,

including:

(i) visiting places of cultural or spiritual importance and protecting those places by carrying out lawful activities to preserve their physical or spiritual integrity; and

(ii) conducting burials, ceremony and ritual.

(e) the right to be accompanied on to the Non-Exclusive Area by those people who, though not Nyamal People and who (for the avoidance of doubt) cannot themselves exercise any native title rights, are:

(i) the non-Nyamal spouses, parents or children of the Nyamal People; or

(ii) people required by traditional law and custom for the performance of ceremonies or cultural activities on the Non-Exclusive Area.

Qualifications on the native title rights and interests

6. 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 Nyamal People for personal, domestic, and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes).

7. Notwithstanding anything in this determination there are no native title rights and interests in the Determination Area 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)* (repealed);

(b) petroleum as defined in the *Petroleum Act 1936 (WA)* (repealed) and in the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*;

(c) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*; or

(d) water lawfully captured by the holders of the Other Interests.

8. The native title rights and interests set out in paragraphs 4(b) and 5 do not confer:

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

(b) a right to control the access to, or use of, those parts of the Determination Area or its resources.

Areas to which section 47A of the Native Title Act applies

9. Section 47A of the Native Title Act applies to disregard any prior extinguishment in relation to the land and waters described in Schedule Five.

The nature and extent of any Other Interests

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

Relationship between native title rights and Other Interests

11. 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.

Definitions and Interpretation

12. 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;

"Exclusive Area" means those lands and waters of the Determination Area described in Schedule Three (which areas are generally shown as shaded green on the maps at Schedule Two);

"flowing water" means the following water within the Determination Area:

(a) water which flows, whether permanently, intermittently or occasionally, within any river, creek, stream or brook; and

(b) any natural collection of water into, through, or out of which a river, creek, stream or brook flows;

"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 lands and waters of the 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);

"Nyamal People" means the people referred to in Schedule Seven;

"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 10;

"resources" means flora, fauna, and other natural resources such as charcoal, stone, soil, sand, clay, gravel, timber, 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));

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

"use" does not include use by way of trade;

"underground water" means water from and including an underground water source, including water that percolates from the ground; and

"waters" has the same meaning as in the Native Title Act and includes flowing and underground water.

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. WCD2019/011 Schedule One - Determination Area, 2 pages - A4, 24/09/2019
2. WCD2019/011 Schedule Two - Maps of the Determination Area, 4 pages - A4, 24/09/2019
3. WCD2019/011 Schedule Three - Exclusive Area, 1 page - A4, 24/09/2019
4. WCD2019/011 Schedule Four - Areas Where Native Title Does Not Exist, 3 pages - A4, 24/09/2019
5. WCD2019/011 Schedule Five - Areas to Which Section 47A of the Native Title Act Applies, 1 page - A4, 24/09/2019
6. WCD2019/011 Schedule Six - Other Interests, 7 pages - A4, 24/09/2019

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.