

BREAKING NEWS

Rubibi

After more than ten years Yawuru claimants to the greater Broome area have had their links to this area acknowledged in a partial determination by Justice Merkel. The claim covers approximately 5,300 sq km and includes the town of Broome.

The determination recognises that:

- (a) the Yawuru community is a recognisable body of persons united in and by traditional laws and customs which, since sovereignty, have constituted the normative system under which the native title rights and interests in issue in the present case are being claimed ([366]-[369]);
- (b) under the traditional laws and customs acknowledged and observed by the Yawuru community, native title rights and interests in relation to the claim area are possessed by the Yawuru community which, by those laws and customs, has a connection with land and waters that are situated within that area ([370]-[376]); and
- (c) the rights and interests possessed by the Yawuru community are communal native title rights and interests

The remaining issues are:

- (a) the identification of the native title determination area;
- (b) the criteria for membership of the native title holding community;
- (c) the nature and extent of the native title rights and interests possessed by the native title holding community;
- (d) the native title rights and interests that have been extinguished.

Merkel J.'s reasons for judgement in *Rubibi Community v State of Western Australia* (No 6) (includes Corrigendum dated 15 February 2006) [2006] FCA 82 (13 February 2006) can be found at http://www.austlii.edu.au/au/cases/cth/federal_ct/2006/82.html

Western Yalanji

The Federal Court of Australia made a consent determination recognising the Western Yalanji People's non-exclusive native title rights over a pastoral property in far north Queensland on 17 February 2006. Under the determination and associated agreements, the Western Yalanji People will exercise their rights to carry out their traditional customs and activities in cooperation with other people and organisations who have interests in the area. The area is approximately 120 km north-west of Cairns and 70 km west of Mt Carbine (see map) and settles the question of native title on this area.




[Click to view detailed map \(PDF - 256KB\)](#)

This decision follows an earlier consent determination made by the Federal Court of Australia on 28 September 1998 which recognised the Western Yalanji People's rights to access the determination area in order to carry out their traditional customs and activities. Under the determination and associated agreements, the Western Yalanji People will exercise their rights in cooperation.

The consent determination settles the question of native title on this particular property and follows an earlier consent determination made by the Federal Court on 28 September 1998, in which the Western Yalanji People's native title rights were recognised on another part of the property. Known as the Western (Sunset) Yalanji

determination, it was the first consent determination to be made over a pastoral property in Australia (see map).

In this second determination, the Federal Court recognised the Western Yalanji People's non-exclusive native title rights and interests over the land and waters in the determination area. This outcome was achieved because parties with interests in the claimed area agreed, through negotiation and mediation,



that the Western Yalanji People are the native title holders for the area. As part of the determination negotiations, the parties have reached four other agreements, known as indigenous land use agreements (ILUAs), which establish how their rights and interests will co-exist in the determination area.

Related Links:

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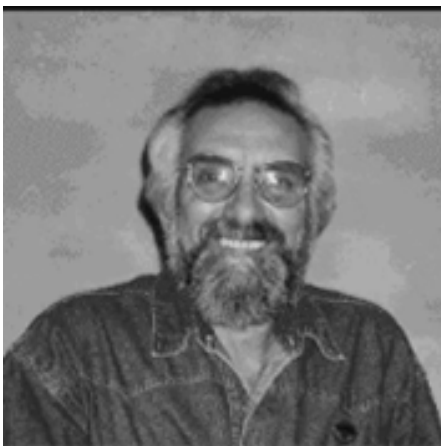
This information about the Western Yalanji determinations has been extracted from the National Native Title Tribunal's e-publication [Western Yalanji People native title determination – what it means and how it will work](#). Please visit <http://www.nntt.gov.au/publications/WYalanji3.html> for the full text of this article.

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CLAIMANT COMMENT

Balancing the scales of land justice in Victoria

Dr Wayne Atkinson



With the Melbourne Commonwealth Games fast approaching, Dr Wayne Atkinson reflects on the status of the fight for Indigenous land justice in and the Victorian government's shameful legacy and lack of political will to deal with the matter in a fair and just manner.

The path to Indigenous land justice in Victoria has been a hard and hollow one and the returns have been minuscule.

In 2006 the status of Indigenous land justice in Victoria is one that can be indicated with a dot on the map.

Indigenous Victorians have been returned the derisory amount of less than a half of one percent of their ancestral lands. Up until 1998 the amount of land held was 0.014 percent (100th of 1 percent), which in 2006 has increased marginally, but overall is still less than a half of one percent.

This amount does not include the 'consent agreement' reached by the claimants in the

Mallee-Wimmera region, 2005, which the court states is 'not a grant of native title'.

The agreement offers no ownership or exclusive rights over land and waters and provides for no more say over its management than settler interests.

The claimants traditional based rights to occupy possess and enjoy the two percent of their claim area along the Wimmera River have been normalised to the extent that their inherent rights to continue to camp, fish, and enjoy the land and waters as their ancestors have done, are treated the same as other Victorians. In exercising these rights they also will be required to comply with the imported Anglo laws and regulations that govern these activities. Should there be any inconsistency between the native title rights of the claimants and the rights of other license holders, the latter's rights prevail (Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria [2005] FCA 1795, 2005: 10-15). The question of whether this is land justice or continued dispossession by stealth is one of critical importance.

The nature of the title and the rights to land that has been returned to Victoria's original owners by way of Government grants, transfers and the purchase of land on the open market is worth noting.

Most of the land has been returned under inalienable freehold title including some small areas that contained Aboriginal cemeteries. Some of the land was granted and or purchased on the condition that it is used for Aboriginal cultural purposes, and in all of the lands acquired, the crown retains certain rights and interests including the right of veto over mining.

The lack of progress towards land justice in Victoria made by the current Brack's Labor government offers little joy to Indigenous