

<b>IN THE HIGH COURT OF AUSTRALIA PERTH REGISTRY</b>	<b>IN THE HIGH COURT OF AUSTRALIA PERTH REGISTRY</b>	<b>IN THE HIGH COURT OF AUSTRALIA PERTH REGISTRY</b>	<b>IN THE HIGH COURT OF AUSTRALIA PERTH REGISTRY</b>
No. P34 of 2019	No. P35 of 2019	No. P36 of 2019	No. P37 of 2019
APPEAL FROM THE FULL COURT OF THE FEDERAL COURT OF AUSTRALIA	APPEAL FROM THE FULL COURT OF THE FEDERAL COURT OF AUSTRALIA	APPEAL FROM THE FULL COURT OF THE FEDERAL COURT OF AUSTRALIA	APPEAL FROM THE FULL COURT OF THE FEDERAL COURT OF AUSTRALIA
BETWEEN	BETWEEN	BETWEEN	BETWEEN
STATE OF WESTERN AUSTRALIA Appellant	STATE OF WESTERN AUSTRALIA Appellant	COMMONWEALTH OF AUSTRALIA Appellant	COMMONWEALTH OF AUSTRALIA Appellant
and	and	and	and
ERNEST DAMIEN MANADO, CECILIA CHURNSIDE, ALEC DANN, BETTY DIXON, WALTER KOSTER AND PHILIP MCCARTHY ON BEHALF OF THE BINDUNBUR NATIVE TITLE GROUP First Respondent	RITA AUGUSTINE, ELIZABETH DIXON, CECILIA DJIAGWEEN, IGNATIUS PADDY AND ANTHONY WATSON ON BEHALF OF THE JABIRR JABIRR / NGUMBARL NATIVE TITLE CLAIM GROUP First Respondent	RITA AUGUSTINE, ELIZABETH DIXON, CECILIA DJIAGWEEN, IGNATIUS PADDY AND ANTHONY WATSON ON BEHALF OF THE JABIRR JABIRR / NGUMBARL NATIVE TITLE CLAIM GROUP First Respondent	ERNEST DAMIEN MANADO, CECILIA CHURNSIDE, ALEC DANN, BETTY DIXON, WALTER KOSTER AND PHILIP MCCARTHY ON BEHALF OF THE BINDUNBUR NATIVE TITLE GROUP First Respondent
COMMONWEALTH OF AUSTRALIA Second Respondent and Ors	COMMONWEALTH OF AUSTRALIA Second Respondent and Ors	STATE OF WESTERN AUSTRALIA Second Respondent and Ors	STATE OF WESTERN AUSTRALIA Second Respondent and Ors

## FIRST RESPONDENTS' CHRONOLOGY

### Part I: Certification

1 This chronology is in a form suitable for publication on the internet.



Filed on behalf of the First Respondents in P34, P35, P36 and P37  
of 2019  
ADDRESS FOR SERVICE:  
Kimberley Land Council  
11 Gregory Street  
Broome WA 6725

Date of filing: 13 September 2019  
Telephone: 08 9194 0100  
Email: [alex.romano@klc.org.au](mailto:alex.romano@klc.org.au)  
Facsimile: 08 9193 6279  
Ref: Alexander Romano

**Part II: Chronology**

#	Date	Event	Reference
1.	18/06/1829	Proclamation of British sovereignty over all parts of the Australian continent not included in the Colony of New South Wales.	1AB 56.15-20 [188]
2.	28/10/1898	<i>Land Act 1898</i> (WA). <sup>1</sup> Section 3 defined “High Water Mark” when applied to tidal waters as “the ordinary high water at spring tides.” Section 135 provided that “Every person who ... in any manner trespasses” on any Crown Lands shall be liable to a fine and placed the onus of proof of authority on the party accused.	62 Vict 37.
3.	04/01/1934	<i>Land Act 1933</i> (WA). Section 3 continued the definition of “High Water Mark” adopted in the 1898 Act. Section 164 continued to provide that “Every person who ... in any manner trespasses” on any Crown lands is liable to a fine; but did not continue the provision placing the onus of proof on the party accused.	Act No.37 of 1933.
4.	14/02/1947	Reserve 22615 set aside over an area which includes areas of coastline in the west of the Bindunbur determination area. The seaward extent of its boundary follows the high water mark as defined in the <i>Land Act 1933</i> (WA).	Electronic tenure data contained in ExWA10 Annexure PTG2 (FFC AB Pt B CRI Tab 144.2). 2AB 549.25
5.	23/10/1972	Waterbank pastoral lease (CL243/1972) granted over most areas of the Jabirr Jabirr determination area, replacing a number of previous pastoral leases. The seaward-most extent of the lease was a line which runs 40m landward of the high water mark as defined in the <i>Land Act 1933</i> (WA).	Electronic tenure data contained in ExWA10 Annexure PTG4 (FFC AB Pt B Tab CRI 144.4) and ExWA15 Annexure AJC1 (FFC AB Pt B CRI Tab 152.1). 2AB 549.25, 552.42
6.	29/10/1976	Reserve 1012 set aside over Beagle Bay and surrounding areas in the west of the Bindunbur determination area. The seaward extent of its boundary follows the high water mark as defined in the <i>Land Act 1933</i> (WA).	Electronic tenure data contained in ExWA10 Annexure PTG2 (FFC AB Pt B CRI Tab 144.2). 2AB 549.25

<sup>1</sup> This Chronology does not list all of the legislation that has dealt with Crown lands in Western Australia, but only that which is referred to in the Appellant’s submission or elsewhere in this Chronology.

#	Date	Event	Reference
7.	26/11/1980	<i>Land Amendment Act 1980</i> (WA). This Act repealed and replaced s 164 of the <i>Land Act 1933</i> and provided for offences on public lands, for particular uses and activities, including for, without lawful authority, residing on, removing anything growing on the land and for leaving any rubbish, litter or refuse. By subsection (9), the defendant has the onus of proving lawful authority.	Act No.65 of 1980.
8.	00/09/1993	Commonwealth of Australia publication, <i>Mabo, Outline of proposed legislation on native title</i> . At p 8 [18] states, "The Bill will provide that the Commonwealth, a State or Territory is able to confirm any existing public right of access to and enjoyment of: waterways; beds and banks or foreshores of waterways; coastal waters; beaches; areas which were public places on 30 June 1993". At p 8 [19] it states," Such confirmation shall not extinguish any native title and will not affect any grant made under a special law for the benefit of Aboriginal and Torres Strait Islander people."	
9.	16/11/1993	Native Title Bill 1993 as presented and read a first time included a clause 197(2), in the same terms as subsec 212(2) of the NTA as when sec 212 commenced. Clause 172(3), now NTA subsec 212(3), proposed that "Any confirmation under subsection (2) does not extinguish any native title rights and interests ..."  The Bill also included a definition of "interest" in clause 238 (now NTA sec 253) in the same terms as the definition now in force.	Native Title Bill 1993, cl 197.  Native Title Bill 1993, cl 238.

#	Date	Event	Reference
10.	16/11/1993	Native Title Bill 1993 Explanatory Memorandum included in relation to clause 197 (now NTA sec 212), "There is also power to confirm <i>existing public rights</i> of access to places like beaches and parks" and "... governments can confirm <i>existing public rights</i> of access to places such as waterways and their beds and banks or foreshores, beaches, coastal waters and other places to which the public has <i>right</i> of access on 31 December 1993." (Italics added) The explanatory Memorandum also included, in relation to the definition of "interest" in clause 238 (now NTA sec 253), "This definition applies to the term "interest" when it is used about land or waters. The definition includes as an interest in land or waters that which at common law would not be regarded as being an interest in land or waters such as a licence or permit".	House of Representatives, Native Title Bill 1993 Explanatory Memorandum Part B, pp 71.2, 72.2.  p 102.9.
11.	16/11/1993	Second Reading of Native Title Bill 1993, speech includes that "[T]he bill allows existing access to beaches, waterways and other recreation areas to be confirmed".	House of Representatives Hansard, p 2882. 2AB 505.38-506.10 [142]-[143]
12.	16/12/1993 22/12/1993	A Senate amendment having the effect of including after the word "extinguish" the words "or impair" in cl 197(3) was supported by the government and NTA sec 212(3) was enacted with those additional words.	Senate Hansard, p 5440.9-5441.7 House of Representatives Hansard pp 4539.1, 4550.1.
13.	01/01/1994	<i>Native Title Act 1993 (Cth) (NTA)</i> , sub secs 212(2), (3) commenced.	NTA s 2(2); Gazette 1993, No. S402. 2AB 499.29-500.24 [123]-[124]
14.	04/07/1995	<i>Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) (TVA)</i> , sec 14 commenced.	Act No.16 of 1995. 2AB 500.28-50 [126]-[127]
15.	06/07/1995	CT2040/398 granted in freehold at Willie Creek, over an area of Unallocated Crown Land. At its nearest point to the coast, its boundary is slightly less than 40m from high water mark as defined in the <i>Land Act 1933 (WA)</i> .	Electronic tenure data contained in ExWA10 Annexure PTG4 (FFC AB Pt B CRI Tab 144.4). 2AB 549.25
16.	23/12/1996	High Court of Australia decision in <i>Wik Peoples v Queensland ("Pastoral Leases case")</i> [1996] HCA 40; (1996) 187 CLR 1; (1996)	1AB 503.22-47 [138]

#	Date	Event	Reference
17.	09/03/1998	Explanatory Memorandum for Native Title Amendment Bill 1997 referred to amendment to NTA sec 212(2) as enabling the States, “to <i>similarly legislate</i> in respect of stock routes. This amendment is included simply to enable confirmation. It does not indicate any doubt that stock routes currently have full force and effect and that the <i>rights</i> to use them prevail over any native title rights” (italics added). The Explanatory Memorandum in relation to an amendment to NTA s 212(3) to remove the words “or impair” stated, “because the confirmation of ownership or access may technically impair the enjoyment of native title in some respects. For example, public access to a beach may in some cases impair unhindered enjoyment of native title by native title holders.”	House of Representatives Native Title Amendment Bill 1997 Explanatory Memorandum p 253, [24.26] (Table 24.3).
18.	30/03/1998	<i>Land Act 1933</i> (WA) repealed and replaced by the <i>Land Administration Act 1997</i> (WA).	Act No.30 of 1997.
19.	30/03/1998	<i>Land Administration Act 1997</i> (WA). Section 267 makes it an offence to conduct certain activities on Crown land without permission of the Minister or reasonable excuse, including residing, removing any plant matter, or depositing or leaving any thing of any kind. Sub-section (10) places the onus on the defendant of proving Ministerial permission or reasonable excuse.	Act No.30 of 1997.
20.	30/09/1998	<i>Native Title Amendment Act 1998</i> (Cth) commenced, amending NTA, sec 212(2) to include reference to “stock routes”; and NTA, sec 212(3) to remove “or impair”.	Act No.97 of 1998, s 3; [Schedule 1, items 36 and 38]. 2AB 500.25 [125]
21.	05/05/1999	TVA, sec 14 amended to include reference to stock routes. The long title of the TVA was replaced but retained the statement, “An Act to make provision in relation to native title as permitted by the Native Title Act 1993 of the Commonwealth, namely— ... • under section 212 of that Act, to confirm certain rights relating to natural resources and public access.	Act No.9 of 1999, s 8.
22.	11/10/2001	High Court of Australia decision in <i>The Commonwealth v Yarmirr and Yarmirr v Northern Territory</i> [2001] HCA 56	
23.	08/08/2002	High Court of Australia decision in <i>State of Western Australia v Ward</i> (2002) 213 CLR 1	2AB 503.40 [138]

#	Date	Event	Reference
24.	26/03/2003	Waterbank pastoral lease (CL243/1972) merged and extinguished. Areas formerly covered by the pastoral lease are henceforth Unallocated Crown Land, including some places that were included as prescribed places in the Jabir Jabirr determination area.	Electronic tenure data contained in ExWA10 Annexure PTG4 (FFC AB Pt B CRI Tab 144.4). 2AB 549.25
25.	14/06/2006	<i>Land Administration (Land Management) Regulations 2006</i> (WA). Regulation 2 provides that the land to which the regulations apply is known as regulated land, which reg 3 states includes Unallocated Crown Land. Regulations 4-8 further provide that “authorised persons” may exclude members of the public from accessing Unallocated Crown Land, may grant, withhold, revoke and amend permissions in relation to the doing of something otherwise prohibited or to not do something otherwise permitted.	
26.	20/09/2013	Bindunbur (Area A) Native Title Determination Application (WAD357/2013) lodged.	FFC AB Pt A Tab 31 (as amended)
27.	23/09/2013	Jabirr Jabirr Native Title Determination Application (WAD359/2013) lodged.	FFC AB Pt A Tab 1 (as amended)
28.	14/11/2013	Jabirr Jabirr application accepted for registration by the National Native Title Tribunal.	
29.	14/11/2013	Bindunbur (Area C) Native Title Determination Application (WAD425/2013) lodged.	
30.	26/11/2013	Bindunbur application accepted for registration by the National Native Title Tribunal.	
31.	03/12/2013	Bindunbur (Area A) and (Area C) applications combined, and Bindunbur Native Title Determination Application (WAD357/2013) amended.	
32.	24/04/2014	Bindunbur (Area B) Native Title Determination Application (WAD94/2014) lodged.	
33.	21/09/2015	Hearing of the Bindunbur, Jabirr Jabirr/Ngumbarl and Goolarabooloo proceedings commenced with opening addresses in Broome.	FFC Pt B CRI Tabs 249-252 1AB 26.29 [21] 2AB 565.35-42
34.	13/10/2015	Jabirr Jabirr/Ngumbarl Native Title Determination Application amended.	FFC AB Pt A Tab 1
35.	14/12/2015	Bindunbur and Bindunbur (Area B) applications combined, and Bindunbur Native Title Determination Application (WAD359/2013) amended.	FFC AB Pt A Tab 31

#	Date	Event	Reference
36.	17/12/2015	By its pleading in proceeding WAD 359 of 2013 ( <b>Bindunbur Claim</b> ), the State of Western Australia ( <b>the State</b> ) sought the inclusion of a clause concerning the recognition of public access to particular kinds of areas as an "other interest" in any positive determination of native title.	FFC AB Pt A Tab 37, 54 [310] of Attachment 1
37.	17/12/2015	By its pleading in proceeding WAD 357 of 2013 ( <b>Jabirr Jabirr/Ngumbarl Claim</b> ), the State sought the inclusion of a clause concerning the recognition of public access to particular kinds of areas as an "other interest" in any positive determination of native title.	FFC AB Pt A Tab 8, 39 [189] of Attachment 1
38.	29/02/2016	By its pleading in response, the Applicant in the Jabirr Jabirr Ngumbarl claim ( <b>Jabirr Jabirr/Ngumbarl Applicant</b> ) relied on TVA sec 14 for its full force and effect, put in issue whether any such public access has been confirmed and accepted only that the details of clearly identified and validly confirmed public access could be recorded as "other interests" in any positive determination.	FFC AB Pt A Tab 9, 42 [189] of Attachment 1
39.	21/09/2016	Hearing of the Bindunbur, Jabirr Jabirr/Ngumbarl and Goolarabooloo proceedings resumes with opening addresses on extinguishment issues in Perth.	FFC AB Pt B Tabs 309.1-309.6 1AB 27 [26]
40.	24/09/2016	By its pleading in response, the Applicant in the Bindunbur claim ( <b>Bindunbur Applicant</b> ) relied on TVA sec 14 for its full force and effect, put in issue whether any such public access has been confirmed and accepted only that the details of clearly identified and validly confirmed public access could be recorded as "other interests" in any positive determination.	FFC AB Pt A Tab 38, 67 [310] of Attachment 1
41.	28/06/2017	Hearing of final submissions on extinguishment issues in Perth.	FFC AB Pt C Tab 325 FFC AB Pt B CRI Tabs 326-334 1AB 27 [29] 2AB 580.22-38 2AB 596.55
42.	23/11/2017	Decision of North J in <i>Manado (on behalf of the Bindunbur Native Title Claim Group) v State of Western Australia</i> [2017] FCA 1367	1AB 8-251
43.	08/03/2018	Decision of North J in <i>Manado (on behalf of the Bindunbur Native Title Claim Group) v State of Western Australia</i> [2018] FCA 275	1AB 252-269

#	Date	Event	Reference
44.	02/05/2018	Native Title Determinations made by North J in <i>Manado (Bindunbur Native Title Claim Group) v WA</i> [2018] FCA 854	1AB 270-408
45.	22/05/2018	Notice of Appeal filed in relation to (part of) Jabirr Jabirr/Ngumbarl Determination	2AB 424-431
46.	22/05/2018	Notice of Appeal filed in relation to (part of) Bindunbur Determination	2AB 416-423
47.	07/08/2018	Amended Supplementary Notice of Appeal filed in Jabirr Jabirr/Ngumbarl Appeal (WAD216/2018)	2AB 443-451
48.	07/08/2018	Amended Supplementary Notice of Appeal filed in Bindunbur Appeal (WAD215/2018)	2AB 435-442
49.	14/11/2018-16/11/2-18	Hearing of the appeal by a Full Court of the Federal Court (Barker, Perry and Charlesworth JJ) in Perth	2AB 455.29-.30
50.	20/12/2018	Judgement delivered on appeal.	2AB 452-522
51.	20/12/2018	Order from the appeal made to remove references in the determinations to confirmed public access and enjoyment pursuant to sec 14 of the TVA.	2AB 517-522
52.	17/01/2019	Applications for special leave to appeal filed by the State of Western Australia (P4/2019 and P5/2019)	
53.	17/01/2019	Applications for special leave to appeal filed by the Commonwealth of Australia (P6/2019 and P7/2019)	
54.	21/06/2019	The High Court (Nettle and Gordon JJ) grant special leave to the State of Western Australia and Commonwealth of Australia.	2AB 599-603, 651-654, 687-690, 738-742
55.	05/07/2019	Notices of appeal filed by the Commonwealth of Australia and the State of Western Australia	2AB 604-609, 655-660, 691-695, 743-759

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Bret Walker

Phone

(02) 8257 2527

Fax

(02) 9221 7974

Email

maggie.dalton@stjames.net.au



Robert Blowes

Phone

(02) 6249 7828

Fax

Email

rblowes@bigpond.com

Counsel for the respondent