

NOTICE OF FILING

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Sia Lagos

Registrar

Important Information

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Federal Court of Australia
Queensland District Registry
General Division

No QUD356/2025
QUD357/2025



CHARLES WOOSUP & Ors on behalf of the Ankamuthi People Sea Claim Group

Applicant

BERNARD CHARLIE & Ors on behalf of the Gudang Yadhaykenu People Sea Claim

Applicant

STATE MINISTER FOR THE STATE OF QUEENSLAND and others

Respondents

OUTLINE OF THE STATE MINISTER FOR THE STATE OF QUEENSLAND

Filed pursuant to order 21 of orders made 3 June 2026

Filed on behalf of	State Minister for the State of Queensland, First Respondent
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The role of the State

1. The State Minister for the State of Queensland (**State**) does not advance a positive case in this proceeding and does not have any preconceived view as to who holds native title in the Overlap Area.
2. Each Applicant has the burden of proving, on the balance of probabilities, that native title is held in the Overlap Area in the way for which they respectively contend. If neither Applicant establishes the elements of their case to the requisite standard, but the evidence before the Court nonetheless supports, on the balance of probabilities, that native title exists in the Overlap Area, the Court is not limited to making a determination in the form sought in either claimant application and may proceed to make a determination in such form as it sees fit based on the evidence before it.¹ In other words, it is open to the Court to find that native title is held in a different configuration to that advanced by either Applicant.
3. The State seeks to assist the Court including in relation to matters of law, testing relevant parts of the evidence, and ultimately making submissions as to where the weight of the evidence lies.

Relevance of adjacent consent determinations

4. The Overlap Area is surrounded by consent determinations of native title. For present purposes, the relevant determinations are:
 - (a) **Woosup** on behalf of the Northern Cape York Group #1 v State of Queensland (No 3) [2014] FCA 1148 (adjacent mainland area); and
 - (b) **David** on behalf of the Torres Strait Regional Seas Claim v State of Queensland [2022] FCA 1430 (adjacent Ankamuthi sea country to the south and Gudang Yadhaykenu sea country to the north).

¹ *Billy Patch and others on behalf of the Birriliburu People v State of Western Australia* [2008] FCA 944 at [18] (French J); *Holborow on behalf of the Yaburara & Mardudhunera People v State of Western Australia (No 3)* [2018] FCA 1108 at [29]-[36] (Barker J); **Nona** on behalf of the Badulgal, Mualgal and Kaurareg Peoples (Warral & Ului) v State of Queensland (No 5) [2023] FCA 135 at [74] (Mortimer J as her Honour then was); **Ross** on behalf of the Cape York United #1 Claim Group v State of Queensland (No 40) (Massy and Breakfast Creeks boundary dispute) [2026] FCA 980 at [65], [292] (Mortimer CJ).

5. How such determinations affect the fact-finding exercise in a disputed adjacent area was recently considered by the Full Federal Court in *Richards v State of South Australia (Far West Coast Sea Claim)* [2026] FCAFC 97 (Burley, O'Bryan and Longbottom JJ).² The specific question that arose was the legal effect on a sea claim of a consent determination of native title over the adjacent mainland area in favour of three groups (Kokatha, Mirning and Wirangu) (**land determination**). The primary judge had found that only two of the groups held native title in the sea claim area on the basis that the Kokatha were an inland group whose ancestors did not have coastal estates (at [109]-[111]).
6. The Full Court confirmed that, as a native title determination under the *Native Title Act 1993* (Cth) (**NTA**) operates *in rem*, a person may not, in later proceedings, seek to contradict a determination of native title or the findings which were essential to that determination. The findings which are essential to the determination can have relevance to a native title claim area that is beyond the land and waters that are the subject of the determination (at [119]). In the particular context of a sea claim, the relevance of an abutting native title determination is “apparent and strong” because any native title rights and interests would “necessarily be held by Aboriginal people holding rights and interests in the land adjacent to the sea claim area” (at [128]).
7. The Full Court held that the primary judge had erred in finding that the land determination did not recognise a communal title in which *all* the native title holders have rights and interests in *all* parts of the land determination area (at [192], [203]). The requirements of ss 94A and 225 of the NTA are such that, where a determination recognises a single native title holding group, it follows that its constituent members hold native title in the *entirety* of the determination area. There may be an intramural allocation of those rights and interests amongst the native title holding group, such that some have particular privileges (for example, to speak for an area) (at [176]-[177]). Nevertheless, in that case, all members of the native title holding group had, at least, “use rights” to access the country and utilise its resources (at [191]).
8. The Full Court further held (at [179]) that the land determination must be construed as recognising a single communal title under which all the native title holders recognised

² The Full Court's judgment post-dates the concise statements filed by each of the parties to this proceeding.

hold native title rights and interests in the determination area as a whole, because the land determination:

- (a) identified the persons holding the native title for the purposes of s 225 as a single group, by reference to descent from an undifferentiated list of apical ancestors (at [180]);
 - (b) described and depicted a single determination area defined by reference to external boundaries, not separate determination areas associated with particular groups of native title holders (at [183]); and
 - (c) identified a single prescribed body corporate to act as agent for the native title holders (at [184]).
9. The Full Court described the terms of the land determination as self-explanatory: this was not a case where it was necessary to refer to reasons for judgment to fully understand their effect (at [185]). That is important because the *Woosup* determination — being the adjacent mainland determination to the Overlap Area — has all the indicia referred to in paragraph [8] above. By order 6, the native title is held by a single native title holding group (“the Northern Cape York #1 Native Title Claim Group”), being the persons descended from the apical ancestors described in Schedule 3. The list in Schedule 3 is undifferentiated: that is, it is comprised of antecedents of three groups (Ankamuthi, Gudang Yadhaykenu, and McDonnell Atampaya) is only discernible from the reasons of Greenwood J (at [1]). There is a single determination area described by reference to external boundaries (order 5, sch 1). The native title is held on trust by a single prescribed body corporate (order 15). Moreover, the determination recognises that the native title holding group has a singular right to possession, occupation, use and enjoyment of the determination area to the exclusion of all others (order 7(a)).
10. The State submits that the *Woosup* determination cannot be construed as anything other than a determination of communal native title. If that is accepted, neither the Ankamuthi applicant nor the Gudang Yadhaykenu applicant can seek to contradict that determination or the findings which were essential to it, in order to establish their respective claims to hold native title in the Overlap Area.

11. Having said that, the Full Court also emphasised that the land determination is not determinative of the sea claim: it is *conceptually possible* that the group of persons who hold native title in the sea claim area differs from the group of persons who have been determined to hold native title in the land determination area. For example, whilst rights and interests in the land determination area may have amalgamated post-sovereignty as a necessary adaptation to European settlement, the same amalgamation may not have occurred in respect of the abutting sea claim area (*Richards* at [194], [199]).
12. That conceptual possibility is a demonstrable reality in relation to the areas of sea country immediately to the south and north of the Overlap Area, as determined in *David*. That is because the mainland area adjacent to the determined Ankamuthi sea country is part of the *Woosup* determination area,³ as is a large section of the mainland area adjacent to the determined Gudang Yadhaykenu sea country. In other words, the determinations in *David* are of sea country in which the respective native title holding group is different to the native title holding group for the adjacent land determination. That forms part of the context in which the question of who holds native title in the Overlap Area falls to be considered.
13. Finally, in *Richards*, the native title applicant positively asserted that the native title holding group for the sea claim area was the same as for the land determination. Insofar as the Overlap Area is concerned, there has been no assertion of native title rights by any member of the McDonnell Atampaya group (whose apical ancestors are included in Schedule 3 of the *Woosup* determination) either in this proceeding, or the previous proceeding that resulted in the *David* determination. Given the involvement of the Cape York Land Council in such proceedings, the Court can be comfortably satisfied that McDonnell Atampaya do not assert native title in the Overlap Area.

Approach to evidence

14. Any evidence adduced for the purpose of contradicting the *Woosup* determination will be inadmissible to the extent that it is directed to that purpose, or must be afforded no

³ Note that a section of the adjacent mainland area (between approximately Van Spouit Head and Slade Point) is part of the determination area in *Anderson on behalf of the Northern Cape York #3 Native Title Claim Group v State of Queensland* [2017] FCA 830. However, the native title holding group in *Anderson* is identical to that in *Woosup*, and the *Anderson* determination has all of the same indicia described in paragraph [9] above.

weight: *Richards* at [135]; *Starkey on behalf of the Kokatha People v State of South Australia* (2018) 261 FCR 183 at [204] (Reeves J, with whom White J agreed). The State submits that it is preferable to deal with such evidence by submissions as to weight, because strict questions of admissibility will ultimately turn on how particular evidence is to be understood (after having been tested), and how it is ultimately sought to be used. Further, as the relationship between the *Woosup* determination and the *David* determinations show, there is likely to be nuance in the evidence that is best evaluated in its full context.

Overlapping native title and exclusive rights

15. The potential for this issue to arise is the subject of paragraphs [15]-[17] of the State's concise statement filed 1 July 2026. However, it is clear from the written outlines of their respective cases that neither Applicant contends for such a result.
16. Gudang Yadhaykenu contends that it is the sole native title holding group in the Overlap Area. Although Ankamuthi contends that both groups hold native title in the Overlap Area, exclusive native title rights in areas above the high water mark are only sought if there is a single joint native title. If there are separate but overlapping native titles, the Ankamuthi accept that all native title rights (above and below the high water mark) are non-exclusive: see written outline filed 1 September 2026 at [10].
17. In the circumstances, the State does not advance arguments on this issue.



Signed by K Snape

For CE Christensen, Crown Solicitor

Solicitor for the First Respondent, State Minister for the State of Queensland

Dated: 4 September 2026