

NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	27/03/2026 2:36:03 PM AEST
Date Accepted for Filing:	27/03/2026 2:36:08 PM AEST
File Number:	QUD357/2025
File Title:	BERNARD CHARLIE & ORS ON BEHALF OF THE GUDANG YADHAYKENU PEOPLE SEA CLAIM AND STATE MINISTER FOR THE STATE OF QUEENSLAND
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



No. 357 of 2025

Federal Court of Australia
District Registry: Queensland
Division: General

**BERNARD CHARLIE & ORS ON BEHALF OF THE GUDANG YADHAYKENU
PEOPLE SEA CLAIM**

Applicant

STATE OF QUEENSLAND

Respondent

**Concise Statement of Facts, Issues and Contentions of the Applicant in the Gudang
Yadhaykenu People Sea Claim QUD 357/2025**

INTRODUCTION

1. The Applicant in the Gudang Yadhaykenu People Sea Claim QUD 357/2025 (**GY Applicant**) files this Concise Statement of Facts, Issues and Contentions pursuant to Order 4 of the Orders made by Mortimer CJ on 17 March 2026.
2. On 30 May 2025, the following native title determination applications were filed over an area of the Endeavour Strait, referred to as the **Overlap Area**:
 - a. Gudang Yadhaykenu People Sea Claim (QUD 357/ 2025) (**GY Claim**); and
 - b. Ankamuthi People Sea Claim (QUD 356/2025) (**Ankamuthi Claim**).
3. On 17 October 2025 the GY Applicant filed an amended GY Claim pursuant to leave granted by McGregor JR on 15 October 2025.

Filed on behalf of (name & role of party)	Applicant
Prepared by (name of person/lawyer)	Matilda Vaughan, solicitor employed by the solicitor for the Applicant, Hema Hariharan, Managing Practitioner Director, Arma Legal
Law firm (if applicable)	KRED Legal Pty Ltd (trading as 'Arma Legal')
Tel	08 9480 0465
Fax	
Email	Matilda.vaughan@armalegal.com.au; hema@armalegal.com.au
Address for service (include state and postcode)	Suite 11, Level 3, 1060 Hay Street, West Perth, Western Australia 6005

[Version 3 form approved 02/05/2019]

4. Set out below are the facts, issues and contentions of the GY Applicant in support of the GY Claim.

FACTS

Recognition of native title

5. The Overlap Area is surrounded on all sides by areas of land and waters which are the subject of approved determinations of native title.
6. In this regard, the Gudang Yadhaykenu People have been determined to hold native title in land and waters adjacent to the Overlap Area, being:
 - a. the land and sea country immediately to the northeast, in *David on behalf of the Torres Strait Regional Seas Claim v State of Queensland* [2022] FCA 1430 (QUD 115/2017) (**David**);
 - b. the land and waters immediately to the south and to the east, in *Woosup on behalf of the Northern Cape York Group #1 v State of Queensland* (No 3) [2014] FCA 1148 (QUD157/2011) (**Woosup I**); and
 - c. the land and waters abutting the southern boundary (SO67 Reserve), in *Anderson on behalf of the Northern Cape York #3 Native Title Claim Group v State of Queensland* [2017] FCA 830 (QUD 780/2016) (**Anderson**).
7. Gudang Yadhaykenu People have also been determined to hold native title in the land and waters to the southeast of the Overlap Area, south of Apudthama National Park, in *Ross on behalf of the Cape York United #1 Claim Group v State of Queensland* (No 12) (*Gudang Yadhaykenu determination*) [2022] FCA 1177 (**Ross**). This area does not abut the Overlap Area but is the most recent determination recognising the Gudang Yadhaykenu People's native title.
8. The Angkamuthi/ Ankamuthi People have been determined to hold native title in the land and waters immediately to the west and to the south of the Overlap Area in *David* and in *Woosup on behalf of the Ankamuthi People #1 v State of Queensland* [2017] FCA 831 (**Woosup 2**).
9. Immediately to the north of the Overlap Area the Kaurareg People, have been determined to hold native title in *David*.
10. A map prepared by the National Native Title Tribunal depicting the Overlap Area and the surrounding native title determinations is annexed to this statement and marked **Annexure 1**.

At and since sovereignty

11. The date of sovereignty for the Overlap Area was 1788, but significant European presence in the area and the immediately adjacent mainland did not occur until after the establishment of a government station at Somerset in 1863 (**effective sovereignty**).
12. At and prior to effective sovereignty, the Overlap Area and the adjacent mainland was occupied and used by Aboriginal people.¹
13. Those Aboriginal people accessed and used all parts of the Overlap Area, with seasonal variation as to use and access.
14. The occupation and use of the Overlap Area and the adjacent mainland was done, as of right, under a body of laws acknowledged and customs observed by those Aboriginal people.
15. Under that body of laws and customs, the Aboriginal people who occupied and used the Overlap Area at sovereignty, and at effective sovereignty, possessed rights and interests in relation to and had a connection with, the land and waters of the Overlap Area.
16. The Aboriginal people who occupied and used the Overlap Area and the adjacent mainland belonged to a regional society.
17. The regional society was not a land owning group.
18. Within the regional society there existed local groups who were regarded as the “owners” of particular tracts of country, often now referred to as “estates”.
19. The laws and customs of the regional society included:
 - a. rules about access and use of Country;
 - b. rules about taking, using, sharing and exchanging resources; and
 - c. rules about important places and protecting and looking after Country.
20. Within the regional society, the owners of local estates were local groups whose members were recruited through patrilineal descent.
21. The traditional laws and customs governing marine tenure within the regional society hinged upon the principle of a seaward extension of adjacent landed estates.

¹ **Sovereignty** means the date non-Indigenous sovereignty was asserted over the Overlap Area in 1788, **Settlement** refers to the settlement of an area by non-Indigenous persons, commencing with a government station established at Somerset in 1863, where John Jardine was appointed Government Resident.

22. Ownership of the seabed extending out from a landed estate underpinned the estate group's ownership of the seas and resources above it.
23. The landed estates of the ancestors of the contemporary Gudang Yadhaykenu People included parts of the northeastern and northwestern coasts of Cape York Peninsula including that part of the northwestern coast that is immediately adjacent to the Overlap Area.
24. It was only the ancestors of the contemporary Gudang Yadhaykenu People who held rights and interests in the landed estates of the mainland immediately adjacent to the Overlap Area and hence it was only those ancestors who possessed rights and interests in the Overlap Area.

Sovereignty to the present

25. The Gudang Yadhaykenu People have continued, substantially uninterrupted since sovereignty, to acknowledge and observe a body of traditional laws and customs under which they possess rights and interests in relation to, and by those law and customs, they have a connection with, the land and waters of the Overlap Area and the adjacent mainland, albeit those laws and customs have undergone adaptation and change in response to the effects of European settlement.
26. The ancestors of the contemporary Gudang Yadhaykenu People have held rights and interests in in the Overlap Area and the land adjacent to the Overlap Area since effective sovereignty.
27. The contemporary Gudang Yadhaykenu People are the descendants of those ancestors.
28. It is only the members of the contemporary Gudang Yadhaykenu People who can demonstrate a descent connection to an ancestor who can be identified as having held ancestral rights and interests in the mainland adjacent to the Overlap Area.
29. Since effective sovereignty, language and dialect labelled groupings emerged as the relevant land holding groups within the regional society, as local group organisation became more attenuated.
30. The Gudang Yadhaykenu People are one of those language and dialect groupings.
31. Persons possessing a shared language identity, such as the Gudang Yadhaykenu People, share in common the landed rights and interests in the country identified with that language.
32. Since effective sovereignty the patrifilial estate model has undergone adaptation.
33. As a result of this adaptation recruitment into the Gudang Yadhaykenu People group is now by way of cognatic descent from a recognised ancestor who can be male or female, and through any combination of male and/or female descent links.

34. The contemporary Ankamuthi People defined in the Ankamuthi Claim are the descendants of ancestors whose traditional estates were located in the lower catchments of the west coast rivers of the region, commonly known as the Seven Rivers.
35. The traditional estates of the ancestors of the Ankamuthi People did not include any of the land immediately adjacent to the Overlap Area.
36. As a result of intermarriage and shared residential communities, members of the Ankamuthi People have generally been able to access resources from the marine estate in the Overlap Area without activating permission-seeking protocols with the Gudang Yadhaykenu group.
37. The permissive use accorded to members of the Ankamuthi People by the primary holders of rights and interests in the Overlap Area, the Gudang Yadhaykenu People, is contingent on intergroup relationships prevailing at any particular point in time.

ISSUES

38. The separate questions to be decided by the Court are:
- a. But for any question of extinguishment of native title, does native title exist in relation to any and, if so what, land and waters of the area the subject of the proceedings?
 - b. In relation to that part of the claim area where the answer to (a) above is in the affirmative:
 - i. Who are the persons, or groups of persons, who hold the common or group rights comprising the native title?
 - ii. What is the nature and extent of the native title rights and interests?
39. In view of the determinations that have been made in *David*, *Woosup 1*, *Woosup 2* and *Ross* there can be no issue that the Gudang Yadhaykenu People and the Ankamuthi People acknowledge and observe traditional laws and customs under which they each possess native title rights and interests in areas adjacent to and in the vicinity of, the Overlap Area.
40. The issue is whether the native title rights and interest of one or other or both, of those groups, extends into all or any part or parts of the Overlap Area.
41. If the native title rights and interests of both groups extend into the Overlap Area, there will be an issue as to where their respective rights and interests meet and/or overlap.

CONTENTIONS

42. The GY Applicant contends that:

- a. It was only the ancestors of the Gudang Yadhaykenu People who possessed native title rights and interests at effective sovereignty in the landed estates on the mainland immediately adjacent to the Overlap Area;
- b. As the traditional laws and customs of the regional society of which the Gudang Yadhaykenu People and the Ankamuthi People are a part, governing marine tenure was (and remains) based upon the principle of a seaward extension of adjacent landed estates, it was only the Gudang Yadhaykenu People who possessed native title rights and interests in the adjacent landed estates who held rights and interests in the Overlap Area at effective sovereignty;
- c. As it was only the ancestors of the Gudang Yadhaykenu People who were members of the local groups who held the land on the mainland immediately adjacent to the Overlap Area, it is only the Gudang Yadhaykenu People who today possess native title rights and interests in the Overlap Area;
- d. Members of other language and dialect labelled groupings within the regional society, including the Ankamuthi People, may have reciprocal or personal rights to use and access the Overlap Area or parts of it, but they do not possess native title rights and interests in the Overlap Area;
- e. While, due to intermarriage and shared residential communities, members of the Ankamuthi People have been able to access and use the resources of the Overlap Area without activating permission-seeking protocols, their use and access is nevertheless contingent on intergroup relationships prevailing at any particular point in time.

43. Based on the facts set out above:

- a. The question set out at paragraph 38.a) above should be answered: “[Y]es native title does exist, in relation to the whole of the land, waters and sea within the Overlap Area”.
- b. The question set out at paragraph 38.b) above should be answered:
 - i. “The persons who hold the common or group rights comprising the native title are the Gudang Yadhaykenu People, as they are defined in Schedule A of the Amended Form 1 filed by the GY Applicant on 17 October 2025; and
 - ii. The native title rights and interests are those set out at Schedule D of the Amended Form 1”.

Date: 25 March 2026

A handwritten signature in blue ink, appearing to read "Vance Hughston", is written over a horizontal dotted line.

Signed by Vance Hughston SC

ANNEXURE 1

