



kanyirninpa jukurrpa

Martu Cultural Knowledge Program
Building sustainable Martu communities

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Attorney-General's Department
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National Circuit
BARTON ACT 2600

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Proposed s47C – Native Title Act

Kanyirninpa Jukurrpa is a Martu company, dedicated to the preservation of Martu culture and the creation of a viable economy for Martu based on that culture.

Kanyirninpa Jukurrpa supports the proposed amendment to the *Native Title Act 1993*, that would enable historical extinguishment of native title to be disregarded in certain circumstances. This has substantial, direct significance for Martu people in relation to the Karlamilyi National Park.

When the Martu people's native title was determined over a large area of the Western Desert in 2002, there was a notable omission from the determination area: Karlamilyi (formerly Rudall River) National Park.

With a detectable note of regret, Justice French made the following comments on his decision to make no determination over Karlamilyi:

There are certain areas that are excluded from the determination, in some cases because native title is thought to have been extinguished by operation of the Act or by operation of the common law. It is on that basis that the Rudall River National Park is not included in the determination. This simply means that native title in such cases cannot be recognised by the Courts. There is a limitation on the recognition which can be granted under the *Native Title Act*. The relationship of the people to their country in those areas is not changed by the limits that the Act or the common law place on recognition. If it is their country under their traditional law and custom it remains so under their law and custom whatever the Act or the common law say about recognition.¹

The exclusion of Karlamilyi from the determination area was a consequence of one of the more egregious of the 1998 "Wik amendments" to the *Native Title Act 1993*. The Rudall River National Park had been gazetted on 22 April 1977, vesting the land in what is now the Department of Environment and Conservation. Consequently, under the *Native Title Act*

¹ Martu Determination, paragraph 12

1993 this vesting would have been deemed to have been invalid as inconsistent with the *Racial Discrimination Act 1975* until the *Native Title Act Amendment Act 1998* retrospectively validated such actions.

This vesting of the National Park occurred barely ten years after the last large groups of Martu living traditionally in this Karlamilyi area left their desert life and moved to a mission at Jigalong. One large group left in 1965 and another in 1966. Many members of both groups, who grew to adulthood living a completely traditional life in this area, are still alive and now live in the communities of Parngurr and Punmu, located within the Karlamilyi National Park.

The Park has never been managed or developed. There are no signs, no roads and there is little conservation activity undertaken on Park lands. It is infrequently visited by members of the general public. The WA Government even acknowledges that the Park was not gazetted on the basis of the land having any uniquely significant environmental values.

Some members have assumed that when the Rudall River National Park was vested as an A-class reserve, the vesting was based on in-depth studies that concluded that the area merited strong environmental protection. In fact, when the Rudall River National Park was vested in 1977, there had not been an in-depth study of its desert environment. The Environmental Protection Authority's recommendations to declare Rudall River an A-class reserve did not specify any particular reason for its protection. Rather, I am advised that the recommendations offered a brief description of the topography, mentioned that the geology of the area was poorly known and stated that after heavy rainfall, there were niches for many small plants and animals. It did so without specifying any particular variety or species. In other words, the park was declared ahead of an environmental study..... Basically, the park has remained unmanaged.²

The Martu people, who only learned of the omission of Karlamilyi shortly before the determination ceremony, were immediately bewildered and angry. At the ceremony, one leader expressed this anger, saying "You have given us back a body without its heart."³ Karlamilyi is an area of extreme cultural significance for Martu people, rich both in resources and in sites of significance.

The WA Government was embarrassed by the omission of the National Park from the determination area. The Deputy Premier, Eric Ripper, quickly assured the WA Parliament that the Government would act to rectify the Commonwealth-caused anomaly:

I take this opportunity to confirm that, notwithstanding any extinguishment of native title in national parks or conservation areas as a result of the High Court's decision, the government remains committed to negotiating joint management arrangements with traditional owners - including the Martu people - as that is the only just and proper course of action under the circumstances.⁴

Mr Ripper more recently noted the profound effect that the exclusion had had:

I went to the determination of native title for the Martu people. Instead of it being a joyous occasion, it was a somewhat sad occasion. In the speeches made at the determination, the Martu representatives referred to their great sadness that at the last moment the centrepiece of their claim had been withdrawn from their grasp by a High Court decision that said that native title was extinguished by the vesting of Western Australian national parks. They had about six weeks to two months before the

² Eric Ripper, Deputy Premier, WA Hansard 15 November 1977 at page 7273

³ Teddy Biljabu, at Parnngurr Rockhole, 22 September 2002

⁴ Eric Ripper, Deputy Premier, Speech to WA Parliament 24 September 2002

determination of their native title being of the view, as was the state, that the determination would cover the Rudall River National Park. I made a promise to them at that determination that the state government would address this issue.⁵

The previous WA Labor Government moved to rectify this situation. Immediately prior to the last election, it had before it the *Indigenous Conservation Title Bill*. That Bill would have created a new, legislatively-based form of Indigenous title for the Martu people over Karlamilyi. However, there were significant aspects of that Bill with which Martu were unhappy – notably a requirement for an immediate 99 year lease back to the Government. Since their native title determination, Martu have repeatedly stated that they want their title over Karlamilyi recognised.

The Australian Government can now rectify this situation. At the time of the 1998 amendments to the *Native Title Act*, the then-Opposition strongly and rightly opposed them. Many of the amendments were, by any measure, unjust. In particular, the retrospective validation of Crown acts in vesting parks and reserves (the existence of which is seldom factually inconsistent with the continuation of native title) and the retrospective statutory extinguishment of native title over such areas, were acts that have led to a manifestly unjust situation for the Martu people.

We support the Australian Government's proposal to amend the *Native Title Act 1993*, so as to allow recognition of native title over areas covered by national parks and nature reserves vested since the enactment of the *Racial Discrimination Act 1975*. In particular, support the Australian Government's proposed section 47C, which would enable the Martu people's native title over Karlamilyi, which is undeniable, to be recognized at law.

We have been authorised by the Governing Committee of the Western Desert Lands Aboriginal Corporation (Jamukurnu Yapalikunu), the Martu people's prescribed body corporate to make representations to the Government on behalf of the Martu people in relation to native title over Karlamilyi. We have attached a letter from a Martu delegation that visited Minister Macklin in Canberra two years ago, in language and translation, expressing their desire to have their title over Karlamilyi properly recognised.

Yours sincerely



Peter Johnson
(CEO)

⁵ Eric Ripper, Deputy Premier, WA Hansard, 21 November 2007 at page 7577