



Kimberley Land Council

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JOINT MEDIA STATEMENT OF: The Kimberley Land Council (KLC) and the Gogolanyngor Aboriginal Corporation Registered Native Title Body Corporate (RNTBC).

FOR IMMEDIATE RELEASE

Court decision disempowers Traditional Owners

The High Court of Australia has denied an appeal by the Nyul Nyul, Nimanburr and Jabirr Jabirr/Ngumbarl people related to the right of the public to access coastal areas on unallocated Crown land within their native title determination area on the Dampier Peninsula.

The Nyul Nyul, Nimanburr and Jabirr Jabirr/Ngumbarl people were granted native title in mid-2018 over an area of approximately 12,000 square kilometres on the Middle Dampier Peninsula in Western Australia's Kimberley region.

This included significant areas of exclusive native title and in late 2018 the Full Federal Court determined that their native title should not include the right of the public to access coastal areas within their determinations. Exclusive native title is designed to give Traditional Owners the right to decide who enters their land.

Prior to the Federal Court decision these rights often had to co-exist with the rights of the public to access these areas. The court's decision, for the first time, empowered Traditional Owners to make decisions about who could access coastal areas of unallocated crown land within their determinations. Unallocated crown land is land on which the only legal interest is native title.

The native title holders, represented by the Kimberley Land Council (KLC), resisted appeals by the State of Western Australia and the Commonwealth of Australia who argued that public access to beaches and waterways within their native area should exist despite their exclusive possession.

The native title holders argued that there should be evidence of a "right to access" by the public before it should be recognised alongside any native title.

The court ruled in favour of the appellants, the Commonwealth and the State of Western Australia, by saying that because the State Parliament had not passed any laws preventing the public from accessing unallocated crown land, which included the beach, therefore they can.

The court also stated that in passing the Native Title Act the Parliament sought to “preserve the principal of public access to beaches” regardless of native title.

Tyronne Garstone, Acting CEO of the Kimberley Land Council, said the ruling weakens the core of exclusive native title and is a disappointing outcome not just for Kimberley Aboriginal people but for all Aboriginal and Torres Strait Islander people.

“This ruling undermines the basis of what native title and particularly what exclusive native title was designed to do”, he said.

“This case only applies to unallocated crown land. That means land on which the only known interest is native title. So, let’s be clear, no right of access exists here other than that of the native title holders who are the only ones with any legal rights to this area.

“They have been denied by the court because of a legal technicality and a lack of State laws about public access to unallocated crown land.

“This ruling makes the situation even more unclear, how does public access and exclusive native title co-exist? It also impairs the rights of Traditional Owners to fully enjoy their hard-won rights, and opens up the question of compensation for native title holders in similar situations around Australia.”

Wayne Barker, Chairperson of the Gogolanyngor Aboriginal Corporation RNTBC and a Jabirr Jabirr/Ngumbarl man said the ruling denied what Traditional Owners had been promised from exclusive native title.

“We were given exclusive possession and it should mean exactly that. Beaches and waterways are critical cultural assets,” he said.

“Today’s ruling further disempowers us to use traditional land management practices to bring the country back to life and create positive social and economic opportunities to our people.

“We have followed the native title process, a process not of our design, but as citizens of this country we agreed to do what was asked of us by Western law to regain control of our country. We engaged in this process, in good faith, yet we are still denied what exclusive native title promised.

“This decision is evidence that we, as First Nations people, are still not able to participate as equals when it comes to protecting our land.”

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