



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): SAD6001/1998; SAD147/2010; SAD417/2015
NNTT Number: SCD2018/002

Determination Name: [Coulthard v State of South Australia \(Adnyamathanha, Ngadjuri and Wilyakali Overlap Claim\)](#)

Date(s) of Effect: 14/12/2018

Determination Outcome: Native title exists in parts of the determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date: 14/12/2018

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 14 December 2018, the Federal Court of Australia made a determination that native title exists in parts of the determination area - see *Coulthard v State of South Australia (Adnyamathanha, Ngadjuri and Wilyakali Overlap Claim)* [2018] FCA 1993.

Note A of the determination provides that “[t]his determination covers the whole area of the Adnyamathanha, Ngadjuri and Wilyakali Overlap Claim (SAD 6001 of 1998) which is a combination of the remaining undetermined Adnyamathanha No 1 Native Title Determination Application (SAD 6001 of 1998) (**Adnyamathanha No 1 claim**), the whole of the Ngadjuri Nation Native Title Determination Application (SAD 147 of 2010) (**Ngadjuri claim**) and the whole of the Wilyakali No 2 Native Title Determination Application (SAD 417 of 2015) (**Wilyakali No 2 claim**)”.

REGISTERED NATIVE TITLE BODY CORPORATE:

Ngadjuri Adnyamathanha Wilyakali Native Title Aboriginal Corporation
Agent Body Corporate
Level 4, 345 King William Street
Adelaide South Australia 5000

Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The Native Title Holders

6. The Native Title Holders hold the Native Title Rights and Interests in the Native Title Land as follows:
- (a) in relation to that Native Title Land within the West Area of the Determination Area, those living Aboriginal persons who are described in *Schedules 4 and 5* who:
 - (i) identify as Adnyamathanha or Ngadjuri; and
 - (ii) are recognised by other Native Title Holders under the respective Adnyamathanha or Ngadjuri traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in, Part 1 of the Determination Area; and
 - (b) in relation to that Native Title Land within the Central Area of the Determination Area, those living Aboriginal persons who are described in *Schedules 4, 5 and 6* who:
 - (i) identify as Adnyamathanha or Ngadjuri or Wilyakali; and
 - (ii) are recognised by other Native Title Holders under the respective Adnyamathanha or Ngadjuri or Wilyakali traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in, Part 2 of the Determination Area.
 - (c) in relation to that Native Title Land within the East Area of the Determination Area, those living Aboriginal persons who are described in *Schedules 4 and 6* who:
 - (i) identify as Adnyamathanha or Wilyakali; and
 - (ii) are recognised by other Native Title Holders under the respective Adnyamathanha or Wilyakali traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in, Part 3 of the Determination Area.

SCHEDULE 4 - THE DESCENDANTS OF ADNYAMATHANHA APICAL ANCESTORS

The descendants (whether biologically or by adoption) of:

Mt Serle Bob

Polly, wife of Mt Serle Bob

Quartpot Tommy

Mt Serle Bob's sister, wife of Quartpot Tommy

Willy Austin Snr

Nicholas Demell

Emily McKenzie, wife of Nicholas Demell

Sydney Ryan

Mary, wife of Sydney Ryan

the siblings Angepena Billy or Mary

Fanny, wife of Angepena Billy

the siblings Sara Johnson, Matilda Johnson, Fred Johnson, Natalie Johnson, Jessie Johnson or Sydney Jackson

SCHEDULE 5 - THE DESCENDANTS OF NGADJURI APICAL ANCESTORS

The descendants of:

Fanny, who was born at Winnininnie and her spouse Gudjari

Richard (Dick) Warrior

The un-named mother of Ned Edwards, who was born at Booyoolie, near Gladstone

The un-named mother of the Armstrong siblings who was born at Canowie

The un-named mother of Alice Morris, who was born at Canowie

The un-named mother of William John Miller and Amelia Miller

Eliza McGrath, antecedent of the McGrath family

SCHEDULE 6 - THE DESCENDANTS OF WILYAKALI APICAL ANCESTORS

The descendants (whether biologically or by adoption) of:

Jack Tyler born in South Australia in 1857

Outalpa Dick

Crancey

Minnie Crozier

MATTERS DETERMINED:

BY CONSENT THE COURT MAKES THE FOLLOWING DETERMINATION OF NATIVE TITLE PURSUANT TO SECTION 87 OF THE NATIVE TITLE ACT:

Interpretation

1. In this determination, including its schedules:
 - (a) unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Part 15 of the Native Title Act;
 - (b) in the event of an inconsistency between a description of an area in a schedule and the depiction of that area on the maps in Schedule 1 and Annexure A, the written description shall prevail.

Determination Area

2. *Schedule 1* describes the external boundaries of the **Determination Area** which is divided up as follows:
 - (a) **West Area** means that part of the Determination Area as is described in Part 1 of *Schedule 1* (and shown as "West Area" in the maps forming part of that Schedule);
 - (b) **Central Area** means that part of the Determination Area as is described in Part 2 of *Schedule 1* (and shown as "Central Area" in the maps forming part of that **Schedule**);
 - (c) **East Area** means that part of the Determination Area as is described in Part 3 of *Schedule 1* (and shown as "East Area" in the maps forming part of that Schedule).

Existence of Native Title

3. Subject to items 1, 2, 3 and 4 of *Schedule 3*, native title exists in the lands and waters described in *Schedule 2* ('Native Title Land').
4. Native title has been extinguished in those areas described in *Schedule 3*.
5. Public Works constructed, established or situated after 23 December 1996 have had such effect as has resulted from Part 2, Division 3, of the *Native Title Act*.

The Native Title Holders

6. The Native Title Holders hold the Native Title Rights and Interests in the Native Title Land as follows:
 - (a) in relation to that Native Title Land within the West Area of the Determination Area, those living Aboriginal

persons who are described in *Schedules 4 and 5* who:

- (i) identify as Adnyamathanha or Ngadjuri; and
 - (ii) are recognised by other Native Title Holders under the respective Adnyamathanha or Ngadjuri traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in, Part 1 of the Determination Area; and
- (b) in relation to that Native Title Land within the Central Area of the Determination Area, those living Aboriginal persons who are described in *Schedules 4, 5 and 6* who:
- (i) identify as Adnyamathanha or Ngadjuri or Wilyakali; and
 - (ii) are recognised by other Native Title Holders under the respective Adnyamathanha or Ngadjuri or Wilyakali traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in, Part 2 of the Determination Area.
- (c) in relation to that Native Title Land within the East Area of the Determination Area, those living Aboriginal persons who are described in *Schedules 4 and 6* who:
- (i) identify as Adnyamathanha or Wilyakali; and
 - (ii) are recognised by other Native Title Holders under the respective Adnyamathanha or Wilyakali traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in, Part 3 of the Determination Area.

Native title rights and interests

7. Subject to Paragraphs 8, 9 and 10, the nature and extent of the **Native Title Rights and Interests** held by the Native Title Holders are rights to use, stay on and enjoy the land and waters of the Native Title Land in their respective Part of the Determination Area, being:
- (i) The right to access and move about;
 - (ii) The right to live, to camp and to erect shelters;
 - (iii) The right to hunt and fish;
 - (iv) The right to gather and use the natural resources such as food, plants, timber, resin, ochre and soil;
 - (v) The right to cook and to light fires for cooking and camping purposes;
 - (vi) The right to use the natural water resources;
 - (vii) The right to distribute, trade or exchange the natural resources;
 - (viii) The right to conduct ceremonies and hold meetings;
 - (ix) The right to engage and participate in cultural activities including those relating to births and deaths;
 - (x) The right to carry out and maintain burials of deceased native title holders and of their ancestors;
 - (xi) The right to teach on the Native Title Land the physical and spiritual attributes of locations and sites;
 - (xii) The right to visit, maintain and preserve sites and places of cultural or spiritual significance to Native Title Holders under their traditional laws and customs;
 - (xiii) The right to be accompanied on the Native Title Land by those people who, though not Native Title Holders, are:
 - (i) spouses of Native Title Holders; or
 - (ii) people required by traditional law and custom for the performance of ceremonies or cultural activities on the Native Title Land; or
 - (iii) people who have rights in relation to the Native Title Land according to the traditional laws and customs acknowledged by the Native Title Holders.

General Limitations

8. The Native Title Rights and Interests do not confer possession, occupation, use and enjoyment of the Determination Area on the Native Title Holders to the exclusion of others.
9. The Native Title Rights and Interests are for personal, domestic and non-commercial communal use.
10. The Native Title Rights and Interests are subject to and exercisable in accordance with:
 - (a) the traditional laws and customs of the Native Title Holders;
 - (b) the valid laws of the State and Commonwealth, including the common law.

For the avoidance of doubt, the native title rights and interests expressed in Paragraph (vi) are subject to the *Natural Resources Management Act 2004* (SA).

Other rights and interests and Relationship with Native Title

11. The nature and extent of the other rights and interests in relation to the Determination Area are:
 - (a) the rights and interests within the Determination Area created by the pastoral leases described in *Schedule 7*;
 - (b) the interests of the Crown in right of the State of South Australia;
 - (c) the interests of persons to whom valid or validated rights and interests have been granted or recognised by the Crown in right of the State of South Australia or by the Commonwealth of Australia pursuant to statute or otherwise in the exercise of executive power;
 - (d) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;
 - (e) the rights to access land by an employee or agent or instrumentality of the State, Commonwealth or other statutory authority as required in the performance of his or her statutory or common law duties (in accordance with any valid legislation);
 - (f) the rights relating to the Automatic Weather Station located within the external boundaries of Section 1436, Out of Hundreds Olary, CR Volume 5337 Folio 560;
 - (g) the rights and interests of each of: The Flinders Ranges Council, District Council of Orroroo/Carrieton and District Council of Peterborough and:
 - (i) under the Local Government Act 1934 (SA) or the Local Government Act 1999 (SA);
 - (ii) as an entity exercising statutory powers in respect of land and waters within the Determination Area; and
 - (iii) in relation to dedicated land placed under its care, control and management pursuant to the Crown Land Act 1929 (SA) or the Crown Land Management Act 2009 (SA);
 - (h) the rights, interests and entitlements of SA Power Networks (a partnership of Spark Infrastructure SA (No.1) Pty Ltd, Spark Infrastructure SA (No.2) Pty Ltd, Spark Infrastructure SA (No.3) Pty Ltd, CKI Utilities Development Limited and PAI Utilities Development Limited) and its related and successor entities, including its rights, interests and entitlements:
 - (i) to exercise its entitlements and discharge its obligations as the owner and/or operator of electricity infrastructure (as defined in the *Electricity Act 1996* (SA)) and telecommunications facilities and infrastructure within the Determination Area including but not limited to the electricity infrastructure identified in *Schedule 10* (“Existing Infrastructure”);
 - (ii) to exercise its entitlements and discharge its obligations as the holder of a licence under the Electricity Act and/or as an electricity entity under the Electricity Act;
 - (iii) to exercise its entitlements and discharge its obligations as the holder of a carrier licence under the *Telecommunications Act 1997* (Cth);

- (iv) to install new electricity and telecommunications infrastructure on the Determination Area (**New Infrastructure**) and modify, maintain and repair Existing Infrastructure;
 - (v) under **Easements**, leases or licences (whether registered, unregistered, statutory or otherwise) relating to Existing Infrastructure or New Infrastructure on the Determination Area;
 - (vi) to provide its employees, agents or contractors with access to Existing Infrastructure, New Infrastructure and the Easements on the Determination Area; and
 - (vii) to the extent permitted by law, to restrain any person from performing any act, or compel any person to perform any act, for the purposes of ensuring that SA Power Networks complies with its obligations under any law, including, but not limited to, excluding any person from entering an area containing Existing Infrastructure or New Infrastructure for the purposes of maintaining the safety of any person and the security and protection of such infrastructure.
- (i) the rights and interests of **Epic Energy South Australia Pty Ltd** (formerly Tenneco Gas South Australia Pty Ltd):
 - (i) as:
 - 1) holder of Pipeline Licence No. 1 (**PL1**) issued pursuant to the *Petroleum Act 1940* (SA) on 12 March 1969 and renewed on 27 March 1990 pursuant to the *Petroleum Act 1940* (SA) and continuing in force by the operation of clause 2 of the Schedule to the *Petroleum and Geothermal Energy Act 2000* (SA);
 - 2) owner of the pipeline the subject thereof by virtue of having been a purchaser of the pipeline (as *purchaser* is defined in section 16 of the *Natural Gas Authority Act 1967* (SA) as amended by the *Pipelines Authority (Sale of Pipelines) Amendment Act 1995* (SA) (**Sale Legislation**)) from the former Pipeline Authority of South Australia (now the Natural Gas Authority of South Australia) pursuant to a Sale Agreement dated 30 June 1995 under the Sale Legislation; and
 - (ii) where the licensed pipeline was established pursuant to the *Natural Gas Authority Act 1967* (SA) and is located within a statutory easement established by section 9 of the Sale Legislation and section 28 of the Sale Legislation provides:
 - 1) the creation of the statutory easement under this Act, or the grant of a pipeline lease, does not affect any native title that may exist in the land to which the easement or lease relates;
 - 2) The statutory easement under this Act does not derogate from pre-existing rights of Aboriginal people to enter, travel across or stay on land subject to the easement or lease”;
 - (iii) the statutory easement entitles Epic, *inter alia*, to install, maintain and operate the pipeline and to carry out authorised purposes including the installation, operation, inspection, extension, alteration, repair and removal of the pipeline or associated equipment and the carrying out of maintenance work on the pipeline or associated equipment;
 - (iv) for Epic, its employees, agents and contractors (or any of them) to enter the Determination Area to access Epic’s rights and interests and to do all things necessary to exercise those rights and interests and perform all obligations in the vicinity of the Determination Area in performance of their duties;
 - (j) the rights, interests and entitlements of **Boss Uranium Pty Ltd** (ACN 069 420 462) (including any of its related entities and successors in title from time to time) as described in the instruments listed below:
 - (i) as owner and operator of the Honeymoon Uranium Mine under Mining Lease Number 6109 granted pursuant to the *Mining Act 1971* (SA) and any subsequent licence; and
 - (ii) as the holder of exploration licences and associated licences granted pursuant to the *Mining Act* from time to time

for its employees, agents and contractors to enter the Determination Area to access and operate its facilities in, and in the vicinity of, the Determination Area; and, to the extent permitted by law, to restrain any person from performing any act, or compel any person to perform any act, for the purposes of ensuring that Boss Uranium Pty Ltd complies with its obligations under any law, including but not limited to, excluding any person from entering the mine area for the purposes of maintaining the safety of any person and protection of the mine area and its operations.
 - (k) the rights, interests and entitlements of **Benagerie Gold & Copper Pty Ltd** (ACN 131 124 427) (**Benagerie**)

and Consolidated Mining & Civil Pty Ltd (ACN 094 428 109) (**CMC**) (including any of their respective related entities and successors in title from time to time) as described in the instruments listed below:

- (i) as owner and operator of the Portia - North Portia Mine under Mining Lease Number 6346 granted pursuant to the *Mining Act 1971* (SA) and any subsequent licence

for its employees, agents and contractors to enter the Determination Area to access and operate its facilities in, and in the vicinity of, the Determination Area; and, to the extent permitted by law, to restrain any person from performing any act, or compel any person to perform any act, for the purposes of ensuring that Benagerie and CMC comply with their respective obligations under any law, including but not limited to, excluding any person from entering the mine area for the purposes of maintaining the safety of any person and protection of the mine area and its operations.

- (l) the rights, interests and entitlements of Kalkaroo Copper Pty Ltd (ACN 111 129 812) (**Kalkaroo**) and/or Havilah Resources Ltd (ACN 077 435 520) (**Havilah**) (including any of their respective related entities and successors in title from time to time) as described in the instruments listed below:

- (i) Kalkaroo - as proponent for the Kalkaroo Mine pursuant to any Mining Lease which may be granted in respect of Mineral Claim numbers 3826, 3827, 3828, 4368 and 4369 granted pursuant to the *Mining Act 1971* (SA) and any subsequent licence; and

- (ii) Havilah as the holder of exploration licences 5179, 5800, 5915, 5396, 5421, 5422, 5488, 5802, 5803, 5904, 5502, 5393, 5396, 5578, 5703, 5956, 6054 and 6194 and associated licences granted pursuant to the Mining Act from time to time

for its employees, agents and contractors to enter the Determination Area to access and operate its facilities in, and in the vicinity of, the Determination Area; and, to the extent permitted by law, to restrain any person from performing any act, or compel any person to perform any act, for the purposes of ensuring that Kalkaroo and Havilah comply with their respective obligations under any law, including but not limited to, excluding any person from entering the mine area for the purposes of maintaining the safety of any person and protection of the mine area and its operations.

- (m) the rights, interests and entitlements of Exco Operations (SA) Pty Ltd (ACN 105 161 564) (**Exco**) and Polymetals (White Dam) Pty Ltd (ACN 130 423 684) (**Polymetals**) (including any of their respective related entities and successors in title from time to time) as described in the instruments listed below:

- (i) as owner and operator of the White Dam Mine under Mining Lease Numbers 6275 and 6395 granted pursuant to the *Mining Act 1971* (SA) and any subsequent licence; and

- (ii) as the holder of exploration licences and associated licences granted pursuant to the Mining Act from time to time

for its employees, agents and contractors to enter the Determination Area to access and operate its facilities in, and in the vicinity of, the Determination Area; and, to the extent permitted by law, to restrain any person from performing any act, or compel any person to perform any act, for the purposes of ensuring that Exco and Polymetals comply with their respective obligations under any law, including but not limited to, excluding any person from entering the mine area for the purposes of maintaining the safety of any person and protection of the mine area and its operations.

- (n) the rights and interests of Telstra Corporation Limited (ACN 051 775 556):

- (i) as the owner or operator of telecommunications facilities within the Determination Area;

- (ii) created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth), including rights:

- 1) to inspect land;
- 2) to install and operate telecommunications facilities; and
- 3) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;

- (iii) for its employees, agents or contractors to access its telecommunication facilities in and in the vicinity of the Determination Area in the performance of their duties; and

- (iv) under any lease, licence, access agreement or easement relating to its telecommunications facilities in the Determination Area;
 - (o) The rights and interests of the parties to the Native Title Mining Agreements listed in *Schedule 8* as they are amended by the order recorded at Order 17 below.
12. Subject to paragraphs 13 and 15 below, the relationship between the Native Title Rights and Interests in the Determination Area that are described in Paragraph 7 and the other rights and interests that are referred to in Paragraph 11 (“the Other rights and interests”) is that:
- (a) the Other rights and interests co-exist with the native title rights and interests;
 - (b) in the event of inconsistency, the Other rights and interests prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them;
 - (c) the existence of the native title rights and interests does not prevent the doing of any activity required or permitted to be done by, in accordance with or under the Other rights and interests.
13. The relationship between the native title rights and interests described in paragraph 7 and the rights relating to the Proclamation of the Bimbowrie Conservation Park is that:
- (a) the rights relating to the Proclamation co-exist with the native title rights and interests;
 - (b) to the extent that the rights relating to the Proclamation are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety and prevail over the rights relating to the Proclamation, to the extent of any inconsistency, during the currency of the Proclamation; and otherwise,
 - (c) the doing of any activity required or permitted to be done in accordance with the Proclamation does not prevent the enjoyment or exercise of the native title rights and interests, and the native title rights and interests prevail over the doing of any such activity, to the extent of any inconsistency, during the currency of the Proclamation.
14. The relationship between the native title rights and interests referred to in paragraph 7 and the Automatic Weather Station referred to in paragraph 11(f) is that the Automatic Weather Station is:
- (a) wholly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests;
 - (b) the native title continues to exist but has no effect in relation to the Automatic Weather Station;
 - (c) if the Automatic Weather Station or its effects are wholly removed or otherwise wholly cease to operate the native title rights and interests again have full effect;
 - (d) if the Automatic Weather Station or its effects are removed to an extent or otherwise cease to operate only to an extent, the native title rights and interests again have effect to that extent.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

- 15. The native title is not to be held in trust.
- 16. Ngadjuri Adnyamathanha Wilyakali Native Title Aboriginal Corporation (Aboriginal Corporation”) is to:
 - (a) be the prescribed body corporate for the purposes of section 57(2) of the *Native Title Act*, and
 - (b) perform the functions mentioned in section 57(3) of the *Native Title Act* after becoming the registered native title body corporate in relation to the Determination Area.
- 17. The Court notes that each of the Native Title Mining Agreements listed in *Schedule 8*, has, subject to the making of this Order, been novated in terms of the clauses set out in *Schedule 9* so that the RNTBC stands in the place of the Native Title Party (as defined in the *Mining Act 1971*) and its associated entities (who executed each agreement) in each of those agreements in so far as they relate to land within the Determination Area. The novation takes place with effect from the registration of the RNTBC by the National Native Title Tribunal (NNTT).

18. The Parties have liberty to apply on 14 days' notice to a single judge of the Court for the following purposes:
 - (a) to establish the precise location and boundaries of any public works and adjacent land and waters referred to in Paragraphs 3 and 4 of *Schedule 3* of this Order; or
 - (b) to establish the effect on native title rights and interests of any public works referred to in Paragraph 5 of this Order.
19. Any party (including a Continuing Party under Schedule 9) have liberty to apply on 14 days' notice to a single judge of the Court to rectify the terms of a Native Title Mining Agreement novated under *Schedule 9* as referred to in paragraph 6.4 of *Schedule 9*.

REGISTER ATTACHMENTS:

1. Schedule 1 - Description and maps of the Determination Area, 19 pages - A4, 14/12/2018
2. Schedule 2 - Native title land (areas where native title is recognised in this CD), 11 pages - A4, 14/12/2018
3. Schedule 3 - Land and waters where native title has been extinguished, 181 pages - A4, 14/12/2018
4. Schedule 7 - Pastoral leases wholly or partially in the Determination Area, 1 page - A4, 14/12/2018
5. Schedule 8 - Native title mining agreements relating to tenements wholly or partially in the Determination Area which are novated, 5 pages - A4, 14/12/2018
6. Schedule 9 - Terms relating to mining agreements listed in Schedule 8 and any outstanding negotiation processes, 39 pages - A4, 14/12/2018
7. Schedule 10 - Assets of SA Power Networks, 2 pages - A4, 14/12/2018

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.