



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): SAD38/2013; SAD78/2013; SAD220/2018
NNTT Number: SCD2021/003

Determination Name: [Stuart v State of South Australia \(Oodnadatta Common Overlap Proceeding\) \(No 4\)](#)

Date(s) of Effect: 23/12/2021

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: 23/12/2021

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

No Prescribed Body Corporate has been registered for the area.

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:

Native Title Holders

5. The Native Title Holders are:

(a) all those Lower Southern Arrernte persons who have a traditional connection to the Determination Area, being all of those described in Schedule 4 who:

(i) identify as Lower Southern Arrernte; and

(ii) are recognised under the relevant traditional law and custom by other Native Title Holders as having rights and interests in the Determination Area; and

(b) all those Yankunytjatjara and/or Luritja persons who:

(i) have a spiritual connection to the Determination Area and the Tjukurpa associated with it because in the case of each of them:

A. the Determination Area is his or her country of birth (also reckoned by the area where his or her mother lived during the pregnancy); or

B. he or she has had a long term association with the Determination Area such that he or she has traditional geographical and religious knowledge of that country; or

C. he or she has an affiliation to the Determination Area through a parent or grandparent with a connection to the Determination Area as specified in sub-paragraph (A) or (B) above,

including all of those described in Schedule 5 who identify as Yankunytjatjara or Luritja; and

(ii) are recognised under the relevant traditional law and custom by other Native Title Holders as having rights and interests in the Determination Area.

SCHEDULE 4 – Lower Southern Arrernte Descent Groups

- the descendants of Yungili and Yungili's brother and their wives, being the sisters of Maggie and Bugagaguna
- the descendants of Willie Doolan
- the descendants of Lalayi
- the descendants of Jimmy Arrerte
- the descendants of Lilly Summerfield (Summerville)
- Marilyn Rose Hull Ah Chee and her descendants
- Ian Hodgson and his descendants
- the descendants of Angeline (including Ruth McKenzie, Tom Cramp and Jenny Stewart)
- the descendants of Mary Cleanskin (Nyukapinya) (including Billy Bailes and June Bailes)
- the descendants of Anatjara and Wiltiwa (the parents of Lilly, the Arrernte mother of Edie King)
- the descendants of Harry Taylor
- the descendants of Lorna Terone

SCHEDULE 5 – Yankunytjatjara/Luritja Descent Groups

- the descendants of Willie Doolan
- the descendants of Lalayi
- the descendants of Angeline (including Ruth McKenzie, Tom Cramp and Jenny Stewart)
- the descendants of Mary Cleanskin (Nyukapinya) (including Billy Bailes and June Bailes)
- the descendants of Anatjara and Wiltiwa (the parents of Lilly, the Arrernte mother of Edie King)
- the descendants of Harry Taylor
- the descendants of Lorna Terone
- the descendants of Mulatjatjara
- the descendants of Emily Churchill
- Hughie Tjami and his descendants
- Keith Minungka and his descendants

MATTERS DETERMINED: THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Interpretation and Declaration

1. In this determination, including its Schedules, unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Pt 15 of the *Native Title Act 1993* (Cth) (**NTA**).

2. In this determination, "**Determination Area**" means the area described in Schedule 1 (as shown in the Map in Schedule 2 hereto), apart from those areas which are described or referred to in Schedule 5.

3. In this determination, including its schedules, in the event of an inconsistency between a description of an area in a schedule and the depiction of that area on the Map in Schedule 2, the written description shall prevail.

4. Native title exists in the areas described in both parts of Schedule 3 (**Native Title Land**).

Native Title Holders

5. The Native Title Holders are:

(a) all those Lower Southern Arrernte persons who have a traditional connection to the Determination Area, being all of those described in Schedule 4 who:

(i) identify as Lower Southern Arrernte; and

(ii) are recognised under the relevant traditional law and custom by other Native Title Holders as having rights and interests in the Determination Area; and

(b) all those Yankunytjatjara and/or Luritja persons who:

(i) have a spiritual connection to the Determination Area and the Tjukurpa associated with it because in the case of each of them:

A. the Determination Area is his or her country of birth (also reckoned by the area where his or her mother lived during the pregnancy); or

B. he or she has had a long term association with the Determination Area such that he or she has traditional geographical and religious knowledge of that country; or

C. he or she has an affiliation to the Determination Area through a parent or grandparent with a connection to the Determination Area as specified in sub-paragraph (A) or (B) above,

including all of those described in Schedule 5 who identify as Yankunytjatjara or Luritja; and

(ii) are recognised under the relevant traditional law and custom by other Native Title Holders as having rights and interests in the Determination Area.

Rights and Interests

6. The nature and extent of the native title rights and interests in relation to the Determination Area are non-exclusive rights to use and enjoy in accordance with the Native Title Holders' traditional laws and customs the land and waters of the Determination Area, being:

(a) the right to access and move about the Determination Area;

(b) the right to hunt and fish on the land and waters of the Determination Area without the limitation of what purpose;

(c) the right to gather and use the natural resources of the Determination Area such as food, medicinal plants, wild tobacco, timber, resin, ochre and feathers;

(d) the right to share and exchange the subsistence and other traditional resources of the Determination Area;

(e) the right to use the natural water resources of the Determination Area;

(f) the right to live, to camp and, for the purpose of exercising the native title rights and interests, to erect shelters and other structures on the Determination Area;

(g) the right to cook on the Determination Area and to light fires for domestic purposes but not for the clearance of vegetation;

(h) the right to engage and participate in cultural activities on the Determination Area including those relating to births and deaths;

(i) the right to conduct ceremonies and hold meetings on the Determination Area;

(j) the right to teach on the Determination Area the physical and spiritual attributes of locations and sites within the Determination Area;

(k) the right to visit, maintain and protect sites and places of cultural and religious significance to Native Title Holders under their traditional laws and customs on the Determination Area;

(l) the right to be accompanied on to the Determination Area 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 Determination Area; or

(iii) people who have rights in relation to the Determination Area according to the traditional laws and customs acknowledged by the Native Title Holders; and

(m) in relation to Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Native Title Holders, the right to speak for country and make decisions about the use and enjoyment of the Determination Area by those Aboriginal persons.

7. The native title rights and interests described above in paragraphs 6(b), (c), (d) and (e) are for personal, domestic and communal needs.

8. The native title rights and interests described in paragraph 6 do not confer possession, occupation, use and enjoyment of the Determination Area on the Native Title Holders to the exclusion of others.

9. 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.

10. Prior extinguishment of native title rights and interests in those areas described in Part 2 of Schedule 3 is to be disregarded by reason of section 47A of the NTA, meaning the rights and interests described in paragraphs 6 to 9 above exist in those areas.

11. Native title does not exist in those areas described in Schedule 6, as it has been extinguished.

12. Native title rights and interests do not exist in:

(a) Minerals, as defined in section 6 of the *Mining Act 1971* (SA); or

(b) Petroleum, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA); or

(c) a naturally occurring underground accumulation of a regulated substance as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth; or

(d) a natural reservoir, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth;

(e) geothermal energy, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA) the source of which is below a depth of 100 metres from the surface of the earth.

For the purposes of this paragraph 12 and the avoidance of doubt:

(i) a geological structure (in whole or in part) on or at the earth's surface or a natural cavity which can be accessed or entered by a person through a natural opening in the earth's surface, is not a natural reservoir;

(ii) thermal energy contained in a hot or natural spring is not geothermal energy as defined in section 4 of the *Petroleum and Geothermal Energy Act* (SA) 2000;

(iii) the absence from this order of any reference to a natural reservoir or a naturally occurring accumulation of a regulated substance, as those terms are defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), above a depth 100 metres below the surface of the earth or geothermal energy the source of which is above a depth of 100 metres below the surface of the earth is not, of itself, to be taken as an indication of the existence or otherwise of native title rights or interests in such natural reservoir, naturally occurring accumulation of a regulated substance or geothermal energy.

Other Interests & Relationship with Native Title

13. The nature and extent of other interests to the Determination Area are:

(a) the interests of the Crown in right of the State of South Australia;

(b) 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 including, but not limited to, rights and interests granted or recognised pursuant to the *Crown Land Management Act 2009* (SA), *Crown Lands Act 1929* (SA), *Mining Act 1971* (SA), *Petroleum and Geothermal Energy Act 2000* (SA) and *Opal Mining Act 1995* (SA), all as amended from time to time;

- (c) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;
- (d) 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 where such access would be permitted to private land;
- (e) the rights and interests of AirServices Australia as the holder of Licence to Occupy OL017676 for satellite ground station purposes, issued under the *Crown Lands Act 1929* (SA), as renewed and amended from time to time.
- (f) the rights and interests of Telstra Corporation Limited (ACN 051 775 556):
- (i) as the owner or operator of telecommunications facilities within the Native Title Land;
- (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:
- A. to inspect land;
- B. to install, occupy and operate telecommunications facilities; and
- C. 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 telecommunications facilities in and in the vicinity of the Native Title Land in performance of their duties; and
- (iv) under any lease, licence, permit, access agreement or easement relating to its telecommunications facilities within the Native Title Land;
- (g) 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)) (**Electricity Act**) and telecommunications facilities and infrastructure within the Native Title Land (**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 Native Title Land (**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 Native Title Land (**Easements**);
- (vi) to provide its employees, agents or contractors with access to Existing Infrastructure, New Infrastructure and the Easements on the Native Title Land; 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;

14. The relationship between the native title rights and interests in the Determination Area that are described in Paragraph 6 and the other existing rights and interests that are referred to in Paragraph 13 (**Other Interests**) is that:

- (a) to the extent that any of the Other Interests 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, but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency during the currency of the Other Interests; and otherwise,
- (b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the Other Interests, and the Other Interests, and the doing of any activity required

or permitted to be done by or under the Other Interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but, subject to any application of section 24IB or section 24JA of the NTA, do not extinguish them.

(c) the native title rights and interests are subject to extinguishment by:

(i) the lawful powers of the Commonwealth and of the State of South Australia; and/or

(ii) the lawful grant or creation of interests pursuant to the Laws of the Commonwealth and the State of South Australia

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

15. The native title is not to be held in trust.

16. The prescribed body corporate nominated by the native title holders in accordance with s 57(2) of the NTA and in accordance with Order 7 [sic] below, be the prescribed body corporate holding the native title rights and interests.

17. The native title holders are, by 28 February 2022, to file in the Court the nomination to which Order 16 refers.

REGISTER ATTACHMENTS:

1. SCD2021/003 Schedule 1 - Location of and areas comprising the Determination Area, 1 page - A4, 23/12/2021

2. SCD2021/003 Schedule 2 - Map of the Determination Area, 1 page - A4, 23/12/2021

3. SCD2021/003 Schedule 3 - Areas within the external boundaries of the Determination Area where native title exists, 2 pages - A4, 23/12/2021

4. SCD2021/003 Schedule 6 - Areas within the external boundaries of the Determination Area where native title does not exist, 2 pages - A4, 23/12/2021

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.