



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): SAD38/2013  
NNTT Number: SCD2021/001

**Determination Name:** [Stuart v State of South Australia \(No 3\)](#)

**Date(s) of Effect:** 17/03/2021

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

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

**Determination Date:** 17/03/2021

**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](http://www.oric.gov.au)*

### COMMON LAW HOLDER(S) OF NATIVE TITLE:

#### NATIVE TITLE HOLDERS

5. Under the relevant traditional laws and customs of the Arabana people the native title holders comprise those living Aboriginal people who both self-identify as Arabana and who are recognised as being Arabana by other Arabana people based on:

- (a) Filiation, including by adoption, from an Arabana parent or grandparent; or
- (b) Long term co-residence with Arabana people on Arabana country;

**and** who satisfy one or more of the following criteria:

- (i) Being raised in Arabana country and being bound by its system of law and custom;
- (ii) Living and behaving appropriately with Arabana people in accordance with Arabana laws and customs;
- (iii) Having knowledge of Arabana country and its stories and taking appropriate responsibility, under Arabana custom

and law, for that knowledge;

(iv) Having knowledge of Arabana society and the relationships of people within it and seeking to maintain proper relationships amongst Arabana people;

(v) Having knowledge of Arabana language;

(vi) Displaying an active interest and engagement in Arabana affairs;

## **MATTERS DETERMINED:**

### **THE COURT ORDERS, DECLARES AND DETERMINES BY CONSENT THAT:**

#### **INTERPRETATION & DECLARATION**

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) "Native Title Land" means the land and waters referred to in paragraph 3 of these orders; and

(c) 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.

#### **DETERMINATION AREA**

2. Schedule 1 describes the external boundaries of the determination area (**Determination Area**).

#### **AREAS WITHIN DETERMINATION AREA WHERE NATIVE TITLE EXISTS (NATIVE TITLE LAND)**

3. Subject to items 1, 2, 3 and 4 of Schedule 4, native title exists in the land and waters described in Schedule 3.

#### **AREAS WITHIN DETERMINATION AREA WHERE NATIVE TITLE DOES NOT EXIST**

4. Pursuant to s 225 of the *Native Title Act*, native title does not exist in relation to all of the land and waters comprised in those areas described in Schedule 4.

#### **NATIVE TITLE HOLDERS**

5. Under the relevant traditional laws and customs of the Arabana people the native title holders comprise those living Aboriginal people who both self-identify as Arabana and who are recognised as being Arabana by other Arabana people based on:

(a) Filiation, including by adoption, from an Arabana parent or grandparent; or

(b) Long term co-residence with Arabana people on Arabana country;

**and** who satisfy one or more of the following criteria:

(i) Being raised in Arabana country and being bound by its system of law and custom;

(ii) Living and behaving appropriately with Arabana people in accordance with Arabana laws and customs;

(iii) Having knowledge of Arabana country and its stories and taking appropriate responsibility, under Arabana custom and law, for that knowledge;

(iv) Having knowledge of Arabana society and the relationships of people within it and seeking to maintain proper relationships amongst Arabana people;

(v) Having knowledge of Arabana language;

(vi) Displaying an active interest and engagement in Arabana affairs;

#### **RIGHTS AND INTERESTS**

6. Subject to Paragraphs 7, 8 and 9, the nature and extent of the native title rights and interests of the Arabana people in relation to the Native Title Land are non-exclusive rights to use and enjoy in accordance with their traditional

laws and customs the land and waters of the Native Title Land, being:

- (a) the right to access and move about the Native Title Land;
- (b) the right to live, to camp and, for the purpose of exercising their native title rights and interests, to erect shelters and other structures on the Native Title Land;
- (c) the right to hunt and fish on the land and waters of the Native Title Land;
- (d) the right to gather and use the natural resources of the Native Title Land such as food, medicinal plants, wild tobacco, timber, resin, ochre and feathers, but excluding those resources referred to in Item 1 of Schedule 4;
- (e) the right to share and exchange the subsistence and other traditional resources of the Native Title Land;
- (f) the right to use the natural water resources of the Native Title Land;
- (g) the right to cook on the Native Title Land 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 Native Title Land including those relating to births and deaths;
- (i) the right to conduct ceremonies and hold meetings on the Native Title Land;
- (j) the right to teach on the Native Title Land the physical and spiritual attributes of locations and sites within the Native Title Land;
- (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 Native Title Land; and
- (l) the right to be accompanied on to the Native Title Land by those people who, though not Native Title Holders, are:
  - (i) spouses of native title holders; or
  - (ii) 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**

7. The native title rights and interests are for personal, domestic and communal use but do not include commercial use of the Determination Area or the resources from it.

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; and
- (b) the valid laws of the State and Commonwealth, including the common law.

For the avoidance of doubt, the native title interest expressed in paragraph 6(f) (the right to use the natural water resources of the Determination Area) is subject to the *Natural Resources Management Act 2004* (SA).

#### **OTHER INTERESTS & RELATIONSHIP WITH NATIVE TITLE**

10. The nature and extent of other interests in the Determination Area are:

- (a) the interests within the Determination Area created by the following pastoral leases:

<b>Lease name</b>	<b>Pastoral Lease No</b>	<b>Crown Lease</b>
Mundowdna (Portion)	PE 2298	Volume 6171 Folio 801
Witchelina (Portion)	PE 2311	Volume 6209 Folio 252

- (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 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;*

(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 where such access would be permitted to private land;

11. The relationship between the native title rights and interests in the Determination Area that are described in Paragraph 6 and the other rights and interests that are referred to in Paragraph 10 ("the 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 *Native Title Act*, 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:**

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

13. An Aboriginal corporation, the name of which must be provided to the Court within 6 months of the date of this Order, is to:

(a) be the prescribed body corporate for the purposes of s 57(2) of the *Native Title Act*; and

(b) perform the functions mentioned in s 57(3) of the *Native Title Act* after becoming a registered native title body corporate.

14. 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 Schedule 4 of this Order; or

(b) to determine the effect on native title rights and interests of any public works referred to in Schedule 4 of this Order.

**REGISTER ATTACHMENTS:**

1. SCD2021/001 Schedule 1 - Location Of And Areas Comprising The Determination Area, 6 pages - A4, 17/03/2021

2. SCD2021/001 Schedule 2 - Maps - Part A: Map of the External Boundaries of the Determination Area, 4 pages - A4, 17/03/2021

3. SCD2021/001 Schedule 2 - Maps - Part B: Maps depicting Native Title Land, 2 pages - A4, 17/03/2021

4. SCD2021/001 Schedule 3 - Land and waters where native title exists (Native Title Land), 1 page - A4, 17/03/2021

5. SCD2021/001 Schedule 4 - Areas where native title does not exist, 2 pages - A4, 17/03/2021

*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.*