

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): SAD6027/1998
NNTT Number: SCD2017/002

Determination Name: Sumner v State of South Australia (Ngarrindjeri Native Title Claim Part A)

Date(s) of Effect: 14/12/2017

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: 14/12/2017

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Please note:

As detailed in Order 6, native title in Schedule 8 will only exist upon the registration of the Ngarrindjeri Part A Settlement Indigenous Land Use Agreement on the Register of Indigenous Land Use Agreements and subject to the terms of these orders.

As detailed in Order 8, native title in Schedule 7 will be extinguished upon registration of the Ngarrindjeri Part A Settlement Indigenous Land Use Agreement on the Register of Indigenous Land Use Agreements.

REGISTERED NATIVE TITLE BODY CORPORATE:

Ngarrindjeri Aboriginal Corporation RNTBC
Agent Body Corporate
PO Box 3699
Rundle Mall
ADELAIDE South Australia 5000

COMMON LAW HOLDER(S) OF NATIVE TITLE:

9. Under the relevant traditional laws and customs of the Ngarrindjeri People, the Native Title Holders are those living Aboriginal people who:

- (a) hold in common the body of traditional law and custom governing the Determination Area; and
- (b) are recognised by the other Native Title Holders under those traditional laws and customs as having rights and interests in the Determination Area; and

(c) are related by means of a traditional principle of descent (including adoption) to the apical ancestors listed in Schedule 9.

APICAL ANCESTORS

1. Jim Gibson and his wife Katherine (also known as Caroline)
2. Kitty Russell who is the mother of Amy Russell
3. Turtaminyeri and her husband Whympie (also written as Wirimpie)
4. Maggie Dixon who is the mother of Jack, Harry and Alf Watson
5. Louisa Karpany, nee Kontinyeri (also known as 'Queen' Louisa, Louisa Ngewatainindjeri)
6. Dick Dath (also known as Old Jack Fisherman and Fisherman Jack - also written as Death and Dat) and his wife Mutinda (also known as Maltinda)
7. The man Wiwat-tateri (also known as Old Bull) and his wife
8. The woman who is the mother of George Walker and Joe Walker
9. Joe Walker and his wife Emily (also known as Emma Yriandinyeri)
10. Kini and her husband
11. Reuben Walker (also known as Reuben Rankine)
12. Mary Cameron and her husband
13. The sibling set Elizabeth (Libby), Charlotte, Mary, Tom, Lucy and Christina
14. Old Gollan
15. Bill Hunter
16. Sandy (also known as Old Sandy) and his wife
17. John Hodgkiss
18. John Davison
19. Minora and his wife Mary Ann
20. Jim Felix (also known as Charlie) and his wife
21. Grote (also known as Groot) and his wife who are parents of Albert Kartinyeri
22. Benjamin Sumner who is the father of Eva (also known as Darpung), John and Ellen Sumner
23. Kinduruwar who is the mother of Eva (also known as Darpung), John and Ellen Sumner
24. Mulparini who is the mother of Philip Sumner and Isabella Sumner
25. John Rankine
26. George Harris
27. Jack Liliwar and his wife
28. Minkuluti
29. Tripp husband of Kundiuwe
30. Eliza Tripp who is the mother of Bertie Tripp
31. The mother of Charlotte Varcoe

32. Pi:wi:ngangke (also known as Jumbo Campbell and Yulukipald) and his wife Renungi
33. Ngakun who is the father of Pulami (also known as King Peter or King Pullum) and his wives
34. Nangowane
35. James Jackson and his wife
36. Old Kropinyeri and his wife
37. Old Giles (also known as James Giles and Old Henry Giles) and his wife Nyainkinyeri
38. Donald Gollan (also known as Dan Gollan)
39. The woman who is the mother of Alf Gollan
40. Old man Stephens
41. Ada Stephens wife of Bob Stephens
42. Old Carter
43. George Spender
44. James Spender and his wife Betty Campbell
45. Long Billy
46. The woman Li:wuni (also known as Lewinne) who is the mother of Dorothy and Emily Lewinne
47. Fanny (also known as Cockeyed Fan)
48. Bewes (also known as Willie and Eli)
49. George Taylor
50. The man Wasa and his wife Petembetepiri
51. Priscilla Wasa mother of Fred Wasa and others
52. Old Dick Martin (also known as Jack Martin and Ku:jap) and his wife
53. Old Paddy Smith and his wife Louisa
54. Fred Long and his wife Matilda (also known as Lena Weyantali)
55. George Beck and his wife Mary Jane
56. Ngunaitponi (also known as Unaipon) and his wife
57. Dodd and his wife Margaret
58. The mother of Hannah Lawson
59. Tommy Lawson
60. Old Mary Lampard
61. Crofton Boothby and his wife Euphemia
62. Wanditinyeri (also known as Jenny Ponggi, Nelly Muldungine and Paleliwal; also written as Pongge and Pondji)
63. Edward and his wife Maggie
64. Bill Rollison

65. The man Pinkie and his wife
66. John Dunn
67. George Pantoni and his wife Amelia (nee Rankine)
68. Monarto (also known as Queen Monarta) and her husband 'King' John.
69. Buffalo and his wife
70. Old Makeri, father of George Makeri (also known as Muckray, Mukary)
71. William Poole (also written Pool) and his wife Lizzie

MATTERS DETERMINED:

THE COURT ORDERS, DECLARES AND DETERMINES BY CONSENT THAT:

Interpretation and 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) 'Adjacent land' and 'Subjacent land' have the meaning given to them in the *Harbors and Navigation Act 1993* (SA);

(c) 'Low Water Mark' means the mean low water mark;

(d) 'Native Title Land' means those areas described in Orders 4, 5 and 6;

(e) 'Natural Resources' means:

(i) any animal, plant, fish and bird life found on or in the land and waters of the Native Title Land, including but not limited to medicinal plants, wild tobacco, feathers and resin; and

(ii) any clays, soil, sand, gravel, rock or ochre found on or below the surface of the Native Title Land;

that have traditionally been taken and used by the Native Title Holders, but does not include:

(1) animals that are the private personal property of another;

(2) crops that are the private personal property of another; and

(2) minerals as defined in the *Mining Act 1971* (SA) and petroleum as defined in the *Petroleum and Geothermal Energy Act 2000* (SA);

(f) 'Natural Water Resources' means:

(i) water which flows, whether permanently or intermittently, within a river, creek, or stream;

(ii) the sea;

(iii) any natural collection of water, whether permanent or intermittent; and

(iv) water from an underground water source.

(g) 'Reserve' means a reserve as defined in the *National Parks and Wildlife Act 1972* (SA) and a wilderness protection area or wilderness protection zone under the *Wilderness Protection Act 1992* (SA); and

(h) in the event of an inconsistency between a description of an area in a schedule and the depiction of that area on a map in Schedule 2, the written description shall prevail.

Determination Area

2. Schedule 1 describes the external boundaries of the Ngarrindjeri Part A determination area (the Determination Area).

3. To the extent that the area covered by the Application extends beyond the Determination Area, it remains to be dealt with.

Areas within Determination Area where native title exists (Native Title Land)

4. Subject to the items 1, 2, 3 and 4 in Schedule 6 and the terms of these orders, native title exists in the land and waters described in Schedule 3.

5. Section 47A and s 47B of the Native Title Act apply to those parcels or parts of parcels described in Schedule 4 and Schedule 5 respectively. Subject to items 1, 2, 3 and 4 in Schedule 6, the prior extinguishment of native title rights and interests over those areas is disregarded and native title exists in those parcels or parts of parcels in accordance with the terms of these orders.

6. Upon registration of the Ngarrindjeri Part A Settlement Indigenous Land Use Agreement on the Register of Indigenous Land Use Agreements and subject to the terms of these orders, native title exists in Adjacent land and Subjacent land within the Determination Area that is vested in the Minister under section 15(1)(a) of the *Harbors and Navigation Act 1993* (SA), including the areas identified in Schedule 8 but excluding those areas identified in Schedule 6.

Areas within Determination Area where native title is extinguished

7. Native title has been extinguished in those areas described in Schedule 6.

8. Upon registration of the Ngarrindjeri Part A Settlement Indigenous Land Use Agreement on the Register of Indigenous Land Use Agreements, native title is extinguished in those areas described in Schedule 7 over which native title rights and interests are surrendered under that Indigenous Land Use Agreement (ILUA).

Native Title Holders

9. Under the relevant traditional laws and customs of the Ngarrindjeri People, the Native Title Holders are those living Aboriginal people who:

- (a) hold in common the body of traditional law and custom governing the Determination Area; and
- (b) are recognised by the other Native Title Holders under those traditional laws and customs as having rights and interests in the Determination Area; and
- (c) are related by means of a traditional principle of descent (including adoption) to the apical ancestors listed in Schedule 9.

Rights And Interests

10. Subject to paragraphs 11, 12 and 13, the nature and extent of the native title rights and interests in relation to the Native Title Land 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 Native Title Land, being:

- (a) the right to access and move about the Native Title Land;
- (b) the right to live and camp on the Native Title Land for the purpose of exercising the native title rights and interests, and for those purposes, to erect shelters and other structures on the Native Title Land;
- (c) the right to hunt and fish on the Native Title Land;
- (d) the right to gather and use the Natural Resources of the Native Title Land;
- (e) the right to share and exchange the Natural 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 and ceremonial 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 and transmit on the Native Title Land Ngarrindjeri laws and customs, Ngarrindjeri language and 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 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 required by traditional law and custom for the performance of ceremonies or cultural activities on the Native Title Land.

General limitations

- 11. The native title rights and interests are for personal, domestic and communal use but do not include commercial use of the Native Title Land or the resources from it.
- 12. The native title rights and interests described in Order 10 do not confer possession, occupation, use and enjoyment of the Native Title Land on the Native Title Holders to the exclusion of others.
- 13. 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 interest expressed in Order 10(f) (the right to use the Natural Water Resources of the Native Title Land) is subject to the *Natural Resources Management Act* (SA) 2004.

Other interests and relationship with Native Title

- 14. The nature and extent of other interests in the Native Title Land are:
 - (a) the interests of the Crown in right of the State of South Australia;
 - (b) in relation to those Reserves in Schedule 3:
 - (i) the rights and interests of the Crown of South Australia pursuant to the *National Parks and Wildlife Act 1972* (SA) and the *Wilderness Protection Act 1992* (SA); and
 - (ii) the rights and interests of the public to use and enjoy those Reserves consistent with the *National Parks and Wildlife Act 1972* (SA) and the *Wilderness Protection Act 1992* (SA);
 - (c) the rights and interests of the Crown in right of the State of South Australia pursuant to the *Harbors and Navigation Act 1993* (SA);
 - (d) the interests of the Aboriginal Lands Trust in the lands set out in Schedule 4 pursuant to the *Aboriginal Lands Trust Act 1966* (SA);
 - (e) 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), *Opal Mining Act 1995* (SA), *Fisheries Management Act 2007* (SA) and *Natural Resources Management Act 2004* (SA) all as amended from time to time;
 - (f) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;

- (g) 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;
- (h) 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), and the *Telecommunications Act 1991* (Cth), and the *Telecommunications Act 1997* (Cth), including rights:
- (a) to inspect land;
- (b) to install and operate telecommunication 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 on and in the vicinity of the Determination Area in performance of their duties; and
- (iv) under any lease, licence, access agreement or easement relating to its telecommunications facilities on the Determination Area;
- (i) 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 Determination Area including but not limited to the electricity infrastructure identified in Schedule 10 ("Existing Interests of SA Power Networks");
- (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 ("Easements");
- (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; and
- (j) the rights and interests of each of the Alexandrina Council, the City of Victor Harbor, the Coorong District Council, the District Council of Yankalilla, the Rural City of Murray Bridge and any replacement or successor councils;
- (i) under the *Local Government Act 1934* (SA) and 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);

15. The relationship between the native title rights and interests that are described in Order 10 and the other rights and interests described in Order 14 (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 the Native Title Act, do not extinguish them;

(c) in relation to the land and waters set out in Schedules 4 and 5, the non-extinguishment principle applies in relation to the grant or vesting of the land, or the creation of any other prior interest in the land.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

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

17. The Ngarrindjeri Aboriginal Corporation 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.

18. The Applicant (through the prescribed body corporate), the State or any other respondent 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 6 of this Order; or

(b) to determine the effect on native title rights and interests of any public works as referred to in Schedule 6 of this Order; or

(c) in the event that the Ngarrindjeri Part A Settlement Indigenous Land Use Agreement is not registered on the register of Indigenous Land Use Agreements within 12 months from the date of this Order.

SCHEDULES

Schedule 1: External Boundary of the Determination Area

[See NNTR attachment 1: "Schedule 1 - External Boundary of the Determination Area"]

Schedule 2 - Maps of the Determination Area Part A: External Boundaries of Determination Area

[See NNTR attachment 2: "Schedule 2 - Maps Part A - External Boundaries of Determination Area"]

Schedule 2: Maps of the Determination Area Part B: Maps depicting Native Title Land and areas within the Determination Area where native title is extinguished

[See NNTR attachments 3-11: "Schedule 2 - Maps Part B - Maps where native title is extinguished - Parts 1 to 9"]

Schedule 3: Land and waters where Native Title exists

[See NNTR attachment 12: "Schedule 3 - Land and waters where Native Title exists"]

Schedule 4: Areas where prior extinguishment of Native Title is disregarded by virtue of the application of Section 47A of the Native Title Act

[See NNTR attachment 13: "Schedule 4 - extinguishment disregarded - Section 47A"]

Schedule 5: Areas where prior extinguishment of Native Title is disregarded by virtue of the application of Section

47B of the Native Title Act

[See NNTR attachment 14: "Schedule 5 - extinguishment disregarded - Section 47B"]

Schedule 6: Land and waters where Native Title has been extinguished

[See NNTR attachment 15-18: "Schedule 6 - Land and waters where Native Title has been extinguished - Parts 1 to 4"]

Schedule 7: Areas where Native Title has been surrendered pursuant to the Ngarrindjeri Part A Settlement Indigenous Land Use Agreement

[See NNTR attachment 19: "Schedule 7 - Native Title has been surrendered pursuant to ILUA"]

Schedule 8: Areas where Native Title exists pursuant to the Ngarrindjeri Part A Settlement Indigenous Land Use Agreement

[See NNTR attachment 20: "Schedule 8 - Native Title exists pursuant to ILUA"]

Schedule 9: Apical Ancestors

[See NNTR attachment 21: "Schedule 9 - Apical Ancestors"]

Schedule 10: Existing interests of SA Power Networks

[See NNTR attachment 22: "Schedule 10 - Existing interests of SA Power Networks"]

Schedule 11: Native Title action filed by Ngarrindjeri & others Native Title claim on 30-Sep-1998 - Applicants and Respondents

[See NNTR attachment 23: "Schedule 11 - Native Title action filed - Applicants and Respondents"]

REGISTER ATTACHMENTS:

1. Schedule 1 - External Boundary of the Determination Area, 3 pages - A4, 14/12/2017
2. Schedule 2 – Maps Part A - External Boundaries of Determination Area, 10 pages - A4, 14/12/2017
3. Schedule 2 - Maps Part B - Maps where native title is extinguished - Part 1 of 9, 44 pages - A4, 14/12/2017
4. Schedule 2 - Maps Part B - Maps where native title is extinguished - Part 2 of 9, 48 pages - A4, 14/12/2017
5. Schedule 2 - Maps Part B - Maps where native title is extinguished - Part 3 of 9, 54 pages - A4, 14/12/2017
6. Schedule 2 - Maps Part B - Maps where native title is extinguished - Part 4 of 9, 51 pages - A4, 14/12/2017
7. Schedule 2 - Maps Part B - Maps where native title is extinguished - Part 5 of 9, 51 pages - A4, 14/12/2017
8. Schedule 2 - Maps Part B - Maps where native title is extinguished - Part 6 of 9, 52 pages - A4, 14/12/2017
9. Schedule 2 - Maps Part B - Maps where native title is extinguished - Part 7 of 9, 43 pages - A4, 14/12/2017
10. Schedule 2 - Maps Part B - Maps where native title is extinguished - Part 8 of 9, 49 pages - A4, 14/12/2017
11. Schedule 2 - Maps Part B - Maps where native title is extinguished - Part 9 of 9, 36 pages - A4, 14/12/2017
12. Schedule 3 - Land and waters where Native Title exists, 22 pages - A4, 14/12/2017
13. Schedule 4 - extinguishment disregarded - Section 47A, 4 pages - A4, 14/12/2017
14. Schedule 5 - extinguishment disregarded - Section 47B, 3 pages - A4, 14/12/2017

15. Schedule 6 - Land and waters where Native Title has been extinguished - Part 1 of 4, 356 pages - A4, 14/12/2017
16. Schedule 6 - Land and waters where Native Title has been extinguished - Part 2 of 4, 356 pages - A4, 14/12/2017
17. Schedule 6 - Land and waters where Native Title has been extinguished - Part 3 of 4, 356 pages - A4, 14/12/2017
18. Schedule 6 - Land and waters where Native Title has been extinguished - Part 4 of 4, 354 pages - A4, 14/12/2017
19. Schedule 7 - Native Title has been surrendered pursuant to ILUA, 1 page - A4, 14/12/2017
20. Schedule 8 - Native Title exists pursuant to ILUA, 1 page - A4, 14/12/2017
21. Schedule 9 - Apical Ancestors, 3 pages - A4, 14/12/2017
22. Schedule 10 - Existing interests of SA Power Networks, 25 pages - A4, 14/12/2017
23. Schedule 11 - Native Title action filed - Applicants and Respondents, 8 pages - A4, 14/12/2017

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.