



# Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: VID21/2019  
NNTT number: VC2012/001

**Application Name:** Janice Austin & Ors on behalf of the Eastern Maar People and State of Victoria & Ors (Eastern Maar People)

**Application Type:** Claimant

**Application filed with:** Federal Court of Australia

**Date application filed:** 14/12/2012

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**Current stage(s):** Notification Complete, Part Determination

**Registration information:** Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.

**Date claim entered on Register of Native Title Claims:** 20/03/2013

**Registration decision status:** Accepted for registration

**Registration history:** Registered from 20/03/2013

**Date claim / part of claim determined:** 21/03/2024 , 28/03/2023

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**Applicants:** Mrs Janice Austin, Vicki Couzens, Jidah Clark, Thomas Clarke, Sheree Lowe

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## Additional Information

On 28/03/2023, the Federal Court made a determination that native title exists in parts of the application area – see Austin on behalf of the Eastern Maar People v State of Victoria [2023] FCA 237. That determination was registered on the National Native Title Register (NNTR) on 31/03/2023. On 18/12/2023 & 21/03/2024, the Federal Court made orders to dismiss parts of the application area. On 21/03/2024, the Federal Court made a further determination that native title exists in parts of the application area – see Austin on behalf of the Eastern Maar People v State of Victoria (No 2) [2024] FCA 266. That determination was registered on the NNTR on 17/04/2024. Pursuant to s 190 (4)(e) the application remains on the Register of Native Title Claims only to the extent that it relates to the undetermined area. A map and technical description showing the area of the application that remains to be determined, as interpreted by the National Native Title Tribunal, are attached for information only. These attachments do not form part of the application.

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### Persons claiming to hold native title:

5. The native title claim group is the Eastern Maar peoples, being those descendants, including by adoption, of the following persons, who identify as being from the eastern domain of the Maar speaking people and are recognised as being from the eastern domain by the Eastern Maar people: King of Port Fairy and Eliza, Old Jack (father of John Dawson), Charlie and Alice (parents of Albert Austin), Samuel Robinson and Mary Caramut, Lizzie (mother of Frank Clarke), Robert and Lucy (parents of Alice Dixon), Barney Minimalk, Nellie Whiturboin, Louisa (mother of William Rawlings).

6. The reference to adoption in paragraph 5 is a reference to a person who was reared up by members of the Eastern Maar peoples, who identifies as being an Eastern Maar person, and is recognised by the Eastern Maar peoples as being an Eastern Maar person.

### Native title rights and interests claimed:

#### Native title where traditional rights are wholly recognisable

11. Paragraph 12 applies to every part of the claim area, that:

- (a) has not been, and is not, covered by a valid or validated act that is inconsistent to any extent with the right referred to in paragraph 12 (in this Schedule E, "**previous act**"); or if it has been or is so covered, any of such part where the previous act is one whose extinguishment of native title rights and interests is required by section 47A or 47B of the *Native Title Act* to be disregarded; and
- (b) is not subject to the public right to navigate or the public right to fish.

12. Where this paragraph applies the native title rights possessed under traditional law and customs and recognised by the common law of Australia is the right of possession, occupation, use and enjoyment of land and waters as against all others.

#### Native title where traditional rights are only partially recognisable

13. Paragraph 14 applies to every part of the claim area to which paragraph 12 does not apply.

14. Where this paragraph applies, the native title rights possessed under traditional law and customs are the rights to:

- (a) have access to, remain on and use for any purpose the land and waters;
- (b) access and take for any purpose the resources of the land and waters;
- (c) protect places and resources on the land and waters.

#### Area covered by the native title and who holds the rights

15. Each of the native title rights referred to in each of paragraphs 12 and 14 exists in relation to the whole of the area referred to in those paragraphs respectively and is held by all members of the native title claim group albeit that the exercise of the rights is conditioned upon a sense of localised attachment and responsibility, social rules, age, degrees of knowledge and physical and mental capacity.

Activities currently carried on

16. Activities in exercise of the native title rights referred to in Schedule E are all such activities as are contemplated by those rights and interests and include the activities identified in Schedule G.

#### Rights subject laws of Australia

17. The members of the native title claim group acknowledge that their native title rights and interests are subject to and exercisable in accordance with valid and current laws of the Commonwealth and the State of Victoria.

#### Definition

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"Resources" does not include minerals or petroleum wholly owned by the Crown.

**Application Area:** **State/Territory:** Victoria  
**Brief Location:** South West Victoria  
**Primary RATSIB Area:** Victoria  
**Approximate size:** 2297.3033 sq km  
(Note: There may be areas within the external boundary of the application that are not claimed.)  
**Does Area Include Sea:** Yes

**Area covered by the claim (as detailed in the application):**

**Area covered by the Application**

7. The area covered by the application (**claim area**), is all the parcels of land and waters which are within the area described in **Attachment B** [Attachment B is an attachment to this Register extract] and shown in the map attached at **Attachment C (claim region)** [Attachment C is an attachment to this Register extract] and which are not excluded by paragraph 8.

**Areas not covered by the application**

8. The following areas within the claim region referred are not covered by the application, except where any extinguishment by the acts mentioned is required by sections 47A or 47B of the *Native Title Act* to be disregarded:  
(a) any area that, when the application is made, is subject to any of the following kinds of acts as they are defined in either the *Native Title Act 1993*, as amended (where the act in question is attributable to the Commonwealth), or *Land Titles Validation Act 1994 (Vic)*, as amended (where the act in question is attributable to the State of Victoria):

- (i) Category A past acts;
- (ii) Category A intermediate period acts;
- (iii) Category B past acts that are wholly inconsistent with the continued existence of any native title rights or interests;
- (iv) Category B intermediate period acts that are wholly inconsistent with the continued existence of any native title rights or interests;

(b) any area in relation to which a previous exclusive possession act under section 13H or 13I of the *Land Titles Validation Act 1994 (Vic)* was done and that act is attributable to the State of Victoria;

(c) any area in relation to which a previous exclusive possession act as defined by section 23B (including section 23B(7)) of the *Native Title Act* was done in relation to the area and the act was attributable to the Commonwealth; and (sic)

(d) any area where native title rights and interests have otherwise been wholly extinguished;

(e) specifically, any area where there has been:

- (i) an unqualified grant of an estate in fee simple;
- (ii) a public work as defined in section 253 of the *Native Title Act*, or
- (iii) an existing dedicated public road.

**Attachments:**

1. VC2012\_001 Map of Undetermined Area, 1 page - A4, 21/03/2024
2. VC2012\_001 Description of Undetermined Area, 2 pages - A4, 21/03/2024
3. Description of Claim Area, Attachment B of the Application, 4 pages - A4, 14/12/2012
4. Map of Claim Area, Attachment C of the Application, 1 page - A4, 14/12/2012

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End of Extract