



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): SAD6026/1998  
NNTT Number: SCD2011/002

**Determination Name:** [Turner v State of South Australia](#)

**Date(s) of Effect:** 18/11/2011

**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:** 18/11/2011

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

The River Murray and Mallee Aboriginal Corporation RNTBC  
Trustee Body Corporate  
Level 4, 345 King William Street  
ADELAIDE BC SA 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](http://www.oric.gov.au)*

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

3. The Native Title Holders are all those Aboriginal people who:

- (a) hold in common the body of traditional laws and customs governing the Determination Area;
- (b) pursuant to and by those laws and customs, have traditional rights and interests in, and are connected to, the Determination Area, having regard to the relevant normative rules relating to:
  - (i) ancestral descendedness;
  - (ii) lifetime (or prolonged) association with country; and
  - (iii) knowledge of country; and

(c) are recognised by senior Native Title Holders under those traditional laws and customs as having rights and interests in the Determination Area,

being at the date of this Order all those of the Aboriginal people listed below and their descendants (whether biological or social) who are living at that date and are recognised in accordance with subparagraph (c) of this paragraph:

3.1 'King' John and his wife 'Queen' Monarta. Children of this union include Jerry Mason (also known as King Jerry Mason) whose wife was Jinny Christmas (also known as Jenny Christmas);

3.2 The unnamed mother of Jinny Christmas;

3.3 Charles Nattoo (also written Netoon, Natoon) whose wife was Lizzie;

3.4 Annie Disher, the mother of Sam and Richard Disher, including:

(i) The children of Sam Disher and Annie Perry; and

(ii) The children of Richard Disher and Annie McLean, who was the sister of Jack McLean, and together were the children of John McLean;

3.5 Tommy Bookmark (also known as Bookmark Tommy) whose known wife was Ellen Bookmark. Children of this union include Mary Jane, who is known to have married George Beck;

3.6 The unnamed mother of George Lindsay, Bella Lindsay and Ted Lindsay;

3.7 John Perry;

3.8 Nelly Perry;

3.9 Willie Robinson/Scrubber, whose partner was Emily Turvy;

3.10 James Wanganeen (also known as James Moore);

3.11 The children of John Mack;

3.12 The unnamed mother and father of Fanny Pennyfather (also known as Halfpenny);

3.13 Frank Fletcher and his wife Esther;

3.14 The children of Winnie Murray (nee Reed);

#### **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) 'the Vesting' means the vesting of a Park or Reserve in the Crown pursuant to the NPWA as listed in Schedule 4; and

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

2. Native title exists in the areas described in Schedule 1 with the exception of those areas described in paragraph 9 and Schedule 3 ('the Determination Area').

#### **NATIVE TITLE HOLDERS**

3. The Native Title Holders are all those Aboriginal people who:

(a) hold in common the body of traditional laws and customs governing the Determination Area:

(b) pursuant to and by those laws and customs, have traditional rights and interests in, and are connected to, the Determination Area, having regard to the relevant normative rules relating to:

- (i) ancestral descendedness;
- (ii) lifetime (or prolonged) association with country; and
- (iii) knowledge of country; and

(c) are recognised by senior Native Title Holders under those traditional laws and customs as having rights and interests in the Determination Area,

being at the date of this Order all those of the Aboriginal people listed below and their descendants (whether biological or social) who are living at that date and are recognised in accordance with subparagraph (c) of this paragraph:

3.1 'King' John and his wife 'Queen' Monarta. Children of this union include Jerry Mason (also known as King Jerry Mason) whose wife was Jinny Christmas (also known as Jenny Christmas);

3.2 The unnamed mother of Jinny Christmas;

3.3 Charles Nattoon (also written Netoon, Natoon) whose wife was Lizzie;

3.4 Annie Disher, the mother of Sam and Richard Disher, including:

- (i) The children of Sam Disher and Annie Perry; and
- (ii) The children of Richard Disher and Annie McLean, who was the sister of Jack McLean, and together were the children of John McLean;

3.5 Tommy Bookmark (also known as Bookmark Tommy) whose known wife was Ellen Bookmark. Children of this union include Mary Jane, who is known to have married George Beck;

3.6 The unnamed mother of George Lindsay, Bella Lindsay and Ted Lindsay;

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3.9 Willie Robinson/Scrubber, whose partner was Emily Turvy;

3.10 James Wanganeen (also known as James Moore);

3.11 The children of John Mack;

3.12 The unnamed mother and father of Fanny Pennyfather (also known as Halfpenny);

3.13 Frank Fletcher and his wife Esther;

3.14 The children of Winnie Murray (nee Reed);

#### RIGHTS AND INTERESTS

4. Subject to paragraphs 5, 6, 7 & 8, 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;
- (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 take the natural water resources of the Determination Area and insofar as native title rights and interests may provide a right to take water from watercourses or lakes, that right is limited to a right to take water from such for domestic use;

(f) the right to camp and, for the purpose of exercising the native title rights and interests, to erect temporary 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.

#### GENERAL LIMITATIONS

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

6. 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.

7. 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 paragraph 4(e) (the right to use the natural water resources of the Determination Area) does not include the right to control and manage the flow of water and is subject to the Natural Resources Management Act 2004 (SA).

8. For the avoidance of doubt any operation of s 47A or s 47B of the Native Title Act over parts of the Determination Area does not affect the nature of the native title rights and interests held over those parts which remain as set out in paragraph 4.

9. Native title does not exist in the areas and resources described in paragraphs 10, 11 and 13 and in those parts of the claim area covered by valid Public Works pursuant to ss 24JA & 24JB of the Native Title Act.

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

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

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

(c) a naturally occurring underground accumulation of a regulated substance as defined in s 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 s 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 s 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 10 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 s 4 of the Petroleum and Geothermal Energy Act 2000 (SA);

(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 s 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.

11. Native title rights and interests do not exist in respect of those parts of the Determination Area being any house, shed or other building or airstrip or any dam or other stock watering point constructed pursuant to the pastoral leases referred to in paragraph 15(b) below constructed prior to the date of this Determination. These areas include any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements referred to.

12. To be clear, paragraph 11 does not preclude the possibility of further extinguishment, according to law, of native title over other limited parts of the Determination Area by reason of the construction of new pastoral improvements of the kind referred to in paragraph 11 after the date of this determination.

13. Native title rights do not exist in the areas covered by Public Works (including the land defined in s 251D of the Native Title Act) which were constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date.

14. 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, subject to the River Murray and Crown Lands Indigenous Land Use Agreement agreed between the Applicants and the State of South Australia and due to be entered into contemporaneously with this Order ('the River Murray and Crown Lands ILUA').

#### OTHER INTERESTS & RELATIONSHIP WITH NATIVE TITLE

15. 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 the holder of the Calperum Pastoral Lease, being Crown Record No.1381/44, Pastoral Lease No.2457 and Crown Record No. 1381/45, Pastoral Lease No 2459;

(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:

(i) rights and interests granted or recognised pursuant to the Mining Act 1971 (SA), Petroleum and Geothermal Energy Act 2000 (SA), Opal Mining Act 1995 (SA), Natural Resources Management Act 2004 (SA) and Crown Lands Management Act 2009 (SA), all as amended from time to time;

(ii) the interests of persons holding licences, permits, statutory fishing rights, or other statutory rights pursuant to:

(1) the Fisheries Management Act 2007 (SA), or regulations or management plans made under that Act;

(2) the Fisheries Management Act 1991 (Cth), or regulations or management plans made under that Act;

(3) any other legislative scheme for the control, management and exploitation of the living resources of the Determination Area

(d) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;

(e) so far as confirmed pursuant to s 39 of the Native Title (South Australia) Act 1994 (SA), public access to and enjoyment of the following places:

(i) waterways;

(ii) beds and banks or foreshores of waterways;

(iii) beaches;

(iv) stock-routes;

- (v) areas that were public places as at 31 December 1993;
  - (f) any public right to fish;
  - (g) the public right to navigate;
  - (h) 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;
- (i) the rights and interests of Telstra Corporation Limited (or its corporate successor):
- (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;
    - (3) to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunications facilities; and
    - (4) for its employees, agents or contractors to access its telecommunications facilities in and in the vicinity of the Determination Area in performance of their duties;
  - (iii) under any licences, access agreements or easements relating to its telecommunications facilities in the Determination Area.
- (j) the rights, interests and entitlements of ETSA Utilities (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 HEI Utilities Development Limited) and its related and successors 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) (the Electricity Act) and telecommunications facilities and infrastructure within the Determination Area (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 within 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 within the Determination Area (Easements);
  - (vi) to provide its employees, agents or contractors with access to Existing Infrastructure, New Infrastructure and the Easements within 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 ETSA Utilities 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.
- (k) the rights and interests of all parties under the River Murray and Crown Lands ILUA;
- (l) the rights and interests of Envestra (SA) Limited as holder of natural gas Pipeline Licence No. 11 (PL 11) held pursuant to the Petroleum and Geothermal Act 2000 (SA) together with all associated rights and interests conferred by statute, grants of easements or otherwise.

16. Subject to paragraph 17, the relationship between the native title rights and interests in the Determination Area

that are described in paragraph 4 and the other rights and interests described in paragraph 15 ('the Other Interests') is, as follows:

- (a) The Other Interests co-exist with the native title rights and interests;
- (b) The determination does not affect the validity of those Other Interests;
- (c) 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,
- (d) 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 subject to paragraph 16(e), 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 24JA of the Native Title Act, do not extinguish them (save for where otherwise provided by the River Murray ILUA;
- (e) in relation to the Other Interests referred to in paragraph 15(e), 15(f) and 15(g), the native title rights and interests yield to those Other Interests, to the extent of any inconsistency;
- (f) in the Schedule 4 Areas, the native title rights and interests continue to exist but have no effect in relation to the Vesting.
- (g) the native title is 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.

17. For the avoidance of doubt, the relationship between the Aboriginal-held interests listed in Schedule 5 and the native title rights and interests in the Determination Area that are described in paragraph 4 is governed by the non-extinguishment principle as defined in the s 238 of the Native Title Act.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

18. The native title is to be held in trust.

19. The River Murray and Mallee Aboriginal Corporation is to:

- (a) be the prescribed body corporate for the purposes of s 56(2) of the Native Title Act; and
- (b) perform the functions mentioned in s 57(1) of the Native Title Act.

20. 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 13 and 14 of this Order;
- (b) to determine the effect on native title rights and interests of any public works as referred to in paragraphs 13 or 14 of this Order; or
- (c) to determine whether a particular area is included in the description in paragraph 11 or Schedule 3 of this Order.

SCHEDULE 1 ' LOCATION OF AND AREAS COMPRISING THE DETERMINATION AREA

Subject to paragraph 4 of this Schedule (and to paragraphs 13 and 14 of this Order), the Determination Area is comprised of:

1. All those parts of Calperum Pastoral Lease (Crown Record No.1381/44, Pastoral Lease No.2457 and Crown Record No.1381/45, Pastoral Lease No.2459) within a distance of 8 kms from the existing cadastral boundary where the Calperum Pastoral Lease abuts the stem of the River Murray; and
2. The land and waters described in the attached Annexure A (see NNTR Attachment 1: 'Annexure A of Schedule 1')
3. The bed and banks and waters:
  - a. of the main stem of the River Murray to the existing cadastral boundaries on either side of the said waters; and

b. all those portions of anabranches, tributaries and creeks of the River Murray to the extent that they are not covered by a parcel identifier and lie within a distance of 8 kms from the main stem of the River Murray

within South Australia between the South Australian and New South Wales border (longitude 141 East) and longitude 139.65027 East;

4. In relation to the land parcels marked with an asterisk in Annexure A, those parts which were not at any time the subject of a freehold estate or a lease conferring the right of exclusive possession and which were at 9 April 1998 not subject to either:

a. one or more infrastructure purpose licences; or

b. a freehold estate, lease, reservation, proclamation, dedication, condition, permission or authority (excluding an infrastructure purpose licence) of a kind referred to in s 47B(1)(b)(ii) of the Native Title Act.

#### SCHEDULE 2 ' MAP OF THE DETERMINATION AREA

(See NNTR Attachment 2: 'Schedule 2 ' Map of the determination area')

#### SCHEDULE 3 ' AREAS WITHIN THE EXTERNAL BOUNDARIES OF THE DETERMINATION AREA WHERE NATIVE TITLE DOES NOT EXIST

1. All roads which have been established under South Australian legislation.

#### SCHEDULE 4 ' AREAS WHERE THE NON-EXTINGUISHMENT PRINCIPLE APPLIES BY REASON OF A VESTING

PARCEL IDENTIFIER	TITLE	HUNDRED	TENURE
D27120A3	CR5770/259	OH(Renmark)	RM National Park
H836200S477	CR5779/259	OH(Renmark)	RM National Park
H836200S478	CR5779/259	OH(Renmark)	RM National Park
H836200S963	CR5779/259	OH(Renmark)	RM National Park
PARCEL IDENTIFIER	TITLE	HUNDRED	TENURE
H836200S1265	CR5779/259	OH(Renmark)	RM National Park
H836200S1267	CR5779/259	OH(Renmark)	RM National Park
H836200S1268	CR5779/259	OH(Renmark)	RM National Park
H836200S1272	CR5779/259	OH(Renmark)	RM National Park
H741500S177	CR5779/259	OH(Renmark)	RM National Park
H741500S198	CR5779/259	OH(Renmark)	RM National Park
H741500S210	CR5779/259	OH(Renmark)	RM National Park

Ptn H710600S112 '

excluding Customs

House, its environs

& 251D area CR5394/393 Murtho Chowilla GR

H836200S1229 CR5394/393 Murtho Chowilla GR

Ptn H740500S840

which was

formerly s 858 CR5755/974 OH(Renmark) Loch Luna GR

Cogdogla IA



Ptn H740500S873

which was

formerly s 859 CR5755/974 OH(Renmark) Loch Luna GR

Cogdogla IA

Ptn D36126A51

within 8 km

of the River Murray CR5694/147 OH(Renmark) Cooltong CP

SCHEDULE 5 ' AREAS WHERE EXTINGUISHMENT OF NATIVE TITLE MUST BE DISREGARDED BY REASON OF s 47A OF THE NATIVE TITLE ACT 1993 (Cth)

The following parcels:

1. D48467Q8
2. D48467Q10
3. H740200S1039
4. H741300S72
5. H741300S80
6. H741300S83
7. H741300S84

#### SCHEDULE 6 - SECTION 47B PARCELS

1. The Parties agree that, for the purposes of this Consent Determination, s 47B applies as indicated in the column entitled 'Application of s 47B' in the Annexure A to Schedule 1.
2. In respect of parcels marked 'Y', s 47B applies to the entire parcel;
3. In respect of parcels marked 'N', s 47B does not apply to the parcel.
4. In respect of parcels marked 'P', s 47B applies only to the extent that the parcel was not covered by a licence for infrastructure purposes at 9 April 1998.

#### **REGISTER ATTACHMENTS:**

1. Attachment 1 Annexure A of Schedule 1, 11 pages - A4, 18/11/2011
2. Attachment 2 Schedule 2 - Map of Determination Area, 33 pages - A4, 18/11/2011

*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.*