



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): SAD208/2010
NNTT Number: SCD2013/001

Determination Name: [De Rose v State of South Australia](#)

Date(s) of Effect: 16/07/2013

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: 16/07/2013

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Please note that the native title holders and the State of South Australia have confirmed that the reference in Order 19(c) to 'paragraph 99 of this Order' is meant to be a reference to 'paragraph 9 of this Order'.

REGISTERED NATIVE TITLE BODY CORPORATE:

Tjayiwara Unmuru Aboriginal Corporation RNTBC
Agent Body Corporate
C/- SANTS,
Level 4, 345 King William Street
ADELAIDE South Australia 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

COMMON LAW HOLDER(S) OF NATIVE TITLE:

3. Under the relevant traditional laws and customs of the Western Desert Bloc, the native title holders comprise those Aboriginal people who have a spiritual connection to the Tjayiwara Unmuru Determination Area and the Tjukurpa associated with it because:

(a) the Determination Area is his or her country of birth (which is also reckoned by the area where his or her mother lived and travelled during pregnancy); and/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;and/or

(c) he or she has an affiliation with the Determination Area through a parent or grandparent with a connection to the Determination Area as specified in subparagraphs (a) or (b) above; and

he or she is recognised under relevant Western Desert traditional laws and customs by other members of the native title holders as having rights and interests in the Determination Area;

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) 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;

2. Native title exists in the areas described in Schedule 1 with the exception of those areas described in paragraphs 9, 11, 12 and 13 (the Determination Area).

Native Title Holders

3. Under the relevant traditional laws and customs of the Western Desert Bloc, the native title holders comprise those Aboriginal people who have a spiritual connection to the Tjayiwara Unmuru Determination Area and the Tjukurpa associated with it because:

(a) the Determination Area is his or her country of birth (which is also reckoned by the area where his or her mother lived and travelled during pregnancy); and/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; and/or

(c) he or she has an affiliation with the Determination Area through a parent or grandparent with a connection to the Determination Area as specified in sub paragraphs (a) or (b) above; and

he or she is recognised under relevant Western Desert traditional laws and customs by other members of the native title holders as having rights and interests in the Determination Area;

Rights and Interests

4. Subject to paragraphs 5, 6 and 7, 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 on 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, stone and resin;

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

(e) the right to live, to camp and to erect shelters on the Determination Area;

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

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

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

- (i) the right to teach on the Determination Area the physical and spiritual attributes of locations and sites within the Determination Area;
- (j) the right to maintain and protect sites and places of significance to members of the native title holders under their traditional laws and customs on the Determination Area;
- (k) the right to be accompanied on the Determination Area by those people who, though not members of the native title holders, are:
 - (i) spouses of members of the 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
- (l) the right to speak for country and make decisions about the use and enjoyment of the Determination Area by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by members of the native title holders.

General Limitations

- 5. 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.
- 6. The native title rights and interests do not confer possession, occupation, use and enjoyment of those lands and waters 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 the Commonwealth, including the common law.

For the avoidance of doubt, the native title interest expressed in paragraph 4(d) (the right to use the natural water resources of the Determination Area) is subject to the *Natural Resources Management Act 2004* (SA).

- 8. Native title does not exist in the areas and resources described in paragraphs 9, 11, 12 and 13 herein.
- 9. Native title rights and interests have been extinguished 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(a) below and 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.
- 10. To be clear, paragraph 9 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 9 after the date of this determination.
- 11. Native title does not exist in those areas described in Schedule 3, as it has been extinguished.
- 12. 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 section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth; or
 - (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 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 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.

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.

Other Interests & Relationship with Native Title

15. 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:

Lease name	Pastoral Lease No	Crown Lease
Portion of Tieyon	2495	CL 1628/19
Ayers Range South	2491	CL 1433/13

(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;

(f) the rights and interests of all parties to the following Pastoral ILUAs:

(i) Tieyon Station Pastoral ILUA; and

(ii) Ayers Range South Pastoral ILUA.

16. Subject to paragraph 5, 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 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 ss 24JA or 24IB of the Native Title Act, do not extinguish them;

(c) 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.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

17. On this determination coming into effect, the native title is not to be held in trust.

18. Tjayiwara Unmuru Aboriginal Corporation ICN 7854 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.

19. 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 paragraph 14 of this Order; or

(c) to determine whether a particular area is included in the description in paragraph 99 of this Order.

SCHEDULE 1 - Description of the external boundary of the Determination Area

Commencing at the north-western corner of Piece 3000 in Deposited Plan 35731, Out of Hundreds (Alberga), Pastoral Lease 2491 (Ayers Range South), being a point on the State Border between the State of South Australia and the Northern Territory of Australia; thence easterly to the north-eastern corner of the said Piece 3000; easterly to the north-western corner of Piece 3001 in Deposited Plan 35731, Out of Hundreds (Alberga), Pastoral Lease 2491 (Ayers Range South); easterly to the north-eastern corner of the said Piece 3001; easterly along the northern boundary of Section 1319, Out of Hundreds (Alberga) to the north-western corner of Piece 3002 in Deposited Plan 35731, Out of Hundreds (Alberga), Pastoral Lease 2491 (Ayers Range South); easterly to the north-eastern corner of the said Piece 3002; easterly to Longitude 133.900000° east, being a point on the northern boundary of Block 1227, Out of Hundreds (Abminga), Pastoral Lease 2495 (Tieyon); generally southerly to Longitude 133.850000° east, being a point on the southern boundary of the said Block 1227; westerly to the south-eastern corner of Block 1213, Out of Hundreds (Abminga); northerly to the north-eastern corner of Block 1212, Out of Hundreds (Abminga); westerly to the north-western corner of the said Block 1212; northerly to the south-eastern corner of the aforementioned Piece 3002; generally westerly to the south-western corner of the said Piece 3002; generally westerly to the south-eastern corner of the aforementioned Piece 3001; generally westerly to the south-western corner of the said Piece 3001; generally westerly to the south-eastern corner of the aforementioned Piece 3000; generally westerly to the south-western corner of the said Piece 3000; thence northerly along the western boundary of the said Piece 3000 to the point of commencement.

SCHEDULE 2 - Map of the Determination Area

[See NNTR attachment 1: "Schedule 2 - Map of the Determination Area"]

SCHEDULE 3 - Areas within the external boundaries of the Determination Area where native title has been extinguished

The following areas within the external boundaries of the claim area are agreed to have been excluded from the Determination Area by reason of the fact that native title has been extinguished in those areas:

1. All roads including the corridor of the Stuart Highway which have been delineated in a public map pursuant to s 5(d)(ii) of the *Crown Lands Act 1929* (SA) or s 70(3) or (4) of the *Crown Land Management Act 2009* (SA) or which have otherwise been validly established pursuant to South Australian statute or common law as shown in red on the map at Schedule 2;
2. The land parcels comprising that portion of the Central Australian Railway excised from the native title claim area, namely, portion of section 1317 and sections 1318 and 1319 in OH (Alberga);
3. Allotment 3003 in Deposited Plan 35731.

The parties accept that in those areas, the native title holders would have had the native title rights and interests as recognised in Paragraph 4 of this Order but for the acts that extinguished native title.

REGISTER ATTACHMENTS:

1. Schedule 2 - Map of the Determination Area, 1 page - A3, 16/07/2013

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.