



HIGH COURT OF AUSTRALIA

9 April 2025

STUART & ORS v SOUTH AUSTRALIA & ORS
[2025] HCA 12

Today, the High Court unanimously allowed an appeal from a decision of the Full Court of the Federal Court of Australia.

In applications to the Federal Court, the appellants, on behalf of the Arabana people, and applicants representing the Walka Wani people, both claimed that they held native title within the meaning of s 223(1) of the *Native Title Act 1993* (Cth) over an area of land in the vicinity of the township of Oodnadatta in South Australia ("the Overlap Area"). The Overlap Area abuts a large area of land which was the subject of an earlier claim by the Arabana people, in respect of which the Federal Court had made a consent determination for the purposes of s 225 of the *Native Title Act* that the Arabana people held native title. The Overlap Area was not included in that claim because the first respondent had proposed to transfer much of the area to the Aboriginal Lands Trust established under the *Aboriginal Lands Trust Act 1966* (SA), although that proposed transfer never eventuated.

On 21 December 2021, the primary judge dismissed the appellants' application for a determination of native title on the basis that, while the forebears of the Arabana people possessed native title rights and interests within the meaning of s 223(1) of the *Native Title Act* in the Overlap Area at sovereignty under the traditional laws and customs observed by them, the appellants had not established that they maintained their connection with the Overlap Area. The primary judge also concluded that the Walka Wani people had non-exclusive native title rights and interests within the meaning of s 223(1) in the Overlap Area. The Full Court of the Federal Court upheld an appeal against that latter part of the primary judge's decision, and the Walka Wani applicants did not seek special leave to appeal that part of the decision of the Full Court in this Court.

The High Court, by majority, held that, while the primary judge correctly identified the principles to be applied, his Honour erred in his application of those principles in assessing whether the Arabana people held native title within the meaning of s 223(1) of the *Native Title Act* by focussing on whether there were physical acts of acknowledgment and observance of traditional laws and customs in the Overlap Area which demonstrated "connection", rather than asking whether the Arabana people, by their traditional laws and customs, had a "connection" with the Overlap Area. By majority, the Court held that, where the relevant laws and customs demonstrate that "connection" for the purposes of s 223(1)(b) may be established other than by physical acts of acknowledgment or observance within the relevant area, physical acts may not be necessary to demonstrate such "connection".

Accordingly, the High Court remitted the proceeding to the Full Court of the Federal Court, or if the Full Court determines to remit it to a single judge of the Federal Court for that Court, to consider making a determination under s 225 of the *Native Title Act* as to whether the Arabana people hold native title rights and interests in relation to the Overlap Area.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.