National Native Title Tribunal

Registration test decision

Application name	Yilka (*Harvey Murray on behalf of the Yilka Native Title Claimants v State of Western Australia*)
Name of applicant	Harvey Murray
State/territory/region	Western Australia
NNTT file no.	WC08/05
Federal Court of Australia file no.	WAD297/08
Date application made	15 December 2008
Date application last amended	10 June 2011 (pursuant to programming orders by Justice McKerracher dated 23 June 2011)
Name of delegate	Susan Walsh

I have considered this claim for registration against each of the conditions contained in ss. 190B and 190C of the *Native Title Act 1993* (Cwlth).

For the reasons attached, I am satisfied that each of the conditions contained in ss. 190B and C are met. I accept this claim for registration pursuant to s. 190A of the *Native Title Act 1993* (Cwlth).

Date of decision: 30 June 2011

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Susan Walsh

Delegate of the Native Title Registrar pursuant to sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cwlth) under an instrument of delegation dated 2 August 2010 and made pursuant to s. 99 of the Act.

Reasons for decision

Table of contents

Introduction

This document sets out my reasons, as the Registrar's delegate, for the decision to accept the application for registration pursuant to s. 190A of the Act.

Note: All references in these reasons to legislative sections refer to the *Native Title Act 1993* (Cwlth) which I shall call 'the Act', as in force on the day this decision is made, unless otherwise specified. Please refer to the Act for the exact wording of each condition.

Application overview

The Registrar of the Federal Court of Australia (the Court) gave a copy of the amended Yilka claimant application to the Native Title Registrar (the Registrar) on 8 April 2011 pursuant to s. 64(4) of the Act. The amended application was the subject of leave from the Federal Court pursuant to programming orders by Justice McKerracher dated 25 January 2011. This initiallyb triggered the Registrar's duty to consider the claim made in the application under s. 190A of the Act—see s.190A(1).

I note that I accepted the claim in the original application for registration and refer to my statement of reasons dated 6 August 2009 for this decision.

I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply to this claim and Attachment A sets out my reasons.

Therefore, in accordance with ss. 190A(6) and (6B), I must accept the claim for registration if it satisfies all of the conditions in 190B and 190C of the Act. This is commonly referred to as the registration test.

On 25 May 2011, the Tribunal provided procedural fairness to the State of Western Australia (the State) by informing the State that the application would again undergo the full registration test on 9 June 2011 (so as to comply with a number of s. 29 notices affecting the application area). The Tribunal offered the State an opportunity to make a submission by 2 June 2011.

On 25 May 2011, the State advised the Tribunal by e-mail that it would not be making submissions concerning the amended application or the registration test.

On 31 May 2011, the Applicant's legal representative requested that I defer the registration test to permit an amendment of the application. I understand that the amendment was necessary because of an unintended contraction of the claimed rights and interests as a result of an erroneous reference in schedule E of the amended application to the relevant parts of the Applicant's Points of Claim.

On 23 June 2011, the Federal Court gave leave to the applicant to further amend the application to correct Schedule E. On 24 June 2011, the Registrar of the Federal Court provided a copy of the Second Amended Form 1 to the Registrar filed on 1 June 2011 (including the applicant's Amended Points of Claim and annexed Determination Sought). This referral from the Court has triggered the Registrar's duty to consider the second amended application against the registration test—see s. 190A(1).

In light of the advice from the State that it did not wish to make submissions concerning the registration test and the amended Yilka application, I have not again extended an opportunity to the State to comment in relation to the second amended application.

Information considered when making the decision

In making this decision, I have had regard to the second amended application filed on 10 June 2011. I note that the second amended application refers to a separate document also filed by the Applicant to support its claim—this is the Applicant's Amended Points of Claim filed on 10 June 2011 (the Points of Claim). The Points of Claim was also the subject of leave to amend being granted by the Court on 23 June 2011 and as it is relied on extensively by the applicant and appears to form part of the application, I have had regard to it in making this decision.

Additionally, I have considered the documents provided by the applicant separately to the Registrar when the application first underwent the registration test on 6 August 2009 (this material is itemised below in my reasons for s. 190B(5)). I have also had regard to the documents contained in the Tribunal's case management/delegates file WC08/05 (also described as 2008/03061 Vols 01 and 02). Where I have had particular regard to documents within that file I have identified them in this statement of reasons.

Registration test

Section 190B sets out conditions that test particular merits of the claim for native title. Section 190C sets out conditions about 'procedural and other matters'. Included among the procedural conditions is a requirement that the application must contain certain specified information and documents. In my reasons below I consider the s. 190C requirements first, in order to assess whether the application contains the information and documents required by s. 190C *before* turning to questions regarding the merit of that material for the purposes of s. 190B.

Pursuant to ss. 190A(6) and (6B), the claim in the application must be accepted for registration because it does satisfy all of the conditions in ss. 190B and 190C. My reasons for this now follow.

Procedural and other conditions: s. 190C

Subsection 190C(2)
Information etc. required by ss. 61 and 62

> The Registrar/delegate must be satisfied that the application contains all details and other information, and is accompanied by any affidavit or other document, required by sections 61 and 62.

For the reasons that follow, I am **satisfied** that the application meets the procedural condition in s. 190C(2) because of my finding that the application contains the details and other information required by ss. 61 and 62.

I address each of the requirements of ss. 61 and 62 which impose requirements relating to the application containing certain details and information or being accompanied by any affidavit or other document in the reasons that follow.

Native title claim group: s. 61(1)

> The application must be made by a person or persons authorised by all of the persons (the native title claim group) who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed, provided the person or persons are also included in the native title claim group.

The application contains all details and other information required by s. 61(1).

The application identifies that the description of the persons in the native title claim group is found in paragraphs [24] and [83] of the Points of Claim.

I am satisfied that the description is sufficient for the purposes of s. 190C(2). There is nothing on the face of it or elsewhere in the application to indicate that not all persons in the native title claim group are included or that it is a subgroup of the native title claim group. I am therefore satisfied that the requirements of this section are met.

Name and address for service: s. 61(3)

> The application must state the name and address for service of the person who is, or persons who are, the applicant.

The application contains all details and other information required by s. 61(3).

This is found in Part B of the application.

Native title claim group named/described: s. 61(4)

> The application must:
> (a) name the persons in the native title claim group, or
> (b) otherwise describe the persons in the native title claim group sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.

The application contains all details and other information required by s. 61(4).

A description of the persons in the native title claim group is found in schedule A which in turn refers to paragraphs [24] and [83] of the Points of Claim.

Affidavits in prescribed form: s. 62(1)(a)

> The application must be accompanied by an affidavit sworn by the applicant that:
> (i) the applicant believes the native title rights and interests claimed by the native title claim group have not been extinguished in relation to any part of the area covered by the application, and
> (ii) the applicant believes that none of the area covered by the application is also covered by an approved determination of native title, and
> (iii) the applicant believes all of the statements made in the application are true, and
> (iv) the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it, and
> (v) setting out details of the process of decision-making complied with in authorising the applicant to make the application and to deal with matters arising in relation to it.

The application is accompanied by the affidavit required by s. 62(1)(a).

An affidavit by the applicant [Name deleted] dated 4 December 2008 setting out the matters required by subparagraphs 62(1)(a)(i) to (v) accompanied the original application filed on 15 December 2008.

Application contains details required by s. 62(2): s. 62(1)(b)

> The application must contain the details specified in s. 62(2).

The application contains all details and other information required by s. 62(1)(b). It contains the details specified in ss. 62(2)(a) to (h), as identified in the reasons below.

Attorney General of Northern Territory v Doepel (2003) 133 FCR 112 (*Doepel*) is authority that the consideration of s. 190C(2) does not involve going beyond the application, and in particular does not require some form of merit assessment of the material in determining whether the requirements of s. 190C(2) are met—at [36], [37] and [39].

Information about the boundaries of the area: s. 62(2)(a)

> The application must contain information, whether by physical description or otherwise, that enables the following boundaries to be identified:
> (i) the area covered by the application, and
> (ii) any areas within those boundaries that are not covered by the application.

The application contains all details and other information required by s. 62(2)(a).

The relevant details are found in schedule B. For the external boundaries of the application area, schedule B refers to the Points of Claim and to the Annexure thereto, being schedule 1, Part 1 of the Determination Sought. Schedule B also states that there are particular areas not covered by the application identified in Schedule 1, Part 2 of the Determination Sought.

Map of external boundaries of the area: s. 62(2)(b)

> The application must contain a map showing the boundaries of the area mentioned in s. 62(2)(a)(i).

The application contains all details and other information required by s. 62(2)(b). This is found in a map provided at Attachment C of the application.

Searches: s. 62(2)(c)

> The application must contain the details and results of all searches carried out by or on behalf of the native title claim group to determine the existence of any non-native title rights and interests in relation to the land and waters in the area covered by the application.

The application contains all details and other information required by s. 62(2)(c).

Attachment D provides details and results of the relevant searches.

Description of native title rights and interests: s. 62(2)(d)

> The application must contain a description of native title rights and interests claimed in relation to particular lands and waters (including any activities in exercise of those rights and interests), but not merely consisting of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law.

The application contains all details and other information required by. 62(2)(d).

An amended description of the claimed native title rights and interests is found in schedule E which refers to the Points of Claim at paragraph [89] and the annexed Determination Sought at paragraphs [3] to [7]. In my view, the description does not merely consist of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law.

Description of factual basis: s. 62(2)(e)

> The application must contain a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist, and in particular that:
> (i) the native title claim group have, and the predecessors of those persons had, an association with the area, and
> (ii) there exist traditional laws and customs that give rise to the claimed native title, and
> (iii) the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

The application contains all details and other information required by s. 62(2)(e).

A general description of the factual basis is provided in schedule F which in turn refers to paragraphs [8] to [81] of the Points of Claim.

Activities: s. 62(2)(f)

> If the native title claim group currently carries out any activities in relation to the area claimed, the application must contain details of those activities.

The application contains all details and other information required by s. 62(2)(f).

This is found in schedule G of the application.

Other applications: s. 62(2)(g)

> The application must contain details of any other applications to the High Court, Federal Court or a recognised state/territory body of which the applicant is aware, that have been made in relation to the whole or part of the area covered by the application and that seek a determination of native title or of compensation in relation to native title.

The application contains all details and other information required by s. 62(2)(g).

These details are found in schedule H.

Section 24MD(6B)(c) notices: s. 62(2)(ga)

> The application must contain details of any notification under s. 24MD(6B)(c) of which the applicant is aware, that have been given and that relate to the whole or part of the area covered by the application.

The application contains all details and other information required by s. 62(2)(ga).

These details are provided in Attachment HA.

Section 29 notices: s. 62(2)(h)

The application must contain details of any notices given under s. 29 (or under a corresponding provision of a law of a state or territory) of which the applicant is aware that relate to the whole or a part of the area covered by the application.

The application contains all details and other information required by s. 62(2)(h).

These details are provided in Attachment HA.

Subsection 190C(3) No common claimants in previous overlapping applications

The Registrar/delegate must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:

(a) the previous application covered the whole or part of the area covered by the current application, and
(b) the previous application was on the Register of Native Title Claims when the current application was made, and
(c) the entry was made, or not removed, as a result of the previous application being considered for registration under s. 190A.

The application **satisfies** the condition of s. 190C(3).

The issue of common members does not arise because there are no overlapping applications affecting the area of this application. (I have ascertained this to be correct via searches of the Tribunal's geospatial databases).

Subsection 190C(4) Authorisation/certification

Under s. 190C(4) the Registrar/delegate must be satisfied that either:

(a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application, or
(b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.

Note: The word ***authorise*** is defined in section 251B.

Section 203BE relevantly provides:

(2) A representative body must not certify under paragraph (1)(a) an application for a determination of native title unless it is of the opinion that:

(a) all the persons in the native title claim group have authorised the applicant to make the application and to deal with matters arising in relation to it; and
(b) all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the native title claim group

(4) A certification of an application for a determination of native title by a representative body must:

(a) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (2)(a) and (b) have been met; and
(b) briefly set out the body's reasons for being of that opinion; and
(c) where applicable, briefly set out what the representative body has done to meet the requirements of subsection (3).

The amended application **satisfies** the condition of s. 190C(4) because of my view that it remains certified under Part 11 by the only representative Aboriginal/Torres Strait Islander body that could certify the application, thereby meeting the requirement in s. 190C(4)(a). Because I am satisfied that the application has been certified pursuant to s. 190C(4)(a), I am not required to consider the requirements of s. 190C(4)(b).

Which representative bodies cover the application area?

Section 190C(4)(a) requires an application to have been certified by all representative bodies recognised under s. 203AD or funded to perform the certification function under s. 203FE(1) that cover the application area or any part of it. The searches undertaken establish that the application area is entirely covered by the Central Desert Native Title Services Ltd (CDNTS) representative body area. To my knowledge there are no other s. 203AD recognised bodies or s. 203FE funded bodies for the application area. CDNTS is thus the only representative body that could certify the application under Part 11, noting my finding below that it is funded to perform the certification function pursuant to s. 203FE(1).

Attachment R of the application contains a certification of the application by CDNTS. The certification is made and signed by the CDNTS's principal legal officer and is dated 15 December 2008.

Is CDNTS empowered to certify the application?

I note that CDNTS is not recognised under s. 203AD. This is alluded to at the outset of the certification which identifies that the certification is made pursuant to s. 203FE(1).

Section 203FEA(1) of the Act provides that:

> A person or body to whom funding is made available under subsection 203FE(1) to perform a function in respect of a particular area has the same obligations and powers in relation to the performance of that function as a body recognised as the representative body for that area would have in relation to the performance of that function.

I understand that CDNTS is funded under s. 203FE(1) to perform the certification power. I am therefore satisfied that CDNTS is a representative body funded under s. 203FE(1) to perform the certification power and is empowered to certify the application.

Does the CDNTS certification comply with Part 11?

For the certification to satisfy the requirements of s. 190C(4)(a), it must comply with the provisions of subparagraphs 203BE(4)(a), (b) and (c) (if applicable). The text of the relevant provisions of s. 203BE is reproduced at the start of this section of my reasons.

Pursuant to s. 203BE(4)(a) the certification contains statements that satisfy s. 203BE(2), that is, CDNTS is of the opinion that the requirements of s. 203BE(2) have been met—CDNTS certifies at paragraph 1 of the certificate that all persons in the native title claim group have authorised the applicant to make the application and deal with all matters in relation to it and that all reasonable

efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the claim group.

Pursuant to s. 203BE(4)(b), the certification includes brief reasons as to why CDNTS holds these opinions—see paragraph 2 of the certificate. The information in paragraph 2 is to the effect that the CDNTS and its predecessor Ngaanyatjarra Council, has provided legal and anthropological services within the area covered by the application since 1996 and is satisfied that the anthropologists who worked with the claim group took all reasonable efforts to ascertain and identify all the members of the claim group, including by exhaustive research undertaken by in-house and external anthropologists. Brief details of the anthropological research undertaken are found in paragraph 2.2. The certificate also provides details of the native title claim group's traditionally mandated decision-making process and how the group complied with that process at paragraphs 2.3 to 2.7.

I note that the provisions of s. 203BE(4)(c) do not apply as there are no overlapping applications (I have ascertained this to be correct via searches of the Tribunal's geospatial databases).

To conclude, I find that the certification complies with the requirements of Part 11, because it contains the statement of opinions and brief setting out of the reasons for holding those opinions required by s. 203BE(4)(a) and (b).

Information provided by [Name deleted]

On 10 December 2008, [Name deleted] provided the Tribunal with a copy of a letter he had sent to the representative body, outlining his views that the application is not properly authorised. I have not considered [Name deleted] information because of my view that s. 190C(4)(a) does not empower me to 'look behind' the reasons expressed in the representative body's certification for it holding the opinions required by s. 203BE(2) in relation to the applicant's authority or to question the merits of the representative body's certification—see *Doepel* at [80]–[81] and *Wakaman People 2 v Native Title Registrar and Authorised Delegate* (2006) 155 FCR 107; [2006] FCA 1198 at [31]–[32]. My task at s. 190C(4)(a) is merely to ensure that the certification meets the requirements for a valid certification under s. 203BE(4); it is not to consider whether I am satisfied that the applicant is, in fact, authorised.

Amended application remains certified

In my view, the original certification of the application applies to the second amended application, absent information before me that the applicant no longer intends this: Kiefel J in *Wakaman People 2 v Native Title Registrar and Authorised Delegate* (2006) 155 FCR 107; [2006] FCA 1198 (*Wakaman*) at [32] and [34]. The certification I have considered is Attachment R of the second amended application and it seems clear that the certifying body and the applicant intend that it still apply.

Conclusion

For the reasons above I am satisfied that the application has been certified by the one representative body that must certify, namely CDNTS, as per the written certification dated 15 December 2008 in Attachment R of the amended application.

Merit conditions: s. 190B

Subsection 190B(2)
Identification of area subject to native title

> The Registrar must be satisfied that the information and map contained in the application as required by ss. 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

The application **satisfies** the condition of s. 190B(2).

Description of the area covered by the application—external boundaries

The external boundaries of the area covered by the application have not been changed as a result of the amendments to Schedule B of the application. Schedule B directs the reader to Part 1, Schedule 1 of the Determination Sought (Annexure to the Points of Claim) for the description of the boundaries of the area covered by the application. This is in identical terms to paragraph [10] of the original application. There is no change to the map showing the external boundaries in Attachment C of the application.

I have considered my decision dated 6 August 2009 accepting the claim in the original application for registration, including the reasons I provided for this condition. I have considered the information before me in relation to the external boundaries, including the map in attachment C and the Tribunal's Geospatial report dated 7 January 2009. I agree with my reasons for this condition and find that the information and map in the application are sufficient to identify the external boundaries of the application area with reasonable certainty.

Description of an areas inside the external boundaries not covered by the application—internal boundaries

The only change to the internal boundaries of the application area is the addition of particular information (found at Part 2, Schedule 1 of the Determination Sought) which identifies five water reserves that are specifically excluded from the area covered by the application—see final paragraph of Schedule B of the second amended application.

I have considered my decision dated 6 August 2009 accepting the claim in the original application for registration, including the reasons I provided for this condition. I have reconsidered the information before me in relation to the internal boundaries in the second amended application. I agree with my reasons for this condition and find that the information and map in the application are sufficient to identify the internal boundaries of the application area with reasonable certainty.

In relation to the additional areas that have been excluded from the application within Part 2 of Schedule 1 of the Determination Sought, it is my view that a sufficient level of information is provided in the application to describe these areas with reasonable certainty. Each of the five water reserves is described using the cadastral reference allocated by the State. Additionally, each reserve is shown on the map within Attachment C of the amended application. I am satisfied that the location of each reserve can be identified with reasonable certainty.

For these reasons, I am satisfied that the information and map in the second amended application required by sections 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular areas of land or waters and the requirements of s. 190B(2) are therefore met.

Subsection 190B(3)
Identification of the native title claim group

> The Registrar must be satisfied that:
> (a) the persons in the native title claim group are named in the application, or
> (b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

The application **satisfies** the condition of s. 190B(3).

The description of the persons in the native title claim group has undergone some refinement to that found in Schedule A of the original application. I refer to my decision dated 6 August 2009 and to my reasons for this condition.

Schedule A of the second amended application states that the claim group description is found in paragraphs [24] and [83] of the Points of Claim. Paragraph [83] in turn refers to Schedule 2 of the Determination Sought for a description of the native title holders.

Paragraph [24] differs from paragraph [5] of Schedule A the original application in a couple of respects:

- A footnote is provided to explain that:
  > Contestation may occur in relation to the place of birth or the significance of the birth at a place, where, for example the birth occurred when the parents or mother was just 'passing through' or 'visiting' the place. Analogously, today where a birth occurs in a hospital away from the area at which the mother or both parents are living, such fact is not regarded as giving rise to customary rights or interests in that place of birth.
- In addition to the described connections of birth and/or long association to the application area, is the connection of 'holding senior ritual authority'—see [24](a)(i) of the Points of Claim.
- Paragraph [24](a)(ii) clarifies that the connections may arise if 'one or more of' a person's ancestors have the requisite birth and/or long association, rather than all of 'their ancestors'.
- Paragraph [24](b) of the Points of Claim stipulates that recognition occurs under WDCB (Western Desert Cultural Bloc) traditional laws and customs, whereas paragraph [5](b) referred only to 'traditional laws and customs'.

Order 2 of the Determination Sought differs from paragraph [6] of Schedule A of the original application:

- Whereas [6](a) of the original application stated that the native title claim group includes [Name deleted] and [Name deleted], Schedule 2(b) of the Determination Sought states that the group includes:
  > [Name deleted] and any others who, in accordance with traditional laws and customs, have a connection to the Determination Area by which they claim country, through their own birth on, long association with, or holding of senior ritual authority with respect to places on, the Determination Area and in respect of whom that claim is recognised according to traditional laws and customs.
- [Name deleted] has been added as an ancestor for the native title claim group, in addition to [Name deleted], [Name deleted] and [Name deleted], [Name deleted], [Name deleted], [Name deleted]and [Name deleted], who were named in [6](b) of the original application.

I refer to my discussion of the legal principles governing this registration test condition in my reasons dated 6 August 2009, including the decision by Carr J in *State of Western Australia v Native Title Registrar* (1999) 95 FCR 93; [1999] FCA 1591.

I remain of the view that the description is within the bounds of the 'Three Rules' test discussed by Carr J at [67]. I am provided with a starting point, that is, the specific factors by which a person may be entitled to claim membership of the native title claim group through:

- their own birth on the application area;
- their own long association with the application area;
- their holding of senior ritual authority; or
- the birth or long association of one or more of their ancestors with the application area; and
- the acceptance of a claim to membership under WDCB traditional laws and customs.

The application now names seven ancestral lines by which persons may be entitled to claim membership. It also identifies by name one member of the native title claim group whose claim is governed by [24](a)(i) of the Points of Claim (this is found Schedule 2(b) of the Determination Sought). Finally, it clarifies that the applicable traditional laws and customs governing recognition are those of the WDCB.

I am satisfied that the description meets the requirements of s. 190B(3)(b) because it provides sufficiently clear information that would allow a factual inquiry of the kind discussed above by Carr J. The starting point for such an inquiry is the alternative bases by which a person is entitled to have a claim to membership of the group recognised according to WDCB traditional laws and customs. Such an inquiry may not be easy, but that is not to say it cannot be done on the basis of the information in the application.

Subsection 190B(4)
Native title rights and interests identifiable

> The Registrar must be satisfied that the description contained in the application as required by s. 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.

The application **satisfies** the condition of s. 190B(4).

Schedule E has been amended, such that the description of the claimed native title rights and interests is now drawn from [89] of the Points of Claim which in turn relies on paragraphs [3] to [7] of the Determination Sought for the following description of the claimed native title rights and interests:

> [3] Subject to Orders 6 and 7, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 3 [being land and waters where there has been no extinguishment of native title or areas where any extinguishment must be disregarded] is the right to possession, occupation, use and enjoyment of that part as against the whole world.
>
> [4] Subject to Orders 5 to 7, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 4 [being land and

waters where there has been partial extinguishment other than where such extinguishment must be disregarded] are the following rights or interests:
(a) the right to access, to remain in and use that part for any purpose;
(b) the rights to access resources and to take for any purpose resources in that part;
(c) the right to engage in spiritual and cultural activities in or on that part;
(d) the right to maintain and protect places and objects of significance in or on that part; and
(e) the right to protect resources and the habitat of living resources in that part.

[5] The native title rights and interests referred to in Order 4 do not confer possession, occupation, use and enjoyment of the native title areas or any parts thereof on the native title holders to the exclusion of all others.

[6] The native title rights and interests are exercisable in accordance with and subject to the:
(a) traditional laws and customs of the native title holders; and
(b) laws of the State and the Commonwealth, including the common law.

[7] Notwithstanding anything in this Determination Sought, there are no native title rights and interests in the native title areas in or in relation to:
(a) such minerals as are wholly owned by the Crown; or
(b) such petroleum as is wholly owned by the Crown.

I remain of the view that for a description to meet the requirements of this section, it must describe what is claimed in a clear and easily understood manner: *Doepel* at [91] to [92], [95], [98] to [101], [123]. Any assessment of whether the rights can be established prima facie as 'native title rights and interests', as that phrase is defined in s. 223, will be discussed in relation to the requirement in s. 190B(6). It is my view that this new description is clear and easily understood and meets the requirements of s. 190B(4).

Subsection 190B(5)
Factual basis for claimed native title

The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:
(a) that the native title claim group have, and the predecessors of those persons had, an association with the area, and
(b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interest, and
(c) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

The application **satisfies** the condition of s. 190B(5) for the reasons that follow.

The applicant's factual basis materials

This is another area where there has been some refinement to the general description of the factual basis formerly provided in Schedule F of the original application. The second amended application refers to paragraphs [8] to [81] of the Points of Claim for the general description of the factual basis.

When the originaly application underwent the registration test, the applicant provided additional information directly to the Registrar in support of the factual basis:

- Draft Yilka Native Title Claim Report dated February 2009 (draft anthropological report)
- Witness statements by [Name deleted], [Name deleted] and [Name deleted], all dated 13 February 2009
- CDNTS submissions dated 4 May 2009
- Annexure 1 to the Yilka Native Title Claim Report, 'Yilka Native Title Claim: Identity of the Claim Group', by [Name deleted], dated February 2009 (supplementary anthropological report).

The Wongatha decision

It is my view that the second amended application is sufficiently different to the Cosmo Newberry WAD144/98 native title application such that the decision on 5 February 2007 by Lindgren J in *Harrington-Smith v Western Australia (No 9)* [2007] FCA 31 (the *Wongatha* decision) should not be followed or considered by me when considering the amended application against the conditions of s. 190B(5).

The key difference between the two applications which I identified in my original decision dated 6 August 2009 still remains in this second amended application. In my view, the second amended application goes some significant way to alleviating particular concerns raised in the *Wongatha* decision as to the lack of traditional (i.e. pre-sovereignty) laws and customs of an Indigenous society governing the recruitment and composition of the Cosmo native title claim group. In summary the differences between the Yilka native title claim group and the Cosmo native title claim group are:

- The Cosmo 'multiple pathways of connection' has been replaced by a limited set of criteria related to birth/long association/ holding senior ritual authority of a person and birth/long term association of a person's ancestor or ancestors, with the group's seven ancestral lines being named in the description;
- In most cases, ancestral links have moved forward a generation;
- The group is no longer the exclusive/sole adjudicator of membership claims, in fact one of the amendments to the description of the persons in the native title claim group is that acceptance of membership claims is governed by Western Desert laws and customs;
- There is no exclusion of any particular person from the native title claim group;
- Membership has been expanded to include some of those identified in the *Wongatha* decision as persons who may hold native title in the application area. Additionally, the annexure 1 'Identity of the Claim Group' report explains why others are not included (in a way that seems plausibly related to the operation of law and custom).

I remain of the view that another factor which militates against making too much of the fact that there has been a full hearing and dismissal of the Cosmo Newberry application, is that there is an appeal of the *Wongatha* decision (see copy notice of appeal dated 5 April 2007 provided by CDNTS on 4 May 2009).

I stand by my view that the Registrar's task at s. 190B(5) does not supplant the Court's role; the latter has the task under the Act of determining whether native title exists, not the Registrar. The Registrar is not to evaluate the factual basis as if it were evidence provided in support of the

claim and the applicant is not required to provide evidence of the type which would prove all of the facts necessary to succeed in their native title claim: *Gudjala People #2 v Native Title Registrar* [2008] FCAFC 157 (French, Moore and Lindgren JJ) (*Gudjala FC*) at [92].

I also remain of the view that it would be erroneous for me to simply adopt, or not disagree with, the findings made in the *Wongatha* decision: *Cadbury UK Ltd v Registrar of Trade Marks* [2008] FCA 1126 at [18] (*Cadbury*). The *Wongatha* decision and its findings may indeed be relevant to the issue at hand before me, namely, the sufficiency of the factual basis in this new Yilka application. I stand by my decision that I should attach little or no weight to those findings and rely on the summary of my reasons for this outlined in my decision dated 6 August 2009 on pp. 16–17.

Registrar's task under s. 190B(5)

I remain of the view that the Registrar's task under s. 190B(5) is that outlined on p. 17 of my original registration test decision.

Subsection 190B(5)(a)— that the native title claim group have, and the predecessors of those persons had, an association with the area;

I am **satisfied** that the factual basis provided is sufficient to support the assertion that the native title claim group have, and their predecessors had, an association with the application area.

The law applicable to this particular assertion is that outlined on p. 18 of my original decision.

There is a new general description of the factual basis for this particular assertion drawn from [8] to [81] of the Points of Claim. I note that the amended general description of the factual basis for this assertion has been expanded to discuss how Western Desert traditional laws and customs operate in relation to the claim in this application.

Paragraph [18] states that the society under whose laws and customs native title rights and interests are possessed in the claim area is the Western Desert Cultural Bloc (WDCB). Paragraph [19] states that the WDCB existed as a society at sovereignty and at all times since. Paragraph [20] states that each person in the native title claim group is part of the WDCB society and each has an ancestor who was a member of the WDCB at sovereignty. A footnote to [20] states that it is not part of the Applicant's case that it is a requirement under WDCB law and custom that rights cannot be possessed in an area by a person who does not have an ancestor who possessed rights in that area. Paragraph [21] states that the claim area is within the Western Desert.

Paragraph [15] states that the concept *Tjukurrpa* (or Dreaming) is an important element of the belief system of the people of the Western Desert. Essentially it is the Dreaming of magical beings who acted and interacted on the earth in a time outside the memories of living actors. These Beings (termed *Tjukurrpa*, like the Dreaming itself) are often personified with human, plant, animal or natural object characteristics. It explains the existence and physical formation of the landscape and is evidenced by particular features in the landscape. It informs and provides a base for and source of WDCB laws and customs and is the object and subject matter of particular WDCB laws and customs. It provides a normative element in the acknowledgement and observance of those laws and customs. It is the source of a direct spiritual connection between people and country as well as a connection mediated through law and custom.

Paragraph [16] states that *Tjukurrpa* is the source of the requirement to 'look after' and protect places and areas associated with particular *Tjukurrpa*. Paragraph [17] states that *Tjukurrpa* is the

source of the requirement to prevent the disclosure of particular beliefs and practices which relate to particular places and areas associated with particular *Tjukurrpa*.

The four *Tjukurrpa* sites named in paragraph [24] of the original application are again identified in paragraph [38] of the Points of Claim as *Tjukurrpa* believed to be associated with the area covered by the application.

I have reconsidered the additional information provided by the applicant when the application first underwent the registration test and my reasons for decision where I discussed this material (see p. 19 of my statement of reasons dated 6 August 2009). I have decided that the new factual basis outlined in the Points of Claim is supported by what is said by [Name deleted], [Name deleted] and [Name deleted] in their witness statements, the content of which is summarised on p. 19 of my original decision. It appears clear that these three persons are all associated with the application area as are their predecessors. All three persons provide evidence of being part of a wider normative system by which they are connected to their country, which stems from their belief and acknowledgement of laws and customs around the concept of the *Tjukurrpa*.

I am satisfied, based on the material before me, that the claim group currently have an association with the application area as a whole. I am also satisfied, based on the material before me, that there is a sufficient factual basis to support the assertion that the predecessors of the claim group had an association with the application area.

Subsection 190B5(b) that there exist traditional laws and customs acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests

I am **satisfied** that the factual basis is sufficient to support the assertion in s. 190B(5)(b).

The law applicable to this particular assertion is that outlined on pp. 20–21 of my original decision.

The new general description of the factual basis for this particular assertion drawn from [8] to [81] of the Points of Claim has been significantly expanded to discuss how Western Desert traditional laws and customs operate in relation to this claim. If anything, the new general description is more detailed than that found in the original application and more particularly addresses how the relevant society and the traditional laws and customs acknowledged and observed by the native title claim group have had a continuing operation since significant European settlement of the area in the 1890s.

Paragraphs [15] to [17] of the Points of Claim essentially mirrors the information found in the original application about the importance of the *Tjukurrpa* as the source of the claim group's connection with the application area.

Paragraphs [18] to [20] state that the relevant society to which the claim group belong is the WDCB, with the application area forming part of the country known as the Western Desert and the members of the claim group all have an ancestor who was a member of the WDCB at sovereignty.

Paragraph [24] of the Points of Claim states that under WDCB traditional laws and customs, rights and interests in relation to the claim area are possessed by a person who has a connection to the area through birth and/or long association or holding senior ritual authority or the birth

and/or long association of one or more of a person's ancestors and in respect of whom that claim is generally accepted under WDCB laws and customs.

Paragraph [25] states that WDCB laws and customs contemplated that the possession of rights and interests in relation to land or waters:

(a) where a person's own birth or long association with the area is the basis on which rights or interests were possessed – the rights are possessed by an individual, whether or not with other individuals; and

(b) where the birth or long association of an ancestor was the basis on which rights were possessed, by an individual or by sets or groups of persons namely the descendants (on a bilateral basis) of that ancestor.

Paragraph [26] states that the subject matter of the rights or interests that are possessed:

(a) where the place of birth of a person or ancestor is relied on – is the area associated with that place of birth and with the person or ancestor;

(b) where the long association of a person or ancestor is relied on – is the area with which that person or the ancestor was long associated; and

(c) where ritual knowledge and responsibility is relied on – is the area with which that knowledge and responsibility is associated.

The areas discussed in paragraph [26] is referred to by a Western Desert person as 'my country' or *Ngurra*—at paragraph [27].

Paragraphs [28] to [32] explain the operation of law and custom around 'my country' areas of *ngurra* including that they are not precisely or finely delineated, but are loosely bounded, may be composed of clusters or aggregates of sites and could overlap the 'my country' areas of others. Strangers or visitors can be refused access, or have conditions imposed on access to a 'my country' area. Strangers wishing to visit an area ideally must ask permission from a person who possesses rights and interests in that area. Access may be restricted on the basis of age, gender and ritual knowledge and authority. There are rules about accessing places with certain qualities, such as warning of approach or cleaning or clearing around a place.

Importantly persons who hold rights and interests in an area have responsibilities and rights to 'look after', care for, and protect and maintain the area—paragraph [34] of the Points of Claim.

I have reconsidered the applicant's additional information provided in support of the original application. I refer to my discussion of this material on pp. 22–23 of my original decision dated 6 August 2009. In my view the factual basis provided by the applicant is sufficient to support the assertions in the Points of Claim, as discussed above. Importantly there is evidence from three members of the claim group discussing the *Tjukurrpa* that connects them to their 'my country' areas or *ngurra* and the inter-generational transfer of knowledge and belief around these areas.

The witnesses say that other Indigenous people to their north and east (Warburton and Tjirrkarli) acknowledge and accept that the Yilka claim group have the right to speak for this country under traditional laws and customs. I infer that the witnesses are talking about other people of the Western Desert who acknowledge that the Yilka claim group are the people who have the right to speak for the application area.

The draft anthropological report also supports the asserted factual basis because it provides information about the existence of traditional laws and customs that date back to sovereignty. There is reference to European observations and those writing about the region, including the writings of historians, anthropologists and ethnographers which support that the area is located within a wider cultural horizon, identified by researchers as the WDCB. I refer to my discussion of this material on pp. 22–23 of my original decision. The information provided is that the application area is within the bounds of the Western Desert and that there has been continuing acknowledgement and observation of Western Desert laws and customs since sovereignty.

I agree with my original decision that the three witness statements by [Name deleted], [Name deleted] and [Name deleted] provide further support for this part of the factual basis in that they show how these laws and customs are practised by them in relation to the application area and as members of a larger regional society to their north and east, which I infer to be the WDCB. They all describe how they have the right to regulate access to and use of the application area, both in relation to strangers who first get permission and in relation to regular visitors who know from long experience where they may go and how they may use the land, because the traditional owners have told them where they can go to hunt and other things. This is well explained in [Name deleted] statement at [43]–[47].

Based on all the material before me, I am satisfied that the factual basis is sufficient to support an assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the claim group that give rise to the claimed rights and interests.

Subsection 190B(5)(c)—that the native title claim group have continued to hold native title in accordance with those traditional laws and customs

I am **satisfied** that the factual basis is sufficient to support the assertion in s. 190B(5)(c).

The law applicable to this particular assertion is that outlined on pp. 23–24 of my original decision.

The anthropological materials and the witness statements which I have again reviewed in the course of making this decision show how the claim group have continued to observe and acknowledge traditional laws and customs, including those that govern their interactions with other Indigenous persons to their north and east and which importantly deal with their belief in the *Tjukurrpa* and the possession of rights and interests in *ngurra* or 'my country' areas as explained in the Points of Claim. There is discussion of their ownership of the land and their right to control access to and use of their country being regulated within a wider regional system, identified in the anthropological materials as the WDCB. These materials point to a sufficient factual basis for the assertion that these are 'traditional' laws and customs, in the sense required by *Yorta Yorta*.

Having regard to all of these materials, examples of which I have referred to above, I am of the view that there is a sufficient factual basis for the assertion that the native title claim group has continued to hold the claimed native title by acknowledging and observing the traditional laws and customs of a pre-sovereignty society in a substantially uninterrupted way.

To conclude, the application **satisfies** the condition of s. 190B(5) overall because I am satisfied that the factual basis is sufficient to support each of the three particular assertions in s. 190B(5), as set out in my reasons above.

Subsection 190B(6)
Prima facie case

> The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.

The application **satisfies** the condition of s. 190B(6). In my view, all of the claimed native title rights and interests are prima facie established.

Schedule E of the second amended application identifies that the description of the claimed rights and interests is found in paragraph [89] of the Points of Claim and paragraphs [3] to [7] of the Determination Sought.

The original application claimed exclusive possession, occupation, use and enjoyment (the exclusive right) over areas where it has not been extinguished or where any extinguishment must be disregarded and also claimed the identified non-exclusive rights where there has been extinguishment of the exclusive native title. The native title claimed in the original application included rights of related Aboriginal persons as defined in paragraph [18].

The second amended application also claims the exclusive right where available and the non-exclusive rights identified in paragraph [4] of the Determination Sought. In essence, the only substantive change to the claimed rights and interests is that the amended application does not include rights of related Aboriginal persons and the non-exclusive rights are now limited to five identified rights in paragraph [4](a) to (e) of the Determination Sought. I note that rights [4](a), (b), (d) and (e) were all claimed in substantially the same terms in the original application. The only new non-exclusive right is that found in [4](c), being a right to engage in spiritual and cultural activities. In my view this is not a controversial right or interest, provided there is some information before me to indicate that it prima facie exists.

I have reviewed the decision I made when I considered the application against this registration test condition on 6 August 2009. I agree with my explanation of the law surrounding this conditon, outlined on pp. 24–25 of that decision.

I have reviewed my original decision dated 6 August 2009 for this condition. I have also reconsidered the information provided by the applicant to support registration of this application, including the following materials:

- Draft Yilka Native Title Claim Report dated February 2009 (draft anthropological report)
- Witness statements by [Name deleted], [Name deleted] and [Name deleted], all dated 13 February 2009
- CDNTS submissions dated 4 May 2009
- Annexure 1 to the Yilka Native Title Claim Report, 'Yilka Native Title Claim: Identity of the Claim Group', by [Name deleted], dated February 2009 (supplementary anthropological report).

I remain of the view that the exclusive right described in [3] of the Determination Sought is prima facie established, for the reasons outlined on pp. 27–30 of that decision.

I am also of the view that the five non-exclusive rights described in [4] of the Determination Sought are all prima facie established, for the reasons outlined on p. 30 of my decision. The one new non-exclusive right (right to engage in spiritual and cultural activities) is clearly established having regard to the same factual information considered in my original decision. There is a wealth of information provided that prima facie establishes the existence of a vigorous spiritual and cultural life by members of the native title claim group within the application area.

Subsection 190B(7)
Traditional physical connection

> The Registrar must be satisfied that at least one member of the native title claim group:
> (a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application, or
> (b) previously had and would reasonably be expected to currently have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to the land or waters) by:
> (i) the Crown in any capacity, or
> (ii) a statutory authority of the Crown in any capacity, or
> (iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease.

The application **satisfies** the condition of s. 190B(7).

In addition to the information at [57] to [59] of Schedule M of the original application, the second amended application also refers to [84] of the Points of Claim. This discusses the connection of the persons in the native title claim group by the WDCB laws and customs outlined in paragraph [84], inlcuding those related to:

- persons having *ngurra* within the claim area as a result of birth or long association themselves or the birth or long association of persons through whom they claim to possess rights or interests;
- the *Tjukurrpa* associated with a particular place or area, which requires such places to be looked after, cared for or protected;
- senior ritual authority held by persons to places associated with that authority;
- persons having particular authority to speak for or participate in decision–making about an area;
- access to places with certain qualities being subject to behavioural requirements such as warning of approach;
- the association between the language with which people identify the area, namely the Wangkayi and Ngannyatjarra speech varieties of the Western Desert language;
- death and burial of ancestors and kin on the area.

I have reconsidered the reasons I provided for this condition in my original decision dated 6 August 2009 and the witness statements by [Name deleted], [Name deleted] and [Name deleted]. I remain of the view that this evidence is sufficient to satisfy me that all three persons are

members of the claim group and have the requisite traditional physical connection. I refer to my reasons as to the law surrounding this requirement. I remain of the view that 'traditional physical connection' means a physical connection in accordance with the particular traditional laws and customs relevant to the claim group, being 'traditional' as discussed in *Yorta Yorta*.

Subsection 190B(8)
No failure to comply with s. 61A

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s.61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.

Section 61A provides:

(1) A native title determination application must not be made in relation to an area for which there is an approved determination of native title.

(2) If :

(a) a previous exclusive possession act (see s. 23B) was done, and

(b) either:

(i) the act was an act attributable to the Commonwealth, or

(ii) the act was attributable to a state or territory and a law of the state or territory has made provisions as mentioned in s. 23E in relation to the act;

a claimant application must not be made that covers any of the area.

(3) If:

(a) a previous non-exclusive possession act (see s. 23F) was done, and

(b) either:

(i) the act was an act attributable to the Commonwealth, or

(ii) the act was attributable to a state or territory and a law of the state or territory has made provisions as mentioned in s. 23I in relation to the act;

a claimant application must not be made in which any of the native title rights and interests confer possession, occupation, use and enjoyment of any of the area to the exclusion of all others.

(4) However, subsection(2) and (3) does not apply if:

(a) the only previous non-exclusive possession act was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made, and

(b) the application states that ss. 47, 47A or 47, as the case may be, applies to it.

The application **satisfies** the condition of s. 190B(8). I explain this in the reasons that follow by looking at each part of s. 61A against what is contained in the application and accompanying documents and in any other information before me as to whether the application should not have been made.

Reasons for s. 61A(1)

Section 61A(1) provides that a native title determination application must not be made in relation to an area for which there is an approved determination of native title.

In my view the the application **does not** offend the provisions of s. 61A(1). Searches of the Tribunal's Geospatial databases reveal that there there are no determinations of native title over the application area.

Reasons for s. 61A(2)

Section 61A(2) provides that a claimant application must not be made over areas covered by a previous exclusive possession act, unless the circumstances described in subparagraph (4) apply. In my view the the application **does not** offend the provisions of s. 61A(2). Schedule B of the second amended application expressly excludes any areas covered by a previous exclusive possession act, as defined in s. 23B.

Reasons for s. 61A(3)

Section 61A(3) provides that an application must not claim native title rights and interests that confer possession, occupation, use and enjoyment to the exclusion of all others in an area where a previous non-exclusive possession act was done, unless the circumstances described in s. 61A(4) apply.

In my view, the application **does not** offend the provisions of s. 61A(3) because it is clear from the description of the claimed native title rights and interests (refer to my reasons at s. 190B(6) above) that the exclusive right of possession, occupation, use and enjoyment is only claimed over areas where it has not been extinguished or where any extinguishment must be disregarded.

Subsection 190B(9)
No extinguishment etc. of claimed native title

> The application and accompanying documents must not disclose, and the Registrar/delegate must not otherwise be aware, that:
> (a) a claim is being made to the ownership of minerals, petroleum or gas wholly owned by the Crown in the right of the Commonwealth, a state or territory, or
> (b) the native title rights and interests claimed purport to exclude all other rights and interests in relation to offshore waters in the whole or part of any offshore place covered by the application, or
> (c) in any case, the native title rights and interests claimed have otherwise been extinguished, except to the extent that the extinguishment is required to be disregarded under ss. 47, 47A or 47B.

The application **satisfies** the condition of s. 190B(9), because it **meets** all of the three subconditions, as set out in the reasons below.

Reasons for s. 190B(9)(a):

The application **satisfies** the subcondition of s. 190B(9)(a).

Schedule Q states that there are no claim is made to ownership of any minerals, petroleum or gas wholly owned by the Crown.

Reasons for s. 190B(9)(b)

The application **satisfies** the subcondition of s. 190B(9)(b).

The application is located well inland of the coast of Western Australia and does not cover any offshore places

Result for s. 190B(9)(c)

The application **satisfies** the subcondition of s. 190B(9)(c) as I am not aware, and the material before me does not disclose, that the claimed native title rights and interests have otherwise been extinguished. I note also that schedule B, paragraph 15(e) excludes any areas where native title have otherwise been wholly extinguished.

[End of reasons]

Attachment A
Reasons for ss. 190A(1A) and 190A(6A)

Subsection 190A(1A)

Despite subsection (1), if:

(a) The Registrar is given a copy of an amended application under subsection 64(4) that amends a claim; and

(b) The application was amended because an order was made under section 87A by the Federal Court; and

(c) The Registrar has already considered the claim, as it stood before the application was amended;

The Registrar need not consider the claim made in the amended application

Subsection 190A(1A) **does not** apply because the application has not been amended as the result of an order under s. 87A by the Federal Court.

Subsection 190A(6A)

The Registrar must accept the claim (the **later claim**) for registration if:

(a) a claim (the **earlier claim**) was made in an application given to the Registrar under section 63 or subsection 64(4) (the **earlier application**); and

(b) the Registrar accepted the earlier claim for registration under subsection (6) of this section; and

(c) the later claim was made in an application given to the Registrar under subsection 64(4) that amends the earlier application; and

(d) the Registrar is satisfied that the only effect of the amendment is to do one or more of the following:

(i) reduce the area of land or waters covered by the application, in circumstances where the information and map contained in the application, as amended, are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters;

(ii) remove a right or interest from those claimed in the application;

(iii) change the name in the application of the representative body, or one of the representative bodies, recognised for the area covered by the application, in circumstances where the body's name has been changed or the body has been replaced with another representative body or a body to whom funding is made available under section 203FE;

(iv) change the name in the application of the body to whom funding was made available under section 203FE in relation to all or part of the area covered by the application, in circumstances where the body's name has been changed or the body has been replaced by another such body or representative body;

(v) alter the address for service of the person who is, or persons who are, the applicant.

Subsection 190A(6A) **does not** apply because the amended application contains a new description of the persons in the native title claim group and a new general description of

the factual basis, as required by s. 62(2)(e). This goes beyond the kinds of amendments outlined in s. 190A(6A)(d).