Registration test decision

Application name	Iman People #2
Name of applicant	Richard Doyle, Patrick Sylvester, Kenny Waterton, Eve Fesl, Eddie Waddy, Graham Anderson, Arwa Waterton, Cynthia Kemp, Bradley Curtis, Dena Marie Dodd-Ugle and Heidi Anne-Marie Lawson
State/territory/region	Southern Queensland
NNTT file no.	QC97/55
Federal Court of Australia file no.	QUD6162/98
Date application made	30 October 1997
Date application last amended	16 March 2012
Date of Decision	24 May 2012
Name of delegate	Lisa Jowett

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 Reasons: 3 August 2012

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Lisa Jowett

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 24 August 2011 and made pursuant to s. 99 of the Act.

Edited reasons for decision

Table of contents

Introduction

This document sets out my reasons, as the Registrar's delegate, for the decision to accept the Iman People #2 amended claimant application (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 application to the Native Title Registrar (the Registrar) on 20 March 2012 pursuant to s. 64(4) of the Act. This has triggered the Registrar's duty to consider the claim made in the application under s. 190A of the Act.

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 subsection 190A(6) 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.

The Iman People #2 native title determination application was first made on 30 October 1997. There have been numerous forms of the application filed since that time, and it was first accepted for registration under s. 190A on 26 July 2002. The area covered by the application falls in south-eastern Queensland and includes the towns of Taroom, Wandoan and numerous pastoral stations. The Dawson River intersects the area.

I provided a preliminary assessment on an amended application filed on 7 February 2012 after which the applicant filed a further amended application and provided additional material to the Registrar in relation to certain conditions of the registration test.

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. A summary of the result for each condition is provided at Attachment B.

Information considered when making the decision

Subsection 190A(3) directs me to have regard to certain information when testing an application for registration; there is certain information that I *must* have regard to, but I *may* have regard to other information, as I consider appropriate.

I have followed Court authority and have only considered the terms of the application itself in relation to the registration test conditions in s. 190C(2) and ss. 190B(2), (3) and (4) (see *Northern Territory v Doepel* (2003) 203 ALR 385; [2003] FCA 1384 (*Doepel*) at [16]).

Attachment C of these reasons lists all of the information and documents that I have considered in reaching my decision.

I have not considered any information that may have been provided to the Tribunal in the course of the Tribunal:

- providing assistance under ss. 24BF, 24CF, 24CI, 24DG, 24DJ, 31, 44B, 44F, 86F or 203BK;
- undertaking its mediation functions in relation to this or any other claimant application. I take this approach because matters disclosed in mediation are 'without prejudice'. Further, mediation is private as between the parties and is also generally confidential (ss. 94K and 94L of the Act).

Procedural fairness steps

As a delegate of the Registrar and as a Commonwealth Officer, when I make my decision about whether or not to accept this application for registration I am bound by the principles of administrative law, including the rules of procedural fairness, which seek to ensure that decisions are made in a fair, just and unbiased way.

In my view, the State of Queensland (the state government) is a person to whom procedural fairness is owed if it appears that the application may be accepted for registration: see *Western Australia v Native Title Registrar* (1999) 95 FCR 93; [1999] FCA 1591 at [21] to [38]. The applicant is also entitled to an opportunity to comment in relation to any submissions made or information provided to the Registrar which is potentially adverse to the application being accepted for registration.

However, it is also my view, that the statutory scheme governing the Registrar's registration testing of claimant applications and the subsequent notification of applications to a range of persons (including the registered native title claimants of any overlapping applications) *after* the registration test decision is made as required by s. 66(6) has curtailed the ordinary rules of procedural fairness to others who might be affected by the decision—see *Hazelbane v Doepel* (2008) 167 FCR 325; [2008] FCA 290 at [23] to [31].

On 14 February 2012, the Tribunal informed the state government of the proposed decision timeframe and invited the state government to comment in relation to the application. The state government made no submissions.

On 16 April 2012, the applicant provided additional material in relation to the application of the registration test. This material was forwarded to the state government on 18 May 2012, and on 23 May 2012 the state government confirmed that it would not be providing any comment for the purposes of the registration test.

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.

The application **satisfies** the condition of s. 190C(2), because it **does** contain all of the details and other information and documents required by ss. 61 and 62, as set out in the reasons below.

I note that I am considering this claim against the requirements of s. 62 as it stood *prior* to the commencement of the *Native Title Amendment (Technical Amendments) Act 2007* on 1 September 2007. This legislation made some minor technical amendments to s. 62 which only apply to claims made from the date of commencement of the Act on 1 September 2007 onwards, and the claim before me is not such a claim.

In reaching my decision for the condition in s. 190C(2), I understand that this condition is procedural only and simply requires me to be satisfied that the application contains the information and details, and is accompanied by the documents, prescribed by ss. 61 and 62. This condition does not require me to undertake any merit or qualitative assessment of the material for the purposes of s. 190C(2)— *Doepel* at [16] and also at [35] to [39]. In other words, does the application contain the prescribed details and other information?

It is also my view that I need only consider those parts 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 (as specified in s. 190C(2)). I therefore do not consider the requirements of s. 61(2), as it imposes no obligations of this nature in relation to the application. I am also of the view that I do not need to consider the requirements of s. 61(5). The matters in ss. 61(5)(a), (b) and (d) relating to the Court's prescribed form, filing in the Court and payment of fees, in my view, are matters for the Court. They do not, in my view, require any separate consideration by the Registrar. Paragraph 61(5)(c), which requires that the application contain such information as is prescribed, does not need to be considered by me under s. 190C(2), as I already test these things under s. 190C(2) where required by those parts of ss. 61 and 62 which actually identify the details/other information that must be in the application and the accompanying prescribed affidavit/documents.

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 nature of the task at 190C(2) is limited to a consideration of whether the application sets out the native title claim group in the terms required by s. 61(1)—*Doepel* at [36] and as such, the task does not require me to look beyond the contents of the application itself—*Doepel* at [37] and [39].

In assessing the current application and whether it contains the details and information required by s. 61(1), it is not my concern that the native title claim group is the correct native title claim group, but that the claim 'on its face, is brought on behalf of all members of the native title group'—*Doepel* at [35] and [37].

Part A of the application contains the information regarding persons authorised to make this application, listing the names of the persons jointly comprising the applicant, and providing details regarding their authorisation by the native title claim group.

Schedule A of the application contains a description of the native title claim group as comprising the descendents of ten persons and in my view, there is nothing on the face of the application that leads me to conclude that the description of the native title claim group does not include all of the persons in the native title group, or that it is a subgroup of the native title claim group.

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).

Part B of the application states on page 15 the name and address for service of the persons who are the applicant.

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).

Schedule A provides a description of the persons in the group.

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 entry in the National Native Title Register, 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) stating the basis on which the applicant is authorised as mentioned in (iv).

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

No affidavits addressing the requirements of s. 62(1)(a) have been filed with this amended application.

The Iman People #2 application was first lodged with the Registrar on 30 October 1997, at which time the applicant was comprised of **{Person 1 – name deleted}**, Patrick Sylvester, Cynthia Kemp, Eve Fesl, **{Person 2 – name deleted}**, **{Person 3 – name deleted}**, **{Person 4 – name deleted}**. It was last considered and accepted for registration under s. 190A in amended form on 26 July 2002 when the applicant comprised of **{Person 1 – name deleted}**, Patrick Sylvester, Cynthia Kemp, Eve Fesl, **{Person 2 – name deleted}**, **{Person 5 – name deleted}**, **{Person 6 – name deleted}**, Richard Doyle and **{Person 7 – name deleted}**.

On 19 July 2011, the Court ordered the replacement of the applicant pursuant s. 66B. This is the applicant which now brings the application, as amended, before me— Richard Doyle, Patrick Sylvester, Kenny Waterton, Eve Fesl, Eddie Waddy, Graham Anderson, Arwa Waterton, Cynthia Kemp, Bradley Curtis, Dena Marie Dodd-Ugle and Heidi Anne-Marie Lawson.

In *Drury v Western Australia* [2000] FCA 132 (*Drury*) Justice French dealt with an amendment of geographical contraction of a claim area and held that not all amendments of applications required the filing of new s. 62 affidavits with an amended application. His Honour referred to s. 64(5) as it then was in the old Act. The requirement in s. 64(5) to file new affidavits for replacement persons was limited to the affidavit simply stating that the new person is authorised by the claim group and stating the basis upon which the new person is so authorised. Thus, under the old Act, even with a replacement applicant there was no requirement to file a fresh s. 62(1) affidavit(s). Justice French stated:

> Where an application is to be amended simply by contraction of the geographical area covered by it pursuant to an agreement, that is a matter in which the filing of fresh affidavits by the same applicants covering the matters in (i) to (v) would be a pointless bureaucratic imposition. The amendment proposed in this case does not require the filing of fresh affidavits by the applicants—at [13].

Section 64 was removed in 2007 when s. 66B was amended to make it 'clear' that the 'only' way to replace the applicant was through a s. 66B process. Pursuant to that process affidavits would be filed in Court and it would determine whether the replacement applicant was properly authorised. If the application was subsequently amended (not relating to replacement of the applicant) there would be no legal requirement to file new s. 62(1)(a) affidavits (pursuant to the *Drury* decision). This is the case in this amended application before me whereby the applicant has been replaced through a s. 66B process and a subsequent application filed unrelated to any changes to the applicant.

Given that it would appear there is no legal requirement to file fresh s. 62(1)(a) affidavits it would seem appropriate (despite the change in applicant over time) for me to rely upon affidavits filed in the original and later amended applications by reading those applications and the amended application together on this point. In my view, I am assisted at this condition by affidavits filed with the 2002 amended application and it is these that I rely on for the purposes of my consideration at s. 62(1)(a)of the amended application.

The affidavits filed with the amended application of 18 February 2002 were sworn by the persons who then comprised the applicant: Eve Fesl (6 February 2002), **{Person 2 – name deleted}**, (2 February 2002), **{Person 5 – name deleted}**, (1 February 2002), Cynthia Kemp (1 February 2002),

{Person 6 – name deleted} (1 February 2002), **{Person 7 – name deleted}** (1 February 2002), Patrick Sylvester (1 February 2002), **{Person 1 – name deleted}**, (1 February 2002), Richard Doyle (1 February 2002). Each of the affidavits contains the statements required by s. 62(1)(a)(i) to (v) (as it stood before the amendment of that provision by the *Native Title Amendment (Technical Amendments) Act 2007* (*Technical Amendments Act*)).

I note in this case that there are different people who now jointly constitute the applicant but, in my view, this is not of considerable issue for this procedural point, as at the time the application was filed it was accompanied by the relevant s. 62(1)(a) affidavits.

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).

The application does contain the details specified in ss. 62(2)(a) to (h), as identified in the reasons below.

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).

Attachment B of the application contains a description of the external boundaries of the area covered by the application. Schedule B includes a description of those areas not covered by the area of the application.

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).

Attachment C of the application contains a map of the application area.

Searches: s. 62(2)(c)

> The application must contain the details and results of all searches carried out 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).

Schedule D contains the statement that no searches have been carried out by the applicant.

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).

A description of the native title rights and interests claimed in relation to the area covered by the application is contained in Schedule E. This description (included as an excerpt within my reasoning at s. 190B(4)) consists of more than a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that may not have 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).

Schedule F of the amended application contains the statement that the applicant relies on the following material:

- statements and material referred to in Schedules F and R of the Amended Native Title Determination Application filed on 12 March 2002;
- Two reports provided at Attachment F of the Amended Native Title Determination Application filed on 7 February 2012; and
- Anthropological Assessment dated 22 December 2011 contained in Attachment F.

These documents are either attached to the amended application filed earlier in February 2012 or have subsequently been provided by the applicant in its additional material.

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).

Schedule G of the application lists activities which the native title claim group currently carry out on and in relation to the area 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).

Schedule H contains the statement that there are no existing native title determination applications in respect of the claim area.

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).

Schedule I refers to Attachment I which provides a list of notices issued under s. 29 between 2002 and 2011.

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 requirement that the Registrar be satisfied in the terms set out in s. 190C(3) is only triggered if all of the conditions found in ss. 190C(3)(a), (b) and (c) are satisfied—see *Western Australia v Strickland* (2000) 99 FCR 33; [2000] FCA 652 (*Strickland FC*) at [9]. Section 190C(3) essentially relates to ensuring there are no common native title claim group members between the application currently being considered for registration ('the current application') and any overlapping 'previous application'.

The geospatial assessment and overlap analysis of 23 March 2012 (the geospatial report) identifies that no native title determination applications fall within the external boundaries of the current application.

As the amended application is not overlapped by any other applications in the sense discussed in s. 190C(3)(a) to (c), there is no requirement that I consider the issue of common claim group membership.

I am therefore satisfied that the current application meets the requirements of s. 190C(3).

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.

Under s. 190C(5), if the application has not been certified as mentioned in s. 190C 4(a), the Registrar cannot be satisfied that the condition in s. 190C(4) has been satisfied unless the application:

(a) includes a statement to the effect that the requirement in s. 190C(4)(b) above has been met, and

(b) briefly sets out the grounds on which the Registrar should consider that the requirement in s. 190C(4)(b) above has been met.

For the reasons set out below, I am **satisfied** that the requirements set out in s. 190C(4)(b) are met.

I must be satisfied that the requirements set out in either ss. 190C(4)(a) or (b) are met, in order for the condition of s. 190C(4) to be satisfied. As the application is not certified pursuant to s. 190C(4)(a), it is necessary to consider if the application meets the condition in s. 190C(4)(b); that the applicant is a member of the native title claim group and is authorised by all other persons in the claim group to make the application and deal with matters arising in relation to it.

Additionally, in my consideration of the authorisation condition at s. 190C(4)(b) I must also consider the requirements as set out in s. 190C(5), the terms of which are set out above.

Information considered

In my consideration of the authorisation of the applicant to make the Iman People #2 application and to deal with matters arising in relation to it, I have had regard to material contained at Attachment R to the amended application filed 16 March 2012:

- Affidavit of **{Person 8 – name deleted}** sworn 23 February 2012, in relation to the 7 January 2012 meeting, which includes:
    - Annexure BJB1, notice in the Courier Mail, 18 December 2012
    - Annexure BJB2, meeting attendance registration log
    - Annexure BJB3, 105.9FM sponsorship Agreement
- Affidavit of Patrick Sylvester sworn 7 March 2012, in relation to his attendance at the 7 January 2012 meeting, which includes:
    - Annexure PS1 attendance register of authorisation meeting 7 January 2012
- Affidavit of **{Person 9 – name deleted}** sworn 15 March 2012, in relation to the 7 January 2012 meeting, which includes:

- Annexure CSH1, attendance register of authorisation meeting 7 January 2012
- Annexure CSH2, minutes of authorisation meeting 7 January 2012
- Annexure CSH3, minutes of authorisation meeting 11 June 2011

I have had regard to attachment F of the amended application of 16 March 2012:

- Rosie of the Dawson (mother of Cissie Henry) and Tommy Tommy, An Anthropological Assessment, {**Anthropologist 1 – name deleted**}, 22 December 2011 [Stage 1] ('Stage 1 Report')

I have had regard to information attached to Attachment R of the amended application filed 7 February 2012:

- Affidavit of **{Person 15 – name deleted}**, QSNTS, affirmed 11 April 2011
- Affidavit of **{Person 16 – name deleted}**, QSNTS, affirmed 8 April 2011, to which is annexed Minutes of Iman Authorisation Meeting, 13 November 2010

I have had regard to additional material provided to me by the applicant on 16 March 2012 and 16 April 2012:

- Affidavits of Bradley Curtis (affirmed 3 June 2011), Arwa Waterton (affirmed 6 June 2011), Cynthia Kemp (affirmed 6 June 2011), Eddy Waddy (affirmed 4 June 2011), Kenny Waterton (affirmed 6 June 2011), Patrick Sylvester (affirmed 3 June 2011), Richard Doyle (affirmed 31 May 2011), all of which attach the *Summary of Outcomes, Iman People's Authorisation Meeting, 27 March 2011*;
- Submission on the merit conditions of the registration assessment of the Native Title Determination Application for Iman People #2, Just Us Lawyers, Solicitor for the Applicant, dated 16 April 2012; and
- Iman People Native Title Application, Anthropologists Report (Stage 2), {**Anthropologist 1 – name deleted**}, 5 April 2012 ('Stage 2 Report').

I have also had regard to the judgment and orders of Justice Collier, dated 19 July 2011, in relation to the s.66B application that replaced the applicant:

- *Tatow on behalf of the Iman People #2 v State of Queensland* [2011] FCA 802 (*Tatow*)

The requirements of s. 190C(5)

For the purposes of s. 190C(5)(a), the application must contain a statement to the effect that the requirement set out in paragraph (4)(b) has been met. My consideration is confined to information contained in the application and in my view the information at Schedule R of the application provides the relevant information.

Attachment R includes the minutes of 11 June 2011 which are annexed to **{Person 9 – name deleted}**'s affidavit (CSH3). The apical ancestor for each of the persons proposed to be authorised to jointly comprise the applicant is identified for the purposes of motion 6. In my view, this is sufficient for me to be satisfied that the persons authorised are members of the native title claim group. The group's agreed to, and adopted decision-making process is set out, as well as the number of votes which confirmed each person to comprise the applicant. In my view this information provides sufficient grounds on which the Registrar should consider that the

applicant is authorised to make and deal with the application by all the other persons in the native title claim group.

Additionally, as referred to in my reasons under s. 62(1)(a), I also rely upon the affidavits filed with the amended application of 2002. This application was brought on behalf of the Iman People #2 native title claim group by **{Person 1 – name deleted}**, Patrick Sylvester, Cynthia Kemp, Eve Fesl, **{Person 2 – name deleted}**, **{Person 5 – name deleted}**, **{Person 6 – name deleted}**, Richard Doyle and **{Person 7 – name deleted}**.

Each of the persons comprising the applicant at that time made the following statement in their affidavits, which, in my view, satisfies the requirements of s. 190C(5)(a):

> I was authorised by the persons in the native title claim group to make this Application and to deal with matters arising in relation to it in accordance with a decision making process involving consultation with members of the native title claim group and approval by those members at a meeting held in Rockhampton on 14 September 2000, 20 September 2000, 6 and 7 December 2001 as well as a meeting held in Rockhampton on 1 February 2002, as set out in Schedule R of this amended application—para 5 in each of the affidavits provided by the persons who comprised the then applicant for the amended application.

I have referred also to Schedule R of the 2002 amended application which, in summary, provides the following information:

- The persons comprising the applicant are members of the native title claim group;
- They were authorised to make and deal with the application by all the persons in the native title claim group;
- Their authorisation was through an 'adopted contemporary traditional process' involving approval of families associated with particular areas within the claim area, the consent of senior members of the group and through discussion, the native title claim group reaching consensus.

In my view the information to be found in the 2002 amended application is consistent with the relevant information contained in the more recent amended application before me. I am therefore satisfied that the application meets the requirements of s. 190C(5).

The requirements of s. 190C(4)(b)

In *Doepel*, Mansfield J discusses the interaction between s. 190C(4)(b) and s. 190C(5) and how the Registrar is to be satisfied as to these conditions of the registration test:

> In the case of subs (4)(b), the Registrar is required to be satisfied of the fact of authorisation by all members of the native title claim group. Section 190C(5) then imposes further specific requirements before the Registrar can attain the necessary satisfaction for the purposes of s. 190C(4)(b). The interactions of s. 190C(4)(b) and s. 190C(5) may inform how the Registrar is to be satisfied of the condition imposed by s. 190C(4)(b), but clearly it involves some inquiry through the material available to the Registrar to see if the necessary authorisation has been given—at [78].

It is therefore still necessary for me to consider whether I am satisfied that the applicant is authorised pursuant to s. 190C(4)(b), noting that I am not limited in my consideration to what is contained in the application on the issue.

A note to s. 190C(4) directs the Registrar to s. 251B of the Act, for the meaning of the word 'authorise':

> **251B Authorising the making of applications**
> For the purposes of this Act, all the persons in a native title claim group or compensation claim group authorise a person or persons to make a native title determination application or a compensation application, and to deal with matters arising in relation to it, if:
>
> (a) where there is a process of decision-making that, under the traditional laws and customs of the persons in the native title claim group or compensation claim group, must be complied with in relation to authorising things of that kind—the persons in the native title claim group or compensation claim group authorise the person or persons to make the application and to deal with the matters in accordance with that process; or
>
> (b) where there is no such process—the persons in the native title claim group or compensation claim group authorise the other person or persons to make the application and to deal with the matters in accordance with a process of decision-making agreed to and adopted, by the persons in the native title claim group or compensation claim group, in relation to authorising the making of the application and dealing with the matters, or in relation to doing things of that kind.

Thus, s. 251B of the Act must guide the Registrar when considering the application's ability to comply with s. 190C(4)(b). For the Registrar to be satisfied that the applicant has been duly authorised, the information must 'demonstrate compliance with either of the processes for which the legislature has allowed'—*Evans v Native Title Registrar* [2004] FCA 1070 at [53]. That is, the information must show compliance with a decision-making process mandated by the traditional laws and customs of the native title claim group or a decision-making process agreed to and adopted by the persons in the native title claim group.

Section 66B proceedings to replace the applicant

On 15 July 2011, Justice Collier heard an application pursuant to s. 66B to replace the then existing Iman People #2 applicant based on the submission that it was no longer authorised to make and deal with the application. In her reasons in *Tatow*, Collier J addressed certain conditions imposed by the section that must be satisfied and found that:

1. each of the persons proposed to jointly comprise the new applicant were members of the native title claim group, each having filed affidavits deposing to the fact that they are members of the native title claim group—at [13];
2. that authorisation of the current native title applicant was withdrawn—at [26]; and
3. the applicants to the notice of motion (pursuant to s. 66B) were authorised to make the native title application and deal with matters arising under it—at [26].

In *Tatow*, Collier J sets out and considers at [19] to [25] the details of an authorisation meeting held on 11 June 2011 and determines that she is satisfied that the meeting was properly convened and conducted.

The applicant has provided me with affidavits filed in the Court and minutes of the authorisation meeting relevant to the process which resulted in the authorisation of the current applicant for the Iman People #2 amended application (as referred to above in my reasons under s. 190B(5)).

Authorisation meetings held by the native title claim group

A number of native title claim group meetings were convened over the period November 2010 to January 2012 to cover key decisions to be made by members of the group:

13 November 2010	to authorise changes to the claim group description and to authorise a new applicant (Affidavit of **{Person 15 – name deleted}** and minutes of the meeting, 7 February 2012 amended application)
27 March 2011	to determine whether the applicant was authorised to represent the claim group and, if not, to select a replacement applicant (affidavits of Bradley Curtis et al, filed 6 June 2011)
11 June 2011	ordered by the Court on 13 April 2011 to resolve the issue of replacement of the applicant (affidavit of **{Person 9 – name deleted}**, annexure CSH3, 16 March 2012 amended application)
7 January 2012	to authorise an amendment to the claim group description (affidavit of **{Person 9 – name deleted}**, annexure CSH2, 16 March 2012 amended application)

The Court made orders to replace the applicant on 19 July 2012.

Decision-making process of the Iman People native title claim group

The decision-making process agreed to and adopted by the native title claim group is set out in a number of documents before me, the descriptions of which are all largely consistent with each other. I summarise below the process, based on the records in the minutes of all the meetings set out above:

- there is no particular process of decision-making under traditional laws and customs that must be complied with by the claim group (meetings of November 2010, March 2011, January 2012);
- reasonable opportunity is provided for informed discussion about each matter before a decision is made on it (November 2010, June 2011);
- a proposed decision is put in the form of a written motion which is read out to the meeting and must be moved and seconded before being decided upon (November 2010, March 2011, June 2011, January 2012);
- the decision is put to a vote through a show of hands with a majority required of those in attendance for the decision to be affirmed (November 2010, March 2011, June 2011, January 2012); and
- a decision reached by majority vote is binding and will be an authoritative decision of the claim group (November 2010, March 2011, June 2011).

It is clear to me that this process was agreed to and adopted consistently at all four of the meetings that occurred between November 2010 and January 2012.

The decision by the native title claim group at the 11 June 2011 meeting to replace the existing applicant, and the basis on which Collier J found the new applicant to be authorised to make and

deal with the application, was carried through various motions with majority votes. My reading of the minutes of that authorisation meeting concurs with Collier J's findings:

> that Richard Doyle, Patrick Sylvester, Kenny Waterton, Eve Fesl, Eddie Waddy, Graham Anderson, Arwa Waterton, Cynthia Kemp, Bradley Curtis, Dena Marie Dodd-Ugle and Heidi Lawson be confirmed as the native title applicant (Motion 6. Each of the applicants were confirmed with different majorities)—at [21].

It therefore follows, from the information considered above, that the applicant asserts to be authorised by all the other persons in the native title claim group, in accordance with the process described in s. 251B(b), being an agreed to and adopted decision-making process.

Authorisation meeting of 11 June 2011

Collier J was satisfied that the Court should exercise its discretion to make an order pursuant to s. 66B because:

- the 11 June 2011 meeting resolved unanimously and overwhelmingly to replace the native title applicant; and
- the meeting effectively superseded the two earlier attempts to replace the applicant (at the meetings of November 2010 and March 2011)—at [27].

The applicant has not provided me with details to show how the 11 June 2011 meeting was notified or who attended that meeting and whether or not they were sufficiently representative of the claim group. However, the minutes of the 11 June 2011 authorisation meeting do record a motion in respect of these matters:

> That the members of the Iman #2 claim group in attendance at the meeting are satisfied that:
> (a) the people at the meeting are sufficiently representative of the Iman #2 Claim Group (as identified in the court order of 13 April 2011[1]) to make authoritative decisions about the claim; and
> (b) sufficient notice was given of this meeting to the claim group to enable authoritative decisions to be made today about the Iman #2 claim—Motion 3.

The motion was carried with 81 in favour, none against and 7 abstentions. It appears to me that at least 127 persons attended this meeting[2]. With no attendance list before me to verify how the native title claim group was represented at the meeting, I have given weight to the findings of Collier J on these matters. She applies the criteria Justice O'Loughlin sets out in *Ward v Northern Territory* [2002] FCA 171 (*Ward*) when considering an application pursuant to s. 66B, and is satisfied that information concerning the 11 June 2011 meeting is satisfactorily disclosed because it was clear to the Court that:

- the meeting was convened by QSNTS pursuant to orders of the Court;
- an agenda displayed in a PowerPoint presentation was put to the meeting;
- those in attendance were recognised by resolutions passed at the meeting as having the right or entitlement to participate in the authorisation process;
- the meeting was chaired independently by **{Person 17 – name deleted}**, who has previous experience in chairing such meetings;

[1] Mary Arwa, Jim Waterton, Ada Robinson, Maggie Palmtree, Lizzie Palmtree, Rosie of the Dawson (mother of Cissie Henry), Mary Ann (mother of Maggie Dunn) Eliza Shields, Fanny Waddy/Sandy, Tommy Tommy, Dick Bundi/Bundai, John "James" Serico

[2] Motion 4 (to do with the terms and conditions of the role of persons comprising the applicant) is carried by 127 persons in favour.

- **{Person 17 – name deleted}** was assisted by **{Person 10 – name deleted}** of Counsel;
- those who attended the meeting had the fact of their attendance recorded and their line of descent from one of the apical ancestors verified by an experienced anthropologist familiar with the composition of the claim group;
- the minutes recorded resolutions put to the meeting, resolutions both carried and not carried, and the number of votes cast;
- by resolution, the meeting accepted that adequate notice had been given in respect of the convening of the meeting—at [25].

On this basis, Collier J was 'satisfied that the meeting was properly convened and conducted, that authorisation of the current native applicant was withdrawn, and that the applicants to the notice of motion were authorised by the claim group to make the native title application and to deal with matters arising under it'—at [26].

Additionally, each of these persons comprising the new applicant have affirmed or sworn affidavits (in July 2011) supporting and consenting to the bringing of a notice of motion under s. 66B to replace the applicant and to being a member of the applicant group (at [2]) and that this nomination was accepted and resolved at an authorisation meeting of 11 June 2011 (at [4]).

Authorisation meeting of 7 January 2012

The applicant has provided me with a large volume of material in relation to this meeting held, it appears, primarily to authorise and confirm an amendment to the claim group description (*Minutes of Iman Authorisation Meeting*). The native title claim group's decision-making process is set out (referred to above), extensive details are provided in relation to claim resolution and subsequent developments (Item 4) with a number of resolutions moved, seconded and put to a vote and carried in the majority. The meeting was extensively notified in print publications and radio announcements, evidence of which is provided in the annexures to the affidavit of a lawyer in the employ of Just Us Lawyers, the representative for the applicant.

The notices for the meeting invited the descendents of 13 apical ancestors:

> Mary Arwa, Jim Waterton, Ada Robinson, Maggie Palmtree, Lizzie Palmtree, Eliza Shields, Rosie of the Dawson (mother of Cissie Henry), Mary Ann (mother of Maggie Dunn) Fanny Waddy/Sandy, Tommy Tommy, Dick Bundi/Bundai, John "James" Serico, Nellie Carmody/Dunn—Annexure BJB1

Nellie Carmody, Cissy Henry and Tommy Tommy do not form part of the list of apical ancestors used to describe the claim group in this amended application. Resolution 12 is recorded in the minutes as carried with 151 in favour, 49 against, 12 abstentions:

> The Applicants are authorised to provide instructions to their legal advisors to apply to amend the claim group description of the Iman #2 Native Title Claim by removing reference to Rosie of the Dawson (mother of Cissie Henry) and Tommy Tommy and their descendants.

Attendees at the meeting resolved that descendents of Nellie Carmody did not 'have a right to speak or otherwise participate in decision making at this meeting'—Minutes of authorisation meeting, Resolution 1.2.

{Person 9 – name deleted}, the representative for the applicant, deposes to 344 members of the claim group in attendance at this meeting, and annexes to his affidavit a copy of the attendance register to confirm this.

The minutes do not record any vote or resolution in relation to the authorisation of the applicant to make and deal with the application.

Other matters considered

As stated above, the applicant was conclusively replaced pursuant to s. 66B by order of the Court on 19 July 2011. The authorisation meeting (of 11 June 2011) which resulted in this decision being made by the native title claim group is, in my view, the meeting most directly relevant to the authorisation condition. I have therefore focused my consideration on the documentation that relates to the authorisation meeting of 11 June 2011. In my view, the weight to which Collier J affords this material and her subsequent findings are also relevant.

No specific resolution was passed at the meeting of 7 January 2012 that related to the authorisation of the eleven persons comprising the applicant to make the application, and in my view, nothing turns on the fact that no such precise resolution was put to the members of the native title claim group at that meeting. In addition to the preceding s. 66B proceedings and subsequent orders to replace the applicant, it is implicit from the native title claim group's authorisation of the amendments to the claim and other resolutions that the applicant was authorised, as comprised of the eleven named persons, to make and deal with the application.

However, in my view it is clear that some inconsistency exists in the way the native title claim group has been described during the process that has resulted in the filing of the amended application and it is therefore relevant that I consider the composition of the native title claim group. Authorisation of the applicant, with which s. 190C(4)(b) is concerned, must flow from the 'native title claim group' and I refer to the decision of Collier J in *Wiri People v Native Title Registrar* (2008) FCR 187; [2008] FCA 574 (*Wiri People*) whereby the Registrar must be satisfied in relation to s. 190C(4), as to the *identity* [original emphasis] of the claimed native title holders including the applicant'—at [29].

Composition of the native title claim group

In my view, it appears that there has been since November 2010 an active process to settle the description of the native title claim group. This has eventuated in an expanded description of the group from that which brought the 2002 amended application (with 9 ancestors). Consideration was had by the group in November 2010 of a description which potentially included descent from 18 apical ancestors; orders were made by the Court in April 2011 to amend the description to one that identified 12 ancestors; and finally the list of apical ancestors used to describe the claim group was authorised in January 2012:

> Mary Arwa, Jim Waterton, Ada Robinson, Maggie Palmtree, Lizzie Palmtree, Eliza Shields, Mary Ann (mother of Maggie Dunn) Fanny Waddy/Sandy, Dick Bundi/Bundai, John "James" Serico.

This amended application has included (as attachment F) an anthropological assessment, dated 22 December 2011 (State 2 Report, {**Anthropologist 1 – name deleted**}), in relation to the connection of two ancestors—Rosie of the Dawson (the mother of Cissie Henry) and Tommy Tommy. The descendants of Cissie Henry were included in the description of the native title claim group for the 2002 amended application. At both the 11 June 2011 and 7 January 2012 meetings resolutions reached in relation to the description of the native title claim group included the descendants of both Rosie of the Dawson and Tommy Tommy in that description.

{**Anthropologist 1 – name deleted**}'s view, based on her consideration of available materials, is that the traditional affiliations of these two ancestors are not with the area covered by the Iman #2 application. Rosie of the Dawson is identified as Gureng-Gureng and Tommy Tommy as Kambuwul. Neither ancestor is included in the current description for the native title claim group for this amended application. That their descendants not be included in the description of the group was authorised by the claim group on 7 January 2012.

Three ancestors have been added to the description since the application was placed on the Register in 2002: Ada Robinson, Fanny Waddy/Sandy, Dick Bundi/Bundai. Their inclusion in the description was the subject of a majority resolution at the authorisation meeting of 13 November 2010.

In her Stage 2 Report, {**Anthropologist 1 – name deleted**} has assessed a number of other ancestors who have been included in descriptions of the claim group at various times over the years that Iman people have filed NTDAs over the region. She finds in relation to only one ancestor, Nellie Carmody/Dunn, that it 'would not be contrary to Iman law and custom for [her] descendents to be included within the claim group description of the Iman #2 claim'—at [117]. The descendants of Nellie Dun were included in the description of the native title claim group for the 2002 amended application. Nellie Carmody/Dunn is not included the description for the amended application before me. Descendants of this ancestor were invited to the 7 January 2012 meeting but it was resolved at the meeting that they would not participate.

The applicant's submission of 16 April 2012 includes a footnote in relation to this issue: 'The descendents of Nellie Carmody/Dunn are not currently included in the claim because the claim group has not yet had an opportunity to consider the findings in {**Anthropologist 1 – name deleted**}'s "stage 2" report'—at footnote 58, page 15.

Essentially, during the period of time that has elapsed since 2002, since the application was last considered for registration, it would appear as though significant research and consideration has occurred in relation to the description of the native title claim group. On the face of it, the description of the native title claim group may appear to be in a state of flux. Based on the workplan, the description is proposed to be settled by 30 August 2012. That is, the 'basis upon which each nominated ancestor can be said to be a member of the Traditional Indigenous society for the claim area and full genealogies' will be completed.

I do not consider that I can or ought to reach any definitive view as to what the correct identity of the native title claim group may be. While there may be some uncertainty as to how the native title claim group is defined, and given that the Registrar is permitted to undertake some analysis of the 'identity' of the native title claim group, such a complex and exacting task in these circumstances is beyond the limitations of the Registrar's task, as characterised by *Doepel*:

> [The Tribunal's] task is clearly not one of finding in all respects the real facts on the balance of probabilities, or on some other basis. Its role is not to supplant the role of the Court when adjudicating upon the application for determination of native title, or generally to undertake a preliminary hearing of the application—at [16].

Thus, in carrying out the administrative function of applying the registration test, I do not intend to take on the role of adjudicating upon the identity of a native title claim group, as it is clear that I am compelled by the limitations of the Registrar's task—*Doepel* at [16]. In my view, given the circumstances particular to this matter, it is not for me to forestall an application's ability to get

onto the Register and it is therefore appropriate that I curtail any complex deliberation beyond what I have detailed above.

I have a description of the native title claim group whose identity would appear to be largely settled and whose description is based on recent anthropological assessment and some consideration by the Iman People. I acknowledge that there have been inconsistencies with the description regarding who, according to their traditional laws and customs, comprise the native title claim group. However, given the lack of any explicit dissension in relation to the composition of the group or its description, I am satisfied as to the identity of the native title claim group for the area claimed.

Is the applicant a member of the native title claim group?

I have material before me in respect of all four authorisation meetings held over the past 18 months, previously and recently filed affidavits and Court orders and related documents. It is clear to me from the information scattered across this material that the persons comprising the applicant are all members of the native title claim group.

Is the applicant authorised to make and deal with the application in accordance with s. 251B(b)?

The Court has considered in various instances what may be required to satisfy the Registrar that an applicant has been authorised by all the persons in the native title claim group, in accordance with s. 251B(b). It is well settled in law, that the word 'all' in the context of authorisation pursuant to s. 251B, has 'a more limited meaning than it might otherwise have.' In *Lawson v Minister for Land and Water Conservation* (NSW) [2002] FCA 1517 (*Lawson*), Stone J held in relation to s. 251B(b) that it is not necessary for each and every member of the native title claim group to authorise the making of an application, but rather '[i]t is sufficient if a decision is made once the members of the claim group are given every reasonable opportunity to participate in the decision-making process'—*Lawson* at [25].

Collier J applied the questions posed in *Ward* (as referred to above) and was satisfied as to the disclosure of the authorisation process sufficient to order the replacement of the applicant pursuant to s.66B (*Tatow*).

I have no information before me contesting the representation of the native title claim group at the 11 June 2011 meeting or that sufficient opportunity was not afforded all of the persons in the group to attend and participate in the process of authorisation at that meeting. Stone J in *Lawson* advocated that 'a practical approach' is best adopted in relation to such questions—at [28]. Whilst one might wish to have more precise information in relation to what proportion of the claim group attended the meeting, where there is sufficient information about the authorisation of the applicant, it may not be appropriate for the Registrar to take an 'overly technical or pedantic' approach.

As this is my approach, I am of the view that I am satisfied that the applicant is authorised to make and deal with the application because:

- a decision-making process agreed to and adopted by the claim group was followed in very similar form at all meetings that involved decisions about the applicant and the claim, including the 11 June 2011 meeting;

- the minutes of the 11 June 2011 meeting record that the persons in attendance were satisfied that they were sufficiently representative of the native title claim group and that sufficient notice of the meeting was given to the claim group;
- each of the persons now comprising the applicant have affirmed or sworn to their authority brought by the majority vote of those persons of the native title claim group in attendance at the 11 June 2011 meeting; and
- that Collier J expressed no doubt as to the veracity of the resolution of the native title claim group and its majority decisions at the 11 June 2011 meeting to authorise a new applicant comprising the eleven persons who have brought this amended application.

Conclusion

In considering the authorisation condition I have had to turn my mind to information which seems to contain some inconsistencies in relation to the apical ancestors and how the claim group is defined. On balance, however, it is my view that there is cogent and compelling information going to the composition of the native title claim group. The composition of a claim group will usually develop and change over time as more research is carried out and I don't believe that it is the role of the Registrar or her delegates to overly scrutinise such changes where they are accompanied by cogent material about the changes and where there is reasonable certainty around the identity of the claimed native title holders.

In respect of the apical ancestor Nelly Carmody/Dunn, it is by the applicant's own admission (as per the information in the Stage 1 Report and the applicant's submissions) that she is an apical ancestor of the native title claim group and should be included in the description of the group. Her descendants were invited to the January 2012 meeting but were not given the opportunity to participate in the decision-making, however, there is information as to why this course was taken, that being that the anthropological report had not been completed at that stage. Although the issue is not unambiguous, it is, in my view, open for me to take a pragmatic approach. That is, the issue of the native title claim group would appear to be not quite settled, nonetheless, there is reasonable certainty provided in the material before me such that I can be satisfied as to the identity of the claimed native title holders.

I am therefore satisfied that all reasonable steps have been taken for all of the persons of the native title claim group to be provided an opportunity to participate in the decision-making process which authorised an amendment to the claim group description and the making of this amended application. I am satisfied that all the material before me demonstrates that the applicant is duly authorised in accordance with s. 251B(b) to make this application and to deal with all matters arising in relation to it.

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).

In assessing the current application against s. 190B(2), I am required to be satisfied that the information provided by the applicant for the purposes of ss. 62(2)(a) and 62(2)(b) is sufficient for the particular land and waters, over which native title rights and interests are claimed, to be identified with reasonable certainty. Whilst I may have regard to information beyond the application where clarification is necessary, it is to the terms of the application itself that I am to primarily direct my attention in reaching the required level of satisfaction—*Doepel* at [16] and [122].

Schedule B of the application refers to Attachment B which is entitled "Area of Land and Water Covered by the Application" and contains a written description of the external boundary prepared by Geospatial Services, National Native Title Tribunal on 25 November 2011 and describes the external boundary of the application area by referencing the Dawson River, Lot 3 on Plan TR56 and coordinate points (referencing Geocentric Datum of Australia 1994 (GDA94) Shown to six (6) decimals points).

Schedule B lists at paragraphs 1 to 6 general exclusions to describe those areas not covered by the application and the description in Attachment B specifically excludes the lands and waters in the following native title determination applications from the application area:

- QC00/7—Wulli Wulli People—QUD6006/00 , as accepted for registration 31 March 2010;
- QC08/10—Mandandanji People—QUD366/08 , as accepted for registration 30 March 2009;
- QC06/5—Karingbal 2—QUD23/06, as accepted for registration 24 March 2006.

Schedule C refers to a map showing the boundaries of the area covered by the application at Attachment C. The map at Attachment C is a reduced monochrome copy of an A3 colour map produced by Geospatial Services on 25 November 2011 and titled 'QUD6162/98 (QC97/55) Iman People 2'. The map includes the following details:

- the application area depicted as a bold blue line with a transparent blue fill, and surrounding native title determination application boundaries depicted as thick dashed red, blue and green lines and identified by Federal Court number, name and NNTT number;
- topographic background;
- scalebar, coordinate grid and location diagram; and

- notes relating to the source, currency and datum of data used to prepare the map.

Section 190B(2) requires that the information in the application describing the areas covered by the application must be sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters. For the Registrar to be satisfied, it is my view that the written description and map should be sufficiently consistent with each other and the reader should be able to discern the location of the area covered by the application on the surface of the earth with reasonable certainty.

The geospatial report of 23 March 2012 confirms that the description and map are consistent and identify the application area with reasonable certainty.

Having regard to the identification of the external boundary in Attachment B and the map showing the external boundary, I am satisfied that the external boundaries of the application area have been described such that the location of it on the earth's surface can be identified with reasonable certainty.

The specific exclusions to the area of the application are clearly identifiable, and while the written description at Schedule B contains some general exclusions, they are sufficient to offer an objective mechanism by which to identify those areas that fall within the categories described.

Based on the information provided in both the written description of the application area at Schedule B and Attachment B, and the map in Attachment C, I agree with the geospatial assessment and am satisfied that it can 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).

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).

Under this condition, I am required to be satisfied that one of either s. 190B(3)(a) or (b) has been met. The application does not name the persons in the native title claim group but contains a description, and it is therefore necessary to consider whether the application satisfies the requirements of s. 190B(3)(b).

Schedule A of the application contains the following description of the persons in the native title claim group:

> The Native Title Claim group comprises the descendants of:
> 1. Mary Arwa
> 2. Jim Waterton
> 3. Ada Robinson
> 4. Maggie Palmtree

5. Lizzie Palmtree
6. Eliza Shields
7. Mary Ann (mother of Maggie Dunn)
8. Fanny Waddy/Sandy
9. Dick Bundi/Bundai
10. John "James" Serico

I note the comments of Mansfield J in *Doepel* at [51] and [37] respectively that the focus of s. 190B(3)(b) is:

- whether the application enables the reliable identification of persons in the native title claim group; and
- not on 'the correctness of the description . . . but upon its adequacy so that the members of any particular person in the identified native title claim group can be ascertained'.

Carr J in *State of Western Australia v Native Title Registrar* (1999) 95 FCR 93 (*Western Australia v Native Title Registrar*) was of the view that 'it may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described. But that does not mean that the group has not been described sufficiently—at [67].

I am of the view that the native title claim group is described sufficiently clearly to enable identification of any particular person in that group—it being the case that members of the group will trace descent from (one or more of) the ten named ancestors.

I am satisfied that the native title claim group has been sufficiently described.

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).

Section 190B(4) requires the Registrar to be satisfied that the description of the claimed native title rights and interests contained in the application is sufficient to allow the rights and interests to be identified—*Doepel* at [92]. In *Doepel*, Mansfield J refers to the Registrar's consideration:

> The Registrar referred to s. 223(1) and to the decision in *Ward*. He recognised that some claimed rights and interests may not be native title rights and interests as defined. He identified the test of identifiability as being whether the claimed native title rights and interests are understandable and have meaning. There is no criticism of him in that regard—at [99].

On this basis, for a description to be sufficient to allow the claimed native title rights and interests to be readily identified, it must describe what is claimed in a clear and easily understood manner.

Schedule E of the application contains the description of native title rights and interests claimed in relation to the application area, as required by s. 62(2)(d). The description includes a

qualification to which the claimed rights and interests are subject. The rights and interests claimed are described as follows:

> 1. Over areas where a claim to exclusive possession can be recognised (such as areas where there has been no prior extinguishment of native title or where s238, ss47, 47A or 47B apply), the claim group claims the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world, pursuant to the traditional laws and customs of the claim group.
>
> 2. Over areas where a claim to exclusive possession cannot be recognised, the claim group claims the non-exclusive right to:
>
> (a) live and be present on the application area;
> (b) take, use, share and exchange Traditional Natural Resources for personal, domestic and non-commercial, communal purposes;
> (c) conduct burial rites;
> (d) conduct ceremonies;
> (e) teach on the area about the physical and spiritual attributes of the area;
> (f) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
> (g) light fires for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;
> (h) be accompanied into the claim area by non claim group members being people required;
>
> (1) by traditional law and custom for the performance of ceremonies or cultural activities; and
>
> (2) to assist in observing and recording traditional activities on the claim area; and
>
> (i) in relation to Water, take and use;
>
> (1) Traditional Natural Resources from the Water for personal, domestic and non-commercial communal purposes; and
>
> (2) for personal, domestic and non-commercial, communal purposes.
>
> 3. For the purposes of 2. Above;
>
> "Live" means to reside and for that purpose erect shelters and temporary structures but does not include a right to construct permanent structures;
>
> "Traditional Natural Resource" means:
>
> (1) "animals" as defined in the Nature Conservation Act 1992 (Qld);
> (2) "plants" as defined in the Nature Conservation Act 1992 (Qld);
> (3) "charcoal, shells and resin"; and
> (4) "clay, soil, sand, ochre, gravel or rock on or below the surface";
>
> "Water" means water as defined by the Water Act 2000 (Qld);
>
> 4. The native title rights and interests are subject to:
>
> (a) The valid laws of the State of Queensland and the Commonwealth of Australia; and
> (b) The rights conferred under those laws.

In reading the rights and interests listed in Schedule E, together with and subject to the qualifications provided, I am of the view that the native title rights and interests claimed can be 'properly understood', and that there is 'no inherent or explicit contradiction' in the description which prevents me from reaching the level of satisfaction required by s. 190B(4)—*Doepel* at [123].

I am satisfied that the description contained in the application is sufficient to allow the native title rights and interests to be readily identified, as required by 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) because the factual basis provided is **sufficient** to support each of the particularised assertions in s. 190B(5), as set out in my reasons below.

For the application to meet this merit condition, I must be satisfied that a sufficient factual basis is provided to support the assertion that the claimed native title rights and interests exist and to support the particularised assertions in paragraphs (a) to (c) of s. 190B(5). In *Doepel*, Mansfield J states that:

> Section 190B(5) is carefully expressed. It requires the Registrar to consider whether the `factual basis on which it is asserted' that the claimed native title rights and interests exist `is sufficient to support the assertion'. That requires the Registrar to address the quality of the asserted factual basis for those claimed rights and interests; but only in the sense of ensuring that, if they are true, they can support the existence of those claimed rights and interests. In other words, the Registrar is required to determine whether the asserted facts can support the claimed conclusions. The role is not to test whether the asserted facts will or may be proved at the hearing, or to assess the strength of the evidence which may ultimately be adduced to establish the asserted facts—at [17].

In my consideration of the quality of the factual basis for the claim made in this application, I am guided by principles outlined in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; (2002) 194 ALR 538; [2002] HCA 58 (*Yorta Yorta*):

- traditional laws and customs are ones that a society passes on from one generation to another;
- laws and customs arise out of, and go to define, a particular society, that is a body of persons united in, and by, its acknowledgement and observance of a body of laws and customs;
- traditional laws or customs are derived from a body of norms or normative system that existed before sovereignty;
- rights and interests are rooted in pre-sovereignty traditional laws and customs; and

- it must be shown that the society, under whose laws and customs the native title rights and interests are said to be possessed, has continued to exist throughout the period since sovereignty was asserted as a body united by its acknowledgement and observance of the laws and customs.

That these principles from *Yorta Yorta* guide consideration of the condition in s. 190B(5) was discussed by Dowsett J in *Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*)—at [26]. I note that the review of that decision by the Full Court in *Gudjala # 2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala FC*) did not criticise this approach. I also note that the later decision by Dowsett J in *Gudjala #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala 2009*) again points to the *Yorta Yorta* principles as guiding the Registrar's consideration of the condition in s. 190B(5).

The test in s. 190A involves an administrative decision—it is not a trial or hearing of a determination of native title pursuant to s. 225, and therefore it is not appropriate to apply the standards of proof that would be required at such a trial or hearing. It is therefore not the task of the delegate to make findings about whether or not the claimed native title rights and interests *exist*. Nor is it the role of the delegate to reach definitive conclusions about complex anthropological issues pertaining to the applicant's relationship with their country as that is a judicial enquiry.

Information considered

Attachments to the amended application of 7 February 2012:

- Regional Socio-Cultural Ethnographic Reconstruction, Collaborative Solutions, November 2009 ('Regional Report');
- Consideration of Continuity of Connection, Collaborative Solutions, May 2010 ('Continuity Report')

Attachments to the amended application of 16 March 2012:

- Rosie of the Dawson (mother of Cissie Henry) and Tommy Tommy, An Anthropological Assessment, {**Anthropologist 1 – name deleted**}, 22 December 2011 [Stage 1] ('Stage 1 Report')

Additional material provided by the applicant on 16 April 2012:

- submission on the merit conditions of the registration assessment of the Native Title Determination Application for Iman People #2, Just Us Lawyers, Solicitor for the Applicant, dated 16 April 2012;
- Iman People Native Title Application, Anthropologists Report (Stage 2), {**Anthropologist 1 – name deleted**}, 5 April 2012 ('Stage 2 Report');
- Upper Dawson River Aboriginal Cultural Heritage Study, Anthropological Report, {**Anthropologist 2 – name deleted**}, August 1996 – January 1997, extracts from full report.

Schedule F of the amended application refers to the material upon which the applicant relies and also refers to the existence of information in relation to the 2002 amended application:

- Schedules F and R of the amended native title determination application filed on 12 March 2002—'on or about October 1998 and January 1999 a Consultant Anthropologist and the Research Assistant ... undertook consultation and research with members of the native title group'. The information was provided to the NNTT as supporting material for the Iman People application.

I note that on perusing the 2002 application this material is not attached to the Form 1. I have read the reasons for decision made in relation to the registration of that application and note that the delegate relied on affidavits sworn by **{Person 13 – name deleted}** and **{Person 14 – name deleted}** and an anthropological report attached to the application in QC99/3—Iman People #3—QUD6003/99. This material was included in that which was provided to the Registrar by the applicant on 16 April 2012:

- letter from Gurang Land Council (Aboriginal Corporation) Native Title Representative Body, 13 November 2000, attaching:
    - affidavit of **{Person 14 – name deleted}**, sworn 11 November 2000;
    - affidavit of **{Person 13 – name deleted}**, sworn 11 November 2000;
    - Attachment A – Native Title Claim Group (QC99/3);
    - Attachment F – General description of the Native Title Rights and Interests Claimed, attached to the application QC99/3—Iman #3— QUD6003/99;
- literature Review, **{Anthropologist 3 – name deleted}**, Consultant Anthropologist, 12 January 1999;
- statutory declaration of **{Person 11 – name deleted}**, dated 16 February 1999;
- affidavit of **{Person 12 – name deleted}**,, sworn 20 January 1999
- affidavit of **{Person 11 – name deleted}**, sworn 21 January 1999

Below I consider each of the three assertions set out in the three paragraphs of s. 190B(5) and I refer only to those statements in the material before me that are pointedly relevant to each of the assertions.

Composition of the native title claim group

I have had regard to material in this amended application and the amended application filed 7 February 2012 as well the applicant's additional material that makes it apparent, as mentioned earlier in these reasons, that there has been and continues to be some 'fluidity' regarding the identity of the native title claim group. As considered under the authorisation condition earlier in these reasons, the apical ancestors that comprise the descent-based description of the native title claim group has been the subject of recent research and substantial review and adjustment by the group.

In my consideration of the factual basis on which it is asserted that the native title rights and interests claimed exist, identification of the claim group is a key factor in whether or not I can be satisfied that the factual basis material supports the relevant assertions. On this point I refer to Dowsett J's characterisation in *Gudjala 2007* of the kinds of asserted facts that must be provided to support the assertion in s. 190B(5)(b). In respect of the identification of an indigenous society at the time of sovereignty, it is clear that there 'can be no relevant traditional laws and customs

unless there was, at sovereignty, a society defined by recognition of laws and customs from which such traditional laws and customs are derived'—at [66].

Guided by Dowsett J's comments, in my view, it is not my task to seek for the application to show that the apical ancestors were members of an indigenous society at the time of sovereignty. The list of apical ancestors in its current configuration is used to define the claim group and the factual basis material is largely directed at supporting the assertion that there existed an Iman society of which these persons were a part at and before the time of effective sovereignty in the area of the application. Dowsett J states that 'at some point the applicant must explain the link between the claim group and the claim area'—at [66] and in my view, the material before me sufficiently demonstrates this link.

I have taken a pragmatic approach to the identity of the native title claim for the purposes of my consideration of the factual basis for the claim, based on the same reasons I outlined earlier in these reasons at the authorisation condition.

Reasons for s. 190B(5)(a)

I am **satisfied** that the factual basis provided is sufficient to support the assertion described by s. 190B(5)(a).

This subsection requires me to be satisfied that the factual material provided is sufficient to support the assertion that the native title claim group has, and its predecessors had, an association with the area of the application. While it is not necessary for the factual basis to support an assertion that *all* members of the native title claim group have an association with the area *all* of the time, it is necessary to show that the claim group *as a whole* has an association with the area—*Gudjala 2007* at [51] and [52].

Association of the predecessors of the native title claim group with the application area

The Regional Report provides an 'ethnographic reconstruction of the regional society' in the area covered by the application based on the observations of explorers, government reports between 1840-1858, and the commentary of anthropologists and ethnographers. Explorers' accounts of the upper Dawson River area and surrounds during the early to mid 1840s show evidence of Aboriginal people with specific knowledge of country to exploit resource rich areas; laws and customs in respect of groups and family groupings; and the concept of reciprocity and cultural norms dictating access to country (page 16-18). The Government reports provide evidence of large assemblies of Aboriginal people in the Dawson River area and surrounding pastoral properties, the existence of 'controlled conflict' and the intermingling of people over a wide area including the area of the Iman application (page 25).

The Regional Report sets out the commentary of anthropologists and others made in relation to the early settlement of the area up to the mid 1900s and concludes that the evidence indicates the 'existence of a highly organised system of laws and customs that covered relations over large areas of territory and regulated decision-making in pre-sovereignty societies of the area including the pre-sovereign Jiman society' (page 96). It is concluded that the Jiman people were part of wider system of organisation and law that included neighbouring groups and that recognised connection to particular areas of country. The Stage 1 report finds that the name Iman (or one of

its variants) has persisted over time and is associated with the area covered by the application and broader surrounding region—at [16].

The Stage 2 Report asserts that based on consideration of the historical and ethnographic material 'Iman is a language -named landholding group', associated with the area of the application as well as parts of the adjoining region—at [50]. These records show association of the Iman (Emon, Yeeman and Jiman) people with the area centred in the southern Leichhardt Pastoral district (where Taroom is located), the Upper Dawson River and some of its tributaries, and potentially association with areas not covered by the application (around Condamine and Roma to the south as well as areas to the north)—pages 25 to 37. {**Anthropologist 1 – name deleted**}'s concluding view is that there is clear evidence in the written records that the application area covers country associated with a landholding group distinguished in the records as Iman and that also indicates the application area does not include all the country of the Iman landholding group—[74].

The Stage 2 Report provides in table format summary information in relation to the application's identified apical ancestors— at [22]. The table sets out birth dates to show that the majority of these people were born between the 1840s and 1860s. All appear to have resided and died within the area of the application, at Taroom or surrounding pastoral leases. {**Anthropologist 1 – name deleted**} also makes estimates of the birth dates of the parents of these ancestors based on an estimation of the average generation to be 20 years. In her view, this indicates that the named Iman apical ancestors were likely to have been born around or before the date of effective sovereignty in the area of the application (asserted to be 1845).

Hostilities in the mid 1800s, brought about by the 'Hornet Bank massacre' and consequent reprisals[3] resulted in the displacement and dispersal of Yeeman / Emon people. {**Anthropologist 1 – name deleted**}'s view is that, despite the varying views of historians as to the survival of the Iman tribe, Iman People took steps to ensure the preservation of their people during this time and the evidence suggests that a continuing connection was maintained by the descendants of the pre-sovereignty society—Stage 2 Report, at [21]. It is clearly acknowledged in the reports that members of the generations between the apical ancestors and the current claim group were moved around the area of the application by the effects of government policies during the first half of the 20th century. People were brought into the Taroom settlement from camps on the Dawson River and Palm Tree Creek and later moved to Woorabinda (outside the claim area).

Current association of the native title claim group with the application area

The Continuity Report is a collation of statements made in interviews with members of the claim group conducted during fieldwork in 2009. These persons are listed at the beginning of the report and the apical ancestor/s identified from whom they claim descent. The claim group's connection to the area of the application is documented through these interviews. Generations of members of the claim group have worked and continue to work on the pastoral stations in and adjoining the area of the application:

- work involved travelling through country, to keep track of country and kin who had moved around—at [168];

[3] Most of the members of the settler Fraser family and three other Europeans were killed at Hornet Bank Station in 1857. The 'reprisals' involved the formation of a posse that 'set about killing the adult male members of Aboriginal camps attached to the stations of the Auburn-Dawson region'—footnote 9 of the Stage Report.

- through work, contact was maintained with significant places, camps and meeting places—at [162];
- residence in Taroom (by virtue of removal to the mission in the early part of the 20th century) allowed ongoing connection to the area of the application—[147].

The Continuity Report includes statements from members of the claim group referring to their knowledge of burial sites, caves, women's sites, camp sites, ceremonial sites shown to them by their fathers, uncles and aunties, or grandparents—at [86] to [110]:

- 'Isla gorge gave a view of other points. It was a special place... where the paintings all are the art site. Isla gorge is in Jiman country...you can look all over the valley at a place called Wallaroo. That's in the Jiman country there you go back to Injune'—**{Person 6 – name deleted}**, at [86];
- 'There was something sacred about the Dawson, about flood times it was like if that – it was sort of fertility time I think now growth...'—Eddie Waddy, at [100].

Some of the information in the older anthropological material provided by the applicant makes reference to the current association of the claim group with the area covered by the application:

- the Serico family are among the traditional owners of the upper Dawson River country and Mr Serico was born in Taroom in 1926—**{Anthropologist 3 – name deleted}**, p. 89;
- the Waterton men placed emphasis on the spiritual basis of the connection of their family to the country around Palm Tree Creek (within the application area)— **{Anthropologist 3 – name deleted}**, p.91.

The affidavits of **{Person 13 – name deleted}** and **{Person 14 – name deleted}** (both sworn 11 November 2000) contain relevant information regarding the claim group's current association with the claim area and their links to the predecessors of the group, respectively:

> I am Iman through my great grandmother Maggie Dunn. She was born on Cockatoo Station which is in Iman Country around 1867.
>
> Both my parents were moved from Taroom to Woorabinda reserve around 1927.
>
> My father was an Aboriginal stockman around Taroom. He told us stories of his journey through Iman Country during his move to Woorabinda.
>
> ...
>
> I learnt about my people and country through my grandmother, who told me of trips she would take through Iman country when she was young. My grandmother also told me that one of my uncles was buried in Taroom. I have passed these stories to my children.
>
> As a child, I spent time on country hunting and fishing along rivers and creeks with my father...
>
> ...
>
> All my children identify as Iman persons. I regularly attend Iman meetings with my son who is actively involved in matters concerning Iman Country.
>
> I feel comfortable around Taroom because it is a part of Iman country. My people are there.

And

> I am Iman through my mother. Her totem was the freshwater turtle.
>
> ...
>
> My mother was born on Cockatoo Station which is in my country...
>
> My great grandmother, Maggie Dunn, was an Iman person too. I was told that she was born around Cockatoo Station...
>
> I was taught by Auntie Everidge Swain how to fish on country. During such trips she would teach me how to catch fish my throwing stones and talking to the water. On trips to the bush my Auntie and I would dig yams and pick wild berries...
>
> My grandmother also taught me about bush medicine...
>
> I used to accompany my husband on hunting trips. We would catch porcupine, kangaroos, and emu and cook them up on country.
>
> When I have the opportunity I pass on to my children knowledge about the country. I tell them about the importance of the country. My grandmother and brother are buried at Bundula station, which is on my country.
>
> I wish to be buried on my country with my people.
>
> I care for my country and I don't want the sacred sites and burial ground disturbed. It is my duty.

Consideration

In *Gudjala* (2007) Justice Dowsett considered the requirements of s. 190B(5) generally and, in particular, the necessity for the Registrar to address 'the relationship which all the members claim to have in common in connection with the relevant land'—at [40]. This should be considered in conjunction with his Honour's statement that the facts alleged must 'support the claim that the identified claim group (and not some other group) held the identified rights and interests (and not some other rights and interests)'—at [39]. These principles are pertinent to examining the sufficiency of the claimant's factual basis for the purpose of the assertion at s. 190B(5)(a) as they elicit the need for the factual basis material to provide information pertaining to the identity of the native title claim group, the predecessors of the group and the nature of the association with the area of the application.

In my view, the material before me demonstrates, albeit in scattered form, that a link exists between the current claim group and its predecessors' and their association with the application area. The information is sufficient to support the claim group's connection to the land and waters of the application area and this appears to have its origins in the preceding generations' association with the area. This is sufficient for me to be satisfied that the native title claim group has and its predecessors had an association with the area.

Reasons for s. 190B(5)(b)

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

This subsection requires that I be satisfied that the material before me provides a sufficient factual basis for the assertion that there exist traditional laws acknowledged and customs observed by the native title claim group and that these give rise to the native title rights and interests it claims.

Justice Dowsett considered the requirements of s. 190B(5) when he addressed the adequacy of the factual basis underlying an applicant's claim in *Gudjala 2009*. He makes statements about the assessment of the adequacy of a general description of the factual basis of the claim at [29], which in summary mean that:

- assertions should not merely restate the claim, and
- there must be at least an outline of the facts of the case.

In Dowsett J's view, there is a requirement for factual details concerning the pre-sovereignty society and its laws and customs relating to land and waters—at [29]. Therefore, in accordance with the case law, the factual basis for the claim is required to address whether or not the relevant traditional laws and customs have their origin in a pre-sovereignty normative system with a substantially continuous existence and vitality since sovereignty. In *Gudjala 2007,* which was not criticised by the Full Court in *Gudjala FC*—at [71], [72] and [96], Dowsett J considered that the factual basis materials for this assertion must demonstrate:

- that the laws and customs currently observed by the claim group have their source in a pre–sovereignty society and have been observed since that time by a continuing society—at [63];
- the identification of a society of people living according to a system of identifiable laws and customs, having a normative content, which existed at the time of sovereignty—at [65] and see also at [66]; and
- the link between the claim group described in the application and the area covered by the application, 'identifying some link between the apical ancestors and any society existing at sovereignty'—at [66].

Pre-sovereignty society

Based on the first contact of Europeans and the taking up of pastoral runs in the application area, the Stage 1 Report asserts the date of effective sovereignty to be around 1845—[11].

As outlined previously, the basis for the applicant's assertion that there existed an Iman society prior to and at the time of effective sovereignty is that there existed a wider regional pre-sovereignty society of Aboriginal people living within and adjacent to the current claim area whose laws and customs had broad similarities and connections—Stage 2 Report:

> … the accounts of early recorders ... show that at the time of sovereignty, southeast Queensland was inhabited by members of a regional Aboriginal society [footnote: a body of persons distributed over a wider region who are united in and by their acknowledgement and observance of a body of laws and customs from which their rights and interests are derived] whose laws and customs determined firstly, how its members were organised into territorial, social, political and religious units; secondly, the rights and interests of these component units; and thirdly, the rights and interests of the individual members of these units—at [23].

{**Anthropologist 1 – name deleted**} preliminary findings are summarised in the applicant's submission of 16 April 2012:

> The area of the application was occupied by Aboriginal people at the date of effective sovereignty (around 1845) who were members of a society whose laws and customs extended over south east Queensland. She states that this society is one distinguished in the records as

> the Dippil Nation, associated with a Kabi Type system of social organisation in the region that extended into the Dawson Valley and included the area now covered by the Iman application. In her view, the landholding group for the area of the application is identified as Iman and seems to be the most westerly of the territorial groups who were part of the pre-sovereignty society—at [45].

Traditional laws and customs regarding Iman society (kinship and group identity)

Excerpts of interviews with members of the claim group support the conclusions that Iman kinship systems are congruent with the traditional kinship system (at [8]) and the Continuity Report provides the following conclusions:

- kin relations are based on traditional formulations in order to maintain a sense of group identity—at [9];
- kin relationships express the rules of authority and duty of care between people— at [20];
- kin group and its association to country is still considered the key principle of identification—at [29];
- filiation and cognatic descent rules exist where people have connection to both father's and mother's people and country—at [30].

Traditional laws and customs regarding connection to country

The Regional Report asserts also that at the time of European sovereignty, there existed a regional socio-cultural system of law and customs which underpinned the law and custom of the landholding groups within that regional culture:

- the principle of organisation is that of 'kin-group to territory'. That is, individuals hold rights in 'country' only by virtue to being a member in a performative-based kinship group—at [290];
- the normative body of laws and customs that can be inferred for the society at the time of sovereignty includes a local group within the regional group having rights to make agreements over land, reciprocity as a key cultural paradigm that pervades traditional law and custom, extended kinship relationships ... that underpinned their access to land resources—at [292];
- the transmission and retention of Jiman identity and connection to country between the three generations born over the period 1850 and 1950 'suggests that the current traditional law and custom known to and adhered to by members of the claimant group has been transmitted to them through these generations'—at [300].

The Continuity Report records many conversations with members of the claim group that demonstrate the active roles and customs members of the claim group are engaged in:

- **{Person 6 – name deleted}** makes the point that connection to land is a two way relationship with a spiritual dimension and is mediated by correct behaviour to other owners of country—at [64];
- identification of and knowledge about sites is held in terms of avoidance rules—at [95];

- Richard Doyle was taught by his grandparents his line of descent and associated country – learning where various ancestors came from and 'maintaining the connection between kin and territory'—at [124];
- the tracing or kinship links and thereby links to territory through all four grandparents is in keeping with traditional practice—[126].

{**Anthropologist 1 – name deleted**} has outlined her research findings (at 5.1) on the principles that underlie Iman claim group membership:

- descent is through parental filiation back through time, that is descent from an ancestor associated with the claim area before the date of effective sovereignty is the principle prerequisite for claim group membership; and
- descent from Iman ancestors connects members of the claim group to all things pertaining to Iman, land and waters, people, language, history, laws and customs; and determines totemic affiliations connecting people spiritually to their country and to each other.

Places of significance, spirits and stories

The interviews with members of the native title claim group documented in the Continuity Report include information about acknowledgement and observance of traditional laws and customs about:

- sites of significance and the avoidance customs that pertain to them—at [97] and [109];
- corroborees and other ceremonies that were still being conducted around Woorabinda in the 1950s—at [230];
- the belief system of the totem – 'the affiliation between people, place and species other natural phenomena with behaviour said to be maintained in the current generation in relation to totems (carpet snake, emu, scrub turkey)—at [237];
- customs maintained in relation to the belief in totems, the care taken of the emu and kangaroo totems and teaching of the rules associated with totems—at [245];
- knowledge of members of the claim group passed onto them by previous generations, for example of animal signs and stories; weather and astronomical events and signs—at [248] and [251];
- rules and customs relating to naming, deceased ancestors, the behaviour of children— at [270];
- acknowledgment of spirit beings and their protective and inherited qualities—at [284].

Consideration

The applicant's submission of 16 April 2012 largely summarises the information contained in the Stage 1 and 2 Reports and submits that inferences can be drawn from the evidence of the exercise of native title rights and interests by the contemporary native title claim group as set out in the Regional and Continuity Reports.

{**Anthropologist 1 – name deleted**} acknowledges in her Stage 2 Report that her research 'about the claimants' observance and upholding of the laws and customs of the pre-sovereignty

landholding group is at a preliminary stage' – at [88], however she is of the view that Iman claimants continue to uphold laws and customs that ensure:

- the well-being of their land and its resources, including about the care of sites, protection of the area from the access and use by person who have no right under Aboriginal law and custom to speak to the area;
- Iman identity continues to be governed by principles of descent from apical ancestors who are known from written records and/or oral histories to have come from the application area;
- the protection of sites; and
- knowledge and responsibilities for sites and country imparted to them by previous generations is now imparted to their children and younger relatives.

In considering the sufficiency of the claimants' factual basis to support the assertion that traditional laws and customs exist, Dowsett J held that the starting point had to be the 'identification of an indigenous society at the time of sovereignty'. It follows that there must be an inference to be made that there was a pre-sovereignty society 'which had a system of laws and customs from which relevant existing laws and customs were derived and traditionally passed on to the existing claim group'. Those laws and customs must in turn give rise to the claimed native title rights and interests of the native title claim group—*Gudjala [2007]* at [62], [66] and [81].

It is my view that the inference of such, as detailed above, stems primarily from there being some explanation within the claimant's factual basis as to how the current laws and customs of the claim group can be traditional; that is, that they are laws and customs derived from a pre-sovereignty society. The continuity report documents the transmission of knowledge whereby information in relation to landholding is passed from one generation to the next. The writer asserts that the information provided to her by members of the claim group was based on knowledge gained as they grew up, evidenced by the transmission of information and knowledge 'along traditional lines, following gender lines'— at [115]. The writer asserts that Jiman people retain connection to their traditional lands and they do so within a system of law and custom, based on a regional traditional culture—[285].

Based on the material before me, and in part extracted above, it is my view that the claimants' factual basis does provide the necessary explanation and does demonstrate the existence of a relationship between the present laws and customs of the native title claim group and those laws and customs acknowledged and observed by a body of Iman People at the time of sovereignty. The claimant's factual basis supports the assertion that the laws and customs acknowledged and observed by the native title claim group are those which have their origins in a society existing at and before the time of sovereignty.

The material provides a sufficient factual basis for the assertion that there exist traditional laws acknowledged and customs observed by the native title claim group and that these give rise to the native title rights and interests it claims.

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

Reasons for s. 190B(5)(c)

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

This subsection requires that I be satisfied that there is sufficient factual basis to support the assertion that the native title claim group continues to hold native title in accordance with its traditional laws and customs.

Continued acknowledgement and observance of traditional law and custom has been possible because the members of the native title claim group and their predecessors have continued to live, work and travel through the area covered by the application. They have continued to practise their traditional laws and customs and adhere to the processes that regulate their association with and responsibilities to their country (the area of the application).

Reference is made in the material before me, to disruptions to the claim group's continuity of association with the area of its traditional country, essentially for reasons of dispossession created by European settlement. However, the continuity report provides examples of how connection to country was maintained in many different ways during the period when a physical presence was not possible:

- maintaining group linkages through 'traditional society meetings and co-resident camps' which also allowed the younger generations to learn of their Iman connections and build upon the wider group identity—at [10];
- certain individuals took on the role of travelling through the region to 'bring people together'—at [10];
- work on the pastoral stations in the application area allowed members of the claim group to stay on their country and though dispersed across these stations, people were able come together at 'Taroom meeting days'—at [40];
- people camped in kin groups relating to country of origin at ceremonial gatherings, and this was replicated when people lived in the missions camps which were 'organised in part on the principles of country of origin'—at [140];
- adaptation to the prevailing European culture and society but without the abandonment of 'traditional ways'—at [182].

The older anthropological material ({**Anthropologist 2 – name deleted** and **Anthropologist 3 – name deleted**},) also asserts that maintenance of spiritual connection to country was possible even when people were physically denied access to the lands and waters of their country.

The material before me illustrates and, in my view, demonstrates that the laws and customs of Iman society have been passed from generation to generation and therefore continue to be acknowledged and observed today among the current generations of the claim group. For example, the Continuity Report records that:

- continuation of kinship structures and classifications by kin categories is indicative of the continuation of the traditional kinship system —at [40];
- matters to do with land holding is passed from one generation to the next with activities undertaken specifically to teach the younger generations—at [112];

- Richard Doyle was taught both the line of descent and the associated country of both sets of grandparents—at [123]
- children and grandchildren are regularly taken onto country to learn about their ancestors, the animals and the trees—at [136].

This assertion compares closely with the second element of the meaning of 'traditional' as discussed in *Yorta Yorta*—at [47]. To say that the native title claim group have continued to hold the native title in accordance with their traditional laws and customs 'implies a continuity of such tenure going back to sovereignty, or at least European occupation as a basis for inferring the position prior to that date and at the time of sovereignty'—*Gudjala 2007* at [82].

There is sufficient information before me to support the assertion that the native title claim group continues to hold native title in accordance with its traditional laws and customs.

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). The claimed native title rights and interests that I consider can be established, prima facie, are identified in my reasons below.

Under s. 190B(6) I must be satisfied that at least one of the native title rights and interests claimed by the native title group can be established, prima facie. I refer to the comments made by Mansfield J in *Doepel* about the nature of the test at s. 190B(6):

- it is a prima facie test and 'if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis'—*Doepel* at [135].
- It involves some 'measure' and 'weighing' of the factual basis and imposes 'a more onerous test to be applied to the individual rights and interests claimed'—*Doepel* at [126], [127] and [132].

As mentioned above in relation to the requirements of s. 190B(5), the registration test involves an administrative decision and is not a trial or hearing of a determination of native title pursuant to s. 225. Therefore it is not appropriate to apply the standards of proof that would be required at such a trial or hearing. It is not my role to draw definitive conclusions from the material before me about whether or not the claimed native title rights and interests exist, only whether they are capable of being established prima facie.

I note that, in my view, as set out above at s. 190B(5), the application provides a sufficient factual basis to support the assertion that there exist traditional laws and customs acknowledged and observed by the native title claim group that give rise to the claimed native title rights and interests.

Exclusive Rights

Over areas where a claim to exclusive possession can be recognised (such as areas where there has been no prior extinguishment of native title or where s238, ss47, 47A or 47B apply), the claim group claims the

right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world, pursuant to the traditional laws and customs of the claim group.

Not established

The majority decision of the High Court in *Western Australia v Ward* (2002) 191 ALR 1 (*Ward HC*) considered that '[t]he expression "possession, occupation, use and enjoyment ... to the exclusion of all others" is a composite expression directed to describing a particular measure of ***control over access to land***' [emphasis added]. Further, that expression (as an aggregate) conveys 'the assertion of rights of control over the land' which necessarily flow 'from that aspect of the relationship with land which is encapsulated in the assertion of a right to speak for country'—at [89] and [93]. *Ward HC* is authority that, subject to the satisfaction of other requirements, a claim to exclusive possession, occupation, use and enjoyment of lands and waters can be established, prima facie.

In *Griffiths v Northern Territory of Australia* [2007] FCAFC 178 (*Griffiths FC*) the Full Court explored the relevant requirements to proving that such exclusive rights are vested in a native title claim group, stating:

> . . . the question whether the native title rights of a given native title claim group include the right to exclude others from the land the subject of their application does not depend upon any formal classification of such rights as usufructuary or proprietary. *It depends rather on consideration of what the evidence discloses about their content under traditional law and custom*—at [71] (emphasis added*).*

The Full Court stressed that it is also:

> important to bear in mind that *traditional law and custom*, so far as it bore upon relationships with persons outside the relevant community *at the time of sovereignty,* would have been framed by reference to relations with indigenous people—at [127] (*emphasis added).*

The right to exclusive possession by the Iman landholding group is touched on in passing in the anthropological and ethnographical reports provided to me by the applicant.

Any mention of this right in the older anthropological reports refer to possession of such a right in relation to areas in the Kogan Creek and Condamine areas – south of the area covered by this application and the area of a previous Iman application. In my view this information is not relevant or sufficiently cogent to address the requirements that arose through the common law (*Ward HC*, *Griffiths*) in the years following these reports of 1997 and 1999.

There is information that refers to the existence of protocols and group structures as they relate to decision-making about access to country. Whilst there is a general assertion of ownership rights of the land holding group (at [28] of the Regional Report and [91] of the Stage 2 Report) the material does not address rights of the native title claim group to control access to land and to speak for that country. The reports deal with 'access and regulating access' to country asserted to exist under traditional laws and customs in the context of its operation in the regional pre-sovereignty society but not to the right as it is vested in the current claim group.

It may be that Iman People have the right to access and use their country as well as to regulate the access of members of their group to their country and particular areas and sites in it. However, that a right to exclude or regulate the access of people who are not Iman exists under traditional laws and customs is not clear. I have no affidavits from members of the claim group that attest to

matters relating to the right to possess, occupy, use and enjoy the land and waters of the application area as against the whole world, or material that sufficiently demonstrates that the rights exists beyond a mere restating of the claim.

Non Exclusive Rights

The application also claims the following rights and interests over areas where a claim to exclusive possession cannot be recognised:

(a) live and be present on the application area

Established

Paragraph 3 of Schedule E provides a definition of "Live"— to reside and for that purpose erect shelters and temporary structures but does not include a right to construct permanent structures.

This right is evidenced in the material, suggesting the right exists under the traditional laws and customs of the native title claim group. It is apparent in the interviews with members of the claim group (the Continuity Report) that they actively travel through, camp in, reside and visit the application area as have their predecessors.

Richard Doyle speaks about being taught to build traditional bark shelters by his Aunty, being taught the stories of sites by his grandmother—at [119]; knowledge of camps being passed down, some of which pre-date European contact—at [132]. Members of the claim group continue to conduct activities in relation to the area that necessarily involve being present on the area covered by the application.

(b) take, use, share and exchange Traditional Natural Resources for personal, domestic and non-commercial, communal purposes;

Established

Paragraph 3 of Schedule E provides a definition of "Traditional Natural Resource":

(1) "animals" as defined in the Nature Conservation Act 1992 (Qld);

(2) "plants" as defined in the Nature Conservation Act 1992 (Qld);

(3) "charcoal, shells and resin"; and

(4) "clay, soil, sand, ochre, gravel or rock on or below the surface";

This right is evidenced in the material, suggesting the right exists under the traditional laws and customs of the native title claim group. Interviews with the claim group cite the traditional laws and customs in respect of hunting and fishing:

- certain rules relating to hunting and fishing continue to be acknowledged and followed; traditional methods are taught to children by their elders; with the associated activities a means to maintaining cultural continuity and connection to country—at [191];
- knowledge is held about animals and plants, the exercise of a duty of care to totemic animals and in general—at [205];

Members of the claim group continue their use of plants, bark, clay for food, medicinal purposes, bush craft and survival on country; there is evidence of the use of bark indicated by the scar trees around Taroom, plants and clay used as food and medicine—at [210] to [226].

(c) conduct burial rites;

(d) conduct ceremonies;

(e) teach on the area about the physical and spiritual attributes of the area;

Established

These rights are evidenced in the material, suggesting the rights exist under the traditional laws and customs of the native title claim group. It is apparent in the interviews with members of the claim group recorded in the Continuity Report that certain people have the authority under traditional law and custom to conduct burial rites and ceremonies. The material refers to many examples of the exercise of these rights both currently and by their predecessors:

- burials took place in Taroom before the establishment of the Taroom establishment; gravesites and burial sites are known and visited by members of the claim group—at [91];
- the conduct of and attendance at corroborees and other ceremonies to meet traditional duties to country and rites of passage—at [234];
- the behaviour and actions of previous generations are held up as behaviour to emulate—at [135];
- children and grandchildren are taken out onto country and told about their ancestors, 'take them back into culture'—at [136];
- information continues to be passed on to the younger generations, teaching about places, key sites of significance, camp sites, and teaching about country – how to see, remember and transmit country—at [111] to [137];
- Teaching about place maintains knowledge of ancestors and the connection between kin and territory—at [125].

(f) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;

(g) light fires for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;

These rights are evidenced in the material, suggesting the rights exist under the traditional laws and customs of the native title claim group. It is apparent in the interviews with members of the claim group that they actively travel through, camp in, reside and visit the application area for the purposes of maintaining sites—the clearing of bora rings, protecting gravesites, caves and old campsites—at [106]. Activities associated with cooking and camping include the use of fires; knowledge of specific areas and sites on the application area includes knowledge of the native title claim group's rights and obligations to care and protect places of significance.

(i) in relation to Water, take and use;

(1) Traditional Natural Resources from the Water for personal, domestic and non-commercial communal purposes; and

(2) *for personal, domestic and non-commercial, communal purposes.*

Not established

Other than references made to fishing and regulating access to certain waterways, the material before me does not provide sufficient information to suggest that these rights exist under Iman traditional law and custom. It is clear from the material that the Dawson River, and some other water sources, forms a significant element of Iman people's relationship to their country. In my view there is not sufficient description of the laws and customs from which this right is derived or information that reveals the activities undertaken in exercise of this right by the current claim group or its predecessors.

(h) be accompanied into the claim area by non claim group members being people required;

(1) by traditional law and custom for the performance of ceremonies or cultural activities; and

(2) *to assist in observing and recording traditional activities on the claim area;*

Not Established

There is no information in the material before me about the claim group's right to be accompanied by people who are not members of the claim group for the purpose of the two activities listed. Whilst there is information that goes to the vesting in senior Iman people, under traditional law and custom, of the right to make decisions about access to country, there is nothing by way of evidence of the exercise of the right or that the right does in fact exist under the group's traditional law and custom.

Conclusion

I have considered the rights claimed in the application against existing law in relation to whether or not they are capable of being recognised and whether the application provides sufficient information to establish, prima facie, their existence. I am satisfied, having considered the information before me, that some of the rights claimed in this application can be established, prima facie. Therefore the rights to be registered on the Register of Native Title Claims are as follows:

2. Over areas where a claim to exclusive possession cannot be recognised, the claim group claims the non-exclusive right to:

(a) live and be present on the application area;
(b) take, use, share and exchange Traditional Natural Resources for personal, domestic and non-commercial, communal purposes;
(c) conduct burial rites;
(d) conduct ceremonies;
(e) teach on the area about the physical and spiritual attributes of the area;
(f) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
(g) light fires for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;

3. For the purposes of 2 above;

"Live" means to reside and for that purpose erect shelters and temporary structures but does not include a right to construct permanent structures;

"Traditional Natural Resource" means:

(1) "animals" as defined in the Nature Conservation Act 1992 (Qld);

(2) "plants" as defined in the Nature Conservation Act 1992 (Qld);
(3) "charcoal, shells and resin"; and
(4) "clay, soil, sand, ochre, gravel or rock on or below the surface";

"Water" means water as defined by the Water Act 2000 (Qld);

4. The native title rights and interests are subject to:
(a) The valid laws of the State of Queensland and the Commonwealth of Australia; and
(b) The rights conferred under those laws.

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).

Under s. 190B(7), I must be satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application. This condition 'can be seen as requiring some measure of substantive (as distinct from procedural) quality control upon the application:

> Section 190B(7) imposes a different task upon the Registrar. It does require the Registrar to be satisfied of a particular fact or particular facts. It therefore requires evidentiary material to be presented to the Registrar. The focus is, however, a confined one. It is not the same focus as that of the Court when it comes to hear and determine the application for determination of native title rights and interests. The focus is upon the relationship of at least one member of the native title claim group with some part of the claim area—*Doepel* at [18].

Sufficient information is provided in the material before me to show that Iman people have traditional physical connection with the land and waters of the application area. The material has been quoted in my consideration at both s. 190B(5) and s. 190B(6).

The interviews recorded in the Continuity Report show that members of the native title claim group have lived in, travelled and worked in the area of the application throughout their lives. In this way the people have maintained their observance and acknowledgement of their traditional law and custom and continued to exercise rights and interests in relation to the application area. **{Person 6 – name deleted}**, Eddy Waddy and others state that they regularly visit and reconnect with their country for spiritual, recreation and work purposes. The interviews record how knowledge and connection to the country of the application area has been passed down to

members of the current claim group by their parents and grandparents through their predecessors.

I am satisfied that at least one member of that group currently has a traditional physical connection with parts of the application area.

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 47B, 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 application **does not** offend the provisions of s. 61A(1).

The geospatial report dated 23 March 2012 and a search that I made of the Tribunal's geospatial databases on 24 May 2012 reveals that there are no approved 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 application **does not** offend the provisions of s. 61A(2).

Schedule B at paragraphs 1 and 2 excludes from the application area any land or waters covered by previous exclusive possession acts as they are defined in the Act.

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).

Schedule B at paragraph 3 states that exclusive possession is not claimed over areas which are subject to valid previous non-exclusive possession acts.

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 contains the statement that 'the native title claim group does not claim ownership of minerals, petroleum or gas that are wholly owned by the Crown'.

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

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

Schedule P contains the statement that the application does not include a claim to exclusive possession of all or part of an offshore place.

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

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

Schedule B at paragraph 6 states that the application excludes land or waters where the native title rights and interests claimed have been otherwise 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 to this claim for the reasons given below.

The application has not been amended pursuant to an order under s. 87A by the Court. Therefore, s. 190A(1A) is not applicable in this case.

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 to this claim for the reasons given below.

I must consider whether or not the amended application currently before me satisfies the circumstances described by s. 190A(6A) and whether the Registrar must therefore accept the claim.

The amended application currently meets the first three requirements of ss. 190A(6A)(a), (b), (c):

(a) The original application was first made on 30 October 1997 when it was lodged with the Tribunal (later deemed to have been provided to the Registrar under s. 63 on 30 September 1998); and

(b) The application was considered and accepted for registration under s. 190A(6) on 26 July 2002; and

(c) The application before me is an amended application, given to the Registrar under s. 64(4) of the Act.

I must now consider whether the amendments to the application meet the requirements of ss. 190A(6A)(d) . That is, I must be satisfied that the effect of the relevant amendments is to only do one or more of the things set out in ss. 190A(6A)(d)(i) to (v).

Amendments to the application are as follows:

- Schedule A—description of the native title claim group changed to remove three and add four apical ancestors;
- Schedule B—description of the area covered by the application to reduce the area by removing any areas of overlap with three applications
- Schedule C—inclusion of a new map of the area covered by the application
- Schedule E—more detailed description of the rights and interests claimed
- Schedule F—reference to information previously provided by the applicant and attaching two anthropological reports
- Schedule G—expanded list of activities conducted by the claim group
- Schedule HA—now included
- Schedule J—new draft order
- Schedule K—change of name for representative body
- Schedule M—includes reference to reports at Attachment F
- Schedule N
- Schedule O
- Schedule R—addition of new material arising from authorisation meetings in 2010 and 2011
- The name and address for service of the applicant

It is therefore clear that when considered in accordance with the provisions of s. 190A(6A)(d), the effect of the above amendments is *more than*:

(i) Reducing the area of land or waters covered by the application

(ii) Removing a right or interest claimed in the application

(iii) Changing the name of the representative body for the area

(iv) Changing the name of the s. 203FE funded body for the area

(v) Altering the name and address for service

I am therefore of the view that the application does not satisfy the requirements of s. 190A(6)(d) because the amendments do more than the things set out under s. 190A(6A)(d)(i) to (v).

It follows that as the amended application does not satisfy the circumstances described by s. 190A(6A) it must be considered for registration under s. 190A(1).

Attachment B
Summary of registration test result

Application name	**Iman People #2**
NNTT file no.	**QC97/55**
Federal Court of Australia file no.	**QUD6162/1998**
Date of registration test decision	**24 May 2012**

Section 190C conditions

Test condition	**Subcondition/requirement**		**Result**
s. 190C(2)			**Aggregate result:** **Met**
	re s. 61(1)		**Met**
	re s. 61(3)		**Met**
	re s. 61(4)		**Met**
	re s. 62(1)(a)		**Met**
	re s. 62(1)(b)		**Aggregate result:** **Met**
		s. 62(2)(a)	**Met**
		s. 62(2)(b)	**Met**
		s. 62(2)(c)	**Met**
		s. 62(2)(d)	**Met**
		s. 62(2)(e)	**Met**
		s. 62(2)(f)	**Met**
		s. 62(2)(g)	**Met**
		s. 62(2)(h)	**Met**

Test condition	Subcondition/requirement	Result
s. 190C(3)		**Met**
s. 190C(4)		**Overall result:** **Met**
	s. 190C(4)(a)	**N/A**
	s. 190C(4)(b)	**Met**

Section 190B conditions

Test condition	Subcondition/requirement	Result
s. 190B(2)		**Met**
s. 190B(3)		**Overall result:** **Met**
	s. 190B(3)(a)	**N/A**
	s. 190B(3)(b)	**Met**
s. 190B(4)		**Met**
s. 190B(5)		**Aggregate result:** **Met**
	re s. 190B(5)(a)	**Met**
	re s. 190B(5)(b)	**Met**
	re s. 190B(5)(c)	**Met**
s. 190B(6)		**Met**
s. 190B(7)(a) or (b)		**Met**
s. 190B(8)		**Aggregate result:** **Met**
	re s. 61A(1)	**Met**
	re ss. 61A(2) and (4)	**Met**
	re ss. 61A(3) and (4)	**Met**

Test condition	Subcondition/requirement	Result
s. 190B(9)		**Aggregate result:** **Met**
	re s. 190B(9)(a)	**Met**
	re s. 190B(9)(b)	**Met**
	re s. 190B(9)(c)	**Met**

Attachment C
Documents and information considered

The following lists **all** documents and other information that I have considered in coming to my decision about whether or not to accept the application for registration.

1. Affidavits of Eve Fesl (sworn 6 February 2002), **{Person 2 – name deleted}** (sworn 2 February 2002), **{Person 5 – name deleted}**, (sworn 1 February 2002), Cynthia Kemp (sworn 1 February 2002), **{Person 6 – name deleted}** (sworn 1 February 2002), **{Person 7 – name deleted}** (sworn 1 February 2002), Patrick Sylvester (sworn 1 February 2002), **{Person 1 – name deleted}**, (sworn 1 February 2002), Richard Doyle (sworn 1 February 2002).
2. Material filed on the Tribunal's Registration Test (delegate's) file in relation to the Iman People #2 amended application's consideration under s. 190A in 2002.
3. Registration Test Reasons for Decision, 26 July 2002.
4. The Iman People #2 native title determination application as amended and filed in the Federal Court on 7 February 2012, and attachments, including:

   Attachment F:

   (i) Regional Socio-Cultural Ethnographic Reconstruction, Collaborative Solutions, November 2009

   (ii) Consideration of Continuity of Connection, Collaborative Solutions, May 2010

   Attachment R:

   (i) affidavit of **{Person 15 – name deleted}**, affirmed 11 April 2011, and annexures;

   (ii) affidavit of **{Person 16 – name deleted}**, affirmed 8 April 2011, and annexures.
5. The Iman People #2 native title determination application as amended and filed in the Federal Court on 16 March 2012, and attachments, including:

   Attachment F:

   (i) Rosie of the Dawson (mother of Cissie Henry) and Tommy Tommy, An Anthropological Assessment, {**Anthropologist 1 – name deleted**}, 22 December 2011 [Stage 1].

   Attachment R:

   (i) affidavit of **{Person 8 – name deleted}** sworn 23 February 2012, and annexures;

   (ii) affidavit of Patrick Sylvester sworn 7 March 2012, and annexures;

   (iii) affidavit of **{Person 9 – name deleted}** sworn 15 March 2012, and annexures.
6. The Tribunal's Geospatial Services 'Geospatial Assessment and Overlap Analysis' (the geospatial report) for 12 March 2012, being an expert analysis of the external and internal boundary descriptions and mapping of the application area and an overlap analysis against

the Register, Schedule of Applications, determinations, agreements and s. 29 notices and equivalent.

7. Additional material provided to the delegate by the applicant via emails of 16 March 2012 in response to issues identified in Preliminary Assessment of amended application of 7 February 2012, attaching the following material:

    (i) Federal Court Orders of 13 April 2011;

    (ii) Federal Court Orders of 18 November 2011;

    (iii) *Tatow on behalf of the Iman People #2 v State of Queensland* [2011] FCA 802;

    (iv) affidavits of Bradley Curtis (affirmed 3 June 2011), Arwa Waterton (affirmed 6 June 2011), Cynthia Kemp (affirmed 6 June 2011), Eddy Waddy (affirmed 4 June 2011), Kenny Waterton (affirmed 6 June 2011), Patrick Sylvester (affirmed 3 June 2011), Richard Doyle (affirmed 31 May 2011), all of which attach *the Summary of Outcomes, Iman People's Authorisation Meeting, 27 March 2011;*

    (v) Iman People #2 Court ordered 66B authorisation meeting, 11 June 2011, Minutes;

    (vi) affidavits of Arwa Waterton (affirmed 6 July 2011), Bradley Curtis (affirmed 6 July 2011), Cynthia Kemp (affirmed 6 July 2011), Dena Marie Dodd-Ugle (affirmed 6 July 2011), Eddy Waddy (affirmed 5 July 2011), Heidi Ann-Marie Lawson (affirmed 5 July 2011), Patrick Sylvester (affirmed 6 July 2011), Richard Doyle (affirmed 6 July 2011), Graham Anderson (affirmed 12 July 2011);

    (vii) Email correspondence between **{Person 9 – name deleted}** (applicant's representative and {**Anthropologist 1 – name deleted**}, dated 16 March 2012;

    (viii) Iman People Native Title Application, Anthropologists Report (Stage 2), {**Anthropologist 1 – name deleted**}, 5 April 2012.

8. Submission on the merit conditions of the registration assessment of the Native Title Determination Application for Iman People #2, Just Us Lawyers, Solicitor for the Applicant, dated 16 April 2012:

    (i) Literature Review, **{Anthropologist 3 – name deleted}**, Consultant Anthropologist, 12 January 1999;

    (ii) Attachment F – General description of the Native Title Rights and Interests Claimed [additional information provided by the applicant in QC99/3—Iman People #3— QUD6003/99, now discontinued);

    (iii) Upper Dawson River Aboriginal Cultural Heritage Study, Anthropological Report, {**Anthropologist 2 – name deleted}**, August 1996 – January 1997, extracts from full report;

    (iv) Statutory Declaration of **{Person 11 – name deleted}**, dated 16 February 1999;

    (v) Affidavit of **{Person 11 – name deleted}**, sworn 21 January 1999;

    (vi) Letter from Gurang Land Council (Aboriginal Corporation) Native Title Representative Body, 13 November 2000, attaching:

- Affidavit of **{Person 13 – name deleted}**, sworn 11 November 2000
- Affidavit **{Person 14 – name deleted}**, sworn 11 November 2000;

(vii) Affidavit of **{Person 12 – name deleted}**, sworn 20 January 1999;

(viii) Copy of Booklet, Reminiscences of the Early Settlement in the Maranoa District by Mary A McManus (1913).

9. Federal Court Orders:

(i) 13 April 2011, including order 1 to amend the native title claim group description, order 5 to convene an authorisation meeting no later than 17 June 2011;

(ii) 18 November 2011, including order 2 that the applicant seek leave to amend the application to reflect order 1 of the orders made 13 April 2011, order 3 which annexes a workplan to be completed;

(iii) 7 February 2012, amending the application in the form of annexure CSH1 to affidavit of **{Person 9 – name deleted}** dated 22 December 2011

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