



Registration test decision

Application name	Jabirr Jabirr People
Name of applicant	Rita Augustine, Cecilia Djiagween, Elizabeth Dixon, Ignatius Paddy and Anthony Watson
State/territory/region	Western Australia
NNTT file no.	WC2013/007
Federal Court of Australia file no.	WAD357/2013
Date application made	23 September 2013
Name of delegate	Nadja Mack

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

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

Date of decision: 14 November 2013

Nadja Mack

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 30 July 2013 and made pursuant to s. 99 of the Act.

Reasons for decision

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Introduction

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

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

Application overview

The Registrar of the Federal Court of Australia (the Court) gave a copy of the Jabirr Jabirr People claimant application¹ to the Native Title Registrar (the Registrar) on 27 September 2013 pursuant to s. 63 of the Act. This has triggered the Registrar's duty to consider the claim made in the application under s. 190A of the Act.

Given that the claimant application was made on 23 September 2013 and has not been amended, I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply.

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.

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 A.

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 am also guided by the case law (arising from judgments in the courts) relevant to the application of the registration test. Among issues covered by such case law is the issue that some conditions of the test do not allow me to consider anything

¹ I note that the application received from the court is referred to as the 'Jabirr Jabirr People # 2' application. Upon the request of the Jabirr Jabirr People the Tribunal has agreed to omit the reference to this being the second application of the group on the basis that it is the applicant's intention to withdraw the first application upon the registration of this application.

other than what is contained in the application while other conditions allow me to consider wider material.

I have considered the following information in reaching my decision:

- the application, including its attachments;
- geospatial assessment by the Tribunal's Geospatial Services (GeoTrack number 2013/1907) of 1 October 2013;
- affidavits of [Name deleted] affirmed on 9 September 2010; [Name deleted] affirmed on 16 September 2010; [Name deleted] affirmed 31 July 2013 and [Name deleted] affirmed 31 July 2013. The affidavits were provided by the applicant to the Registrar on 30 September 2013;

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, without the prior written consent of the person who provided the Tribunal with that information, either in relation to this claimant application or any other claimant application or any other type of application, as required of me under the Act.

Also, I have *not* considered any information that may have been provided to the Tribunal in the course of its mediation functions in relation to this or any other claimant application. I take this approach because matters disclosed in mediation are 'without prejudice' (see s. 136A of the Act). Further, mediation is private as between the parties and is also generally confidential (see also ss. 136E and 136F).

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. I note that the common law duty to afford procedural fairness may be excluded by express terms of the statute under which the administrative decision is made or by any necessary implication—*Hazelbane v Doepel* [2008] FCA 290 at [23] to [31]. The steps that I and other officers of the Tribunal have undertaken to ensure procedural fairness is observed, are as follows:

On 2 October 2013 the Tribunal provided a copy of the application and accompanying documents to the State of Western Australia (state government) pursuant to s. 66(2) and invited submissions. On the same day the Tribunal provided a copy of the application and accompanying documents to the representative body for the application area, the Kimberley Land Council, pursuant to s. 66(2A).

On 8 October 2013 the Tribunal provided additional material received from the applicant to the state government, being an affidavit by [Name deleted] affirmed on 31 July 2013. Further material was provided to the state government on 10 October 2013, being affidavits by [Name deleted] affirmed on 9 September 2010, [Name deleted] affirmed on 16 September 2010 and [Name deleted] affirmed 31 July 2013.

No submissions were received.

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.

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)— *Attorney General of Northern Territory v Doepel* (2003) 133 FCR 112 (*Doepel*) at [16] and also at [35]–[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.

Turning to each of the particular parts of ss. 61 and 62 which require the application to contain details/other information or to be accompanied by an affidavit or other 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).

Under this section, I must consider whether the application sets out the native title claim group in the terms required by s. 61(1). If the description of the native title claim group indicates that not all persons in the native title claim group have been included, or that it is in fact a subgroup of the

native title claim group, then the relevant requirement of s. 190C(2) would not be met and I could not accept the claim for registration—*Doepel* at [36].

I am not required to go beyond the material contained in the application and in particular I am not required to undertake some form of merit assessment of the material to determine whether I am satisfied that the native title claim group as described is, in reality the correct native title claim group—*Doepel* at [37].

The description of the native title claim group, the Jabirr Jabirr People, is set out in Schedule A of the application. The native title claim group is described as follows:

1. The native title claim group consists of people known as the Jabirr Jabirr people, being those Aboriginal people whose traditional land and waters are situated generally in the district north of Broome and south of Beagle Bay in the state of Western Australia.
2. The individuals who comprise the Jabirr Jabirr people's native title claim group are the biological descendants of the following persons:
 1. Frank Dinghi, aka Jimmy Bulingi
 2. Appolonia, mother of Gerard, Theresa, Josephine and Ester
 3. Nabi
 4. Dorothy, sister of Senanus
 5. Deborah, sister of Senanus
 6. Mary Nelagumia
 7. Appolonia, sister of Mary Nelagumia
 8. Wallai William
 9. Agnes Imbarr
 10. Fred/Friday Walmadang
 11. Murjal, sister of Senanus
 12. Sophie, mother of Kay McKenzie and others
 13. Frank Walmandu, brother of Senanus
 14. Flora, sister of Matilda
 15. Louisa, aka Djauradjaura, sister of Matilda
 16. Madeline, sister of Matilda
 17. Matilda, mother of Josephine Torres and others
 18. Bernal
 19. Liddy
 20. Dorothy Kelly
 21. Walamandjijn
 22. Alice Darada

There is nothing on the face of the application which leads me to conclude that the above description indicates that not all persons in the native title group have been included, or that it is in fact 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).

The name and address for service of the applicant is found in Part B of the application.

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

The application must:

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

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

The application contains a description of the persons in the native title claim group in Schedule A. I will consider whether the description is sufficiently clear so that it can be ascertained whether any particular person is one of those persons, under the corresponding merit condition in s. 190B(3). See *Gudjala v Native Title Registrar* [2007] FCA 1167 (*Gudjala*) at [31].

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

The application must be accompanied by an affidavit sworn by the applicant that:

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

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

The application is accompanied by the affidavits required by s. 62(1)(a) from each person jointly comprising the applicant, namely Rita Augustine, Cecilia Djiagween, Elizabeth Dixon, Ignatius Paddy and Anthony Watson, who are all members of the claim group.

Each of these affidavits is signed by the deponent and competently witnessed. I am satisfied that each of the affidavits sufficiently addresses the matters required by s. 62(1)(a)(i)-(v).

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).

Schedule B of the application refers to Attachment B, which contains a description of the external boundaries of the area covered by the application. Schedule B also provides a description of the areas within the external boundaries that are excluded from 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).

Schedule C refers to Attachment C, which is a map showing the application area and its boundaries.

Searches: s. 62(2)(c)

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

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

Schedule D states that no searches have been carried out by the applicant. There is no information before me to indicate that the applicant has made any searches of the kind described in this section.

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 s. 62(2)(d).

Schedule E provides a description of the native title rights and interests claimed in relation to the particular land and waters covered by the application. The description does not consist only of a statement to the effect that the native title rights and interests are all the rights and interests that may exist, or that have not been extinguished, at law.

I assess the adequacy of the description in the corresponding merit condition at s. 190B(4) below.

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).

Kiefel J in *Queensland v Hutchinson* (2001) 108 FCR 575; [\[2001\] FCA 416](#) notes that it is not enough to merely recite the general or the three particular assertions in s. 62(2)(e); what is required is a 'general description' of the factual basis for the three particular assertions – at [25].

The Full Federal Court (French, Moore, Lindgren JJ) commented in obiter on the requirements of s. 62(2)(e) in *Gudjala People # 2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala FC*). Their Honours said:

The fact that the detail specified by s 62(2)(e) is described as a 'general description of the factual basis' is an important indicator of the nature and quality of the information required by s 62. In other words, it is only necessary for an applicant to give a general description of the factual basis of the claim and to provide evidence in the affidavit that the applicant believes the statements in that general description to be true. Of course the general description must be in sufficient detail to enable a genuine assessment of the application by the Registrar under s 190A and related sections, and be something more than assertions at a high level of generality.

Schedule F and the other material in Attachments F1 to F5 provide a general description of the rights and interests claimed and the factual basis for the assertions set out in s. 62(2)(e).

The description does more than recite the particular assertions and in my view, meets the requirements of a general description of the factual basis for the assertions identified in this section.

I assess the adequacy of the description in the corresponding merit condition at s. 190B(5) below.

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).

Schedules G and F set out details of activities currently carried out by the native title claim group in relation to the area claimed.

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 sets out that '[a]s at the date of this application, the following native title determination applications had been made in relation to the whole or part of the area that is covered by this application (WAD408 of 2010 having been dismissed on 17 March 2011)':

- WAD6002 of 1998, Goolarabooloo/Jabirr Jabirr
- WAD124 of 2010, Jabirr Jabirr
- WAD2 of 2011, Goolarabooloo Families.

I understand that, contrary to the information in Schedule H, the Goolarabooloo/Jabirr Jabirr application was discontinued by order of the court on 20 September 2013. Following the filing of this application, the Court has also granted leave to discontinue the other two applications referred to in Schedule H on 17 October 2013 (see *McKenzie v Western Australia* [2013] FCA 1058) at [6].

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

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

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

Schedule HA refers to Attachment HA which consists of a 'notice of intention to take interests in land for a public work and to confer interests under written law' issued by the Western Australian Minister for Lands on 2 September 2010. There is no information before me to indicate that the applicant is aware of any other notices of the kind described in this section.

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 is a table of six s. 29 notices that fall within the claim area boundary as at 16 September 2013. There is no information before me to indicate that the applicant is aware of any other notices of the kind described in this section.

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 three of the conditions found in ss. 190C(3)(a), (b) and (c) are satisfied — see *Western Australia v Strickland* (2000) 99 FCR 33; (*Strickland FC*)— at [9].

A search of the Register as at 1 October 2013 by the Tribunal's Geospatial Services (Geospatial) and myself shows that there are two applications which cover the whole or part of the area covered by this application. None of these applications were on the Register of Native Title Claims (Register) at that time this application was made on 23 September 2013. As such the condition in ss. 190C(3)(b) is not satisfied.

Subsection 190C(4)

Authorisation/certification

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

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

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

Section 251B provides that for the purposes of this Act, all the persons in a native title claim group authorise a person or persons to make a native title determination 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, must be complied with in relation to authorising things of that kind—the persons in the native title 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 . . . 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 . . . in relation to authorising the making of the application and dealing with the matters, or in relation to doing things of that kind.

Under s. 190C(4A), the certification of an application under Part 11 by a representative Aboriginal/Torres Strait Islander body is not affected where, after certification, the recognition of the body as the representative Aboriginal/Torres Strait Islander body for the area concerned is withdrawn or otherwise ceases to have effect.

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.

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.

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

The application is not certified by a representative Aboriginal/Torres Strait Islander body that could certify the application. Therefore the requirements of s. 190C(4)(a) do not apply and I must consider whether I am satisfied that the requirements of s. 190C(4)(b) are met.

Section 190C(4)(b) sets out that the Registrar must be satisfied that:

- 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.

Section 190C(5) adds that the Registrar can only be satisfied that the condition in s. 190C(4) has been met in circumstances where an application has not been certified, if the application:

- includes a statement to the effect that the requirement set out in paragraph (4)(b) of s. 190C has been met; and
- briefly sets out the grounds on which the Registrar should consider that it has been met.

Are the requirements of s. 190C(5) met?

I will first consider whether the requirements of s. 190C(5) have been met, before I turn to s. 190C(4)(b).

The application contains relevant statements and briefly sets out the relevant grounds in Schedule R and in the applicant's s. 62(1) affidavits. I am therefore satisfied that the requirements of s. 190C(5) have been met.

Are the requirements of s. 190C(4)(b) met?

In relation to the first requirement of this section, that the applicant is a member of the native title claim group, the persons jointly comprising the applicant state in each of their s. 62(1)(a) affidavits that they are 'a member of the native title claim group for this application'. Attachment R further states that '[e]ach of the five persons who comprise "the applicant" are biological descendants of one or more of the ancestors listed in Schedule A above'.

In relation to the second requirement that the applicant is authorised to make and deal with the application, I note that the term 'authorise' as used in s. 190C(4)(b) is defined in s. 251B. That is, an applicant's authority from the rest of the native title claim group to make the application and deal with related matters must be given in one of two ways:

- in accordance with a process of decision-making that must be complied with under the traditional laws and customs of the persons in the native title claim group; or
- where there is no such process, by a process agreed to and adopted by the group.

There is a long line of authority that an agreed and adopted process can only be used where there is no traditional process mandated for authorising 'things of that kind' (i.e. authorising an applicant to make a native title determination application): see for example *Evans v Native Title Registrar* [2004] 1070 —at [7] and [52].

I note that I am not confined to the statements in the application and in the accompanying s. 62(1)(a) affidavits when deciding whether or not s. 190C(4)(b) is satisfied. I may also have regard

to other material provided by the applicant or otherwise available in relation to the authorisation of the applicant—see *Strickland v Native Title Registrar* (1999) FCA 1530 —at [57].

Doepel provides authority that s. 190C(4)(b) ‘involves some inquiry through the material available to the Registrar to see if the necessary authorisation has been given’ —at [78].

Therefore, the first question that I must ask is whether the claim group has a mandated traditional decision-making process. If this is the case, then I must inquire whether this mandated process was followed. If this is not the case, then I must consider whether I am satisfied that the persons in the native title claim group agreed and adopted a decision-making process that they then followed in deciding to authorise the applicant.

1. Does the claim group have a mandated traditional decision making process?

[Name deleted] in her affidavit dated 16 September 2010 states under the heading ‘Decision-Making Processes’ that :

Jabirr Jabirr law and culture is very strong, and it has a presence in many aspects of our daily lives. . . However, there is no process under Jabirr Jabirr law and custom which is equipped to deal with the bureaucratic and legal hurdles that confront us when we are dealing with matters that arise under the Commonwealth’s Native Title Act, such as authorising people to make, and to deal with matters arising in relation to, native title applications. Accordingly, we just have to deal with these matters as best we can, as they arise —at [2] and [3].

I am satisfied based on this statement that the claim group does not have a mandated traditional decision making process.

2. Was a decision making process agreed to and adopted?

[Name deleted] then explains how the applicant for a previous application by the Jabirr Jabirr People (WAD124/2010, WC2010/005) was selected and how the selection was formalised at the authorisation meeting held on 30 April 2010 in Broome ‘by passing a motion in accordance with the decision making-process which we had agreed upon earlier in the meeting’ —at [5].

[Name deleted], the solicitor for the applicant, in his affidavit of 31 July 2013 sets out information in relation to the authorisation meeting regarding this application, which was held at the Gimme Gimme Shed (Goolari Media) in Broome on 11 April 2013. At [15] he notes that the following resolution was carried unanimously at the meeting:

The process for making decisions at this meeting of the Jabirr Jabirr Claim Group, and in particular decisions about making a new Jabirr Jabirr native title determination application and dealing with matters in relation to that application, will be as follows:

- a) There will be a reasonable opportunity for informed discussion about each matter before a decision is to be made on it.
- b) The following process will then be used to make a decision about each matter:
 - i. the decision to be made will be put in the form of a clearly worded written resolution;
 - ii. the proposed resolution will be read out to the meeting;
 - iii. the proposed resolution must be moved and seconded by members of the group before it is decided on;
 - iv. the decision by the group about the proposed resolution will then be made by a show of hands, or some other appropriate means if agreed by a majority by show of hands; and then
 - v. a decision by the majority of those persons present at the meeting about the proposed resolution will be an authoritative decision of the Claim Group.

I note that Attachment R to the application and the s. 62(1)(a) affidavits by the applicant at [5] confirm that the above decision making process was agreed to and adopted at the authorisation meeting.

I am satisfied based on these statements that the claim group has agreed to and adopted the above decision making process, after all members of the claim group were given every reasonable opportunity to participate in the process of agreeing to and adopting the decision making process.

3. Was the agreed to and adopted decision making process followed?

Attachment R, the applicant's s. 62(1)(a) affidavits and [Name deleted's] affidavit at [16] state that the decision to authorise the five persons who jointly comprise the applicant was made unanimously in accordance to the agreed and adopted decision-making process.

[Name deleted's] affidavit sets out the relevant resolution in full at [15], being resolution three.

I understand from [Name deleted's] statement that only those who could be verified as being descended from the ancestors set out in Schedule A were permitted to participate in the authorisation meeting – at [10]. According to [Name deleted's] affidavit 46 persons fell into this category and their names are set out in his affidavit at [11]. Five persons left the meeting prior to the meeting's resolution being considered and passed – at [14].

Details in relation to the notification of the authorisation meeting are contained in [Name deleted]'s affidavit of 31 July 2013, to which [Name deleted's] affidavit also refers. [Name deleted] is the officer with the Kimberley Land Council who was responsible for coordinating the provision of assistance to [Name deleted] in March and April 2013 in facilitating the Jabirr Jabirr authorisation meeting. [Name deleted] states at [2] to [4] that the meeting was advertised in the Broome Advertiser in three editions in March and April 2013. Personal notices were also sent to 361 Jabirr Jabirr claim group members whose names appear on the contact list maintained by the Kimberley Land Council. A copy of the meeting notice is attached to [Name deleted]'s affidavit.

I refer to Stone J's comments in *Lawson v Minister for Land and Water Conservation for the State of New South Wales* (2002) FCA 1517 that

It 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 – at [25]

Given that [there was a] well-attended meeting [that] was appropriately advertised and that there was no dissent from any of the resolutions that were passed, it can safely be assumed that the resolutions approved by [sic] meeting have been approved by the Claim Group – [27] (*emphasis added*).

I accept that the authorisation meeting for this application was well advertised and that steps were taken to give notice to all people who might wish to attend the meeting, including the sending of notices to the known members of the native title claim group contained on the Kimberley Land Council database, such that it appears that every reasonable opportunity has been extended to the native title claim group to participate in the authorisation process. On the basis of the information before me I accept that the agreed and adopted decision making process of the claim group was followed and that the the applicant 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.

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).

Schedule B refers to Attachment B for a written description of the claim area by metes and bounds making reference to a native title application and determination, various cadastral land parcels and coordinate points. Schedule B also lists general exclusions.

A map of the claim area is provided as Attachment C of the application. It is a colour copy of a map titled "Native Title Determination Application – Jabirr Jabirr" produced by the National Native Title Tribunal dated 04/02/2010, and includes:

- The application area depicted with a bold blue outline;
- Adjacent native title determination and application boundaries labelled;
- Cadastral land parcels roads and localities labelled;
- Scalebar, northpoint, coordinate grid, legend and location diagram;
- 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 is 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 that this can be said, the written description and the map are required to be sufficiently consistent with each other.

Geospatial Services on 1 October 2013 undertook an analysis of the claim area description and map. The assessment is 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 clarity of the mapping of this external boundary on the map in Attachment C, 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.

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.

As the application does not name the persons in the native title claim group, I must consider if, pursuant to s. 190B(3)(b), the description in Schedule A (is sufficiently clear so that it can be ascertained whether any particular person is in the native title claim group.

In considering the operation of s. 190B(3)(b) in *Doepel*, Mansfield J stated that:

Its focus also is not upon the correctness of the description of the native title claim group, but upon its adequacy so that the members of any particular person in the identified native title claim group can be ascertained – at [37].

Further, Carr J in *State of Western Australia v Native Title Registrar* (1999) 95 FCR 93 (*Western Australia v Native Title Registrar*) found, in the way native title claim groups were described, 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].

As noted above, the native title claim group is described in Schedule A of the application as follows:

1. The native title claim group consists of people known as the Jabirr Jabirr people, being those Aboriginal people whose traditional land and waters are situated generally in the district north of Broome and south of Beagle Bay in the state of Western Australia.
2. The individuals who comprise the Jabirr Jabirr people's native title claim group are the biological descendants of the following persons:
 1. Frank Dinghi, aka Jimmy Bulingi
 2. Appolonia, mother of Gerard, Theresa, Josephine and Ester
 3. Nabi
 4. Dorothy, sister of Senanus
 5. Deborah, sister of Senanus
 6. Mary Nelagumia
 7. Appolonia, sister of Mary Nelagumia
 8. Wallai William
 9. Agnes Imbarr
 10. Fred / Friday Walmadang
 11. Murjal, sister of Senanus
 12. Sophie, mother of Kay McKenzie and others
 13. Frank Walmandu, brother of Senanus
 14. Flora, sister of Matilda
 15. Louisa, aka Djauradjaura, sister of Matilda
 16. Madeline, sister of Matilda
 17. Matilda, mother of Josephine Torres and others
 18. Bernal
 19. Liddy
 20. Dorothy Kelly
 21. Walamandjijn
 22. Alice Darada

Describing the claim group as the 'biological descendants' of certain named persons provides a sufficiently reliable and objective means by which to ascertain a person's membership to the group. It may be that some factual inquiry may be required to ascertain how members of the claim group are descended from the named apical ancestors, but that would not mean that the group had not been sufficiently described.

I am therefore of the view that the native title claim group is described sufficiently clearly to enable identification of any particular person in that group.

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 readily identified. The description must be clear and easily understood — *Doepel* at [91], [92], [95], [98] to [101] and [123]. An assessment of whether the rights and interests can be established, *prima facie*, as 'native title rights and interests' as defined in s. 223 will be made under s. 190B(6) below.

Schedule E contains the following description of the claimed native title rights and interests:

The native title rights and interests claimed are 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 Jabirr Jabirr People claim the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world.
2. Over areas where a claim to exclusive possession cannot be recognised, the Jabirr Jabirr People claim the following rights and interests:
 - (a) the right to access the application area;
 - (b) the right to travel across the application area;
 - (c) the right to camp on the application area;
 - (d) the right to erect shelters on the application area;
 - (e) the right to live on the application area;
 - (f) the right to move about on the application area;
 - (g) the right to hold meetings on the application area;
 - (h) the right to hunt on the application area;
 - (i) the right to fish on the application area;
 - (j) the right to take fauna from the application area;
 - (k) the right to use and maintain the natural water resources of the application area including the beds and banks of watercourses;
 - (l) the right to gather the natural products of the application area (including food, medicinal plants, timber, stone, ochre and resin) according to traditional laws and customs;

- (m) the right to use the application area for social, religious, cultural and spiritual customary and/or traditional purposes;
- (n) the right to conduct ceremony on the application area;
- (o) the right to participate in cultural activities on the application area;
- (p) the right to maintain places of importance under traditional laws, customs and practices in the application area;
- (q) the right to protect places of importance under traditional laws, customs and practices in the application area;
- (r) the right to conduct burials on the application area;
- (s) the right to speak for and make non-exclusive decisions about the application area;
- (t) the right to cultivate and harvest native flora according to traditional laws and customs;
- (u) the right to cook and light fires for that purpose, on the application area;
- (v) the right to light fires for domestic purposes but not for the clearance of vegetation;
- (w) the right to maintain and transmit cultural heritage of the application area; and
- (x) the right to maintain and transmit cultural knowledge of the application area.

3. The native title rights and interests are subject to:

- (a) The valid laws of the State of Western Australia and the Commonwealth of Australia; and
- (b) The rights conferred under those laws.
- (c) the traditional laws and customs of the native title group.

I am satisfied that the description of all the native title rights and interests claimed is sufficient to allow for them to be readily identified.

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.

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.

I have considered each of the three assertions set out in the three paragraphs of s. 190B(5) in turn before reaching this decision.

The statutory requirement

Doepel provides authority that the Registrar's task in relation to s. 190B(5) is to consider whether the asserted facts, assuming that they are true, can support the claimed assertions identified in that section; the task is not to 'test whether the asserted facts will or may be provided at a hearing, or to assess the strength of the evidence which may ultimately be adduced to establish the asserted facts' — *Doepel* at [17]. This approach to s. 190B(5) was approved by the Full Court in *Gudjala FC* — at [83] and [85].

In *Gudjala FC* the Full Court commented that:

The fact that the detail specified by s 62(2)(e) is described as "a general description of the factual basis" is an important indicator of the nature and quality of the information required by s 62. In other words, it is only necessary for an applicant to give a general description of the factual basis of the claim and to provide evidence in the affidavit that the applicant believes the statements in that general description are true. Of course the general description must be *in sufficient detail to enable a genuine assessment of the application by the Registrar* under s 190A and related sections, and be something more than assertions at a high level of generality. But what the applicant is not required to do is to provide anything more than a general description of the factual basis on which the application is based. In particular, the applicant is not required to provide evidence of the type which, if furnished in subsequent proceedings, would be required to prove all matters needed to make out the claim. The applicant is not required to provide evidence that proves directly or by inference the facts necessary to establish the claim (*emphasis added*) at [92].

Doepel indicates that the delegate should approach the task by 'analysing the information available to address, and make findings about, the particular matters to which s 190B(5) refers' — at [130]. Mansfield J concludes that it is correct to focus primarily upon the particular requirements of s. 190B(5), as this is the way in which the Act draws the Registrar's attention — at [132]. If the factual basis supports the three particular assertions, then the requirements of the section overall are likely to be met.

Information considered by the delegate

Schedule F, which contains a general description, refers to the following Attachments to the application:

- Attachment F1 – Summary (table) of factual basis claimed and prima facie evidence
- Attachment F2 – Affidavit of Mr Anthony Watson of 30 April 2010
- Attachment F3 – Affidavit of Mrs Rita Augustine of 30 April 2010
- Attachment F4 – Affidavit of Mrs Cecelia Djiagween of 27 October 1999
- Attachment F5 – Historical and anthropological information Jabirr Jabirr claim (undated).

Further relevant information is contained in the affidavit of [Name deleted] (anthropologist) of 7 September 2010 and Schedule G of the application.

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).

Section 190B(5)(a) requires me to be satisfied that the factual basis is sufficient to support the assertion that the native title claim group have, and the predecessors of those persons had, an association with the application area.

Schedule F and Attachment F5

Schedule F to the application states the following in relation to the Jabirr Jabirr People and their ancestors' in relation to the group's past and present association with the area covered by this application:

- a) the Jabirr Jabirr native title claim group and their ancestors have, since the assertion of British sovereignty possessed, occupied, used and enjoyed the claim area; and
- b) the association of the Jabirr Jabirr People with the land and waters of the application area has been recorded from the 17th Century when William Dampier documented sightings and interaction with Aboriginal People in and around the application area. Subsequent explorers recorded sightings and interaction with Indigenous people. In the 1840's Lieutenant Stokes reported when conducting a survey of the coast "the coast seems pretty thickly populated between Roebuck and Beagle Bays, as the smoke from the native fires was constantly to be seen."

Schedule F also refers to Attachment F5, which provides 'historical and anthropological information'. In summary, Attachment F5 relevantly states that:

- The Jabirr Jabirr People have lived on and near the claim area since long before European occupation of the area. Many of the Jabirr Jabirr People continue to maintain a close connection with the area and continue to practice their spiritual beliefs and exploit the natural resources of the area;
- Archaeological evidence indicates occupation at James Price Point [an area located within the claim area] some 1300 years ago;
- Sites of 'outstanding archeological and ethnographic significance' have been registered under the *Aboriginal Heritage Act (WA)* in relation to an area around Quondong Point [which is also located within the claim area];
- Early researchers identified the claim area with reference to the Jabirr Jabirr language 'as well as one other label found in the sources – Ngumbarl'. An examination of the early written sources and data gathered from Jabirr Jabirr informants indicates that Ngumbarl is a dialect subgroup of the Jabirr Jabirr language and that the Jabirr Jabirr was the society within the claim area at sovereignty.

In summary, the following further relevant information has been provided in Attachments F2 to F4 in three affidavits by members of the native title claim group:

Attachment F2

Mr Watson explains that he learnt from his grandfather [Name deleted] about the location of Jabirr Jabirr country. He states that '[i]t goes from Willie Creek north to Nadalagan, near Camp Inlet, and it goes from south to Beagle Bay to Country Downs station' – at [12].

I note that the southern claim boundary appears to follow, in general terms, Willie Creek. Camp Inlet is located to the north of the claim area and covered by the Djabera Djabera native title determination application (WAD6124/98). Country Downs station is located west of the coast, between Willie Creek and Camp Inlet. The above description of Jabirr Jabirr country therefore

includes the claim area. Mr Watson gives examples of his current association with the claim area at [14] which include hunting and spending holidays on country.

Attachment F3

Ms Augustine states that 'lots of old Jabirr Jabirr people [lived and moved] all up the coast at places like Quondong (Placename Deleted) and Barred Creek. They also travelled along the coast up and down to [Placename Deleted] (Coulomb Point), Carnot Bay and Sandy Point. Most of them were living up there too. Jabirr Jabirr people lived all along the coast to Winawal' —at [5]. I note that Quondong and Coulomb Point are located in the claim area. Carnot Bay and Sandy Point are within the Djabera Djabera claim area. Ms Augustine also gives examples of Jabirr Jabirr names for places such as [Placename Deleted] for Carnot Bay and [Placename Deleted] for Quondong —at [11]. She also explains that people 'have the same names as places in Jarbirr Jabirr country', such as her grandmother [Name deleted] who is 'named for Quondong and my [Name deleted] and me for some of the country around James Price Point' —at [18]. Ms Augustine gives examples of her family's association with the claim area which include hunting and fishing, being taught by the old people and teaching children and collecting bush food —and bush medicine — at [5], [6], [7] [19], [25], [26], [27], [28] and [29]. I note that Schedule M of the application, which includes a summary of Ms Augustine's affidavit, states that Ms Augustine 'also camps on an outstation within the application area, in exercise of her right to live within the application area'. In her affidavit, Ms Augustine refers to this outstation, Mundud, and states that it is on Carnot Bay —at [30]. Carnot Bay is, however, not located within the boundary of this application but in the Djabera Djabera application.

Attachment F4

Ms Djiagween states that Jabirr Jabirr country is to the north of Willie Creek —at [3]. She states that 'the sea is Jabirr Jabirr country too' —at [8]. She gives examples of her, and her family's, association with the claim area which include camping, fishing and collecting bush food and teaching children and grandchildren to look after Jabirr Jabirr country —at [9].

[Name deleted]'s affidavit

I note that the affidavit states at [1] that [Name deleted]affirms it in support of the registration of the Jabirr Jabirr native title claimant application WC2010/005. The application before me is almost identical with the pervioius application. As such I understand the statements made in [Name deleted]'s affidavit to also relate to the application before me. (I understand from [Name deleted] affidavit that a resolution was passed at the authorisation meeting authorising and directing the applicant for the application before me to apply to the Federal Court for leave to discontinue the previous application upon the application before me being entered on the Register).

[Name deleted]has worked as a consultant anthropologist for the Kimberley Land Council and, since February 2009, has completed approximately 58 days of field research in relation to the Goolarabooloo and Jabirr Jabirr Peoples' claimant application (WAD6002/98) (which has been discontinued, as noted above) and the Djabera Djabera claimant application (WAD6124/98) (which is located to the north of this application), Djabera Djabera being an alternate spelling for Jabirr Jabirr —at [1] and [2]. (I note that Attachment F5 states that the historical reports and in the literature the orthography of the group name varies from alternative forms of Jabirr Jabirr, Djaberra Djaberra, Djabirr Djabirr, Jaber Jaber and Tjabera Tjabera).

[Name deleted]states that Jabirr Jabirr People were able to remain permanently within their country from the time of contact with European settlers in the 1880s to the 1940s and were able to freely acknowledge and observe their traditional laws and customs. In the late 1940s to 1960s, when many Jabirr Jabirr families and individuals were forcibly relocated to missions and other institutions outside Jabirr Jabirr country, Jabirr Jabirr People continued to live in and access the claim area. From the late 1980s, Jabirr Jabirr People have had the opportunity to live within Jabirr Jabirr country, by setting up small outstations for their families – at [7];

Schedule G

Further examples of the current association of the claim group with the application area (in the form of a list of 19 activities which members of the claim group are said to ‘have continuously carried out’) are contained in Schedule G.

I am of the view that the material before me sufficiently supports the assertion that the Jabirr Jabirr People currently have an association, and that the predecessors of the claim group had, an association with the whole of the claim 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).

Section 190B(5)(b) requires me to be satisfied that the factual basis is sufficient 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 claim to native title rights and interests. In my view this assertion must be understood in light of the High Court’s finding in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 194 ALR 538 (*Yorta Yorta*):

A traditional law or custom is one which has been passed from generation to generation of a society, usually by word of mouth and common practice. But in the context of the Native Title Act, “traditional” carries with it two other elements in its meaning. First, it conveys an understanding of the age of the traditions: the origins of the content of the law or custom concerned are to be found in the normative rules of the Aboriginal and Torres Strait Islander societies that existed before the assertion of sovereignty by the British Crown. It is only those normative rules that are “traditional” laws and customs.

Secondly, and no less importantly, the reference to rights or interests in land or waters being possessed under traditional laws acknowledged and traditional customs observed by the peoples concerned, requires that the normative system under which the rights and interests are possessed (the traditional laws and customs) is a system that has had a continuous existence and vitality since sovereignty. If that normative system has not existed throughout that period, the rights and interests which owe their existence to that system will have ceased to exist—at [46]-[47] (*emphasis added*).

In particular, Dowsett J in *Gudjala* characterised the requisite asserted facts in support of the condition in s. 190B(5)(b) as follows:

That the laws and customs currently observed have their source in a pre-sovereignty society and have been observed since that time by a continuing society— at [63];

That there existed at the time of European settlement a society of people living according to a system of identifiable laws and customs, having a normative content— at [65], [66] and [81];

That there is an explanation of the link between the claim group described in the application and the area covered by the application. In the case of a claim group described by reference to apical ancestors this may involve identifying some link between the apical ancestors and any society existing at sovereignty, even if the link arose at a later stage – [66] and [81] (*emphasis added*).

This approach was not criticised or overturned by the Full Court in *Gudjala FC*.

I use Dowsett J's three-part characterisation as the basis for my assessment.

I rely to a large degree on information provided by anthropologist [Name deleted] in her affidavit of 7 September 2010 as it contains information most relevant to my assessment. I note that the affidavits provided at Attachments F2 to F4 give examples of how traditional law and custom of the Jabirr Jabirr People governs the claimants' lives, and gives a context to the views and opinions expressed by the anthropologist.

1. That the laws and customs currently observed have their source in a pre-sovereignty society and have been observed since that time by a continuing society

Schedule F at a) relevantly states that:

Native title rights and interests held by the Jabirr Jabirr people, are pursuant to and possessed under the laws and customs of the claim group, including traditional laws and customs that give rise to rights and interests in land and waters which vest in members of the native title claim group on the basis of:

- ancestral connection to the area
- traditional religious knowledge of and affiliation to and responsibility for the area
- traditional knowledge of the geography of the area
- traditional knowledge of the resources of the area and
- knowledge of traditional ceremonies of the area.

Attachment F5 relevantly states that:

In regards to the claim area, there is evidence to support that there was one society at sovereignty, Jabirr Jabirr which was the society that gave rise to rights and interests which are now identified as native title rights and interests, although there may have been one or more subgroups of the society, including sub-dialects, such as Ngumbarl.

The claimants assert that they are Jabirr Jabirr people and that they are the descendants of commonly acknowledged Jabirr Jabirr antecedents. As a result, they claim traditional ownership and the right to speak for Jabirr Jabirr country.

[Name deleted] in her affidavit relevantly states her opinion that the traditional law of the Jabirr Jabirr People acknowledged and observed by ancestors of present claimants immediately prior to 11 June 1829 constituted the basis on which those persons held rights and interests to use, occupy and possess all the land and waters within the external boundaries of the application at that time, to the exclusion of other peoples. Each generation of Jabirr Jabirr People have, subject to one qualification (which relates to the rule which regulates the inheritance of rights in land and the acquisition of a Jabirr Jabirr identity; there has been some adoption in relation to this rule whereby filiation through either a mother or father is now accepted), continued to acknowledge and observe their traditional laws and customs. They have done so substantially uninterrupted throughout that time – at [4]- [6]. She gives detailed reasons for forming this opinion:

- Jabirr Jabirr People were able to remain permanently within their country from the time of contact with European settlers in the 1880s to the 1940s and were able to freely acknowledge and observe their traditional laws and customs—at [7];
- The Jabirr Jabirr People past and present have continuously been taught by the old people and have taught the young people the laws and customs and the cultural knowledge of the Jabirr Jabirr People, including rules prescribing what may and may not be done and how it is to be done and knowledge of the location and use of resources located within Jabirr Jabirr country — at [8];
- The present-day Jabirr Jabirr claimants live in, use and occupy their country, in accordance with Jabirr Jabirr traditional laws and customs — at [9].
- Present-day Jabirr Jabirr People speak of their Jabirr Jabirr parents and grandparents by linking them to named areas within Jabirr Jabirr country, thus differentiating their forebears' connection to country. Current claimants acknowledge their own and other person's individual connection to specific places in Jabirr Jabirr country based on various recognised ways, but it is at the level of the language-owing group, that the claimants articulate their right to 'speak for country'. Obligations and responsibilities are differentiated not by reference to 'ownership' of specific places, but often according to age and gender within the entire Jabirr Jabirr group, and sometimes according to an individual's specific land-based connections — at [10].

2. That there existed at the time of European settlement a society of people living according to a system of identifiable laws and customs, having a normative content

[Name deleted] in her affidavit at [5] details traditional laws and customs of the Jabirr Jabirr People (also referred to as the 'law of the dreaming' or Bugarrigarra or Bugarrgarr) relevant to the holding of rights and interests in land which, in her opinion were acknowledged and observed prior to 11 June 1829 and have continued to be observed by the Jabirr Jabirr People:

- Rules imposing gender-based restrictions on accessing certain areas;
- Ritual practice introducing strangers to Jabirr Jabirr country;
- Practices required to be conducted so as to manage spiritual beings within Jabirr Jabirr country, [Deleted for cultural reasons];
- A rule for the inheritance of rights in relation to land, [Deleted for cultural reasons];
- Obligations to protect country;
- Rules dictating the use of the country's resources, [Deleted for cultural reasons];
- Rules relating to the lighting and tending of fires, [Deleted for cultural reasons];
- Rules dealing with hunting and fishing, which prescribe the manner in, and the times at which, [Deleted for cultural reasons]; and
- [Deleted for cultural reasons] — at [4] and [5].

I also note [Name deleted]'s statement in her affidavit that 'Jabirr Jabirr law and culture is very strong, and it has a presence in many aspects of our daily lives'. As an example [Name deleted] refers to a meeting of the Jabirr Jabirr People where [Deleted for cultural reasons] — at [2].

3. That there is an explanation of the link between the claim group described in the application and the area covered by the application. In the case of a claim group described by reference to apical ancestors this may involve identifying some link between the apical ancestors and any society existing at sovereignty, even if the link arose at a later stage

[Name deleted] in her affidavit states that she has been engaged to 'identify all the persons who, according to their traditional laws and customs, hold the common or group rights and interests within the Goolarabooloo - Jabirr Jabirr and the Djabera Djabera claimant applications'. She states further that each of the ancestors named in Schedule A, at this stage of her research, have been identified as Jabirr Jabirr ancestors, based on secondary sources alone (I note that it appears that two of the ancestors in Schedule A are not included in [Name deleted]'s discussion: Agnes Imbarr and Alice Darada, but in my view nothing turns on this) — at [1]. Her discussion includes information on members of the claim group who are descendants of the named ancestors. For example Ignatius Paddy, one of the persons who forms part of the applicant, can trace his ancestry to Appolina through his mother [Name deleted] — at [21]. [Name deleted] states further that there is limited information on birthdates of many individuals, particularly those in upper-generational levels — at [16]; and that the earliest estimated date of birth for the apical ancestors is c. 1853 for Wallai William and Bonal. There is one apical ancestor estimated to have been born in the mid 1860s. Three in the mid 1870s and two in the mid to late 1890s — at [17]. As noted above, the time of contact with European settlers is said to have occurred in the 1880s.

Consideration

In my view the material before me, in particular [Name deleted]'s affidavit and the affidavits provided at Attachments F2 to F4, which give examples of how traditional law and custom of the Jabirr Jabirr People governs the claimants' lives, and gives a context to the views and opinions of the anthropologist, provides a sufficient factual basis for the assertion that there exist traditional laws acknowledged and customs observed by the Jabirr Jabirr People and that these give rise to the native title rights and interests claimed.

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).

Section 190B(5)(c) requires me to be satisfied that the factual basis is sufficient to support the assertion that the native title claim group has continued to hold the claimed native title rights and interests by acknowledging and observing the traditional laws and customs of a pre-sovereignty society in a substantially uninterrupted way. This is the second element to the meaning of 'traditional' when it is used to describe the traditional laws and customs acknowledged and observed by Indigenous peoples as giving rise to claimed native title rights and interests: see *Yorta Yorta* — at [47] and [87].

Schedule F of the application relevantly states:

The Jabirr Jabirr claim group has continued to hold native title in accordance with the laws and customs of the Jabirr Jabirr which can be evidenced by the following:

- a) The Jabirr Jabirr traditional law and custom has been passed down by traditional teaching through the generations preceding the present generations to the present generations of persons comprising the native title claim group
- b) the Jabirr Jabirr people continue to acknowledge and observe those traditional laws and customs under which the rights and interests claimed in the application are possessed, further information is provided in the affidavit of Rita Augustine (Attachment F3)
- c) the Jabirr Jabirr people have maintained a connection with the area through their continued acknowledgement and observance of the normative system of laws and customs of the Jabirr Jabirr people.
- d) The Jabirr Jabirr people have maintained a close association with the land and waters of the application area and continue to live on the application area and use the application area of (sic) traditional activities, such as fishing, the protection of sites and the use of natural resources on the application area. Details are contained in the affidavits of Mr Anthony Watson (Attachment F2), Mrs Rita Augustine (Attachment F3) and Mrs Cecelia Djiagween (Attachment F4).
- e) The table at Attachment F1 provides a summary of the of the (sic) factual basis for the claimed native title and sets out prima facie evidence in support of the native title rights and interests claimed at Schedule E.

In addition, as noted above, [Name deleted] in her affidavit relevantly states that the Jabirr Jabirr traditional laws and customs have continued to be acknowledged and observed by each generation of the Jabirr Jabirr People substantially uninterrupted since the time of European contact.

I note that the affidavits provided at Attachments F2 to F4 give examples of how traditional law and custom of the Jabirr Jabirr People governs the claimants' lives, and gives a context to the views and opinions of the anthropologist.

I am satisfied that the factual basis provided is sufficient to support an assertion that the Jabirr Jabirr People have continued to hold native title in accordance with the 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)..

Registrar's task

In relation to the consideration of an application under s. 190B(6) I note Mansfield J's comments in *Doepel*:

Section 190B(6) requires some measure of the material available in support of the claim—at [126].

On the other hand, s 190B(5) directs attention to the factual basis on which it is asserted that the native title rights and interests are claimed. It does not itself require some weighing of that factual assertion. That is the task required by s 190B(6)—at [127].

Section 190B(6) appears to impose a more onerous test to be applied to the individual rights and interests claimed—at [132].

The definition of ‘native title rights and interests’ in s. 223(1) guides my consideration of whether, an individual right and interest can be established prima facie. In particular I take account of the interpretation of this section in:

Yorta Yorta (see s. 190B(5) above) in relation to what it means for rights and interests to be possessed under the *traditional* laws acknowledged and the *traditional* customs observed by the native title claim group; and

The High Court’s decision in *Western Australia v Ward* (2002) 213 CLR 1 [2002] HCA 28 (*Ward HC*) that a ‘native title right and interest’ must be ‘in relation to land or waters’.

In my view a right that clearly falls outside the scope of the definition of ‘native title rights and interests’ in s. 223(1) cannot be prima facie established.

The registration test is 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 also 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.

In summary, s. 190B(6) requires me to carefully examine the asserted factual basis provided for the assertion that the claimed native title rights and interests exist against each individual right and interest claimed in the application to determine if I consider, prima facie, that they:

exist under traditional law and custom in relation to any of the land or waters under claim; are native title rights and interests in relation to land or waters (see chapeau to s. 223(1)); and have not been extinguished over the whole of the application area.

The material provided

[Name deleted]’s affidavit sets out that under the laws and customs of the pre-sovereignty society, the Jabirr Jabirr People hold rights and interests to use, occupy and possess all the land and waters within the external boundary of the claim area, to the exclusion of other peoples, as they collectively own the country.

The rights and interests claimed are set out in Schedule E of the application.

Schedule F states at paragraph [e] that the table at Attachment F1 provides a summary of the factual basis for the claimed native title and sets out prima facie evidence in support of the native title rights and interests claimed at Schedule E.

Consideration of the rights and interests claimed

I first consider the claim to ‘exclusive possession’ in paragraph 1 of Schedule E and then the claim to non-exclusive rights and interests, as referred to in paragraph 2 of Schedule E. Following each consideration I will further consider whether:

The rights claimed are native title rights and interests in relation to land or waters; and
The rights have been extinguished over the whole of the application area.

1. The right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world

Outcome: Prima facie established.

Reasons:

The Full Court in *Griffiths v Northern Territory* (2007) 243 ALR 7 indicates that the question of exclusivity depends upon the ability of the native title holders to effectively exclude from their country people not of their community, including by way of 'spiritual sanction visited upon unauthorised entry' and as the 'gatekeepers for the purpose of preventing harm and avoiding injury to country' – at [127].

Attachment F1 states that '[u]nder traditional laws and customs claim group members had rights and responsibilities over land, these rights and interests were language based and included the right to exclude. I note that this section is in the past tense. Reference is made to the affidavits of Cecilia Djiagween (Attachment F4 at [5] and [7]) and Anthony Watson (Attachment F 2 at [15]).

The affidavits state the following:

Anthony Watson

It is our right when some stranger or mining company comes on to our country that they talk to us first. We are Jabirr Jabirr people for that country and we have to make decisions for it.

Cecilia Djiagween

[Deleted for cultural reasons]

In addition, as noted above, [Name deleted] in her affidavit expresses her opinion that the rights and interests held by the Jabirr Jabirr People, based on their traditional laws and customs, are the right to use, occupy and possess the claim area to the exclusion of other peoples.

I therefore find that prima facie the exclusive rights claimed are established over areas where there has been no previous extinguishment of native title or where any extinguishment is to be disregarded pursuant to ss. 47, 47A or 47B.

Non-exclusive rights and interests

I now assess whether the rights and interests claimed in paragraph [2] of Schedule E can be established prima facie as non-exclusive native title rights in relation to that part of the claim area where exclusive rights cannot be prima facie established.

In my consideration I follow Attachment F1 which groups together those rights and interests that appear to be of a similar character and therefore rely on the same evidentiary material. I refer to them as listed in Schedule E.

- a) **the right to access the application area**
- b) **the right to travel across the application area**
- c) **the right to camp on the application area**
- d) **the right to erect shelters on the application area**
- e) **the right to live on the application area**
- f) **the right to move about on the application area**
- g) **the right to hold meetings on the application area**

Outcome: Prima facie established.

Reasons:

[Name deleted], as noted above, states that under the laws and customs of the Jabirr Jabirr People they hold rights and interests to use, occupy and possess all the land and waters within the external boundary of the claim area to the exclusion of other peoples. In my view the above rights are incidental to the exclusive rights. I note my finding above at s. 190B(5) that the factual basis provided was sufficient to support the existence of traditional laws and customs giving rise to the claimed rights and interests.

Attachment F1 refers to the affidavits of Ms Djiagween (Attachment F 4 at [6], [7] and [9]) and Mr Watson (Attachment F 2 at [10], [12] and [15]) and Ms Augustine (Attachment F 3 at [4], [5] and [30]) which include the following relevant examples of the exercise of the above rights:

Ms Djiagween

She and her family often camp on Jabirr Jabirr country.

Mr Watson

He learnt from his grandfather [Name deleted] where Jabirr Jabirr country was.

Ms Augustine

She remembers locations within the Jabirr Jabirr country where old Jabirr Jabirr People lived at camps, travelling and moving along the coast at places like Quondong and Barred Creek and Coulomb Point.;

She used to live on Jabirr Jabirr country (on an outstation on Carnot Bay which is located within the Djabera Djabera claim area) and now camps there.

I note in relation to **s) the right to speak for and make non-exclusive decisions about the application area**, which is also grouped with the above rights in Attachment F1, that I deal with it below under the heading 'rights and interests claimed that cannot be registered'.

- h) the right to hunt on the application area**
- i) the right to fish on the application area**
- j) the right to take fauna from the application area**
- k) the right to use and maintain the natural water resources of the application area including the beds and banks of watercourses**
- l) the right to gather the natural products of the application area (including food, medicinal plants, timber, stone, ochre and resin) according to traditional laws and customs**
- t) the right to cultivate and harvest native flora according to traditional laws and customs**
- u) the right to cook and light fires for that purpose, on the application area**
- v) the right to light fires for domestic purposes but not for the clearance of vegetation**

Outcome: Prima facie established.

Reasons:

[Name deleted], as noted above, states that under the laws and customs of the Jabirr Jabirr People they hold rights and interests to use, occupy and possess all the land and waters within the external boundary of the claim area to the exclusion of other peoples. In my view the above rights are incidental to the exclusive rights. Again, I note my finding above at s. 190B(5) that the factual

basis provided was sufficient to support the existence of traditional laws and customs giving rise to the claimed rights and interests.

Attachment F1 refers to the affidavits of Ms Djiagween (Attachment F4 at [6] and [7]), Mr Watson (Attachment F2 at [14]) and Ms Augustine (Attachment F3 at [5], [6], [7] and [25] to [28]) which include the following relevant examples of the exercise of the above rights:

Ms Djiagween

Her parents built fish traps along the coast on Waterbank Station to trap fish at low tide.

She helped carrying the heavy stones. Her father also made spearheads from rocks; She and her family often go fishing and collect bush food on Jabirr Jabirr country.

Ms Augustine

She goes hunting, fishing and collecting bush food (such as pandanus nut and little red berries and honey) and bush medicine (such as bark from the bundarung tree to treat sores) in Jabirr Jabirr country;

She was told by the 'old girls' how to make a binjin, out of the bark from the gunburr tree or the lungumarrd and was told that she had to carry her babies in that binjin, which she did.

Mr Watson

He often goes hunting for kangaroo and bush turkeys on Jabirr Jabirr country, as well as goanna, which is cooked whole in the ground under the coals like the old people did.

- m) **the right to use the application area for social, religious, cultural and spiritual customary and/or traditional purposes**
- n) **the right to conduct ceremony on the application area**
- o) **the right to maintain places of importance under traditional laws, customs and practices in the application area**
- p) **the right to protect places of importance under traditional laws, customs and practices in the application area**
- q) **the right to conduct burials on the application area**

Outcome: Prima facie established.

Reasons:

[Name deleted], as noted above, states that under their laws and customs the Jabirr Jabirr People hold rights and interests to use, occupy and possess all the land and waters within the external boundary of the claim area to the exclusion of other peoples. In my view the above rights are incidental to the exclusive rights. Again, I note my finding above at s. 190B(5) that the factual basis provided was sufficient to support the existence of traditional laws and customs giving rise to the claimed rights and interests.

Attachment F1 refers to the affidavits of Mr Watson (Attachment F2 at [13] and [17]) and Ms Augustine (Attachment F 3 at [22] and [23]) which include the following relevant examples of the exercise of the above rights:

Mrs Augustine

She is a law boss for Jabirr Jabirr and Nyul Nyul and authorised by Bardi Law men. A couple of years ago she went to see the boys come out. She had to do something special only Law bosses can do; she cannot talk about it.

Mr Watson

His grandmother's brother [Name deleted] taught him, for safety, to call out names of old people for Jabirr Jabirr country, so that the old people take care for him and watch over the kids and give good luck for fishing;

[Deleted for cultural reasons];

His brother went through the Law that goes from Bardi country south to Jabirr Jabirr country. He knows some of the Bugarigarra stories for that Law [Deleted for cultural reasons].

I also note in relation to all of the above rights and interests that they are native title rights and interests in relation to land or waters and there is no information before me that suggests that they have been extinguished over the whole of the application area. On the balance of the material before me, and having applied the test set out above, I find that, they can be established prima facie.

w) the right to maintain and transmit cultural heritage of the application area

x) the right to maintain and transmit cultural knowledge of the application area.

Outcome: Prima facie established.

Reasons:

[Name deleted], as noted above, states that under the laws and customs of the Jabirr Jabirr People they hold rights and interests to use, occupy and possess all the land and waters within the external boundary of the claim area to the exclusion of other peoples. In my view the above rights are incidental to the exclusive rights. Again, I note my finding above at s. 190B(5) that the factual basis provided was sufficient to support the existence of traditional laws and customs giving rise to the claimed rights and interests.

I interpret the reference to the 'application area' to which the above rights are expressed to apply as a reference to the land and waters claimed. As such, in my view, the above rights can be distinguished from the rights disallowed in *Ward HC* at [60].

Attachment F1 refers to the affidavits of Mr Watson (Attachment F2 at [17]) and Ms Augustine (Attachment F3 at [12] – I note that the reference to paragraph [12] appears to be a typographical error as relevant information is found at [22] instead) which include the following relevant examples of the exercise of the above rights:

Mr Watson states that his brother went through the Law and that he has been asked to go through the Law, too. [Deleted for cultural reasons]

Ms Augustine is a law boss for the Jabirr Jabirr and Nyul Nyul. In her capacity as Law boss she has participated in a ceremony a couple of years ago together with [Name deleted].

Rights and interests claimed that cannot be registered

In relation to the following right I find that it cannot be recognised for the reason outlined below:

s) the right to speak for and make non-exclusive decisions about the application area

There is information in Attachment F2 (Mr Watson's affidavit at [15]) and Attachment F4 (Ms Djiagween's affidavits at [7]) which support the existence of the claimants' right to speak for and make decisions about the application area.

As noted above, I find that prima facie the exclusive rights claimed are established over areas where there has been no previous extinguishment of native title or where any extinguishment is

to be disregarded pursuant to ss. 47, 47A or 47B. In my view the right ‘the right to speak for and make non-exclusive decisions about the application area’ is not capable of being established non-exclusively, as claimed in Schedule E at [2.s)] for the reason set out in *Sampi v State of Western Australia* [2005] FCA 777 at [1072]:

the right to possess and occupy as against the whole world carries with it the right to make decisions about access to and use of the land by others. The right to speak for the land and to make decisions about its use and enjoyment by others is also subsumed in that global right of exclusive occupation.

and *Ward HC* at [88]:

a core concept of traditional law and custom [is] the right to be asked permission and to ‘speak for country’. It is the rights under traditional law and custom to be asked permission and to ‘speak for country’ that are expressed in common law terms as a right to possess, occupy, use and enjoy land to the exclusion of all others – see also at [90] – [93].

I also note that in *Neowarra v State of Western Australia* [2003] Sundberg J was of the view that ‘the right to speak for country involves a claim to ownership’ and could only be recognised in relation to areas of exclusive native title rights and interests – at [494].

In contrast to the right claimed in this application I note that in *Attorney General of the Northern Territory v Ward* [2003] FCAFC 283 (*Ward FC*), the Court in making a consent decision recognised a similar, but qualified right ‘to make decisions about the use and enjoyment of land by Aboriginal people who will recognise those decisions and observe them pursuant to their traditional laws and customs’ as a non-exclusive right – at [27]. Also in *Jango v Northern Territory of Australia* [2006] FCA 318 (*Jango*), Sackville J considered that he was bound by the Full Court in *Ward FC* and held that a non-exclusive right ‘to make decisions about the use or enjoyment of the Application Area by Aboriginal people who are governed by the traditional laws and customs of the Western Desert bloc’ could be recognised – at [571].

For the reasons outlined above I am not satisfied, that in this instance the right to speak for and make non-exclusive decisions about the application area can be prima facie established in relation to areas where a right to exclusively possess, occupy, use and enjoy is not claimed.

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), it is my view that 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. I take 'traditional physical connection' to mean a physical connection in accordance with the particular laws and customs relevant to the claim group, being 'traditional' as discussed in *Yorta Yorta*.

Sufficient material is provided in the application, in particular in Attachments F1 to F5 regarding the traditional physical connection of members of the native title claim group. The affidavits give evidence of members of the native title claim group having a traditional physical connection with the claim area. For example, as noted above at s. 190B(5), Ms Augustine fishes within the application area and gathers food and medicine from the application area, in accordance with traditional laws and customs.

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 47, as the case may be, applies to it.

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

Reasons for s. 61A(1)

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

In my view the application **does not** offend the provisions of s. 61A(1) because the Geospatial Report dated 1 October 2013 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) because Schedule B, paragraph [2] excludes from the application area any areas covered by previous exclusive possession acts as defined in s. 23B.

Reasons for s. 61A(3)

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

In my view, the application **does not** offend the provisions of s. 61A(3) because Schedule E, paragraph [2] acknowledges that a claim to exclusive possession is not made over areas where such a claim cannot be recognised.

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).

The application at Schedule Q states that no ownership of minerals, petroleum or gas wholly owned by the Crown is claimed.

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

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

The application at Schedule P states that no exclusive possession of all or any part of an offshore place is claimed.

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

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

There is no information in the application or otherwise to indicate that any native title rights and/or interests in the application area have been extinguished.

[End of reasons]

Attachment A

Summary of registration test result

Application name	Jabirr Jabirr People
NNTT file no.	WC2013/007
Federal Court of Australia file no.	WAD357/2013
Date of registration test decision	14 November 2013

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

Test condition	Subcondition/requirement		Result
		s. 62(2)(g)	met
		s. 62(2)(ga)	met
		s. 62(2)(h)	met
s. 190C(3)			met
s. 190C(4)			Overall result: met
	s. 190C(4)(a)		NA
	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)		NA
	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

Test condition	Subcondition/requirement	Result
	re s. 61A(1)	met
	re ss. 61A(2) and (4)	met
	re ss. 61A(3) and (4)	met
s. 190B(9)		Aggregate result: met
	re s. 190B(9)(a)	met
	re s. 190B(9)(b)	met
	re s. 190B(9)(c)	met