National Native Title Tribunal

Registration test decision

Application name	Iman People #2
Name of applicant	Richard Doyle, Patrick Silvester, Kenny Waterton, Eve Fesl, Eddie Waddy, Graham Anderson, Arwa Waterton, Cynthia Kemp, Bradley Curtis, Dena Marie Dodd-Ugle, Heidi Anne-Marie Lawson, Stuart White, Jason Jarro, Bevan Tull
NNTT file no.	QC1997/055
Federal Court of Australia file no.	QUD6162/1998
Date application made	30 October 1997
Date application last amended	13 June 2014 (leave to amend granted 4 June 2014)

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

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

Date of reasons: 18 August 2014

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Lisa Jowett
Delegate of the Native Title Registrar pursuant to
sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cth) under
an instrument of delegation dated 30 July 2013 and made pursuant to s 99 of the Act.

Reasons for decision

Introduction

Registration test

[1] The Registrar of the Federal Court of Australia (the Court) gave a copy of the Iman People #2 native title determination application (QUD6162/1998) to the Native Title Registrar (the Registrar) on 16 December 2013 pursuant to s 64(4) of the Act[1]. This has triggered the Registrar's duty to consider the claim made in the application for registration in accordance with s 190A: see subsection 190A(1).

[2] Sections 190A(1A), (6), (6A) and (6B) set out the decisions available to the Registrar under s 190A. Subsection 190A(1A) provides for exemption from the registration test for certain amended applications and s 190A(6A) provides that the Registrar must accept a claim (in an amended application) when it meets certain conditions. Section 190A(6) provides that the Registrar must accept the claim for registration if it satisfies all of the conditions of s 190B (which deals mainly with the merits of the claim) and s 190C (which deals with procedural and other matters). Section 190A(6B) provides that the Registrar must not accept the claim for registration if it does not satisfy all of the conditions of ss 190B and 190C.

[3] I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply to the claim made in this amended application and Attachment A sets out my reasons. I have reached the view that the claim satisfies all of the conditions in ss 190B and 190C and pursuant to ss 190A(6) and (6B), the claim in the amended application must be accepted for registration. This document sets out my reasons, as the delegate of the Registrar, for my decision to accept the claim for registration pursuant to s 190A of the Act.

Application overview and background

[4] The Iman People #2 native title determination application was first made on 30 October 1997. There have been numerous forms of the application filed since that time. It was first accepted for registration under s 190A on 26 July 2002 and was last considered for registration when it was amended on 16 March 2012. I was the delegate who considered the claim made in that amended application, accepting it for registration on 3 August 2012.

[5] On 12 December 2013 the applicant filed an amended application in accordance with leave granted by the Court on 10 December 2013. I provided a preliminary assessment to the

[1] All references in these reasons to legislative sections refer to the *Native Title Act 1993* (Cth) 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.

applicant's representative on 26 February 2014 which identified certain deficiencies in the amended application. Prior to completing my consideration of this amended application under s 190A, on 13 June 2014 the applicant filed a further amended application (for which leave was granted by the Court on 4 June 2014). This is the application the subject of my consideration in these reasons.

[6] The area covered by the application falls in south-eastern Queensland and includes the towns of Taroom, Wandoan and numerous pastoral stations. The Dawson River intersects the area.

Information considered when making the decision

[7] Section 190A(3) sets out the information to which the Registrar must have regard in considering a claim under s 190A and provides that the Registrar 'may have regard to such other information as he or she considers appropriate'. Attachment B of these reasons lists all of the information and documents that I have considered in reaching my decision.

Subsection 190A(3)(a): Application and other documents provided by the applicant

[8] As required by s 190A(3)(a), I have had regard to information in the amended application. I have also considered the documents referred to in both the December 2013 and July 2014 amended applications. These documents were provided to the Registrar on 25 and 26 February 2014 in relation to the December 2013 amended application. The applicant has confirmed its reliance on those documents for the purpose of by consideration of the July amended application in an email dated 17 July 2014—see the detailed list in my reasons below at ss 190B(5) and 190C(4).

Subsection 190A(3)(b): Searches conducted by the Registrar of State/Commonwealth interest registers

[9] I note that there is no information before me of the kind identified in s 190A(3)(b).

Subsection 190A(3)(c): Information supplied by Commonwealth/State

[10] The State of Queensland has not provided any submissions in relation to the application of the registration test.

Section 190A(3): other information to which Registrar considers it appropriate to have regard

[11] As I was the delegate who considered the claim made in the March 2012 amended application, I consider it appropriate to have regard to my reasons for decision of 3 August 2012. I have also considered information contained in an overlap analysis and geospatial assessment by the Tribunal's Geospatial Services dated 1 July 2014 (the geospatial report). Further, I have had regard to orders made by Justice Collier on 10 December 2014 in relation to the amending of the application. I have also had regard to a transcript of the proceedings of the same date, which relate the details that led to changes to the composition of the applicant.

Procedural fairness steps

[12] As noted above, I have considered the additional material provided by the applicant on 25 and 26 February 2014 in support of the December 2013 amended application. This has necessitated that I follow certain procedural fairness steps. On 31 July 2014, I wrote to the State of Queensland (the state government) advising that I would be relying on this information in my application of the registration test and that should they wish to make any submissions, they should do so by 15 August 2014. On 14 August 2014 the Tribunal's case manager for the matter received confirmation that the state government had no comments or submissions to make in relation to the additional material. This concluded the procedural fairness processes.

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.

[13] In assessing the information and map contained in the application against s 190B(2), I am required to be satisfied that it 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. Whilst I may have regard to information beyond the application where clarification is necessary, in reaching the required level of satisfaction it is to the terms of the application itself that I am to direct my attention—*Attorney General of Northern Territory v Doepel* (2003) 133 FCR 112 (*Doepel*) at [16] and [122].

[14] I have considered my reasons for decision of 3 August 2012, accepting the claim in the then amended application for registration, including the reasons I provided for this condition. I have considered the information in the application at Schedule B and Attachments B and C and what they say about the areas covered and not covered by the application. I am also informed by the Tribunal's geospatial report.

[15] I note that the map at Attachment C appears to have been copied so many time that it is rendered illegible. The listing of co-ordinates describing the external boundary in Attachment B is also illegible. Both documents were produced by the Tribunal on 25 November 2011 and are therefore held on file. The geospatial assessment and my consideration at this condition have been based on the same documents held by the Tribunal's Geospatial Services. I have also considered the information in the application about the areas not covered by the amended application contained at both Schedule and Attachment B, including my reasons

[16] The geospatial report provides the assessment that the map and description identify the area of the application with reasonable certainty and confirms that the area covered by the application has not been amended or reduced. I agree with that report.

[17] I refer also to my reasons at pp. 22-23 that based on the information provided in both the written description and the map of the application area, I am satisfied that it can be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

[18] The application satisfies the condition of s 190B(2).

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

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

[19] In *Doepel*, Justice Mansfield said of s 190B (specifically subs 190B(2), (3) and (4)) that it has 'requirements which do not appear to go beyond consideration of the terms of the application'—at [16]. The information at Schedule A does not name the persons in the native title claim group but is a description of that group and it is on that basis I consider whether the application satisfies the requirements of s 190B(3)(b).

[20] There is case law that guides how the Registrar must consider the requirements of this condition. Justice Mansfield said in *Doepel*:

- the focus of s 190B(3)(b) is whether the application enables the reliable identification of persons in the native title claim group—at [51]; and
- that the focus is not on 'the correctness of the description . . . but upon its adequacy so that the members [sic] of any particular person in the identified native title claim group can be ascertained'—[37].

[21] Justice Carr said in State of *Western Australia v Native Title Registrar* (1999) 95 FCR 93 (*Western Australia v Native Title Registrar*) that:

- a factual inquiry may be necessary to work out whether any particular person is in the native title claim group as it has been described; and
- a factual inquiry does not mean that the group has not been described adequately—at [67].

[22] The description of the persons in the native title claim group has been amended since it was last considered for registration in 2012. Schedule A of the application contains the following description of the persons in the native title claim group:

> The Native Title Claim group comprises the descendants of:
> 1. Mary Arwa
> 2. Jim Waterton
> 3. Ada Robinson
> 4. Maggie Palmtree
> 5. Lizzie Palmtree
> 6. Eliza Shields
> 7. Mary Ann (mother of Maggie Dunn)
> 8. Fanny Waddy/Sandy
> 9. Dick Bundi/Bundai and Alice Dutton
> 10. The mother of John Serico (known as Aggie)

[23] I am satisfied that the native title claim group is described sufficiently clearly to enable identification of any particular person in that group—it being the case that membership of the group is defined by descent from (one or more of) the named ancestors.

[24] The application satisfies the condition of s 190B(3).

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.

[25] Section 190B(4) requires the Registrar to be satisfied that the description of the claimed native title rights and interests contained in the application is sufficient to allow the rights and interests to be identified—*Doepel* at [92].

[26] There is no change to the description of the claimed native title rights and interests in this amended application. Schedule E of the application refers to Attachment E which contains the description of native title rights and interests claimed in relation to the application area, as required by s 62(2)(d). The description includes a qualification to which the claimed rights and interests are subject. The rights and interests claimed are described as follows:

> 1. Over areas where a claim to exclusive possession can be recognised (such as areas where there has been no prior extinguishment of native title or where s238, ss47, 47A or 47B apply), the claim group claims the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world, pursuant to the traditional laws and customs of the claim group.
>
> 2. Over areas where a claim to exclusive possession cannot be recognised, the claim group claims the non-exclusive right to:
>
> (a) live and be present on the application area;
> (b) take, use, share and exchange Traditional Natural Resources for personal, domestic and non-commercial, communal purposes;
> (c) conduct burial rites;
> (d) conduct ceremonies;
> (e) teach on the area about the physical and spiritual attributes of the area;
> (f) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
> (g) light fires for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;
> (h) be accompanied into the claim area by non claim group members being people required;
> (1) by traditional law and custom for the performance of ceremonies or cultural activities; and
> (2) to assist in observing and recording traditional activities on the claim area; and
> (i) in relation to Water, take and use;
> (1) Traditional Natural Resources from the Water for personal, domestic and non-commercial communal purposes; and
> (2) for personal, domestic and non-commercial, communal purposes.

3. For the purposes of 2. Above;

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

"Traditional Natural Resource" means:
(1) "animals" as defined in the Nature Conservation Act 1992 (Qld);
(2) "plants" as defined in the Nature Conservation Act 1992 (Qld);
(3) "charcoal, shells and resin"; and
(4) "clay, soil, sand, ochre, gravel or rock on or below the surface";
"Water" means water as defined by the Water Act 2000 (Qld);

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

[27] I refer to my reasons for decision of 3 August 2012 and to my reasons for this condition, with the law applicable to this particular assertion outlined on pp. 24–25 of that decision. I remain of the view that the description contained in the application is sufficient to allow the native title rights and interests to be readily identified.

[28] The application satisfies the condition of s 190B(4).

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

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

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

[30] I refer to my discussion of the legal principles governing this registration test condition in my reasons dated 31 May 2012, including the decisions in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; (2002) 194 ALR 538; [2002] HCA 58 (*Yorta Yorta*); *Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 07*); *Gudjala # 2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala FC*) and *Gudjala #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala 09*).

[31] I remain of the same view that the Registrar's task at s 190B(5) is not to evaluate the factual basis as if it were evidence provided in support of the claim and the applicant is not required to provide evidence of the type which would prove all of the facts necessary to succeed in their

native title claim—*Gudjala FC* at [92]. The Registrar is to assume that the facts asserted are true, and to consider only whether they are capable of supporting the claimed rights and interests. That is, to consider whether the factual basis sufficient to support each of the assertions at ss 190B(5)(a) to (c)—*Doepel* at [17].

Information considered

[32] I have considered my reasons for decision dated 3 August 2012 accepting for registration the claim in the application as it was then amended, and specifically the reasons I provided for this condition. I have also had cause to consider fresh information provided to me by the applicant in respect of the amended application of December 2013. This information has been referred to in the Form 1 for this current amended application and the applicant's representative has confirmed on 17 July 2014 that I should consider it for the purposes of my decision.

[33] The general description at Schedule F has been amended in this application. It cites the extensive material filed to date in the Court in support of the Iman People #2 application and then provides a general description drawn from these materials to address the three assertions. The full extent of these materials and reports were provided to me by the applicant's representative on 25 and 26 February 2014:

1. The Anthropological Reports by Dr Fiona Powell:

   Stage 3 (May 2012) – sets out findings and the evidence on which they are based in relation to the traditional affiliation of the apical ancestors with the area covered by the application. She includes that it is her opinion that each ancestor was descended from members of the pre-sovereignty land holding group;

   Stage 4 (July 2012) – provides a review of the ethno-historical literature in relation to Iman People and the country they occupied prior to and at the time of European exploration and settlement and consideration of particular areas of association, rights to country, religious beliefs and practices and social organisation;

   Stage 5 (November 2012) – provides genealogies illustrating the basis upon which the 12 nominated apical ancestors can be said to be members of the traditional society of the area covered by the Iman application;

   Stage 6 (June 2013) – relates to the nature and extent of traditional laws and customs of the Iman People, evidence that they were acknowledged and observed by the Iman pre-sovereignty society and how Iman people have continued to acknowledge and observe their traditional laws and customs despite the effects of European settlement in the area covered by their application; and

   Stage 7 (June 2013) – provides information about the sites of Aboriginal and archaeological significance in relation to the area covered by the Iman application.

2. The Iman People, Final Historical Report by Rosalind Kidd, December 2012 which sets out 16 key findings in relation to the history of Indigenous occupation of the area covered by the application and specifically along the Dawson River and surrounding towns and pastoral stations.

3. 'Connection Affidavits' filed in the Court over the period of July 2012 and June 2013—**[Claimant 1 – name deleted]** filed 31 July 2012, **[Claimant 2 – name deleted]** filed 31 August 2012, **[Claimant 3 – name deleted]** filed 31 August 2012, **[Claimant 4 – name deleted]** filed 21 December 2012, Patrick Silvester filed 5 March 2013, **[Claimant 5 – name deleted]** filed 28 June 2013, Eddy Waddy filed 2 August 2013, Richard Doyle filed 23 August 2013.

[34] Schedule M—Traditional Physical Connection has also been amended to provide information drawn from Stage 6 of Dr Powell's Anthropological Report. The area covered by the application has not changed. The factual basis material I considered in relation to the 2012 amended application, in my view, remains pertinent and relevant to my consideration of this current amended application at this condition.

[35] The affidavit material (the connection affidavits) provided to me by the applicant as additional material further demonstrates the anthropological and historical contentions and supports my views and the decision I reached in relation to the 2012 amended application. They illustrate in detail such matters as the passing on of stories and cultural experience, knowledge of the boundaries of 'Jiman' traditional country, knowledge and practices relating to hunting and collection and preparation of bush tucker, the passing on of traditional laws and customs through the generations and the kinship of the claim group and people's connection to each other through their descent from the apical ancestors identified at Schedule A.

Composition of the native title claim group

[36] In this amended application, the description of the native title claim group has again undergone some refinement, namely, the refining of the identity of two of the apical ancestors:

From *Dick Bundi/Bundai*	To *Dick Bundi/Bundai and Alice Dutton*
From *John "James" Serico*	To *The mother of John Serico (known as Aggie)*

[37] I refer to my 2012 reasons for decision where I consider the research, review and adjustment of the description of the native title claim group. I remain of the same views I held on the relevant case law and the conclusions I drew in relation to the previous description—see pp. 28 to 29.

[38] Further, in my view, the effect of refinement of the description of the Iman People native title claim group does not create a further impost on the claim's factual basis in order for it to meet the requirements of s 190B(5). I have considered this refinement to the composition of the claim group to extent that the factual basis continues to support the asserted existence of the native title rights and interests claimed in the application by the native title claim group.

[39] I am not required to be satisfied that each and every apical ancestor had an association with the area of the application, and consequently that all members of the native title claim group now have an association at all times. What is required is for the factual basis material to evidence an association between the whole group and the area and an association between the predecessors of the whole group and the area over the period since sovereignty—*Gudjala 07* at [52]. I also remain of the view I held in 2012 that the factual basis material sufficiently identifies the Indigenous society that is asserted to have existed at the time of sovereignty, or first European contact, in the area covered by the application. In this sense, it is not my task to ensure that each and every apical ancestor identified in the description of the native title claim group was a member of that society, those persons are simply used to define the claim group— *Gudjala 07* at [66].

[40] I consider each of the three assertions set out in the three paragraphs of s 190B(5) in turn in my reasons below, relying on the material that was before me in 2012 and the reasons for the conclusions I reached at that time.

Reasons for s 190B(5)(a)

[41] I refer to my statements on p. 29 of my 2012 reasons for decision in relation to the requirements of this assertion.

[42] It was my view that the 2012 amended application provided a factual basis that showed the history of the association that those members of the claim group have, and that their predecessors had, with the application area—see *Gudjala [2007]* at [51]. In this way, the material demonstrated that a link exists between the current claim group and its predecessors' and their association with the application area. The information was sufficient to support the claim group's asserted connection to the land and waters of the application area and that it appeared to have its origins in the preceding generations' association with the area.

[43] I have read the material to which the applicant refers in the application which continues to support the view I held in 2012 that there is a sufficient factual basis to support the assertion that the native title claim group have and its predecessors had an association with the area covered by the application. The historical report by Rosalind Kidd comprehensively sets out the history of Indigenous occupation of the claim area and supports the information in Dr Powell's stage 1 and 2 reports on which I relied for my 2012 registration decision—see pp. 29 to 30 of my reasons.

[44] The connection affidavits all speak to the details of the deponents' genealogy, their knowledge of the boundaries and significant features of Iman (Yiman) country. All attest to having a history of association with the claim area brought about by working, travelling and living in the area. Forebears of the group worked on the pastoral leases as stockmen, drovers and domestic staff. Members of the current claim group continue to travel and camp in the claim area, taking their children and grandchildren out to teach them about Yiman country and cultural knowledge. The connection affidavits are replete with references to geographical locations of

sites, areas and places of significance, the cultural protocols associated with the boundaries and extent of Yiman country and to the places on Yiman traditional lands in which claimants live.

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

Reasons for s 190B(5)(b)

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

[47] It was my view in relation to the 2012 amended application that based on the information before me, Iman society continues to be governed by a normative system that observes and acknowledges traditional laws and customs that have existed since before the acquisition of sovereignty in the area of the application. In this respect, I continue to be of the view that it is not the purpose of the registration test to come to definitive conclusions about what in fact was the society at sovereignty, only whether the factual basis can support the assertion that the society at sovereignty has continued a vital existence (largely uninterrupted) since that time to the present. I decided that the material provided by the applicant in relation to the 2012 amended application clearly supported the assertion that there was a society at sovereignty in respect of the claim area, defined by its recognition of laws and customs, and from which the claim group's current traditional laws and customs are derived (*Gudjala 09* at—[66]).

[48] Again, the material in the connection affidavits demonstrates how the claim group has handed down its laws and customs from generation to generation, in the sense defined in *Yorta Yorta*. Each talk about the ongoing exercise of rights and interests by the claim group, the practice of which has been passed down to them by their elders. I remain of the view that the factual material in the reports (those provided to me then and now) is supported by the claimant statements that illustrate aspects of the groups' traditional law and custom in respect of the area of the application. All of the material together relays information pertaining to family and ancestors, rules and responsibilities in relation to land and belonging to the area, special places and stories, spirits and the religious life, hunting, fishing and foraging and the passing on of traditional and cultural knowledge. In this way the factual basis then supported and in my view continues to support the asserted existence of traditional laws and customs in relation to such things as the native title claim group's kinship ties and identity, its stories and cultural knowledge, its rights and responsibilities in relation to country and places of significance.

[49] I am therefore satisfied, as I was in relation to the 2012 amended application, that the factual basis is sufficient to support the assertion that there exist traditional laws acknowledged and customs observed by the native title claim group and that these give rise to the native title rights and interests it claims.

Reasons for s 190B(5)(c)

[50] This subsection requires that I be satisfied that there is sufficient factual basis to support the assertion that the native title claim group continues to hold native title in accordance with its traditional laws and customs. Dowsett J, in *Gudjala 07*, held that this requirement 'implies a continuity of such tenure going back to sovereignty, or at least European occupation as a basis for inferring the position prior to that date'—at [82]. Without a factual basis that identifies the pre-sovereignty society or a factual basis for the connection between that society and the group's currently asserted laws and customs, it is unlikely for there to be support for the assertion that the society and its laws and customs have continued substantially uninterrupted since sovereignty.

[51] I decided in relation to the 2012 amended application that the historical and anthropological material then before me revealed that the native title claim group has continued in such matters as its cultural practices and use of the natural resources of the land and that this knowledge has been and continues to be passed down to successive generations. I was of the view that this material was sufficient to support the assertion that the Iman community continues as 'one society' and adheres to 'the law and custom of their ancestors'. Further, it was my view that the affidavit material illustrated and demonstrated how the laws and customs of Iman society have been passed from generation to generation and also supported the assertion that they continue to be acknowledged and observed today among the current generations of the claim group. These contentions are re-affirmed by the 'connection affidavits' which provide further illustration and detail on these matters.

[52] I am therefore satisfied that the factual basis is sufficient to support the assertion that the native title claim group continues to hold native title in accordance with its traditional laws and customs.

Conclusion

[53] 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).

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.

[54] I have reviewed the decision I made when I considered the application against this registration test condition and my reasons for that decision, dated 3 August 2012. I remain of the same views expressed in my explanation of the law surrounding this condition as outlined on p. 38 of that decision. I confirm that no amendments have been made in relation to the claimed rights and interests as detailed in Schedule E.

[55] In respect of this amended application I have considered a much greater extent of material, particularly in the form of the 'connection affidavits' and subsequent stage of Dr Powell's anthropological reports. I therefore consider all of those rights and interests claimed in the application against that material. I remain of the view that of the non-exclusive rights described in Schedule E at 2 from (a) through to (g), can be prima facie established.

[56] I remain of the same view I held in 2012 in relation to the right claimed at (h):

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

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

to assist in observing and recording traditional activities on the claim area;

[57] I refer to my reasons for decision at p. 42 and am of the view that there is no further information in the new material before me that evidences that such a right exists under the traditional laws and customs of the native title claim group. I consider that this right cannot be established, prima facie.

[58] What follows are my reasons in relation to the other rights and interests claimed in this amended application. I was not satisfied in 2012 that these rights could be established, prima facie. I am satisfied that the additional material I have considered evidences that these rights and interests can now be established, prima facie.

Over areas where a claim to exclusive possession can be recognised (such as areas where there has been no prior extinguishment of native title or where s238, ss47, 47A or 47B apply), the claim group claims the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world, pursuant to the traditional laws and customs of the claim group.

[59] I remain of the same views expressed in my explanation of the law surrounding a claim to exclusive possession as outlined on p. 38-39 in my reasons for 2012 decision.

[60] The right to possess, occupy, use and enjoy the lands and waters of the application area by the Iman landholding group is considered to in the anthropological and historical reports and illustrated in some of the connection affidavits. In my view, I have sufficient information before me that refers to the existence of protocols and group structures as they relate to decision-making about access to country. Whilst there is a general assertion of ownership rights of the land holding group (at [28] of the Regional Report and [91] of the Stage 2 Report) the material addresses the rights of the native title claim group to control access to land and to speak for that country.

[61] Dr Powell's Stage 6 report covers matters relating to continuity of laws and customs pertaining to rights to country and the knowledge of Iman elders and their speaking for country—at [123], part 7.4. It is those senior people who hold the most knowledge of country, acquired by their forbears and through their own experiences, and therefore command the respect of the native title claim group and the authority to speak for Iman country. Dr Powell's Stage 4 report includes discussion of pre-sovereignty landholding groups which 'were entitled to exercise what are termed core proprietary/beneficial rights in relation to the territory ... and to particular places and resources within that area'. Three of these core rights would appear to fall within the ambit of exclusive possession: 'occupation and economic rights, control and management rights, rights concerned with speaking for the country and maintaining the cultural estate'. Dr Powell refers to an example of the 'actualisation' of such rights: 'conferring temporary rights on members of other land holding groups to travel through and/or access for a particular purpose, such as regularly occurred during the summer Bunya festivals'—at [115], Part 8.

[62] At the contemporary level, the connection affidavits from members of the claim group attest to matters relating to access rights and permission protocols that in my view are sufficient to show that there exists traditional laws and customs that pertain to the claim group's right to possess, occupy, use and enjoy the land and waters of the application area as against the whole world. For example, Eddy Waddy speaks in his affidavit of access to country and the permissions and protocols Iman people afford Wakka Wakka people and the expectation that 'outsiders would do the same for us'—at [65]. **[Claimant 6 – name deleted]** speaks in his affidavit of asking permission to hunt on somebody else's country—'When somebody comes onto our country I expect them to do the same. If people who are not Jiman come onto our country, they must ask permissions and offer me a share of what they catch. It they do not, I will not vouch to my ancestors for their safety'—at 18.

[63] Knowledge of the extent of one's country and the entry into their neighbours' country are matters well regulated by the native title claim group and this has been passed onto them by their ancestors. **[Claimant 5 – name deleted]** speaks of his grandfather telling him how their ancestors accessed the country of their neighbours—before entering, 'the visitor had to wait until he was met and escorted by a person from that country that was related (such as in law) or had the same totem ... Yiman people were able to travel all over their own country without having to send a message stick or wait to be escorted'—at [29]. This version is also attested to by Richard Doyle: 'Dad said that as long as a person is Iman, that person can do things on Iman country without having to get permission, but if that person is not, they must get permission from the Iman tribal elders. In the old days, they used to send a message stick asking permission to enter. Today, they should still ask permission from our Elders if they want to go onto our country for fishing or hunting'—at [7].

[64] In my view, the right to exclusive possession is evidenced in the material before me and as such, I consider that it can be established, prima facie, over areas covered by the application where it can be recognised.

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

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

for personal, domestic and non-commercial, communal purposes.

[65] In my view these rights are evidenced in the material before me, suggesting the rights exist under the traditional laws and customs of the native title claim group. Much of the traditional laws and customs of the claim group centre around the waterway of the area covered by the application, including the Dawson River and its tributaries and creeks, waterholes and lagoons. Dr Powell's Stage 6 report considers the rights and interests held by the claim group in relation water and the traditional laws and customs from which they arise. For the pre sovereignty society, the waters of the claim area were not simply a means of physical sustenance but a means of spiritual connection to the area's ancestors and creator spirits which were said to inhabit the waters—[172], part 8. Claimants have continued since pre sovereignty times to use the waters for drinking, bathing and washing and to recognize the spiritual dimension of the waters, in particular the Dawson River. The claim group's rights and interests in relation to the taking and using of water are said to exist under their traditional laws and customs and govern the access and cultural protocols associated with its use. Members of the claim group regularly access and use the natural resources of claim area's waterways – fishing, camping, hunting and gathering. For example, Eddy Waddy speaks in his affidavit of the Dawson being 'the life blood of our people and our family'… being a plentiful source of drinking water and 'food with its lagoons and creeks'—at [58]. The stories of the creation spirits told by **[Claimant 5 – name deleted]** includes a story of water made to flow in a time of drought and its continual presence in that place to this day.

[66] I consider that this right can be established, prima facie.

Conclusion

[67] I am satisfied, having reviewed the information before me in relation to the 2012 amended application and my reasons for decision of 3 August 2012, and the additional and newer information in relation to this amended application, that the following rights claimed in this application can be established prima facie.

> 1. Over areas where a claim to exclusive possession can be recognised (such as areas where there has been no prior extinguishment of native title or where s238, ss47, 47A or 47B apply), the claim group claims the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world, pursuant to the traditional laws and customs of the claim group.
>
> 2. Over areas where a claim to exclusive possession cannot be recognised, the claim group claims the non-exclusive right to:

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

3. For the purposes of 2 above;

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

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

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

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

[68] The application satisfies the condition of s 190B(6).

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.

[69] I have reviewed the decision I made when I considered the application against this registration test condition and my reasons for that decision, dated 3 August 2012. I refer to my reasons as to the law surrounding this requirement and remain of the view that 'traditional physical connection' means a physical connection in accordance with the particular traditional

laws and customs relevant to the claim group, being 'traditional' as discussed in *Yorta Yorta*. I have also considered the new connection affidavit material of members of the native title claim group, in particular Eddy Waddy and **[Claimant 4 – name deleted]**. I remain of the view that this evidence is sufficient to satisfy me that these persons have the requisite traditional physical connection.

[70] The application satisfies the condition of s 190B(7).

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 s61A (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 in relation to an area; 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 provision 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 in relation to an area; 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 provision 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 claimed confer possession, occupation, use and enjoyment of any of the area to the exclusion of all others.
> (4) However, subsection (2) or (3) does not apply to an application if:
> (a) the only previous exclusive possession act or previous non-exclusive possession act concerned 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 section 47, 47A or 47B, as the case may be, applies to it.

[71] No amendments were made to the schedules to which these conditions apply. I remain of the view I held in 2012 that the application does not offend the provisions of ss 61A(1), 61A(2) and 61A(3) and therefore the application satisfies the condition of s 190B(8).

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.

[72] No amendments were made to the schedules to which these conditions apply. I remain of the view I held in 2012 that the application does not offend the provisions of ss 190B(9)(a), (b) and (c) and therefore the application satisfies the condition of s 190B(9).

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.

[73] 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.

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

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

[76] 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). 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.

[77] Below I consider 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)

[78] The nature of the task at s 190C(2) is limited to a consideration of whether the application sets out the native title claim group in the terms required by s 61(1) and as such, the task does not

require me to look beyond the contents of the application itself. In assessing the Iman People #2 amended application, and whether it contains the details and information required by s 61(1), I am not entitled to undertake a merit assessment to determine if I am satisfied whether the native title claim group described in the application before me is the correct native title claim group. That said, in seeking to verify that an application contains all the details and information required by ss 61 and 62, I do ensure that a claim 'on its face, is brought on behalf of all members of the native title claim group' as that term is defined in s 61(1)—*Doepel* at [35] to [37], [39] and [47].

[79] Part A of the application contains the information regarding persons authorised to make this application, listing the names of the applicants, and providing details regarding their authorisation by the native title claim group. Schedule A of the application contains a description of the native title claim group as comprising the descendents of ten decent lines.

[80] There is nothing on the face of the application that leads me to conclude that the description of the native title claim group may exclude any persons from the group. The description does not otherwise indicate that this may be a subgroup of the native title claim group.

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

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

[82] Part B of the application states on page 28 the name and address for service of the persons who are the applicant

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

[83] Schedule A provides a description of the persons in the group that includes a list of the apical ancestors from which the native title claim group is said to descend

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

[84] The application is accompanied by 14 affidavits signed by each person who comprises the applicant. Each affidavit is signed by each deponent and witnessed and specifically makes all the requisite statements.

Details required by s **62(1)(b)**

[85] Subsection 62(1)(b) requires that the application 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)*

[86] Schedule B lists those areas not covered by the application and refers to Attachment B which contains the description of the external boundaries of the area covered by the application.

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

[87] Schedule C refers to Attachment C being a map showing the external boundaries of the area covered by the application.

Searches: s *62(2)(c)*

[88] Schedule D states that no searches have been carried out for the purposes of this amended application.

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

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

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

[90] Schedule F of the application contains information comprising a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist and addresses the criteria set out in subsections 62(2)(e)(i) to (iii). I am of the view that the information this information satisfies the requirements of a general description of the factual basis on which it is asserted that the claimed native title rights and interests exist.

Activities: s *62(2)(f)*

[91] Schedule G lists the activities the claim group currently carries out in relation to the area covered by the application.

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

[92] Schedule H states that there are no existing native title determination applications in respect of the claim area.

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

[93] Schedule I refers to Attachment I which provides a list of notices advertised in relation to the area covered by the application between 2002 and 2011.

Conclusion

[94] The application contains the details specified in ss 62(2)(a) to (h), and therefore does contain all details and other information required by s 62(1)(b).

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.

[95] The requirement that the Registrar be satisfied in the terms set out in s 190C(3) is only triggered if a previous application meets the conditions found in ss 190C(3)(a), (b) and (c)—see *Western Australia v Strickland* (2000) 99 FCR 33; [2000] FCA 652 (*Strickland FC*) at [9]. Section 190C(3) relates to ensuring there are no common native title claim group members between the application currently being considered for registration ('the current application') and any overlapping 'previous application' that is a registered application when the current application was made in the Court. The amended application, which is the current application for the purposes of s 190C(3), was made when it was filed in the Court on 13 January 2014.

[96] The Tribunal's geospatial report confirms that no native title determination applications fall within the external boundaries of the current application.

[97] As the Iman People #2 amended application is not overlapped by any other applications in the sense discussed in s 190C(3)(a) to (c), there is no requirement that I consider the issue of common claim group membership.

[98] The application satisfies the condition of s 190C(3).

Subsection 190C(4)
Authorisation/certification

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

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

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.

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

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

[101] On 10 December 2013 the Court ordered (amongst other things) that the then applicant be replaced. The new applicant is now comprised of the same persons it was originally comprised of with the addition of a further 3 persons. The Register was updated accordingly. This is the applicant recorded in Part A of the amended application.

Information considered

[102] In my consideration of the authorisation of the applicant to make the application and to deal with matters arising in relation to it, I have had regard to all the information contained in the amended application and the additional material provided by the applicant in relation to the earlier amended application, in particular the affidavits and their attachments of:

- **[Person 1 – name deleted]**, affirmed 28 October 2013; **[Person 2 – name deleted]** (affirmed 29 October 2013) and **[Legal Representative – name deleted]** (affirmed 29 October 2013).

[103] I have before me the recorded outcomes of the meeting held on 14 September 2013 to authorise the applicant to make and deal with the application, a copy of the notice advertising that meeting in the Courier Mail and Koori Mail, signed attendance sheets and accounts in their affidavits by each of the above mentioned persons on the conduct of the meeting.

[104] I have also had regard to a transcript of proceedings before Justice Collier on 10 December 2014 and the orders of the same date. These proceedings relate to the process that led to changes to the composition of the applicant and the orders to replacing the applicant.

The requirements of s 190C(5)

[105] For the purposes of s 190C(5)(a), the application must contain a statement to the effect that the requirement set out in paragraph (4)(b) has been met and must also briefly set out the grounds on which the Registrar should consider that the requirement has been met. My consideration is confined to information contained in the application.

[106] These statements are provided at Schedule R and I am satisfied that they meet the requirements of s 190C(5).

Is the applicant a member of the native title claim group

[107] I am satisfied that all the persons comprising the applicant are members of the native title claim group. Each person deposes to this in their affidavits sworn in accordance with the requirements of s 62(1)(a).

How the native title claim group was notified and informed of the authorisation meetings

[108] The authorisation meeting was held in Rockhampton on 14 September 2013. Members of the Iman People claim group were notified of the authorisation meeting in the following ways:

- A public notice appeared in 2 regional papers and the Koori Mail in the lead up to the meeting and included a map of the claim area, the proposal to amend the claim group description and a list of 5 items outlining the purpose of the meeting; and
- Approximately 600 letters containing a copy of the public notice were mailed to members of the native title claim group—affidavit of **[Legal Representative – name deleted]**.

[109] The affidavit of **[Person 2 – name deleted]** (an external provider of support for the meeting) attaches the attendance sheets and includes a breakdown of attendance at the meeting according to attendees' descent from the identified apical ancestors. She affirms that 359 people signed the attendance sheets with descent from all apical ancestors represented at the meeting.

[110] The affidavit of **[Person 1 – name deleted]** attaches the 'Summary of Outcomes' of the authorization meeting which details the 6 resolutions reached by attendees at the 14 September 2013 meeting:

- The appointment of the chair and the rules of conduct of the meeting—R#1;
- Explanation of and understanding that the changes to the description of the native title claim group is to clarify the description and is 'not intended to add or remove anybody from the claim group'—R#2 and #6;
- Acceptance of the attendance of people at and their participation in the meeting based on descent from apical ancestors specified in the signed attendance sheets—R#3;
- The decision-making process agreed to and adopted by the full majority of attendees—R#4; and
- Authorisation of the persons comprising applicant, following the agreed decision-making process—R#5.

[111] **[Person 2 – name deleted]** also affirms in her affidavit that, based on her observations, the meeting was conducted in an orderly fashion, the resolutions under consideration were clearly displayed and the opportunity afforded to attendees to participate in discussions. She states that she observed the resolutions authorizing the applicant and amending the claim group description.

[112] Having regard to the above information, I am satisfied that the native title claim group was provided sufficient opportunity to participate in the process of authorizing the applicant to make and deal with the application. The records of discussion and the subsequent resolutions that resulted in the authorization of persons to comprise the applicant reveal a straightforward and uncontested authorization process.

Decision-making process to authorise

[113] The information before me confirms, that in the absence of a mandated traditional decision-making process, the Iman People utilize an agreed to and adopted decision-making process for making decisions such as authorizing an applicant to make a native title determination. This process is described in the affidavits of the persons comprising the applicant as one adopted by the persons in attendance at the authorization meeting 'allowing decisions to be made by a majority'. The details about the process are set out at Resolution 4 in the 'Summary of Outcomes':

- the proposed decision is put in the form of a clearly worded written motion and read out to the meeting;
- the motion must be moved and seconded by members of the Iman #2 claim group before being decided upon; and
- the motion is passed if a clear majority of those entitled to vote pass the resolution with the decision made by members of the Iman #2 claim group present at the meeting by a show of hands.

[114] Resolution 4 includes a statement that the Iman People confirm there was no particular process of decision-making under traditional laws and customs that must be complied with when making decisions relating to the claim. The resolution was moved and seconded, some explanations followed and the decision-making processes was then voted on by a show of hand. I understand from the information before me that the decision-making process was agreed to and adopted when the resolution was carried by a majority of those persons participating in the meeting.

Conclusion

[115] I am required to be satisfied that the applicant is a member of the native title claim group and is authorized by all the other persons in that group, in accordance with s 190C(4)(b). Each deponent of the s 62(1)(a) affidavits swears that the persons comprising the applicant are all members of the native title claim group and each of the documents before me also state that these persons are members of the Iman People #2 native title claim group.

[116] The Court has considered in various instances what may be required to satisfy the Registrar that an applicant has been authorized by all the persons in the native title claim group in accordance with s 251B(b). It is well settled in law, that the word 'all' in the context of authorization pursuant to s 251B, has 'a more limited meaning than it might otherwise have.' In

Lawson v Minister for Land and Water Conservation (NSW) [2002] FCA 1517 (*Lawson*), Stone J held in relation to s 251B(b) that it is not necessary for each and every member of the native title claim group to authorize the making of an application. Rather '[i]t is sufficient if a decision is made once the members of the claim group are given every reasonable opportunity to participate in the decision-making process'—*Lawson* at [25].

[117] I have no information before me contesting the representation of the native title claim group at the authorization meeting held on 14 September 2013 or that reasonable opportunity was not extended to the persons in the native title claim group to attend and participate in the processes of authorisation. The summary in relation to Resolution 5 which puts forward the applicant to be authorised shows attendees to have followed this process and the motion to authorise carried with 189 votes for and 107 against.

[118] I am satisfied that the applicant is authorized to make and deal with the application because:

- the information before me shows a record of resolutions that the persons in attendance were satisfied that they were sufficiently representative of the native title claim group through their descent from the apical ancestors;
- that sufficient notice of the meeting was given to the claim group, and this is not contended otherwise in any of the material before me;
- a decision-making process agreed to and adopted by the claim group was followed that appointed those person identified at Part A of the From 1 to make and deal with the application;
- each of the persons now comprising the applicant have affirmed or sworn to their authority brought by the majority vote of those persons of the native title claim group in attendance at the authorisation meeting; and
- there is no information before me that would bring into doubt the veracity of the resolutions of the native title claim group and its majority decision to authorise the applicant comprising the 14 persons who have brought this application.

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

[120] For the reasons set out above, I am satisfied that the requirements set out in s 190C(4)(b) are met.

[end reasons]

Attachment A

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

Subsection 190A(1A)

Despite subsection (1), if:

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

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

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

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

[1] The application has not been amended pursuant to an order under s 87A by the Court. Therefore, s 190A(1A) does not apply to this claim.

Subsection 190A(6A)

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

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

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

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

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

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

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

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

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

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

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

[3] The amended application currently meets the first three requirements of subsections 190A(6A)(a), (b), (c):

(a) the original application was first made on 30 October 1997; and

(b) the application was last considered and accepted for registration under s 190A(6) on 24 May 2012; and

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

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

[5] The application has been amended on two occasions, firstly as filed in the Court on 12 December 2014 and secondly, as filed on 13 June 2014. The amendments in the latter application comprise the following:

- PART A—3 additional persons now comprise the applicant;
- Schedule A—the refinement to the description of two apical ancestors (a change to description of the native title claim group);
- Schedule F—changes to the general description and inclusion of references to documents relied on by the applicant;
- Schedule M—amending details of traditional connection;
- Schedule R—statements in relation to a new authorisation process.

[6] In accordance with the provisions of s 190A(6A)(d), the effect of the amendments to the application should be no more than:

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

(ii) removing a right or interest claimed in the application;

(iii) changing the name of the representative body for the area;

(iv) changing the name of the s 203FE funded body for the area;

(v) altering the name and address for service.

[7] The amendments listed above do more than the things set out under ss 190A(6A)(d)(i) to (v). I am therefore of the view that the application does not satisfy the requirements of s 190A(6)(d).

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

Attachment B

Documents and information considered

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

1. Registration Test Reasons for Decision—Iman People #2, dated 3 August 2012.
2. Transcript of proceedings in the Court (QUD6162/1998, Iman People #2), 10 December 2013.
3. Federal Court Orders, 10 December 2013.
4. Iman People #2 native title determination application as amended and filed in the Court on 12 December 2013.
5. Additional material provided by the applicant, 25 and 26 February 2014:
    - The Anthropological Reports by Dr Fiona Powell, Stages 3 to 7;
    - The Iman People, Final Historical Report by Rosalind Kidd, December 2012;
    - 'Connection Affidavits' filed in the Court over the period of July 2012 and June 2013—**[Claimant 1 – name deleted]** filed 31 July 2012, **[Claimant 2 – name deleted]** filed 31 August 2012, **[Claimant 3 – name deleted]** filed 31 August 2012, **[Claimant 4 – name deleted]** filed 21 December 2012, Patrick Silvester filed 5 March 2013, **[Claimant 5 – name deleted]** filed 28 June 2013, Eddy Waddy filed 2 August 2013, Richard Doyle filed 23 August 2013;
    - Affidavits of **[Person 1 – name deleted]**, affirmed 28 October 2013; **[Person 2 – name deleted]** (affirmed 29 October 2013) and **[Legal Representative – name deleted]** (affirmed 29 October 2013);
    - Submission on the merit conditions of the registration assessment of the Native Title Determination Application for Iman People #2, Just Us Lawyers, Solicitor for the Applicant, dated 16 April 2012 (submitted previously in relation to the 2012 amended application).
6. Iman People #2 native title determination application, as amended and filed in the Court on 13 June 2014.
7. The Tribunal's Geospatial Services 'Geospatial Assessment and Overlap Analysis' of 1 July 2014 (the geospatial report), being an expert analysis of the external and internal boundary descriptions and mapping of the application area and an overlap analysis against the Register, Schedule of Applications, determinations, agreements and s 29 notices and equivalent.

[End of document]