National Native Title Tribunal

Registration test decision

Application name	Sullivan/Edwards
Name of applicant	(GS(deceased)) (deceased), Patrick Edwards, Mervyn Sullivan
NNTT file no.	WC2011/011
Federal Court of Australia file no.	WAD498/2011
Date application made	7 December 2011
Date application last amended	23 July 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 do not accept this claim for registration pursuant to s 190A of the *Native Title Act 1993* (Cth).

For the purposes of s 190D(3), my opinion is that the claim does not satisfy all of the conditions in s 190B.

Further, the claim does not satisfy all of the conditions in s 190C.

Date of decision: 23 October 2014

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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 8 August 2014 and made pursuant to s 99 of the Act.

Reasons for decision

Introduction

[1] This document sets out my reasons, as the delegate of the Native Title Registrar (the Registrar), for the decision to not accept the claim for registration pursuant to s 190A of the Act.

[2] 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.

Application overview and background

[3] The Registrar of the Federal Court of Australia (the Court) gave a copy of the Sullivan/Edwards claimant application to the Registrar on 24 July 2014 pursuant to s 64(4) of the Act. This has triggered the Registrar's duty to consider the claim made in the application under s 190A of the Act.

[4] I am satisfied that neither s 190A(1A) nor s 190A(6A) apply to this claim. That is because the application was not amended because of an order made under s 87 by the Court (as would be required for s 190A(1A) to apply). Nor, in my view, does s 190A(6A) apply as this claim has not been previously accepted for registration (as would be required for s 190A(6A) to apply).

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

Registration test

[6] 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.

[7] Pursuant to s 190A(6B), the claim in the application must not be accepted for registration because it does not 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

[8] 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.

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

[10] I note that I was the delegate who previously considered the claim made in the Sullivan/Edwards application when it was filed with the Court on 7 December 2011 (reasons for decision date 9 February 2012). I note that whilst I have had regard to this decision, I am not bound by it. Also, I have considered the claim as made in this amended application afresh.

[11] 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 of the Act.

[12] Also, I have not considered any information that may have been provided to the Tribunal in the course of mediation in relation to this or any other claimant application.

Procedural fairness steps

[13] 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) 167 FCR 325, 332 -334/[23] to [31]. The steps that I and other officers of the Tribunal have undertaken to ensure procedural fairness is observed, are as follows:

[14] Both the applicant and State were informed of the proposed registration test date. The applicant was given an opportunity to provide additional information for consideration by the Registrar. The applicant requested and was granted an extension of time by which to provide any additional material. The State was given an opportunity to make any submissions to the Registrar.

[15] In an email dated 9 September 2014 the applicant provided information to the Registrar in relation to the application. This information was not provided to the State as I subsequently formed the view that the application could not satisfy all of the conditions of registration.

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.

[16] 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.

[17] In reaching my decision for the condition in s 190C(2), I understand that this condition is essentially 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), 119/[16], 123/[35] to 125/[39]. In other words, does the application contain the prescribed details and other information?

[18] 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.

[19] 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)

[20] The application must name the person or persons authorised to make the application and the persons on whose behalf the application is made, being the native title claim group.

The requirements of s 61(1) for the purpose of s 190C(2)

[21] Section 61(1) does not involve the Registrar going beyond the application, nor does it require any form of merit assessment of the material to determine whether 'in reality' the native title claim group described is the correct native title group— *Doepel*, 124/[37] and 125/[39].

[22] Section 190C(2) is framed in a way that 'directs attention to the contents of the application' and its purpose is to ensure that the application contains all the details and information required by ss 61 and 62. If, however, those contents are found to be lacking, this necessarily signifies problems. Thus, at the outset it is important for the purpose of registration 'to ensure that a claim, on its face, is brought on behalf of all members of the native title claim group'—*Doepel,* 123/[35].

Does the application contain the information required by s 61(1)?

[23] The application names three (3) persons as jointly comprising the applicant. The statement that '[t]he Applicant is entitled to make this application as the persons authorised by the native title claim group' is also made in the application. This is contained in Part A.

[24] Schedule A contains a description of the native title claim group on whose behalf the application is made.

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

Name and address for service: s 61(3)

[26] The application must contain the name and address for service of the person who is, or persons who are, the applicant.

[27] Part B of the application contains the details and address for service of the persons who are the applicant.

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

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

[29] Section 61(4) requires that the persons in the native title claim group be either named (s 61(4)(a)) or described sufficiently clearly (s 61(4)(b)) in the application. The nature of the task at s 61(4) is similarly confined by the parameters of the task at s 190C(2). The task at s 190C(2) is discussed above.

[30] As Schedule A contains a description of the native title claim group, it follows that the provision of s 61(4)(b) applies and that the application must contain the details/information that 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' — s 61(4)(b).

[31] I note that the task here is confined to considering whether the application appears to contain the details and other information required by s 61(4)(b), rather than being a merit based assessment of the description (which is the task at s 190B(3)).

[32] I am satisfied that within the application at Schedule A there is a description of the persons in the native title group which appears to be sufficiently clear for the purpose of s 190C(2).

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

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

[34] Section 62(1)(a) requires an affidavit from the applicant in a prescribed form. This section also requires the inclusion of prescribed statements in the affidavit/s.

[35] In *Doolan v Native Title Registrar* [2007] FCA 192 (*Doolan*), Spender J held that '[a]s a matter of language (and in fact practice), the requirements of s 62 are satisfied by the filing of affidavits by each of the persons who constitute 'the applicant' deposing to the specified beliefs. The 'applicant' in s 62(1), in my view, is a reference to each of the persons who comprises 'the applicant' for the purpose of s 61 of the Act'—at [67].

[36] Thus, this requirement is generally met by the filing of affidavits from each of the individual persons who comprise the applicant.

[37] In this instance, the application is accompanied by an affidavit from each of the persons named as comprising the applicant, being (GS(deceased)), Patrick Edwards and Mervyn Sullivan. These affidavits swear to the statements that are required by s 62(1)(a)(i) to (iv). Each of the affidavits also set 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 as required by s 62(1)(a)(v). Whilst these details of the decision-making process complied with are scant, they are sufficient for this requirement.

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

Details required by s 62(1)(b)

[39] 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)*

[40] The application must contain details and other information which describe the boundaries of the application area referred to in s 62(2)(a)(i) and (ii). These are the areas covered by the application (s 62(2)(a)(i)) and any areas within those boundaries that are not covered (s 62(2)(a)(ii)).

[41] Attachment B of the application contains information which describes the areas covered by the application.

[42] Schedule B contains a list of exclusions that apply to areas within the external boundary described in Attachment B.

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

[43] The application must contain a map showing the boundaries of the area covered by the application.

[44] Attachment C of the application is a map of the area covered by the application.

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

[45] Section 62(2)(c) requires that application contain 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 claim area.

[46] Schedule D contains a statement to the effect that no such searches have been carried out by or on behalf of the native title claim group.

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

[47] The application must contain a description of native title rights and interests claimed over the area. This must not merely consist of a statement that all native title rights and interests that may exist are claimed.

[48] Schedule E of the application contains a description of the native title rights and interests claimed over the area, which complies with s 62(2)(d).

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

[49] This section requires that the application contain a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist. In particular, the general description must speak to the matters described in s 62(2)(e)(i) to (iii).

[50] Schedule F refers to Attachment F, labelled (Anthropologist 1)'s report, as containing the general description of the factual basis. There is also other information in the application, which can be considered relevant to the claimant's factual basis, including that contained in Schedules A, E, G and M.

[51] The information that is required by s 62(2)(e) for the purpose of s 190C(2) is quite distinct from the associated task of the Registrar at s 190B(5). In *Queensland v Hutchison* (2001) 108 FCR 575(*Hutchison*) Kiefel J made the point that s 62(2)(e) and s 190B(5) do not 'entirely correspond'— at [25]. Where s 62(2)(e) requires that a 'general description' of the factual basis be provided in the

application, s 190B(5) may call for more as the Registrar is required to be satisfied of the sufficiency of the factual basis claimed to support the assertion—*Hutchison* at [25].

[52] In providing some benchmark as to the details and other information that may be required before the application can be found to satisfy the requirements of s 62(2)(e), Kiefel J found that the factual basis provided in the application 'went no way towards compliance with s 62(2)(e)' as it was simply a restatement of the three particular assertions—at [18].

[53] In *Gudjala People #2 v Native Title Registrar* (2008) 171 FCR 317 (*Gudjula FC*), the Full Court was of the view that the detail in s 62(2)(e) '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'—at 340/[92].

[54] Upon my understanding, the Full Court in *Gudjala FC* was speaking to s 62(2)(e) solely in the context of s 190B(5) rather than s 190C(2). Thus, I consider that it is appropriate to make a distinction between what may be required by s 62(2)(e) for the purpose of s 190C(2).

[55] I consider that the general description in the application is sufficient for the purpose of s 190C(2). Whilst that information, in my view, is very general in nature, I am nonetheless satisfied that the application contains the details and other information required by s 62(2)(e). For instance, the description of the factual basis in the application is not simply a restatement of the assertions and provides some general factual details pertaining to the claimed native title rights and interests. For instance, (Anthropologist 1)'s report contains some details about the association of the native title claim group and their predecessors (albeit, these are scant) and the traditional law and customs that give rise to the claimed native title rights and interests.

[56] I note that I have only considered whether the information regarding the claimant's factual basis contained in the application addresses, in a general sense, each of the particular assertions at s 62(2)(e)(i)–(iii) and have not undertaken any assessment of its sufficiency. Any 'genuine assessment' of the details/information contained in the application at s 62(2)(e), is to be undertaken by the Registrar when assessing the applicant's factual basis for the purpose of s 190B(5) — *Gudjala FC* at 340/[92].

[57] The application contains a general description of the factual basis.

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

[58] If the native title claim group carries on any activities in the application area, the application must contain details of those activities.

[59] Schedule G contains a list of activities currently carried on by the native title claim group in relation to the land and waters of the application area.

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

[60] The application must include details of any other applications to the Court or recognised State/Territory body that have been made over the application area and of which the applicant is aware.

[61] Schedule H refers to Attachment H, which is an overlap analysis prepared by the Tribunal's Geospatial Services on 30 June 2014. This contains details of other applications to which s 62(2)(g) refers.

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

[62] Section 62(2)(ga) requires that the application contain details of any notifications under paragraph 24MD(6B)(c) that have been given over the application area and of which the applicant is aware.

[63] Schedule HA states that the applicant is unaware of any such notices.

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

[64] Section 62(2)(h) requires that the application contain details of any notifications under s 29 of the Act (or under a corresponding State/Territory law) that relate to the application area and of which the applicant is aware.

[65] Schedule I refers to Attachment I, which contains details of such notices.

Conclusion

[66] The application contains the details specified in ss 62(2)(a) to (h), and therefore contains 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.

[67] The requirement here is that the Registrar 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. This requirement, however, is only triggered if the

previous application meets all of the criteria in s 190C(3)(a), (b) and (c)— see *Western Australia v Strickland* [2000] FCA 652 (*Strickland FC*) at [9].

[68] Those requirements are that the previous application covered the whole or part of the area covered by the current application (s 190C(3)(a)), that there is an entry on the Register of Native Title Claims for the previous application when the current application is made (s 190C(3)(b)) and that the entry was made (or not removed) as a result of consideration of the previous application under s 190A (s 190C(3)(c)).

[69] The geospatial assessment and overlap analysis dated 7 August 2014 identifies one overlapping application on the Register, being Yilka native title determination application (WAD297/2008;WC2008/005) (Yilka).

[70] When I previously considered the Sullivan/Edwards application, I considered whether Yilka was a previous application for the purpose of s 190C(3). In my reasons for decision dated 9 February 2012 I formed the view that it was a previous application for that purpose. My view of that remains the same. That is because Yilka covers part of the area covered by the current application (i.e. the Sullivan/Edwards application) and it was on the Register when the current application was made and the entry of Yilka on to the Register was made as a result of being considered for registration under s 190A.

[71] I must then consider whether there are common claimants between these applications. That is, I must be satisfied that no person included in the native title claim group for the current application was a member of the native title claim group for the previous application.

[72] When I previously considered the Sullivan/Edwards application, I also considered this issue of common claimants between the two applications. I noted that there was some contradictory information before me — see reasons for decision dated 9 February 2012.

[73] The application at Schedule O states that no member of the native title claim group is also a member of a previous registered native title application over any part of the application area. (Anthropologist 1)'s report, however, does suggest that some claimants for this application are 'very closely related to Charlie Winter, being one of the "apical ancestors" identified in the Yilka form 1" ([1.6]). The repeated references in (Anthropologist 1)'s report to Yilka do suggest that there may be a close connection between the claimants and members of Yilka. However, (Anthropologist 1)'s report also contains the statement that '[t]he Sullivan family are not specifically identified in the Yilka claimant group' ([1.1]).

[74] The extract from the Register for Yilka contains a description of the native title claim group, which as I understand essentially describes members of the claim group as being those who are

descended from named persons. This includes Charlie Winter and a number of other named persons — see extract from the Register created 23 October 2014.

[75] (Anthropologist 1)'s report does not state that any of the Sullivan/Edwards claimants are descended from 'Charlie Winter', only that they are 'closely related.' Further, there is nothing in the information before me, including the extract from the Register for Yilka, that clearly suggests that there are common claimants between the applications. Also, I consider that the statement made at Schedule O may be accepted as true unless there is credible and conclusive information contradicting it.

[76] 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.

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(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.

[77] 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.

[78] The application is not certified as would be required by s 190C(4)(a). Thus, s 190C(4)(b) contains the relevant requirement that must be satisfied.

[79] Before considering the matters of which I must be satisfied of under s 190C(4)(b), I must first consider whether the application contains the information required by s 190C(5)(a) and (b).

[80] The information required by s 190C(5) is straightforward and must be contained in the application. This information is a statement that the requirements set out in s 190C(4)(b) have been met (s 190C(5)(a)) and the brief grounds on which the Registrar should be satisfied that it has been met (s 190C(5)(b)).

[81] Schedule R of the application contains the statement 'see attached s 62 affidavits.' In that regard, I consider that information or documents filed with an application may properly be considered as forming part of that application.

[82] Having regard to the affidavits which are referred to as the 's 62 affidavits' I do not consider that they contain a statement to the effect that the requirement set out in paragraph 4(b) has been met. The requirement set out in paragraph 4(b) is '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.'

[83] The affidavits referred to each contain a statement that 'I am one of the persons authorised by all the persons in the native title claim group to make this native title application as the applicant and to deal with matters arising in relation to it.'

[84] The absence of the reference to the person swearing the affidavit as being a member of the native title claim group, in my view, means that it does not satisfy the requirement at s 190C(5)(a).

[85] I consider that the requirement in s 190C(5)(a) is met by the inclusion of the formulaic statement in the application (which could be contained in the affidavits). That statement is not made and therefore the application does not include the statement required by s 190C(5)(a).

[86] The requirement in s 190C(5)(b) is that the application briefly sets out the grounds on which the Registrar should consider that it has been met. This is a reference to the grounds on which the Registrar should consider that the applicant is a member of the native title claim group and is authorised to make the application and to deal with matters arising in relation to it.

[87] In that regard the affidavits provide the following grounds:

> I was authorised to make the application at a meeting of the native title claim group held at Kalgoorlie on 31 October 2011. The process of decision making complied with in authorising the applicant to make the application and to deal with matters arising in relation to a [sic] traditional decision making process. That process involved the members of the native title claim group who were present at the meeting reaching a consensus — at [2].

[88] Even given that the application does not include the statement required by s 190C(5)(a), I consider that it does briefly contain some reference to the grounds on which the Registrar should consider that the requirement in 4(b) is met. Thus, I consider it could meet that requirement.

[89] However, in the absence of the statement for s 190C(5)(a), I consider that the application cannot satisfy s 190C(5).

[90] Since s 190C(5) is a necessary precondition that must be met before the Registrar can be satisfied of the requirement of s 190C(4)(b)—*Doepel*, 134/[78], it follows from my conclusion above that I cannot be satisfied that the requirements of s 190C(4)(b) have been met.

[91] I can, however, have regard to information not part of the application for the purpose of s 190C(4)(b). The Court has held that the Registrar may be entitled to consider a range of information in deciding whether, in his/her view, the applicant is authorised to make the application by all the other persons in the native title claim group—see *Strickland v Native Title Registrar* [1999] FCA 1530 at [57], confirmed by the Full Court in *Western Australia v Strickland* (2000) 99 FCR 33 at [78]; see also *Doepel*, 119/[16]; *Evans v Native Title Registrar* [2004] FCA 1070 and *Watson v Native Title Registrar* (2008) 168 FCR 187 (*Wiri People*), [23].

[92] The task at s 190C(4)(b) requires that I must be satisfied as to the 'fact of authorisation'. The Registrar's task at s 190C(4)(b) is distinct from that at s 190C(4)(a) and 'involves some inquiry through the material available to the Registrar to see if the necessary authorisation has been given.' — *Doepel*, 134/[78].

[93] As part of that inquiry through the relevant material, the Registrar must consider issues of the kind that have 'been identified judicially as relevant to an issue of authorisation'— *Evans v Native Title Registrar* [2004] FCA 1070 (*Evans*), [42].

[94] Ultimately what is required to satisfy the Registrar must be 'understood in the particular circumstances and as taking its colour from those circumstances' — *Evans*, [42].

[95] The difficulty, however, is that the applicant has not provided any information about the authorisation of the applicant but for the very brief statement made in the affidavits (as outlined above). This information is such that it does not enable me to genuinely consider whether I can be satisfied of the matters in s 190C(4)(b).

[96] For the reasons set out above, I am not satisfied that the requirements in either ss 190C(4)(a) or (b) are met.

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.

[97] This condition of registration requires that the Registrar 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 and waters.

[98] This requires the Registrar to undertake a consideration of the description and map of the application area in the application, and to be satisfied that the boundaries of the area covered, and those areas not included, can be sufficiently identified.

[99] Attachment B contains a description of the external boundary of the application area. It describes the application area using a metes and bounds description and referencing cadastral boundaries and coordinates to six decimal places. Attachment C of the application is a map of the external boundaries.

[100] The geospatial assessment states that the description and map are consistent and identify the area with reasonable certainty. I agree with this assessment.

[101] Schedule B contains a list of general exclusions. This is provided for the purpose of s 62(2)(a)(ii), being information that enables the identification of any areas within the external boundaries that are not covered by the application.

[102] Upon my understanding, the general formulaic approach is one that typically is used in native title determination applications and is an approach that reflects that such issues are often not settled until the final stages of a matter. In *Daniel for the Ngaluma People & Monadee for the Injibandi People v Western Australia* [1999] FCA 686, in relation to the information required by s 62(2)(a) and its sufficiency for the purpose of s 190B(2), Nicholson J was of the view that such an approach 'could satisfy the requirements of the paragraphs where it was the appropriate specification of detail in those circumstances'. His Honour examined the probable state of knowledge of the applicant at the time of filing the application as a factor in determining what may be appropriate in the circumstances—at [32].

[103] 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.

[104] The native title claim group is described in Schedule A of the application. Thus, the relevant condition of registration for this application is that the Registrar be satisfied that 'the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group' (s 190B(3)(b)).

[105] Schedule A states that:

> The native title claim group (hereafter the 'claim group') on whose behalf the claim is made is the Sullivan and Edwards Family Group.
>
> The Sullivan Family Group are the biological descendants of:
>
> Dimple Sullivan; and
> Pauline Wingrove

[106] There is some inconsistency in the wording of the description in that it first refers to the 'Sullivan and Edwards Family Group' and then to simply the 'Sullivan Family Group.' Nonetheless, I essentially understand that the description is one that describes members by reference to biological descent from two named persons, Dimple Sullivan and Pauline Wingrove.

[107] In *Western Australia v Native Title Registrar* (1999) 95 FCR 93 (*WA v NTR*) Carr J considered a description of a native title claim group where members were described using three criteria or rules, including descent (biological) and adoption. His Honour infers that the necessity to engage in some factual inquiry regarding the criteria 'does not mean that the group has not been described sufficiently.' Nor is it fatal that the application of the rule may prove difficult — at [67].

[108] Clearly a description that names a number of persons from whom members will need to be biologically linked will require some factual inquiry to identify those persons. However, as Carr J observed in *WA v NTR* that does not mean that the description is not sufficiently clear — at [67].

[109] In that regard, it is my view that the description is sufficiently clear for the purpose of s 190B(3).

[110] 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.

[111] Section 190B(4) requires the Registrar be satisfied that the description of the native title rights and interests claimed 'is sufficient to allow the native title rights and interests claimed to be readily identified.'

[112] Primarily, the task is for the Registrar or her delegate to exercise 'judgment upon the expression of the native title rights and interests claimed' and consider whether they are identifiable and have meaning as native title rights and interests— *Doepel*, 139/[99].

[113] Whilst it is open to me to find, with reference to s 223 of the Act, that some of the claimed rights and interests may not be 'understandable' as native title rights and interests (*Doepel*, 144/[123]), I am of the view that a consideration of the rights and interests in reference to s 223 should be the task at s 190B(6).

[114] Schedule E of the application sets out a list of native title rights and interests that are claimed. These rights and interests, in my view, are identifiable and have meaning as native title rights and interests.

[115] 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.

[116] I consider each of the three assertions set out in the three paragraphs of s 190B(5) in turn in my reasons below.

Combined reasons for s 190B(5)

[117] Fundamental to the test at s 190B(5) is that the applicant describe the basis upon which the claimed native title rights and interests are alleged to exist. Accordingly, this is a reference to

rights vested in the claim group and further that it is 'necessary that the alleged facts support the claim that the ***identified claim group*** [emphasis added] (and not some other group) [hold] the identified rights and interests (and not some other rights and interests)'—*Gudjala [2007]* at [39].

[118] The Registrar must consider whether each particularised assertion outlined in s 190B(5)(a), (b) and (c) is supported by the claimant's factual basis material. In that regard, the law provides specific content to each of the elements of the test at s 190B(5)(a)–(c) — see, for instance, *Gudjala [2007]* and *Gudjala People #2 v Native Title Registrar* (2009) 182 FCR 63 (*Gudjala [2009]*).[1]

[119] Whilst the Registrar must assume that the facts asserted are true and only consider whether they are capable of supporting the claimed rights and interests, there must be adequate specificity of particular and relevant facts within the claimant's factual basis material going to each of the assertions before the Registrar can be satisfied of its sufficiency for the purpose of s 190B(5). That is there must be sufficient detail in the general description 'to enable a genuine assessment' by the Registrar — *Gudjala FC,* 340/[92]; Doepel, 120/[17].

Information considered

[120] Attachment F, which is described in the application as (Anthropologist 1)'s report, is a three page document that is described as a 'brief report' concerning 'a group of Aboriginal persons, being Dimple Sullivan and her descendants, and their relationship to the Yilka claim area' — [1.1].

[121] In the report, (Anthropologist 1) states that this group has rights and interests 'in the Yilka claim area which are based on their observance and acknowledgement of the same laws and customs of the present Yilka claimants' — [1.2].

[122] (Anthropologist 1) also sets out in the report that:

> I received information on early persons associated with the Yilka claim area, including Mrs Sullivan's mother and other close senior relatives. I have evidence to show that the Sullivan family is very closely related to Charlie Winter, being one of the 'apical ancestors' identified in the Yilka Form 1. The Sullivans are also genealogically-related to another Yilka apical ancestor, Marnupa: Mrs Sullivan's mother's mother (*kaparli*) is the sister of Marnupa's mother.

[123] (Anthropologist 1)'s report then outlines information about traditional laws and customs of the 'Western Desert traditions.' The report refers to anthropological materials and sets out the following:

> The authors [of the anthropological material] contend that the right to 'speak for' the Cosmo Newberry region – this being one of the rights listed in the Yilka Form 1 – is established through birth, present residence, past association, ritual custodianship and extended kinship relations. Place of birth has been recorded by previous anthropologists as an key avenue to rights and interests in land in the Western Desert. It usually establishes a 'my country'

[1] Also note that the Full Court in *Gudjala FC,* did not criticise generally the approach that Dowsett J took in relation to these elements in *Gudjala [2007]*[1]— See *Gudjala FC* [90]–[96]. His Honour, in my view, took a consonant approach in *Gudjala [2009]*.

> relationship. In Appendix 2 to the (Anthropologist 3) & (Anthropologist 4) report, they produce a number of genealogies of 'persons demonstrating birth-related links with the Cosmo Newberry region.' One of the genealogies is that of the Sullivan family. This would strongly suggest that the Sullivan's rights in what is now the Yilka claim area is based on Western Desert traditions and their rights have been recognised for some time.
>
> According to Mrs Sullivan's son, Mervyn Sullivan, his family continues to enjoy its traditional rights in the Yilka claim area. Mervyn and his family reside in the Cosmo Newberry community.
>
> Not only has Mrs Sullivan and her offspring asserted rights and interests to the Yilka claim area, but senior initiated men (*wati*) knowledgeable of this area have told me that they acknowledge the rights of this group.
>
> By way of conclusion, it is my professional opinion, based on my own interviews and field studies as well as the research findings on the Sullivans by (Anthropologist 2) and by (Anthropologist 3) and (Anthropologist 4), that the Sullivans enjoy the same rights to the Yilka claim area as those set out in the Yilka form 1 (para 82).

[124] The above sets out most of the information about the factual basis that is contained in (Anthropologist 1)'s Report.

[125] Other information in the application that provides some factual detail about the matters in s 190B(5) includes Schedule A (description of the native title claim group), Schedule E (claimed native title rights and interests), Schedule G (activities being carried out by the native title claim group on the application area) and Schedule M (traditional physical connection by one member of the claim group with any of the application area).

[126] The applicant was given an opportunity to provide any additional information that may be relevant to the conditions of registration. The applicant's legal representative wrote by email dated 9 September indicating that the applicant did not intend to provide any further information for consideration by the Registrar or his/her delegate. In the email, the legal representative referred to current trial proceedings before McKerracher J of the Federal Court in respect to the Yilka (WAD297/2008; WC2008/005) and this application. It set out that a considerable amount of lay and expert evidence was given by the Sullivan/Edwards applicant in these proceedings, including expert anthropological reports. The email sets out that:

> The Sullivan Edwards Applicant has submitted that the evidence supports a finding that all the Sullivan Edwards claimants hold native title rights and interests in Sullivan Edwards claim area (as amended) based on the traditional Western Desert Cultural Bloc (WDCB) connection pathways of birth and long association, and that several of the Sullivan Edwards claimants also hold native title rights and interests in the claim area based on another WDCB connection pathway, namely senior ritual authority.

[127] The matters outlined in the email, including the issue of whether in fact the Sullivan/Edwards claimants hold native title rights and interests in the application area, are matters that are to be decided by the Court.

[128] Although the email refers to 'considerable' lay and expert evidence having been presented to the Court, none of that material has been provided to the Registrar and it is not for me to seek or search out such material. The provision of such material disclosing a factual basis for the claimed native title rights and interests is 'ultimately the responsibility of the applicant' and there is no obligation upon the Registrar to search out such material — *Martin v Native Title Registrar* [2001] FCA 16, [24].

[129] In any event, I don't consider that the Registrar would be able to obtain such material.

[130] When I previously considered the Sullivan/Edwards application for registration, the applicant provided additional material in the form of affidavits from a number of claimants. I noted in my reasons for decision that these affidavits referred throughout to the 'Wangkayi people' and also much of the information was about places outside the application area. Thus, it was unclear as to how the affidavits were relevant to either the native title claim group or the claim area —see registration decision dated 9 February 2012.

[131] The applicant has not provided those affidavits on this occasion.

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

[132] To satisfy s 190B(5)(a), the factual basis must demonstrate that the whole claim group presently have an association with the claim area and that their predecessors also had an association since sovereignty, or at least since European settlement. This, however, should not be taken to mean 'that all members must have such an association at all times' but rather that there be some 'evidence that there is an association between the whole group and the area' and a similar association of the predecessors—*Gudjala [2007]* at [52]; *Gudjala FC* at 339-342/[90]–[96].

[133] I note also that I am to be informed as to the nature of the claimant's association with the application area on the basis of the information provided, but I am not obliged to accept broad statements which are not geographically specific—*Martin v Native Title Registrar* [2001] FCA 16 at [26] and *Corunna v Native Title Registrar* [2013] FCA at [39].

[134] In my view, the information in the application, including (Anthropologist 1)'s report, does not provide sufficient detail that would enable a genuine assessment of the factual basis to support this assertion.

[135] (Anthropologist 1)'s report essentially provides only general assertions, such as 'this group [referring to the Sullivan Family] has rights and interests in the Yilka claim area' and that Mrs Sullivan considers many sites on the Yilka claim area 'to be her country and that of her mother' — [1.1].

[136] The application area for this claim falls entirely within the boundaries of the overlapping Yilka application (WAD297/2008;WC2008/005). Thus, this may explain the references in (Anthropologist 1)'s report to the Yilka claim area rather than the Sullivan/Edwards claim area.

Given the title of the (Anthropologist 1)'s report, being 'The Sullivan Family and the Yilka Native Title Claim (WAD297/08),' and its content, it seems likely that the report is focused on providing information in support of the Sullivan Family Group as having rights and interests in the application area as part of the Yilka claim group or in accordance with the traditional laws and customs of that group. Albeit, there is so little information that it is difficult to form any view about this.

[137] There are no factual details with any geographic specificity the members of the claim group and their predecessors and their association with the claim area.

[138] The factual basis material is not sufficient to satisfy the assertion at s 190B(5)(a).

Section 190B(5)(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 interests

[139] The wording of s 190B(5)(b) places focus on traditional laws and customs acknowledged and observed and that give rise to the claimed native title rights and interests claimed.

[140] The phrase 'traditional laws acknowledged by, and traditional customs observed by' is of a similar vein to that employed in s 223 of the Act and, thus, the meaning to be afforded to the term 'traditional' in s 190B(5)(b) can be derived from cases that explore s 223—see *Gudjala [2007]*—at [26] and [62]–[66] (citing the High Court in *Members of the Yorta Yorta Aboriginal Community v State of Victoria & Ors* (2002) 214 CLR 422 (*Yorta Yorta*)).[2]

[141] In *Gudjala [2007]*, Dowsett J observed that '[t]here can be no relevant traditional laws and customs unless there was, at sovereignty, a society defined by recognition of laws and customs from which such traditional laws and customs are derived', with the starting point for any consideration being whether the facts identify an indigenous society at the time of sovereignty — at [66].

[142] In the context of the registration test (and explicitly the task at s 190B(5)(b)), it is clear that the facts asserted, assuming that they are true, must be capable of supporting the assertion that there are 'traditional' laws and customs, acknowledged and observed by the native title claim group and that give rise to the claimed native title rights and interests—*Gudjala [2007]* at [62] and [63].

[143] Similarly to my observations above about the factual basis material provided in support of the claim, the information in the application, including (Anthropologist 1)'s report, does not provide sufficient detail that would enable a genuine assessment of the factual basis to support this assertion.

[2] This aspect of the judgment was not criticised by the Full Court, and see *Gudjala People #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala [2009]*)—at [19]–[22].

[144] (Anthropologist 1)'s report does provide some brief information about the relevant traditional laws and customs, including that they are based on 'Western Desert traditions' ([1.09]). However, the information is very scant and in my view, it is not sufficient to support the assertion at s 190B(5)(b).

[145] As well as identifying a relevant pre-sovereignty society, sufficient factual basis material would also need to provide sufficient facts to support the link between the native title claim group and the relevant society. For instance, if descent from named ancestors is the basis of claim group membership the factual basis must demonstrate some relationship between those named ancestors and the relevant pre-sovereignty society from which it is said that the laws and customs are derived (*Gudjala [2009]* at 74/[40]).

[146] Further, to this, the factual basis must contain some explanation of how current laws and customs are said to be traditional. A sufficient explanation of such does not transpire from the mere assertion that the laws and customs are traditional —*Gudjala [2009]* at 76/[52], 77/[55] and 80/[69].

[147] The factual basis is not sufficient to support the assertion at s 190B(5)(b).

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

[148] This part of the test is concerned with whether the factual basis is sufficient to support the assertion that the native title claim group has continued to hold the native title rights and interests claimed. Upon my understanding, this assertion relates to the continued holding of native title through the continued observance of the traditional laws and customs of the group.

[149] In addressing this aspect of the test in *Gudjala [2009]*, Dowsett J considered that where the claimant's factual basis relied upon the drawing of inferences, that:

> Clear evidence of a pre-sovereignty society and its laws and customs, of genealogical links between that society and the claim group, and an apparent similarity of laws and customs may justify an inference of continuity'—72/[33].

[150] Given my view that the factual basis is not sufficient to support the assertions at s 190B(5)(a) and (b), it follows that it cannot satisfy s 190B(5)(c).

Conclusion

[151] The application does not satisfy the condition of s 190B(5) because the factual basis provided is not 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.

[152] This condition requires that the Registrar consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.

[153] Where the requirements of s 190B(5) are not satisfied, it follows that s 190B(6) cannot be satisfied — *Gudjala [2009]*, 83/[84].

[154] Thus, in my view, the condition at s 190B(6) is not satisfied.

Conclusion

[155] The application does not satisfy 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.

The task at s 190B(7)

[156] Based on the 'evidentiary' material the Registrar must be satisfied of a particular fact(s), specifically that at least one member of the claim group 'has or had a traditional physical connection' with any part of the claim area. While the focus is necessarily confined, as it is not commensurate to that of the Court in making a determination, it 'is upon the relationship of at least one member of the native title claim group with some part of the claim area'—*Doepel* at [18].

[157] Here, the term 'traditional' should be construed in accordance with the approach taken in *Yorta Yorta—Gudjala [2007]* at [89].

[158] In describing the necessary physical connection in the 'traditional' sense as required by s 223 of the Act, the members of the joint judgment in *Yorta Yorta* felt that:

> [T]he connection which the peoples concerned have with the land or waters must be shown to be a connection by their traditional laws and customs … "traditional" in this context must be understood to refer to the body of law and customs acknowledged and observed by the ancestors of the claimants at the time of sovereignty—at [86].

[159] Exploring how this understanding of 'traditional' may feature in the task of the Registrar at s 190B(7), Dowsett J in *Gudjala [2009]* observed that '[i]t seems likely that such connection must be in exercise of a right or interest in land or waters held pursuant to traditional laws and customs' — 83/[84].

[160] At Schedule M, the application states that:

> Members of the claim group have maintained a traditional physical connection with the land and waters, the subject of this application. See below. The manifestation of that physical connection can be found in (Anthropologist 1)'s report in **Attachment F** [original emphasis], which lists the current activities of the native title claim group.
>
> The Sullivan Family Group has maintained a traditional physical connection with the land and waters within the area claimed.
>
> The Sullivan Family Group resides on country, and there are many examples of such physical connections, both in respect of country generally, and the area claimed in particular.
>
> Examples of such connection include that throughout their lives members of the native title claim group have used the land and waters within the area covered by this application, including entering and travelling across the area claimed to hunt and camp. Mervyn Sullivan, one of the persons who comprises the applicant, lives in the Cosmo Newberry Community.

[161] The information contained in (Anthropologist 1)'s report has been extracted above in these reasons for decision. (Anthropologist 1)'s report contains, at best, general assertions about the claim group, the relevant traditional laws and customs and any physical connection.

[162] In my view, the information in Schedule M and (Anthropologist 1)'s report is very general in nature and does not speak to the requisite physical connection in sufficient detail to satisfy this condition, which requires evidentiary material capable of satisfying the Registrar of a particular fact — *Doepel* at 120/[18].

[163] The application does not satisfy 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 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 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.

[164] In the reasons below, I look 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.

Section 61A(1)

[165] 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.

[166] I am of the view that there is no approved determination of native title over the application area — see geospatial assessment dated 7 August 2014 and Ispatial overlap analysis dated 23 October 2014.

Section 61A(2)

[167] 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.

[168] I am of the view that the application is not made over areas covered by a previous exclusive possession act — Schedule B (2) excludes from the application area any such areas that are covered by previous exclusive possession acts.

Section 61A(3)

[169] 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.

[170] I am of the view that the application does not claim exclusive rights and interests where a previous non-exclusive possession act was done — Schedule E sets out that the applicant only claims exclusive possession where it can be recognised and where there has been no prior extinguishment.

Conclusion

[171] In my view 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.

[172] I consider each of the subconditions of s 190B(9) in my reasons below.

Section 190B(9)(a)

[173] The application does not claim ownership of minerals, petroleum or gas wholly owned by the Crown — Schedule Q.

Section 190B(9)(b)

[174] The application does not claim exclusive possession to offshore waters — Schedule P.

Section 190B(9)(c)

[175] I am not aware that the native title rights and interests claimed have otherwise been extinguished.

Conclusion

[176] In my view the application does not offend the provisions of ss 190B(9)(a), (b) and (c) and therefore the application meets the condition of s 190B(9).

[End of reasons]

Summary of registration test result

Application name	**Sullivan/Edwards**
NNTT file no.	**WC2011/011**
Federal Court of Australia file no.	**WAD498/2011**
Date of registration test decision	**23 October 2014**

Section 190C conditions

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

Test condition	Subcondition/requirement	Result
s. **190C(3)**		**Met**
s. **190C(4)**		**Overall result:** **Not Met**
	s. **190C(4)(a)**	**Not Met**
	s. **190C(4)(b)**	**Not Met**

Section 190B conditions

Test condition	Subcondition/requirement	Result
s. **190B(2)**		**Met**
s. **190B(3)**		**Overall result:** **Met**
	s. **190B(3)(a)**	**N/A**
	s. **190B(3)(b)**	**Met**
s. **190B(4)**		**Met**
s. **190B(5)**		**Aggregate result:** **Not Met**
	re s. **190B(5)(a)**	**Not Met**
	re s. **190B(5)(b)**	**Not Met**
	re s. **190B(5)(c)**	**Not Met**
s. **190B(6)**		**Not Met**
s. **190B(7)(a) or (b)**		**Not Met**
s. **190B(8)**		**Aggregate result:** **Met**
	re s. **61A(1)**	**Met**
	re ss. 61A(2) and (4)	**Met**
	re ss. 61A(3) and (4)	**Met**

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

[End of document]