National Native Title Tribunal

Registration test decision

Application name	Yugara/YUgarapul People
Name of applicant	Desmond Sandy, Ruth James and Pearl Sandy
State/territory/region	Queensland
NNTT file no.	QC2011/008
Federal Court of Australia file no.	QUD586/2011
Date application made	7 December 2011
Date application last amended	1 April 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 190C.

Date of decision: 27 August 2014

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Radhika Prasad

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 amended native title determination application made on behalf of the Yugara/YUgarapul People (the application) for registration pursuant to s 190A of the Act.

[2] Note: 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[3] The application was originally made on 7 December 2011 when it was filed in the Federal Court of Australia (the Court). The application was not accepted for registration as it did not satisfy all of the conditions set out in ss 190B and 190C. On 16 February 2012, an amended application was filed with the Court, but again it was not accepted for registration.

[4] On 1 April 2014, the Registrar of the Court gave a copy of this application to the Registrar pursuant to s 64(4) of the Act, which has triggered the Registrar's duty to consider the claim made in the application under s 190A of the Act. The amendments to the application include changes to Schedules A, O and R and Attachment R. Schedule S has also been altered to reflect those changes.

Requirements of s 190A

[5] My consideration of the application is governed by s 190A of the Act. Section 190A(6) requires the Registrar to consider whether a claim for native title satisfies the conditions in ss 190B and 190C, known as the registration test. The test is triggered when a new claim is referred to the Registrar under s 63 or in some instances when a claim in an amended application is referred under s 64(4). The test will not be triggered when an amended application satisfies the conditions of ss 190A(1A) or (6A). For the following reasons, I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply to this claim:

- subsection 190A(1A) does not apply as the application was not amended because an order was made under s 87A by the Court; and
- subsection 190A(6A) does not apply because the original claim had not been accepted for registration under s 190A(6) before the amended application was given to the Registrar.

[6] I must therefore apply the registration test to this amended application. In accordance with s 190A(6), I must accept the claim for registration if it satisfies all of the conditions in ss 190B and 190C of the Act. If those conditions are not satisfied then, under s 190A(6B), I must not accept the claim for registration.

[7] 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 requirements of s 190C 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.

[8] As discussed in my reasons below, I consider that the claim in the application does not satisfy all of the conditions in ss 190B and 190C and therefore, pursuant to s 190A(6B), it must not be accepted for registration. A summary of the result for each condition is provided at Attachment A.

Information considered when making the decision

[9] 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.

[10] 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.

[11] I understand s 190A(3) to stipulate that the application and information in any other document provided by the applicant is the primary source of information for the decision I make. Accordingly, I have taken into account the following material in coming to my decision:

- the information contained in the application and accompanying documents;
- the Geospatial Assessment and Overlap Analysis (GeoTrack: 2014/0570) prepared by the Tribunal's Geospatial Services on 11 April 2014 (geospatial assessment);
- the additional information provided on behalf of the applicant on 30 April, 1 and 30 May, 13, 18 and 19 June and 19 August 2014; and
- the results of my own searches using the Tribunal's mapping database.

[12] 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. 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 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. Those rules seek to ensure that decisions are made in a fair, just and unbiased way. I note that the common law duty to afford procedural fairness may be excluded by express terms of the statute under which the administrative decision is made or by any necessary implication — *Hazelbane v Doepel* [2008] FCA

290 at [23] to [31]. The steps that I and other officers of the Tribunal have undertaken to ensure procedural fairness is observed, are as follows:

- On 15 April 2014, the case manager for this matter sent a letter to the State of Queensland (the State) enclosing a copy of the application and accompanying documents. That letter informed the State that any submission in relation to the registration of this claim should be provided by 30 April 2014. The State has not provided any submission.
- The case manager, also on 15 April 2014, wrote to inform the applicant that any additional information should be provided by 30 April 2014.
- On 30 April, 1 and 30 May, 13, 18 and 19 June and 19 August 2014, additional information was provided on behalf of the applicant in support of the application for registration. This information was not provided to the State for comment as I had formed the view that the claim in the application did not meet all the requirements of the registration test.

Procedural and other conditions: s 190C

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

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

[14] 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.

[15] In coming to this conclusion, I understand that the condition in s 190C(2) 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). As explained by Mansfield J in *Northern Territory v Doepel* (2003) 133 FCR 112; [2003] FCA 1384 (*Doepel*):

> [Section 190C(2)] does not involve the Registrar going beyond the application, and in particular does not require the Registrar to undertake some form of merit assessment of the material …
>
> [F]or the purposes of the requirements of s 190C(2), the Registrar may not go beyond the information in the application itself — at [37] and [39]; see also [16], [35] and [36].

[16] Accordingly, the application must contain the prescribed details and other information in order to satisfy the requirements of s 190C(2).

[17] 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. I do not consider they require any separate consideration by the Registrar. Paragraph 61(5)(c), which requires the application contain such information as is prescribed, does not need to be considered by me separately under s 190C(2), as I already test these 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.

[18] I now turn to each of the particular parts of ss 61 and 62:

Native title claim group: s 61(1)

[19] As indicated above, whilst assessing this requirement, I do not consider that I am permitted to undertake any form of merit assessment of the information contained in the application itself to satisfy myself whether the native title claim group described is the correct native title claim group — *Doepel* at [37] and [39]. I am only required to be satisfied that the application contains the information referred to in s 61(1). In my view, consideration of whether the application

enables the reliable identification of the persons in the native title claim group, namely the adequacy of the claim group description, takes place under s 190B(3) and whether the persons comprising the applicant have been properly authorised is considered under s 190C(4). I will therefore consider those matters under the relevant conditions in my reasons below and will only focus on here whether the information referred to in s 61(1) is contained in the application by being satisfied that the application, on its face, has been made by persons authorised by all of the members in the native title claim group.

[20] Schedule A of the application, extracted in my reasons at s 190B(3) below, provides a description of the native title claim group, being the biological and/or traditionally adopted descendants of the named apical ancestors. The application indicates that the persons comprising the applicant are included in the native title claim group and have been authorised by all the other persons in the native title claim group — see Attachments R at [15]; Attachment R-11 and s 62(1)(a) affidavits. In my view, it does not appear that the application, on its face, has not been made by or on behalf of all members of the claim group.

[21] Having regard to the description of the native title claim group and other information in the application, I am satisfied that the claim, on its face, appears to be brought on behalf of all members of the native title claim group — *Doepel* at [36].

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

Name and address for service: s 61(3)

[23] The names of those persons comprising the applicant appear at Part A of the Form 1 — see 2.

[24] Part B provides the name and address for service of the applicant.

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

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

[26] Schedule A of the application contains a description of the persons in the native title claim group that appears to meet the requirements of the Act.

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

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

[28] The application is accompanied by affidavits sworn, on 15 February 2012, by each of the persons who comprise the applicant. The affidavits contain all the statements required by s 62(1)(a) (i) to (v), including details of the process of decision making complied with in authorising the applicant.

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

Details required by s 62(1)(b)

[30] 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)

[31] Attachment B contains information that allows for the identification of the boundaries of the area covered by the application. That attachment and Schedule B contain information of the areas within those boundaries that are not covered by the application.

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

[32] Attachment C contains a map showing the external boundary of the application area.

Searches: s 62(2)(c)

[33] Schedule D states that the 'applicant has not conducted any … searches' in relation to the application area to determine the existence of non-native title rights and interests.

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

[34] A description of the native title rights and interests claimed by the native title claim group in relation to the land and waters of the application area appears at Attachment E. The description does not consist only of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law.

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

[35] Schedule F contains information pertaining to the factual basis on which it is asserted that the rights and interests claimed exist. I note that there may also be other information within the application that is relevant to the factual basis.

Activities: s 62(2)(f)

[36] Schedule G contains a list of the activities currently undertaken by members of the claim group on the land and waters of the application area.

Other applications: s 62(2)(g)

[37] Schedule H contains details of an application made to the Federal Court, namely 'Connie Isaacs on behalf of the Turrbal People v State of Queensland (QUD6196 of 1998)'.

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

[38] Attachment HA provides that the applicant is not aware of having received any notices under s 24MD(6B)(c) of the Act.

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

[39] Schedule I contains details of one notice issued under s 29 of which the applicant is aware.

Conclusion

[40] 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:
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> (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.

[41] In my view, requiring the Registrar to be satisfied that there are no common claimants arises where there is a previous application which comes within the terms of subsections (a) to (c) — *Western Australia v Strickland* [2000] FCA 652 (*Strickland FC*) at [9].

[42] The wording of s 190C(3) calls into consideration the time at which this provision is to apply. I note that although the text of this provision reads in the past tense, I consider that the proper approach would be to interpret s 190C(3) in the present tense as to do otherwise would be contrary to its purpose. The explanatory memorandum that accompanied the Native Title Amendment Bill 1997 relevantly provides that:

> The Registrar must be satisfied that no member of the claim group for the application … *is* a member of the claim group for a registered claim which was made before the claim under consideration, which *is* overlapped by the claim under consideration and which itself has passed the registration test [emphasis added].
>
> …
>
> The Bill generally discourages overlapping claims by members of the same native title claim group, and encourages consolidation of such multiple claims into one application — at 29.25 and 35.38.

[43] I understand from the above that s 190C(3) was enacted to prevent overlapping claims by members of the same native title claim group from being on the Register at the same time. That purpose is achieved by preventing a claim from being registered where it has members in common with an overlapping claim that is on the Register *when* the registration test is applied. I consider that this approach, rather than a literal approach, that is the plain and ordinary meaning of the text of the provision, more accurately reflects the intention of the legislature as to the time at which the test at s 190C(3) should apply.

[44] I also note that in assessing this requirement, I am able to address information which does not form part of the application — *Doepel* at [16].

[45] The geospatial assessment identifies that the Turrbal People (QUD6196/1998; QC1998/026) native title determination application (the Turrbal People application) overlaps the area covered by the current application. My search of the Register revealed that this application was accepted

for registration and added to the Register on 13 May 1998. The application has not been removed from the Register since that date. As the current application was made on 1 April 2014, in my view, the Turrbal People application meets the conditions specified under subsections (a) and (b).

[46] The condition at subsection (c) is met when an entry was made, or not removed, as a result of the previous application being considered for registration under s 190A. My search of the Register reveals that the Turrbal People application has been amended on a number of occasions and on each instance has been considered and accepted for registration under s 190A by a delegate of the Registrar. As such, the entry for the Turrbal People application has not been removed from the Register since being entered on 13 May 1998.

[47] As the Turrbal People application meets all of the criteria for a 'previous application' stipulated by s 190C(3), I am therefore required to consider whether there are any members of the claim group for the previous application in common with the claim group for the current application.

[48] I have accessed from the Register, a description of the native title claim group for the Turrbal People application. That description provides that the Turrbal People 'native title claim group is comprised of [name 1 deleted] and her biological descendants, being the only known descendants of the Turrbal man known as the "[name 2 deleted]", and the only known descendants of those people who comprised the Turrbal People as at 7 February 1788'.

[49] Having considered the description of the native title claim group for the Yugara/YUgarapul People and the description of the Turrbal People native title claim group, I consider that there are there are no similarities in the names of any of the apical ancestors specified for each of the applications.

[50] I note that I have also considered the additional material provided to the Registrar by the applicant but do not consider there to be any information that suggests that there are members in common between the current application and the Turrbal People application. In particular, the supplementary anthropological report by [anthropologist name deleted] dated 3 December 2013 (report dated 3 December 2013) indicates that the predecessors of [name 1 deleted] were '[name 3 deleted] … and [name 4 deleted] and [name 5 deleted], the grandparents of her mother [name 6 deleted], who [*sic*] second husband was [name 7 deleted], who came from the Bundaberg area' — at [131]; see also [93] to [95]. I do not consider there to be similarities in any of these names to any ancestors identified in the current application.

[51] For this reason, I have formed the view that I am 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.

[52] 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.

[53] 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.

[54] Schedule R provides that the application has not been certified. I must therefore consider whether the requirements of s 190C(4)(b) are met.

The applicant's authorisation material

[55] Schedule R indicates that the applicant's authorisation material is contained in the affidavits of the persons comprising the applicant which were affirmed 15 February 2012, Attachment R and documents that are annexed to that Attachment and marked as Attachments R-1 to R-12, R-YY, R-DCS, R-RAVJ and R-PRS. These documents refer to two authorisation meetings that were held on 23 October 2011 and 24 March 2013. In this regard, Part A of the Form 1 states that the applicant was authorised by the members of the native title claim group to make this native title determination application at a meeting in Inala on 23 October 2011 and at a meeting in Purga on 24 March 2013 — at 3. I note that the notice of the authorisation meeting held on 24 March 2013 indicates that one of the purposes of the meeting was to '[a]uthorise the current Applicant or authorise another Applicant to replace the existing Applicant to the native title claim to deal with all, or specific matters, arising in relation to the claim' — see Attachment R-YY. Given that s 190C(4)(b) is phrased in the present tense, namely that the Registrar must be satisfied that the applicant *is* authorised, I consider that I must be satisfied that the persons comprising the applicant is authorised at the time of testing. I am therefore of the view that the information

relating to the latter authorisation meeting is more relevant to my consideration of whether this provision has been satisfied. However, there may be information regarding the authorisation meeting of 23 October 2011 is pertinent to my consideration and as such, I consider it appropriate to refer to that information where relevant.

[56] I also note that the applicant has also provided additional material, such as the report dated 3 December 2013, which contains further information I consider relevant to my consideration of this condition.

[57] In my view, it is appropriate to have regard to the additional material when considering the requirements of s 190C(4)(b). Although Mansfield J commented that where 's 190C(4)(b) applies, s 190C(5) imposes requirements which must appear from the application itself', his Honour was of the view that '[t]he interactions of s 190C(4)(b) and s 190C(5) … clearly … involves some inquiry through the material available to the Registrar to see if the necessary authorisation has been given' — at [16] and [78]. I also note the comments of French J that:

> s 190C(4)(b) does not confine the Registrar to the statements made in the affidavit or the information provided in the application in reaching the relevant state of satisfaction. Nor is the Registrar so confined by subs 190C(5) — *Strickland v Native Title Registrar* [1999] FCA 1530 (*Strickland*) at [57].

[58] This approach was followed by Collier J in *Wiri People v Native Title Registrar* [2008] FCA 574. I am therefore of the view that I am permitted to consider the additional material provided in support of authorising the applicant to make the application and deal with matters in respect of it.

The application must contain the information specified in s 190C(5)

[59] Section 190C(5) contains a threshold test that must be met before the Registrar may be satisfied that the applicant is authorised in the way described in s 190C(4)(b). Section 190C(5) provides that:

> [i]f 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 set out in [s 190C(4)(b)] has been met; and
>
> (b) briefly sets out the grounds on which the Registrar should consider that [the requirement in s 190C(4)(b)] has been met.

[60] Schedule R refers to Attachments R-YY, R-DCS, R-RAVJ and R-PRS, which are the affidavits of Desmond Sandy affirmed 24 February 2014, Ruth James affirmed 12 December 2013 and Pearl Sandy affirmed 12 December 2013. The persons comprising the applicant each depose to in their affidavits that they are a member of the native title claim group and that they are authorised to make the amended application and deal with matters arising in relation to it by all the other persons in the native title claim group — at [1] and [2]. In my view, this constitutes a statement to the effect that the requirement in s 190C(4)(b) has been met.

[61] As to the grounds on which the Registrar should consider that the requirement in s 190C(4)(b) has been met, the affidavit of Desmond Sandy affirmed 24 February 2014 contains the following information about the meeting of 24 March 2013:

> 3. Elders of each descent group were present except for the Elders of Lizzie Sandy/Brown ([name 8 deleted] said he was unable to attend due to illness) and Elders of the unidentified "Kitty". A

letter was sent on 27 March 2013 to allow Elders of the Lizzie Sandy/Brown (in particular Billy Brown and Topsy Nerang/Delaney) descent group to respond to the resolutions including the claim group and description … I (and the other members of the … applicant) did not receive responses by any members or Elders regarding further amendments to the meeting's resolutions as described on the authorisation meeting notice.

4. At the authorisation meeting on … 24 March 2013 I heard all of the proposed amendments, that were on the public notice, adopted by resolutions by the Elders present at the meeting with no objections. I attach some of the documents from this meeting …

[62] Annexed to this affidavit is a notice of the 24 March 2013 meeting, agenda, attendance sheets for 24 and 27 March 2013 and a letter dated 27 March 2013 to the elder claimants. These documents provide the following relevant information:

- The meeting was notified in the Koori Mail and the advertisement advised of the date, time and place of the meeting and provided details on how to register. The notice also included a map of the application area, the native title claim group description and advised of the purpose of the meeting, namely to authorise amendment to the claim group description — see Attachment R-YY.
- The agenda of the meeting of 24 March 2013 indicates that item 7 was about the native title resolutions by the claim group to amend the claim, which were '[d]istributed by email, Koori mail website and handed out' — see Attachment DCS-YYR at 10. Following this agenda item was the authorisation of the applicant to the amended claim — at item 7. Agenda item 8, which was about native title resolutions to the amended claim, was also '[d]istributed by email, Koori mail website and handed out'.
- Attendance sheet of the 24 March 2013 meeting indicates that 12 members of the native title claim group attended the meeting, whether they were elders, and the apical ancestor that they descended from. In particular, there were three descendants of Alexander Sandy/Bungaree and Paimba/Mary Ann Mitchell, two descendants of John/Jack Bungaree who are also descendants of Bilinba/Jackey Jackey, three descendants of William Mitchell and Lizzie Sandy and four descendants of Ted Myers and Molly — see Attachment DCS-YYR at pp 11 to 13.
- The letter dated 27 March 2013 is addressed to the 'Elder claimants'. The letter refers to documents that were emailed and handed out on 24 March 2013, namely the 'Meeting Code of Conduct', 'Decision Making', 'Agenda' and 'Resolutions 1 to 12'. A response was required by 4 April 2013 regarding whether they supported the resolutions and if their family wanted any amendments made to the resolutions. This document was signed by five elders including the persons comprising the applicant — see Attachment DCS-LSB at 1.
- Attendance sheet dated 27 March 2013 has been completed by the five elders who signed the letter dated 27 March 2013 — see Attachment DCS-LSB at 2.

[63] I am satisfied that the above information contains a brief outline of the grounds on which the applicant considers the Registrar should be satisfied that the requirements of s 190C(4)(b) are met. I consider whether the material provided is sufficient to meet those requirements below.

The application must address the requirements of s 190C(4)(b)

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

[64] Justice Mansfield, in *Doepel*, commented that s 190C(4)(b) requires the Registrar to be satisfied that the applicant has been authorised by all members of the native title claim group, which 'clearly … involves some inquiry through the material available to the Registrar to see if the necessary authorisation has been given' — at [78].

[65] In addition, Justice Collier, in *Wiri People v Native Title Registrar* [2008] FCA 574 (*Wiri People*) noted that s 190C(4) requires the Registrar to be satisfied as to the 'identity of the claimed native title holders', including the applicant, and that the applicant needs to be authorised by all the other persons in the native title claim group — at [21], [29] and [35]; see also *Risk v National Native Title Tribunal* [2000] FCA 1589 (*Risk*) at [62].

[66] For the purposes of s 190C(4)(b), s 251B provides two alternative means of authorisation:

- authorisation in accordance with a process required under the traditional laws and customs of the native title claim group — s 251B(a); or
- authorisation in accordance with a process of decision making agreed to and adopted by the persons in the native title claim group — s 251B(b).

[67] In *Harrington-Smith on behalf* of *the Wongatha People v State of Western Australia (No 9)* [2007] FCA 31, Lindgren J made the following comments in relation to s 251B:

> What it means for all the persons in a native title claim group to authorise a person or persons to make a native title determination application is laid down in s 251B of the [Act]. For convenience, I will refer to the processes of decision-making identified in paras (a) and (b) of s 251B as 'traditional' and 'non-traditional' respectively.
>
> A native title claim group is not given a choice between traditional and non-traditional processes of decision-making. Consistently with the [Act]'s recognition of traditional laws and customs as the source of native title, s 251B recognises traditional laws and customs as the primary source of the decision-making process. It is only if there is no traditional process of decision-making in relation to authorising things of the 'application for a determination of native title' kind, that para (b) applies — at [1229] and [1230].

[68] Accordingly, I understand that a claim group is not permitted to choose between the two processes described in s 251B. If there is a traditionally mandated process, then that process must be followed to authorise the applicant otherwise the process utilised for authorisation must be one that has been agreed to and adopted by the native title claim group — see also *Evans v Native Title Registrar* [2004] FCA 1070 at [7].

Consideration

[69] I note that the first limb of s 190C(4)(b) requires that all the persons comprising the applicant must be members of the native title claim group.

[70] In each of their affidavits, the persons who jointly comprise the applicant depose that they are members of the native title claim group — see affidavit of Desmond Sandy affirmed 24 February 2014 at [1] and affidavits of Ruth James and Pearl Sandy affirmed 12 December 2013 at [1]. I have not been provided with any material that contradicts those statements. It follows that I

am satisfied that the persons who comprise the applicant are all members of the native title claim group.

[71] In respect of the second limb of s 190C(4)(b), I must be satisfied that the persons who jointly comprise the applicant are authorised by all the other members of the claim group to make the application and to deal with matters arising in relation to it using one of the processes described in s 251B — *Doepel* at [78]; *Wiri People* at [21], [29] and [35]; *Risk* at [62]. The decision making process utilised at the authorisation meeting must therefore be identified.

[72] Section 251B identifies two distinct decision making processes, namely a process that is mandated by traditional laws and customs and one that has been agreed to and adopted by the native title claim group. If there is a traditionally mandated process, then that process must be followed to authorise the applicant.

[73] The documents provided in relation to the meeting of 24 March 2013 do not address the type of decision making process that was utilised at this meeting. However, I note that the persons comprising the applicant say in their affidavits that '[a]t the authorisation meeting … I heard all of the proposed amendments that were on the public notice, *adopted* by resolutions by the Elders present at the meeting with no objections [emphasis added]' — see affidavit of Desmond Sandy of 24 February 2014 at [4] and affidavits of Ruth James and Pearl Sandy of 12 December 2013 at [3]. In addition, the claim group in the prior authorisation meeting held on 23 October 2011, 'confirmed that there was no decision-making process under traditional law and custom that the Yugara/YUgurapul [*sic*] People must use for making decisions relating to native title' and therefore agreed to and adopted a decision making process 'in relation to decisions pertaining to the authorising of a proposed claim' — Attachment R at [14]; see also Attachment R-12.

[74] In *NC(deceased) v State of Western Australia (No 2)* [2013] FCA 70, McKerracher J considered the issue of whether, before adopting a decision making process, there needed to be a specific decision on the 'anterior question' of whether there was a traditional decision making process. His Honour held that there was no such requirement, particularly where it was 'common ground that there was no such process for meetings' — at [79]. His Honour also cited the decision of the Full Court in *Noble v Mundraby, Murgha, Harris and Garling* [2005] FCAFC 212 in support that agreement to a particular decision making process may be proved by the conduct of those present — at [80].

[75] In my view of the information, it may be said that in this instance it was common ground (from the previous meeting held) that there was no relevant traditional decision making process and in absence of any information to the contrary, I infer that there is no such process of decision making under the traditional laws and customs of the claim group. As the court in *Kanak v National Native Title Tribunal* (1995) 61 FCR 103; [1995] FCA 1624 commented at [73], the Act is remedial in character and should be construed beneficially.

[76] Thus, I must consider whether I am satisfied that the applicant was authorised by all the persons in the native title claim group using the process under s 251B(b).

[77] Although in the context of s 66B, the requirements of s 251B(b) were discussed by Stone J in *Lawson on behalf of the 'Pooncarie' Barkandji (Paakantyi) People v Minister for Land and Water Conservation for the State of New South Wales* [2002] FCA 1517 where her Honour observed that the

'effect of the section is to give the word "all" [in s. 190C(4)(b)] a more limited meaning than it might otherwise have' — at [25]. Her Honour held that:

> the subsection does not require that "all" the members of the relevant claim Group must be involved in making the decision. Still less does it require that the vote be a unanimous vote of every member. Adopting that approach would enable an individual member or members to veto any decision and may make it extremely difficult if not impossible for a claimant group to progress a claim. In my opinion the Act does not require such a technical and pedantic approach. It is *sufficient if a decision is made once the members of the claim group are given every reasonable opportunity to participate in the decision-making process* [emphasis added] — at [25].

[78] I understand that before I can be satisfied of the conduct at the authorisation meeting, namely that all the persons who jointly comprise the applicant were authorised by all the other members of the claim group to make the application and to deal with matters arising in relation to it, I must be satisfied that the members of the claim group are given every reasonable opportunity to participate in the decision making process.

[79] In this regard, the notice of the 24 March 2013 authorisation meeting contains the following information:

> The Yugara/YUgarapul People native title claim group is those people who are descended from the following people:
>
> Bilin/Bilinba/Jackey Jackey/*Kawae-Kawae*
> (and 3 wives Nellie, Mary and Sarah; brother-in-law Minnippi Rawlins)
> *Gariballie*/*Kerwalli*/King Sandy and Naewin/Sarah
> Alexander/John Bungaree/King Sandy and *Paimba*/Mary Ann Mitchell
> William Mitchell; Lizzie Sandy/Brown
> Dakiyakka/Duke of York & daughter Kitty
>
> **Proposed amended Apical Ancestors:**
> Re Jackey Jackey: add "brothers Mark Jackey and Harry Jackey"
> John/Jack Bungaree and wives
> *Gairballie*/*Kerwalli*/King Sandy and wives (*Naewin*/Sarah)
> Alexander Sandy and *Paimba*/Mary Ann Mitchell
> Dakiyakka/Duke of York (to be omitted); Kitty
>
> **Proposed additional Apical Ancestors:**
> Ted Myers and Molly; Kitty (in particular her daughter Molly)
> *Menvil Wanmaurn* aka King Jackie Delaney (in particular his daughter Topsy)
>
> All persons who are members of the Yugara/YUgarapul People native title claim group (Federal Court proceeding QUD586/2011), who have connection to: (1) the described apical ancestor/s; (2) Yuggara aka Yuggera aka YUgarapul language; and (3) country, are invited to attend a meeting convened by Yugara/YUgarapul people.
>
> **The purpose of the meeting is to:**
>
> 1. Authorise the apical ancestor amendment in the Yugara/YUgarapul People application to the Federal Court. The proposed amendments are to: omit *Dakiyakka/Duke of York*; add *Ted Myers and Molly*; identify *Kitty (in particular her daughter Molly)*; add *Menvil Wanmaurn* aka *King Jackie Delaney (in particular his daughter Topsy)*; add Jackey Jackey's brothers Mark and Harry; separate John/Jack Bungaree and Alexander Sandy; and make any other amendment required to best describe the native title claim group; …

[80] The notice was advertised in the Koori Mail and the date, time, venue and purpose of the meeting was advised. The notice invited not only the descendants of the apical ancestors named, but also the people who are connected to the Yuggara aka Yuggera aka YUgarapul language and country. In my view, I am satisfied that the members of the native title claim group were given a reasonable opportunity to attend the authorisation meeting held on 24 March 2013.

[81] Although it appears that the information is sufficient to suggest that members of the claim group were given a reasonable opportunity to attend and participate in the decision making, in my view the material before me has certain deficiencies about the conduct at the meeting which precludes me from being satisfied that the requirements of s 190C(4)(b) are met. In particular, I note that there is inconsistency in the material about the proper construction of the native title claim group on whose behalf the applicant was authorised to make the application.

[82] In this regard, the report dated 3 December 2013 indicates that the ancestors of the native title claim group include those ancestors identified in Schedule A, which I have extracted in my reasons for s 190B(3) below, as well as 'Kitty (in particular [name 9 deleted]'s grandson [name 10 deleted])' — at [134]. There are references in this report stating that the apical ancestor has current living descendants — at [116]. This ancestor is not identified in the claim group description in Schedule A. In my view, it is not apparent from the report, as well as from other material before me, whether this ancestor is the same as another ancestor identified in the notice or claim group description in Schedule A. In particular, I understand the references to Kitty in the notice to be to the Duke of York's daughter and the mother of Molly Myers. The report indicates that Kitty (in particular [name 9 deleted]'s grandson [name 10 deleted]) was not the same person as the Duke of York's daughter or the mother of Molly Myers — see report at [84], [85], [8], [89], [114] to [116], [129], [132] and [133]. The notice also refers to '*Menvil Wanmaurn* aka King Jackie Delaney (in particular his daughter Topsy)'. I understand from the report that the wife of King Jackie Delaney was Kitty, but again this Kitty is different to Kitty (in particular [name 9 deleted]'s grandson [name 10 deleted]) — at [81].

[83] In light of the anthropological research, I am also of the view that the descendants of this ancestor are not the descendants of another named ancestor described in the claim group description — at [84], [85], [8], [89], [114] to [116], [129], [132] and [133]. I do not have any information to the contrary before me from which I can reach an alternate view.

[84] I note that the affidavit of Desmond Sandy of 24 February 2014 indicates that the descent group of the unidentified 'Kitty' did not attend the authorisation meeting — at [3]. The notice indicates that one of the purposes of the meeting was to amend the apical ancestors in the application and one of the proposed amendments was to 'identify *Kitty (in particular through her daughter Molly)*'. This in my view seems to indicate that the reference to Kitty in Desmond Sandy's affidavit to be the mother of Molly. However, I note that there is text in the affidavit of Desmond Sandy that has a line marked through it, stating that he 'met with the authorised Elders of the unidentified Kitty descent line … in November who gave permission and authority for the … Applicant to represent the Kitty descent line in the Yugara/YUgarapul Native Title Claim Group' and that after he 'consulted with the Elders of the descent groups and with the authorised Elders of the Kitty descent group (in particular her granddaughter's son [name 10 deleted]) there was an agreement to amend the application to describe this descent group' — at [5] and [6]. This seems to suggest that the unidentified Kitty is Kitty (in particular [name 9 deleted]'s grandson [name 10 deleted]) as identified in the report. I also consider that this text

suggests that the descendants of this apical ancestor are not part of another descent group, namely descendants of another apical ancestor, and it appears that the claimants acknowledge this by describing the descendants of this ancestor to be part of a separate and distinct descent group.

[85] It appears that the reason the text has a line marked through it is to remove it from the affidavit. However, I have not been provided with a reason why this text should be removed from the affidavit and it is not apparent from the material before me. In my view, the text seems to indicate that if such events took place then the claim group did consider including the descendants of this ancestor within the claim group description and was authorised to do so, but for some reason the ancestor was not included in the description at Schedule A. In my view, this suggests that the persons comprising the applicant were authorised to make the application with an alternate description of the native title claim group.

[86] If, however, the events did not take place and for this reason the text has the line marked through it, then it would appear that the claim group has not considered including the descendants of this ancestor within the claim group description. Therefore, the native title claim group, being all the persons who according to their laws and customs hold the common or group rights and interests claimed, as defined in s 61(1), has not been identified in the application. I consider that this turn of events seem unlikely to have occurred as the text would not have been inserted in the affidavit if it did not and that therefore the claim group has considered including this ancestor.

[87] It may be that further research has come to light, subsequent to the preparation of the report, that explains that the descendants of Kitty (in particular [name 9 deleted]'s grandson [name 10 deleted]) are also descendants of another apical ancestor identified in Schedule A. However, without such information, I am precluded from being satisfied that the condition of s 190C(4)(b) is met. As O'Loughlin J commented in *Risk*, where the group named or described in the application is not the native title claim group defined in s 61(1) but only part of the group, it becomes 'impossible to accept the application for registration' — at [60].

[88] Given the difficulty created by the inconsistencies to which I have referred to above, I am unable to be satisfied that the persons who jointly comprise the applicant are authorised by all members of the claim group to make the application and deal with matters arising in relation to it. It follows that, I am not satisfied that the requirements of s 190C(4)(b) are met.

[89] The application **does not satisfy** the condition of s 190C(4).

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.

[90] Attachment B is titled 'Yugara / YUgarapul People External Boundary Description' and has been prepared by the Tribunals Geospatial Services on 19 October 2011. It contains a metes and bounds description of the external boundaries of the application area referencing the High Water Mark, topographic features, water catchments, lot on plan descriptions and coordinate points. Attachment B specifically excludes any area subject to the Jagera People 2 (QUD6014/2003; QC2003/15) native title determination application (Jagera People 2 application) as registered on 14 September 2011.

[91] Attachment C is a colour copy of a map titled 'Yugara / YUgarapul People' prepared by the Tribunal's Geospatial Services on 19 October 2011. The map includes:

- the application area depicted by a bold outline;
- Turrbal People application area;
- Jagera People 2 application area;
- topographic background;
- scalebar, northpoint, coordinate grid and locality diagram; and
- notes relating to the source, currency and datum of data used to prepare the map.

Consideration

[92] The geospatial assessment concludes that the description and map of the application area are consistent and identify the application area with reasonable certainty. I agree with this assessment.

[93] I note that Schedule B contains some general exclusions to categories of land and waters. In my view, the use of general exclusions clauses to describe those areas falling within the external boundary of the application area that are not covered by the application provides a sufficiently certain and objective mechanism to identify such areas — see *Daniels for the Ngaluma People and Ors v State of Western Australia* [1999] FCA 686 at [29] to [38].

[94] In light of the above information, I am satisfied that the description and the map of the application area, as required by ss 62(2)(a) and (b), are sufficient for it to be said with reasonable certainty that the native title rights and interests are claimed in relation to particular land or waters.

[95] 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.

[96] The following amended description of the native title claim group appears in Schedule A of the application:

The biological and/or traditionally adopted descendants of the following people:

- *Bilin*/*Bilinba*/Jackey (in particular King Jackey Jackey/*Kawae-Kawae* and 3 wives Nellie, Mary and Sarah; and brother-in-law Minnippi Rawlins);
- *Gairballie*/*Kerwalli*/King Sandy (and wife in particular *Naewin*/Sarah);
- Alexander Sandy and *Paimba*/Mary Ann Mitchell;
- John/Jack *Bungaree*/King Sandy (and in particular his wife Mary Ann Sandy);
- Lizzie Sandy (and in particular her husband William Mitchell);
- Lizzie Sandy/Brown (in particular her son Billy Brown who married Topsy);
- Kitty (in particular her daughter Molly and husband Ted Myers of Brisbane)

[97] It follows from the description above that the condition of s 190B(3)(b) is applicable to this assessment. Thus, I am required to be satisfied that the persons in the native title claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

Nature of the task at s 190B(3)(b)

[98] When assessing the requirements of this provision, I understand that I must determine whether the material contained in the application 'enables the reliable identification of persons in the native title claim group' — *Doepel* at [16] and [51].

[99] In *Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*), Dowsett J commented that s 190B(3) 'requires only that the members of the claim group be identified, not that there be a cogent explanation of the basis upon which they qualify for such identification' — at [33]. His Honour also confirmed that s 190B(3) required the Registrar to address only the content of the application — at [30].

[100] In *Western Australia v Native Title Registrar* (1999) 95 FCR 93; [1999] FCA 1591 (*WA v NTR*), Carr J commented that to determine whether the conditions (or rules) specified in Schedule A has a sufficiently clear description of the native title claim group:

> [i]t may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described. But that does not mean that the group has not been described sufficiently. It is more likely to result from the effects of the passage of time and the

movement of people from one place to another. The Act is clearly remedial in character and should be construed beneficially — at [67].

Consideration

[101] The description of the native title claim group is such that it comprises those persons who are the biological descendants of named apical ancestors and/or are those persons who have been traditionally adopted. I am of the view that this description is to be read as a discrete whole — *Gudjala 2007* at [34].

[102] I will discuss each criteria below before deciding whether I am 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.

[103] I note that in reaching my view about this condition, I have been informed by the applicant's factual basis material contained in the application and accompanying documents and not the additional material provided as I consider that I am confined to the material contained in the application for the purposes of s 190B(3).

Apical ancestors

[104] Describing a claim group in reference to named ancestors is one method that has been accepted by the Court as satisfying the requirements of s 190B(3)(b) — see *WA v NTR* at [67].

[105] I consider that requiring a member to show biological descent from an ancestor identified in Schedule A provides a clear starting or external reference point to commence an inquiry about whether a person is a member of the native title claim group.

[106] In my view, as indicated by the factual basis contained in Schedule F, descent from a named ancestor provides the fundamental basis for membership to the Yugara/YUgarapul people native title group.

[107] I am of the view that with some factual inquiry it will be possible to identify the persons who are the biological descendants of identified apical ancestors.

Adoption

[108] In respect of membership by adoption, I note that in *WA v NTR*, Carr J accepted the approach of identifying members of the native title claim group by biological descendants, including by adoption, of named people. His Honour accepted the description without any qualification indicating whether the method of adoption was according to traditional laws and customs — at [67].

[109] Membership by adoption has been qualified in the description before me to include descendants of the named apical ancestors who are 'traditionally' adopted. I understand this to mean that such adoption would involve some reference to the traditional laws and customs of the native title claim group.

[110] Having regard to Carr J's acceptance of the approach of identifying membership by adoption without any qualification in *WA v NTR*, I am of the view that the description of this criterion is sufficient to ascertain, after some factual inquiry, the persons who are the adopted descendants of the apical ancestors, which as indicated above I understand will involve some reference to the traditional laws and customs of the claim group.

[111] I am of the view that with some factual inquiry it will be possible to identify the persons who have been traditionally adopted as a Yugara/YUgarapul person.

Conclusion

[112] In my view, the description of the native title claim group contained in the application is such that, on a practical level, it can be ascertained whether any particular person is a member of the group. Accordingly, focusing only upon the adequacy of the description of the native title claim group, I am satisfied of its sufficiency for the purpose of s 190B(3)(b) — *Doepel* at [37].

[113] 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.

[114] The task at s 190B(4) is to assess whether the description of the native title rights and interests claimed is sufficient to allow the rights and interests to be readily identified. In my opinion, that description must be understandable and have meaning — *Doepel* at [91], [92], [95], [98] to [101] and [123]. I understand that in order to assess the requirements of this provision, I am confined to the material contained in the application itself — at [16].

[115] I note that the description referred to in s 190B(4), and as required by s 62(2)(d) to be contained in the application, is:

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

[116] I will consider whether the claimed rights and interests can be prima facie established as native title rights and interests, as defined in s 223, when considering the claim under s 190B(6) of the Act. For the purposes of s 190B(4), I will focus only on whether the rights and interests as claimed are 'readily identifiable'. Whilst undertaking this task, I consider that a description of a native title right and interest that is broadly asserted 'does not mean that the rights broadly described cannot readily be identified within the meaning of s 190B(4)' — *Strickland v Native Title Registrar* [1999] FCA 1530 (*Strickland*) at [60]; see also *Strickland FC* at [80] to [87], where the Full Court cited the observations of French J in *Strickland* with approval.

[117] Attachment E of the application provides the following description of the claimed native title rights and interests:

> The native title rights and interests which the applicant claims in relation to the application area are the following:
>
> 1. The right to exclusive possession, occupation and use of the land;
> 2. The right to live on the land;
> 3. The right to access land and waters in the claim area;

4. The right to maintain and protect sites of significance to the native title holders;
5. The right to conduct social, religious and cultural activities within the claim area;
6. The right to harvest, fish, cultivate, grow and manage plants, timber, animals, birds and fish located within the claim area;
7. The right to exchange plants, timber, animals, birds and fish located within the claim [area] with third parties for other things;
8. The right to make things from plants, timber and animals located within the claim area;
9. The right to exchange things made from plants timber and animals located within the claim area with third parties for other things;
10. The right to make decisions about and to control the access to, and the use and enjoyment of, the land and waters of the claim area and the plants, timber, animals birds and fish within the claim area;
11. The right to control access and use between the native title holders and any other Aboriginal people who recognise themselves as being governed by the traditional laws and customs acknowledged and observed by the native title holders and who seek access to, or use of, the land in the claim area in accordance with traditional law and custom;
12. The right to teach and pass on knowledge of the claimant group's traditional laws and customs pertaining to the area and knowledge of the places in the area;
13. The right to learn about and acquire knowledge concerning the claimant group's traditional laws and customs pertaining to the area and knowledge of places in the area.

The claimant group only claims the rights listed [in] (10) and (11) above and the right to exclusive possession, occupation, use and enjoyment in relation to:

a. any areas where there has been no previous extinguishment of native title;
b. any area of natural water resources and the solid land beneath the water where the water if found no to be tidal.
c. any areas affected by category C and D past and intermediate period acts;
d. s.47A Reserves covered by claimant applications; and/or
e. s.47B Vacant Crown Land covered by claimant applications.

Consideration

[118] For the purposes of s 190B(4), I am satisfied that the rights and interests identified are understandable and have meaning.

[119] I note that although the claim to exclusive possession is broadly asserted, I am of the view that it does not offend the requirements of this provision — *Strickland* at [60].

[120] I have considered the description of the native title rights and interests claimed and find that the rights and interests claimed are sufficient to fall within the scope of s 223 and are readily identifiable as native title rights and interests.

[121] 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.

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

The requirements of s 190B(5) generally

[123] Whilst assessing the requirements of this provision, I understand that I must treat the asserted facts as true and consider whether those facts can support the existence of the native title rights and interests that have been identified — *Doepel* at [17] and *Gudjala People #2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala FC*) at [57], [83] and [91].

[124] Although only a general description of the factual basis is required, the Full Court in *Gudjala FC* noted that 'the general description must be in sufficient detail to enable a genuine assessment of the application by the Registrar … and be something more than assertions at a high level of generality' — at [92].

[125] Accordingly, although the facts asserted are not required to be proven by the applicant, I consider the factual basis must provide sufficient detail to enable a 'genuine assessment' of whether the particularised assertions outlined in subsections (a), (b) and (c) are supported by the claimant's factual basis material. Further, I note that where the applicant's material contains assertions that 'merely restate the claim' or are 'really only an alternative way of expressing the claim or some part thereof', it is my view that such material 'does not assist in building the factual basis necessary for assessing the application' — *Gudjala People #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala 2009*) at [28] and [29] and *Anderson on behalf of the Numbahjing Clan within the Bundjalung Nation v Registrar of the National Native Title Tribunal* [2012] FCA 1215 at [43] and [48]; see also *Gudjala 2007* at [39].

[126] I am therefore of the opinion that the test at s 190B(5) requires adequate specificity of particular and relevant facts within the claimants' 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).

[127] The factual basis material is contained in Schedule F. The applicant has also submitted directly to the Registrar additional material as a part of the factual basis. This material is extensive and I only provide a summary of some of the relevant information in my reasons below.

[128] I proceed with my assessment of the sufficiency of the factual basis material by addressing each assertion below.

Reasons for s 190B(5)(a)

The requirements of s 190B(5)(a)

[129] In *Gudjala 2007*, Dowsett J indicated that the condition at s 190B(5)(a) required 'evidence [of] an association between the whole group and the area', although not 'all members must have such association at all times' — at [52]. His Honour also commented that 'there must be evidence as to such an association between the predecessors of the whole group and the area over the period since sovereignty' — at [52].

[130] The factual material must also be sufficient to support an asserted association with the entire claim area, rather than an association with only a part of it, and must contain more than 'very broad statements', which for instance have no 'geographical particularity' — *Martin v Native Title Registrar* [2001] FCA 16 (*Martin*) at [26]; see also *Corunna v Native Title Registrar* [2013] FCA 372 at [39] and [45] where Siopis J cited the observations of French J in *Martin* with approval.

Information regarding the association of the predecessors of the native title claim group with the application area

[131] The report dated 3 December 2013 indicates that language and ethno-historical materials reveal 'an association between the [Yugara/YUgarapul] language and its speakers with the Brisbane River catchment, including the region between the Pine and Logan rivers and the [application area] that has prevailed without interruption since the time of practical sovereignty is this region (about or shortly after 1823) [which I understand to be the time of sustained European contact in the region]' — at [13]. The application area 'covers the coastal portion of Yugara/YUgarapul country, which is associated with the coastal area between the Pine and Logan rivers, and which extends west to include at least some of the Brisbane River, Logan and Pine river catchments' — at [15]. I understand that the Pine and North Pine Rivers form the northern boundary of the application area and the eastern boundary is defined partly by Moreton Bay from Brighton to Lota in the north and then the boundary goes south towards Mount Cotton (which is outside but proximate to the south-eastern corner). Along the southern boundary are places including Rochedale South, Kuraby, Acacia Ridge and then towards Ipswich. The western boundary is formed by going north until the boundary reaches the North Pine River near Dayboro. The Brisbane River flows from the south-western corner through Brisbane in the central region of the application area and out into the Pacific Ocean at Moreton Bay. I understand the Logan River to be outside and south of the application area.

[132] The report prepared for FAIRA Aboriginal Corporation in October 2000 (FAIRA report) states that:

- The Brisbane river basin region was first occupied in 1824 — at [2.9].
- Archaeological work conducted in the region indicates that it had been inhabited for many centuries and such records have captured evidence of religious, art and habitation sites — at [6.1].

[133] Schedule F contains the following assertions:

- The predecessors, including the apical ancestors, of the claim group lived in and around the application area for parts or all of their lives. For example, apical ancestor Bilin had a particular association with the area around Bulimba Creek, (mid-east region of the application area).
- The region in and around the claim area was first subject to widespread colonisation from about 1842 onwards. The apical ancestors are known to have been associated with the areas on and around the claim area prior to and after this time. For example, apical ancestor Bilin has been estimated to have been born around 1820 and died around 1901.
- Ethno-historical records described the area of the claim group as 'Brisbane River from the Cleveland district [outside but proximate to mid-eastern boundary] inland to the Dividing Range about Gatton [outside and south-west of the application area]; north to near Esk [outside and west of application area]; at Ipswich [outside but proximate to south-western corner]… [P]art of their country [included] the sandy areas between Ipswich and Brisbane'.

[134] The factual basis contains the following information about the apical ancestors identified in Schedule A of the application. For instance, the document titled 'Points of claim' indicates the areas within the application area with which some of the apical ancestors were associated:

> 1) South Brisbane – Jackey Jackey and Sandy/Bungaree descent groups
>
> 2) Brisbane – Sandy/Bungaree and Kitty/Ted Myers descent groups
>
> 3) Nundah [within north-eastern region of application area, but original district extended further south to the Brisbane River and the most western extent of the district would have been Albany Creek which is in the mid-northern region (see document titled 'Chapter 13 – Placenames of the Nundah District')] – Sandy/Bungaree and Sandy/Mitchell descent groups
>
> 4) Pine River [forms, in my view, part of the northern boundary] – Topsy descent group — at [1].

[135] The factual basis material contains the following relevant information regarding apical ancestor Bilin:

- He was born in the early 1800s — FAIRA report at 3.5.5.
- One claimant says that he was called Bilinba after his totem, the magpie lark or peewee bird, which is 'called Billenba (aka Bilinba and meaning Billen's area)' in Yugarapul language — affidavit of [name 11 deleted] affirmed 28 May 2013 at [6] and report dated 3 December 2013 at [58]. Another claimant was told that Bilin's country and totem area was Whites Hill (within south-eastern region of the application area) — affidavit of [name 12 deleted] at [13]. The traditional name for Whites Hill was 'Bulimba' which means 'place of the magpie lark' — see email from [name 13 deleted] dated 1 May 2014 containing excerpt from 'A History of Bulimba Creek Valley' compiled by [name 14 deleted] in 1995 (email from [name 13 deleted] of 2014).
- He had two brothers and three wives — at [64].
- His daughter, with his first wife, was born on the banks of the Logan River at Waterford in 1853 and was married at Beaudesert (both locations are outside and far south of the application area). She had 12 children who were born at Tamborine (south of the application area) or Beaudesert. She died in Beaudesert in 1929 — at [67]. Bilin had a son,

with his second wife, who was born in 1872 — at [66]. His son resided at Deebing Creek until 1881 and was said to have subsequently been in Goodna (both locations are outside but proximate to the south-western corner of the application area) — at [68].

- Records indicate that the furthest north he travelled was from the Logan area to Brisbane and went to Beaudesert around 1887 to see his daughter — at [59].
- Photos of Bilin were taken at Enoggera and Alderly (both are within the mid-western region of the application area), the Logan District in 1895 (I understand this region to be outisde the application area and situated south of Rochedale South and Ipswich), Logan River in 1890, and Deebing Creek in 1900 — affidavit of [name 11 deleted] affirmed 10 April 2013 at Appendix 4; and report dated 3 December 2013 at Appendix 141 to 143.
- In 1863, he became the head of his group and was given a brassplate in 1875 with the inscription 'King of the Logan and Pimpama' — F W Hinchcliffe, 'Jackey Jackey – King of the Logan and Pimpama', *Beaudesert Times*, 12 June 1931 (article from Beaudesert Times of 1931); and affidavit of [name 11 deleted] of 10 April 2013 at Appendix 4.
- He was observed at a native camp at York's Hollow, and was said to have 'held sway' at Holland Park (within the south-eastern region of the application area) where a corroboree was held — see for instance FAIRA report at figure 2; and 'From Bush to Suburb - Phenomenal Growth of Holland Park', *The Brisbane Courier*, 5 July 1930 at 9.
- In the 1860s, he was at the Albert River in Beenleigh (outside and south-east of the application area) — report dated 3 December 2013 at Appendix 144. He was also reported to have been at Fortitude Valley, Brisbane City; stayed at Bowen Hills, Newstead, Breakfast Creek, Enoggera Creek, Newmarket (these locations are generally in the central region of the application area) and Alderley (within the mid-western region of the application area); and had a camp at the creek at White Hills (in the mid-eastern region of the application area) — affidavit of [name 11 deleted] of 8 May 2012 at [7].
- In 1879, he attended a corroboree in the Tamborine area and in May 1882, he was supplied with government blankets at Cleveland (proximate to the mid-eastern boundary) — report dated 3 December 2013 at [59].
- During a period in 1893 to 1957, Bilin lived in the Christmas Creek valley (I understand this area to be located south of the application area) — at Appendix 182.
- He is believed to have spent his last days at Deebing Creek but is also recorded as having died around 1901 at Jimbroken Range (I understand this area to be located south of the application area) and at Buddai within the Christmas Creek district (I understand this location to be near Jimbroken Range) — at [63]; see also article from Beaudesert Times of 1931, affidavit of [anthropologist name deleted] affirmed 22 May 2012 at [16] and affidavit of [name 11 deleted] of 10 April 2013 at Appendix 5.
- He was associated with the Yugarapul language and the Logan blacks whose district extended from Ipswich to Brisbane and from Beaudesert to Pimpama and Moreton Bay — report dated 3 December 2013 at [63]. Other areas he was associated with in the coastal lower Brisbane and Logan River catchment regions included South Brisbane, districts adjoining Tingalpa (within mid-eastern region of application area), the ranges that rim the Brisbane River basin, Widgee Creek and Hillview (I understand these last two locations

are outside and south of the application area) — at [63]; see also article from Beaudesert Times of 1931, affidavit of [name 12 deleted] at [13] and [15], affidavit of [name 11 deleted] of 10 April 2013, affidavit of [anthropologist name deleted] of 22 May 2012 and FAIRA report at figure 2.

[136] In relation to Kerwalli/King Sandy, the factual basis provides that:

- He was born around 1825 — points of claim at [11].
- He may have been at or associated with the coast between Brisbane and Caboolture (outside and north of the application area); in 1862 Pine River to Maroochy (north of the application area); 1880 Maroochydore (north of the application area); 1880s to 1894 Burpengary (Deception Bay) (north of the application area); Redcliffe, Woody Point, Clontarf (these three locations are outside and north-east of the application area), Toorbul Point (north of the application area); before 1900 he was near Brisbane and at Wynnum (within mid-eastern region of application area); 1938 and 1871 Brisbane; 1875 Sandgate (on the north-eastern boundary) and Brisbane; 1897 Enoggera; 1888 Laidley (south-west of the application area); 1888 Ipswich Hospital; and from the late 1880s onwards Maroon, Boonah and Fassifern (these locations are outside and south-west of the application area) — report dated 3 December 2013 at Table 3.
- He may also have been associated with the North Pine (along the northwest to mid-northern boundary) to Logan region and associated with the Ningi Ningi and other people — report dated 3 December 2013 at [72].
- He died around 1900 at Wynnum — at [45]; and points of claim at [11].

[137] The factual basis provides the following information about Alexander Sandy and Mary Ann Mitchell:

- Alexander Sandy was related to Kerwalli King Sandy — report dated 3 December 2013 at [45].
- Mary Ann Mitchell was born about 1848 and was reported as being at Deebing Creek in 1894 at the age of 46 — affidavit of [name 15 deleted] affirmed 31 May 2013 at [4].
- The two ancestors were married and had a daughter who was born at Tabragalba near Beaudesert around 1859 to 1866 — at [5]. Their daughter may have married [name 16 deleted]at Ipswich in 1895 and/or married [name 17 deleted] at Beaudesert in 1913 with whom she had ten children, two being born at Southport and Beaudesert — report dated 3 December 2013 at [38], [75] and [76].
- Mary Ann Mitchell's second marriage was to apical ancestor Bungaree who became the social father of the daughter of Alexander Sandy and Mary Ann Mitchell — at [75].

[138] In relation to John/Jack Bungaree and his wife, Mary Ann Sandy, the factual basis states:

- According to oral traditions, Bungaree was born in Brisbane at a camp where Botanical Gardens is now located and his traditional family lineage leads right back to this area — see for instance, report dated 3 December 2013 at [41] and Appendix 108 and affidavit of [name 11 deleted] of 8 May 2012 at [11].

- He was in Dugandan region (which I understand to be south of the application area) when he was a child in about 1860 — report dated 3 December 2013 at [47].
- When he was about 23, he married Mary Ann Mitchell (otherwise known as Mary Ann Sandy), who was the first wife of Alexander Sandy — at [37] and [74]; see also affidavit of [name 11 deleted] of 10 April 2013 at Appendix 35. Alexander Sandy may have been the father or grandfather of this ancestor — at Appendix 11.
- Bungaree and Mary Ann Sandy had twin sons, [name 18 deleted] and [name 19 deleted], who were born in the Nerang River region, Southport in 1883 and they grew up there — affidavit of [name 11 deleted] of 10 April 2013 at Appendix 10 and 11, and report dated 3 December 2013 at [36], [52] and Appendix 92 to 94 and 101. [Name 18 deleted] was associated with Beaudesert as this is where his second marriage took place, where some of his children were born, and where he died — at [54]. [Name 19 deleted] married the granddaughter of Bilin at Beaudesert in 1911 and died at Coopers [text deleted] in 1959 — at [55].
- Bungaree and Mary Ann Sandy also had a daughter who was born around 1873 at Bromelton, Beaudesert or Southport. She was taken to live at the Deebing Creek mission where she met and married her husband in 1895. She died in 1935 at Beaudesert — at [11], [29] and [53].
- Bungaree is reported as being from the upper Brisbane catchment area, associated with the Boonah area and as being listed as a member of the 1902 Deebing Creek population — affidavit of [name 15 deleted] of 31 May 2013 at [21], and affidavit of [name 11 deleted] of 10 April 2013 at Appendix 9.
- He was noted as a man of influence who was in Rosewood Scrubs, Ipswich in 1847 — report dated 3 December 2013 at Appendix 110. He is also mentioned to have been at Toowoomba (west of the application area) in 1858, Helidon Spring in 1916, North Pine River in 1862, in Kyogle (south of the application area) in the 19th century, Coochin Coochin Station (south of the application area) and as living in places including Tweed Valley, Nerang River, Southport, Logan River, the MacPherson Ranges, Warwick and Allora (I understand these locations are south and south-west of the application area) — see for instance, report dated 3 December 2013 at [50], [51] and Appendix pp 99 and 120.
- He is also reported to have visited family at Stone Gully (which I understand to be outside and west of the application area) — report dated 3 December 2013 at [42].
- Photos of Bungaree were taken at Moreton Bay and at Boonah — at Appendix pp 125 and 137.
- He died at Tweed Heads in August 1943 at age 84 and was buried at Fingal, near Tweed Heads (these locations are in New South Wales and therefore south of the application area) — at [37] and [44].
- His country possibly went from south Ipswich to Rathdowney, Boonah, Beaudesert, Palin Creek (Mt Lindsay and Mt Barney), the range that cuts off towards Gold Coast, and Riley's Plateau/Lamington (I understand these locations to be outside and south of the application area) — at Appendix 99.

[139] The factual basis contains the following relevant information about apical ancestors Lizzie Sandy and William Mitchell:

- William Mitchell was born around 1861 at Tamrookin station (south of the application area) — affidavit of [name 20 deleted] of 25 November 2013 at Annexure RM-SM and report dated 3 December 2013 at Appendix 107. He died in 1911 at Beaudesert and was buried at a cattle station there — at Appendix 107.
- Lizzie Sandy was born sometime prior to 1891, most likely in the 1870s at Hillview — affidavit of [name 20 deleted] at Annexure RM-SM and report dated 3 December 2013 at [78]. In 1912, she married her second husband at Hillview.
- Although she was born at Hillview, she belonged to the camp at Tabooba, Upper Logan (outside and south of the application area), where she had once stayed and where she had friends — at [29] and [77].
- Lizzie Sandy and William Mitchell had six or eight children, some of whom were born at Beaudesert and one died at Brisbane — at [77] and file note of 24 February 2012 by a research officer of Link-Up (Qld) Aboriginal Corporation at 3. One of her grandchildren died in South Brisbane — see file note of 24 February 2014 at 1.
- She is reported to have been a cook at Coochin Coochin — report dated 3 December 2013 at Appendix 104.
- In 1925, she died at Boonah Hospital under the name Lizzie [name 21 deleted] — at [78].

[140] Apical ancestor Lizzie Sandy/Brown had a son, Billy Brown, who was born at Tweed River, NSW or Queensland most likely around 1875 — at [83]. Her son was described as a native of Logan district aged 30 in the later part of 1903 — at [79]. Billy Brown had a child with Topsy Nerang in about 1889 and they married at Deebing Creek in about 1895 — affidavit of [name 8 deleted] affirmed 23 May 2012 at [2] and [3]; and report dated 3 December 2013 at [83]. Billy Brown was associated with Ipswich and died at Beaudesert in 1942 — at [83]. Topsy Nerang was born in Cressbrook (outside and north of the application area) around 1872 or 1865 to parents Kitty and [name 22 deleted] and she was described as a native of Esk (outside and northwest of the application area) — at [82] and [83]. The anthropological material states that Kitty and Topsy Nerang are likely to be the same as Kitty Delaney and her daughter Topsy, with Kitty Delaney reported as having lived at Kobble Creek (within the far north-western region of the application area) and died in 1922 — at [85].

[141] Apical ancestor Kitty was married to [name 23 deleted] and had two daughters, Molly who was married to Ted Myers from the Brisbane District, and [name 24 deleted]. In 1882, Kitty and [name 23 deleted] were reported as being in Cleveland — at [129]. The daughter of Molly and Ted Myers was born at Ipswich — affidavit of [name 25 deleted] affirmed 1 August 2013 at Annexure DD-TM. They lived at Jimbour station (outside and north-west of the application area) and then Molly was removed to Taroom mission (further north-west of the application area) around 1911. In 1927, the family was then moved to Woorabinda (further north of the application area).

Information regarding the current association of the native title claim group with the area

[142] Schedule F contains the following assertions:

- Many current members of the claim group have lived in and around the application area for parts or all of their lives.
- Many claim group members have, in accordance with their traditional laws and customs, engaged in camping and living a traditional way of life, fishing, hunting, gathering traditional resources from the claim area, and teaching subsequent generations about traditional language, spiritual/religious stories and significant sites within and surrounding the claim area.

[143] The points of claim states that continued connection of the native title claim group to country includes acknowledgement and observance of the traditional laws and customs; knowledge of any dreaming tracks, stories and ceremonies concerning the claim area; and the current use and enjoyment of the claim area involving:

(i) meetings and gatherings; picnic; camp;

(ii) fish; collect and gather food;

(iii) swim/wash in the creeks and rivers;

(iv) use natural resources;

(v) protect heritage sites;

(vi) conduct ceremonies, festivals; dance; sing

(vii) acknowledgement/welcome to country;

(viii) share and care in the management of our country and business — at [10].

[144] The report dated 3 December 2013 states that:

- 'the residential histories set out in the witness statements contain evidence of the claimants' knowledge and use of [the Yugara/YUgarapul] language, and of their physical connections with the Brisbane River catchment, including the region between the Pine and Logan rivers and the [application area]' — at [12].
- 'the available linguistic and ethno-historical material show an association between this language, and its speakers with the Brisbane River catchment, including the region between the Pine and Logan rivers and the [application area,] that has prevailed without interruption since the time of practical sovereignty [in] this region (about or shortly after 1823) — at [13].

[145] The applicant has also provided affidavits which contain information relevant to the current association of the claim group to the application area. For instance, [name 25 deleted] says that he is a descendant of Kitty and her daughter Molly — affidavit of 10 May 2013 at [5]. He was born in Brisbane and lived and went to a school near the southern boundary — [2]. He has lived in the central region for the last ten years and has also lived in locations outside but proximate to the eastern boundary — at [2] and [37]. When he was young, they took regular trips around Brisbane and Ipswich — at [28]. When his father was young, he would travel with his family to Brisbane and Ipswich to meet up with kin, some of whom continue to live there — at [10]. He and his father have both worked in the mid-eastern region — at [31]. He says that an area on the southern boundary was an important area to the 'old people' — at [23]. That area has water holes and little creeks which were important sources of food, and is where his older sister taught him to

catch yabbies in the creeks and where they would spend a lot of time in the bush. 'Sometimes we would go hunting, … catch birds and gather food, berries and nuts' — at [23]. He says that they would also collect 'seeds, sticks, bark and rocks to make things like spears, axes, clubs and flint knives' — at [23]. His father taught him how to fish and they 'had regular days out fishing and picnicking at [locations proximate to the eastern boundary of the application area as well as within the eastern region]' — at [24].

[146] [Name 20 deleted] says that his father's parents were ancestors William Mitchell and Lizzie Sandy — affidavit of 25 November 2013 at [3]. He lived in the central region from the age of five for a period up to two years — at [8]. He then lived with his family in the north-eastern region and would swim in the Pine River adjacent to the mid-northern boundary — at [9] and [10]. He then lived with his family on the eastern boundary where they would go fishing — at [12] and [17]. He says he caught mud crabs on the beach side on the north-eastern boundary — at [15]. In the early 1970s, he moved to the central region with his family, where they lived at various locations — at [21].

[147] [Name 12 deleted]says that she is a descendant of Bilin and his first wife Nellie, and Bungaree and Mary Ann Sandy — affidavit affirmed 8 May 2012 at [1]. Growing up, she has lived in areas within the central region of the application area and proximate to the south-eastern boundary — at [3], [4] and [10]. She attended school and learnt tribal ways, such as fishing, from her grandmother whilst she lived proximate to the south-eastern boundary— at [3] and [4]. On a number of occasions in the early 1960s, her grandmother would take them to Brisbane to visit relatives where they would tell stories and dance — at [8]. She was told by her elders that in the past her predecessors swam across the Brisbane River — at [9].

[148] [Name 15 deleted] says that 'some of [her] relatives still live in the area of our traditional hunting grounds [in the central region], also [in the south-eastern and southern regions]' — affidavit of 31 May 2013 at [26].

[149] [Name 26 deleted] says that her grandmother, the granddaughter of apical ancestors Alexander Sandy and Mary Ann Mitchell, was born proximate to the south-western boundary — affidavit of 22 November 2013 at [3] to [5]. Her aunty would take her walking in the bush [in the central region] and teach her about different plants — at [18]. She says that for the past 30 years, she has lived in, or near, a location proximate to the south-western boundary — at [22]. Her great grandfather told her about her country which started from a spring near Mount Kilcoy (far north-west of the application area) all the way down to the ocean to the land near Moreton Bay — at [28]. The land encompassed the Dividing, Border Ranges and Hinterland Ranges (I understand these ranges to be located outside and south and west of the application area) — at [28].

[150] [Name 11 deleted] says he is a descendant of Bilin and his first wife Nellie, and Bungaree and Mary Ann Sandy — affidavit of 28 May 2013 at [2]. His dad and his parents were born in areas south of the application area — at [14]. His grandmother was born proximate to the south-western boundary and was married south of the application area, where his parents were also married — at [15] and [16]. He lived with his family in various locations in the central region of the application area and he would hunt in the bush there for bush tucker and fish in the Brisbane River — at [33], [51] and [63]. His father would take him to the north-eastern boundary to fish, hunt, swim and gather shellfish — at [54]. His grandparents lived in the 1950s in the mid-southern region and his grandfather died there in the late 1950s — at [37]. His grandmother, who

is the granddaughter of ancestors Bilin and Nellie, then went to live at a different location in the mid-southern region, where he lived with her for a period — at [4] and [41]. Other relatives also lived in that area — at [43]. [Name 11 deleted] says that he was married and lived in the central region, and has also lived proximate to the south-western boundary — at [19] and [20]. His children were born in the central region and his father died there — at [19] and [20]. He lived in the north-eastern region with his wife and children in the 1970s and they still go there to hunt and fish — at [59]. He says that he learnt from his elders, including his parents, grandparents, aunts and uncles, about his immediate blood relatives, the language and the significance of the clan or tribe name — at [9] and [10]. He was told that 'Bungaree's traditional family lineage leads right back to the Botanical Gardens area in Brisbane' — at [12]. His father told him that the 'traditional area of Sandgate and Shorncliffe had to change the name to Moora when the sea waters around the area rose up' — at [55]. His father told him that 'Murrumba means good place' and that their 'great relative King Sandy' lived at Murrumba Downs (outside but proximate to the north-eastern boundary) — at [56]. His father showed him a location in the north-eastern region and told him that there was a traditional burial ground near there. This was also 'the place of … a traditional medicine plant' — at [57]. His father told him that another area in the north-eastern region 'was a learning place and a waterhole (billabong) and in close proximity were a number of bora rings' which they visited and they continue to visit nearby areas to hunt and fish — at [61]. He says that he has 'seen and heard people from different family descent lines connect more strongly to particular land holding areas' and that many of his 'relatives from the Jackey and Bungaree/Sandy descent lines are buried' in the central and south-eastern regions of the application area as well as in locations south of the application area, but within the wider Yugara/YUgarapul territory — at [67]. [Name 11 deleted] says that his ancestral totem area is in the southeast region and he lives proximate to this area — affidavit of 8 May 2012 at [7].

[151] In his affidavit affirmed 20 April 2013, [name 27 deleted] says that he is an elder who is a descendant of Kitty and her daughter Molly Myers and husband Ted Myers — at [20], [4] and [5]. His maternal grandmother was the daughter of Molly and Ted Myers and she was born proximate to the south-western boundary — at [4]. She told him that they would travel regularly to this area and to Brisbane to visit kin — at [7]. He says he was born north of the application area and was raised by his grandmothers — at [11]. His grandmother would take groups of young people to go camping at a river north of the application area — at [12]. They were taught about the environment, kin, country, culture, traditions and were shown how to track animals, hunt, fish and make tools and weapons — at [12]. He says his family would take regular trips to the central region — at [13]. He has visited places his elders were connected to such as areas north and west of the application area — at [14]. They would camp proximate to the mid-western boundary and visit family and friends proximate to the south-western boundary and stay with friends in the central region — at [15]. In the 1960s, he moved to the central region where he worked for about 12 years and where his children were born — at [16]. He has also lived in the mid-eastern region and in an area on the mid-southern boundary — at [16]. His children went to various schools in the central region and mid-southern region — at [20]. His eldest daughter has delivered cultural sessions and workshops all over Brisbane and regions south of the application area — at [21]. He refers to an area on the mid-southern boundary which was important to his predecessors — at [38]. He says that he taught his eldest son how to fish in areas proximate to the western, south-western and mid-eastern boundaries — at [40]. He knows about his totems, the

story about the sand goanna and the one associated with the range which is located far west of the application area — at [31], [42] and [44].

Consideration

[152] I consider that the factual basis material clearly identifies the native title claim group and acknowledges the relationship the Yugara/YUgarapul people have with their country. The factual basis reflects the claim group members' knowledge of the boundaries of the wider Yugara/YUgarapul country and locations within those boundaries, sites of significance and ancestral lands that belong to the different Yugara/YUgarapul descent groups.

[153] There is, in my view, a factual basis that goes to 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]. The asserted facts indicate that the region was occupied prior to the arrival of European settlers in the area. The factual basis also contains references to the presence of the apical ancestors within the application area prior to the date of sustained European contact with Yugara/YUgarapul country, which I understand to have occurred around the early to mid 1820s. The asserted facts indicate that apical ancestor Bilin was born in the early 1800s and King Sandy was born around 1825, which suggests that those apical ancestors, and their predecessors, would have been present in the application area prior to sustained European contact. The factual basis also indicates that apical ancestor Bungaree was born at a camp in Brisbane area around, from my recounting of the history, the mid-1800s. The asserted facts indicate that ancestor King Sandy died in the application area around 1900. There are also references to the descendants of the apical ancestors, including their children and grandchildren, being present on the application area. For instance, the grandson of apical ancestors William Mitchell and Lizzie Sandy lived with his family and visited areas in the north-eastern, northern, central and eastern regions of the application area. Subsequent generations of claim group families have knowledge of the boundaries of Yugara/YUgarapul country, including that the application area is part of Yugara/YUgarapul traditional lands, and they have all been present on the application area at various times. Current claimants continue to live in and visit various locations of the application area and some have been buried in the application area.

[154] In my view, the factual basis provides information that is sufficient to support the assertion that the ancestors were associated, both spiritually and physically, with the application area since prior to European contact. It is also, in my view, sufficient to support the assertion that this association has been continued by their descendants through to the current members of the claim group. The factual basis demonstrates the intergenerational transfer of knowledge about the boundaries of Yugara/YUgarapul country by telling stories about country, of the dreamtime, totems and their ancestors, and by showing sacred places and performing ceremonies and other traditional practices — see also my reasons at s 190B(5)(b) below. This, in my view, reveals a continuing association with the area covered by the application. I consider that the factual basis is sufficient to support the assertion that there is a continued physical and spiritual connection to the application area.

[155] For the purposes of s 190B(5)(a), I must also be satisfied that there is sufficient factual material to support the assertion of an association between the group and the whole area — see *Gudjala 2007* at [52]. In my view, the material predominately provides information that is sufficient to indicate an association, by the claim group and its predecessors, with the mid-

northern, north-eastern, central and southern regions of the application area. For instance, I understand the factual basis to contain information that the apical ancestors identified in Schedule A to be associated with those areas and that the current claim group members, and their immediate predecessors, to either live in, visit or travel about areas located in those regions of the application area. In relation to the north-western region of the application area, the only specific references in the factual basis material are in relation to the predecessors' association with this region. In particular, there is a reference to the mother of Topsy who may have lived at Kobble Creek and a reference to Kerwalli King/Sandy who may have been associated with the North Pine region. I note, however, the anthropological material indicates that the claimants witness statements contain evidence of their physical connection to the application area and that this association has prevailed without interruption since the time of sustained European contact in the application area — see report dated 3 December 2013. I infer from this material that there is sufficient information to support the assertion that the predecessors were associated with the whole of the application area and this association has been continued through the generations to the current members of the claim group. From the above information, I consider that the factual basis is sufficient to support the assertion of an association, 'between the whole group and the area' — see *Gudjala 2007* at [52].

[156] Given the information before me, I am **satisfied** that the factual basis provided is sufficient to support the assertion described by s 190B(5)(a).

Reasons for s 190B(5)(b)

The requirements of s 190B(5)(b)

[157] The definition of 'native title rights and interests' in s 223(1) provides at subsection (a) that those rights and interests must be 'possessed under the traditional laws acknowledged, and traditional customs observed,' by the native title holders. Noting the similar wording between this provision and the assertion at s 190B(5)(b), I consider that it is appropriate to apply s 190B(5)(b) in light of the case law regarding the definition of 'native title rights and interests' in s 223(1). In that regard, I have taken into consideration the observations of the High Court in *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] 214 CLR 422; HCA 58 (*Yorta Yorta*) about the meaning of the word 'traditional' — see *Gudjala 2007* at [26] and [62] to [66].

[158] In light of the findings of Dowsett J in *Gudjala 2007* and the High Court in *Yorta Yorta*, I consider that a law or custom is 'traditional' where:

- 'the origins of the content of the law or custom concerned are to be found in the normative rules' of a society that existed prior to sovereignty, where the society consists of a body of persons united in and by its acknowledgement and observance of a body of law and customs — *Yorta Yorta* at [46] and [49];
- the 'normative system under which the rights and interests are possessed (the traditional laws and customs) is a system that has had a continuous existence and vitality since sovereignty' — at [47];
- the law or custom has been passed from generation to generation of a society, but not merely by word of mouth — at [46] and [79];

- those laws and customs have been acknowledged and observed without substantial interruption since sovereignty, having been passed down the generations to the claim group — at [87].

[159] I note that in *Gudjala 2009,* Dowsett J also discussed some of the factors that may guide the Registrar, or her delegate, in assessing the asserted factual basis for the purposes of s 190B(5)(b), including:

- that the factual basis demonstrate the existence of a pre-sovereignty society and identify the persons who acknowledged and observed the laws and customs of the pre-sovereignty society — at [37] and [52];
- that if descent from named ancestors is the basis of membership to the group, that the factual basis demonstrate some relationship between those ancestral persons and the pre-sovereignty society from which the laws and customs are derived — at [40]; and
- that the factual basis contain an explanation as to how the current laws and customs of the claim group are traditional (that is laws and customs of a pre-sovereignty society relating to rights and interests in land and waters). Further, the mere assertion that current laws and customs of a native title claim group are traditional because they derive from a pre-sovereignty society from which the claim group is said to be descended, is not a sufficient factual basis for the purposes of s 190B(5)(b) — at [29], [54], and [69].

Information provided in support of the assertion at s 190B(5)(b)

[160] Schedule F states that:

- At or around the time of sovereignty, there existed 'a body of people known variously as the Yugara/Yugarapul (or various derivations thereof) people' who 'inhabited and conducted traditional activities on an area of land in and around the claim area';
- 'The same body of people [continue] to inhabit and claim interests in the claim area'; and
- The claim group has traditional laws and customs that regulate:
    - The rights of the native title claim group members to regulate access to and use of land and waters within the claim area;
    - The rights of the native title claim group members in respect of natural resources within the claim area; and
    - The appropriateness of social and cultural behaviour of claim group members …

[161] The points of claim provides the following information about the 'original society' (which I understand to mean the pre-sovereignty society):

- The subgroups of the society identified in the early to mid-1800s were:
    - South Brisbane/Logan tribe (hunting grounds extended from the Dividing Range to the Logan River); 'Girkham/Kirkham' (lived north of the Brisbane River); 'Gugingin' (the [text deleted]); 'Logan blacks' (from Brisbane); 'Yaggapal' (referred to people who spoke this language) and 'Warrilcum' (people of the creeks);
    - Tingalpa tribe (ties with Bilinba, Jackey Jackey and King Sandy);

- 'Brisbane tribe' (ties to King Sandy), 'Brisbane River catchment' (reference to Bungaree being at Rosewood Scrub in 1847), 'Brisbane blacks' (people from Brisbane);
- Nundah tribe;
- Pine River tribe — at [2].

- The criteria for membership to the society was a body of persons who 'were related biologically or by kinship belonging to the country (land and waters)', and who 'acknowledged and observed the Original society's laws and customs' — at [2].
- 'Laws and/or customs were included in every part of traditional life – funerals, deaths, births, dressing animals, kindred relationships, trading, ceremonies, travelling, food, campsites, chain of command, hunting & gathering, seasons & climate, animals, environment, lore, marriages, special places, passing knowledge by teaching the children and grandchildren' — at [2].
- The land and waters of the original society included:
  - 'Yugambeh – Bundjalung subgroups including: Wangerr Burra; Ngarangwal; and Githabul country' in the south;
  - 'Gureng Gureng – South of Gladstone, Bundaberg (Bunda tribe); Gubbi Gubbi and Wakka Wakka' in the north;
  - Yuggara or YUgarapul language speaking country in the middle;
  - 'Quandamooka/Moreton Bay Islands – Moreton Island, Stradbroke Island' in the east; and
  - 'Wakka Wakka' in the west — at [2].

[162] In relation to the connection of the native title claim group to the original society, the points of claim provides that:

> (a) The descendants of traditional tribes from the Original Society are referred to in the Current society with names such as "mob" or "people" from a regional area mostly identified by language based names with sub-groups who may identify with a place or area name.
>
> (b) The Old people passed on knowledge about family connections around the campfires. In the Current society family connections and kinship relationships are identified through various means including the customary way of greeting all family related Elders and Elders reference to each other with names meaning "sister", "brother", "cousin" at gatherings or when the Elders meet.
>
> (c) The families from the Current society may be connected to more than one sub-group area from different descent lines from the Original society. The connection to country is physical, cultural and spiritual abiding the law and customs.
>
> (d) The descendants of the Original society have knowledge passed on by the Old people that connect them to the last known tribal people of the Original society. Some of the knowledge of the Old people and observations by others of the people from the Original society were recorded which included written documents — at [4].

[163] The FAIRA report states that:

- The language groups that have been identified in the Brisbane river basin region from linguistic, ethnographic and historical records are the Yuggera/Yaggara/Yagara (now called Yugara/YUgarapul), the Wakawaka, the Cateebal/Gitabal and the Yu-gum-bir/Yukambe/Yugambeh-Bundjalung — at [2.9]. Within those language groups exist dialect groups and probable local landholding groups. The descendants of the Yagara speaking groups are together known as the 'Yugerra Language Group' — at [2.9].
- The native title rights and interests of the Yugerra Language Group include:
  - The right to act and speak for and on behalf of the country and its resources — at [5.1.1];
  - The right to inherit traditional interests in country according to their customs as these have developed — at [5.1.2];
  - The right to participate in their culture in its classical and developed forms, including using and maintaining the country to protect and nurture its people — at [5.1.3];
  - The right to participate in negotiations about the access of those who are not affiliated with the Traditional Owners to their cultural capital and resources — at [5.1.4];
  - The right to uphold spiritual connections to country — at [5.1.5]; and
  - The right to make decisions about the use of and/or management of the country and/or resources associated with the country, including its sacred sites and its natural phenomena — at [5.1.6].

[164] The report dated 3 December 2013 provides that:

- The Yugara/YUgarapul Language Group 'is a group whose members claim ownership of a particular language, irrespective of whether or not they speak it, on the basis of birth right' — at [3]. It comprises several subgroups including the coastal group (from Pine River to lower Logan River catchments), upper Brisbane River catchment group (including the Lockyer Valley and Ipswich), the North Stradbroke Island/Quandamooka sub-set, and the Yugara/YUgarapul and Yugambeh Peoples (the Yugambeh People are associated with the Albert River and Wangerr Burra) — at [14].
- Ethno-historical records indicate that 'there was a dynamic system of local organisation, and that the large group Chepara, originally the "*only tribe on this coast*", had sub-divided into … groups … with the name of the older group (Chepara) persisting at that point in time to distinguish one of the newly formed divisions' — at [33]. The Yugara/YUgarapul claim area covers a portion of the area associated with the Chepara and other tribes — at [21].
- Claim members speak of being told by their predecessors about the dreamtime in the wider Yugara/YUgarapul country. For instance, one claimant says that he learnt from his mother about a dreamtime story which starts far south of the application area [text deleted] — at [46].
- The current members claim ownership of the Yugara/YUgarapul language on the basis of evidence that the language was spoken by their direct descendants and that the claimants still have knowledge of and continue to use the language — at [12].

- There are references to apical ancestors observing religious practices. For instance, Bungaree had powers to heal and had high ritual status — at [49].
- Since sustained European contact, 'the principal basis for obtaining proprietary interests in land is through filiation', where filiation 'is a recognised rights-conferring connection to a kin group based on the fact of being recognised as the offspring of a member of the group' — at [115]. In addition:

  > The holders of such interests have rights to speak for an ancestor's country, and economic and management rights to that particular ancestor's country and responsibilities to protect its sites and resources from those who have no such rights. Under the system of laws and customs …, the descendants of an ancestor who was a members of a land-holding group associated with this region at the time of effective sovereignty are entitled to assert such rights. Also, … in the circumstances where there are no living descendants of a particular ancestor, the proprietary interests in that particular ancestor's land may be acquired through succession. [Succession can be based on kinship connections between the former, current and future holders of property (which occurs in relation to property that is personally co-managed or acquired and which can include spouses, children, personal names, language, responsibility for sites and ceremonies and rights to country) and the other based on negotiation between those who hold property and those who wish to hold this property (such as hunting and foraging areas and their sites, their land and water resources, and high level executive positions in the socio-economic and religious spheres)] — at [115].
- Descendants of the Yugara/YUgarapul ancestors assert a right to speak for country, where '[i]t is customary for the most senior member of a descent group to exercise the right to speak for and about the group's ancestor and that ancestor's country and this senior person may, in some circumstances, give permission for another member of the descent group to speak for and behalf of the group' — at [116].

[165] The notes prepared by [anthropologist name deleted], 'Aspects of the pre- and early post-sovereignty society of the Moreton Bay region of southeast Queensland' (March 2014), provides that:

- Early records report the presence of named territorial groups in and around the coastal region covered by the application — at [1].
- At the time of sustained European contact, a system of local group organisation prevailed in the coastal region from the North Pine to the Logan River — at [16].
- Within this coastal region, '[e]ach tribe had its own boundary, which was well known, and none went to hunt, etc. on another's property without an invitation, unless they knew they would be welcome … all spoke the same language, but of course, was divided up into different lots, who belonged some to the North Pine, some to Brisbane, and so on. These lots had their own little boundaries. Thought the land belonged to the whole tribe, the head men often spoke of it as theirs' — at [2] and [3].
- The local groups had headmen or chieftains who were assisted by councils of elders, indicating a hierarchical system of governance and decision making — at [25], [39] and [40]. The position of chief passed from father to son — at [25].
- Members of landholding groups were recruited by patrifiliation and there was also patrilineal inheritance of property — at [30] to [40].

- The local groups followed a system of social classification and observed laws about marriage — at [43].

[166] A document titled 'Some notes on the manners and customs of the Aborigines of South East Queensland' provides information about the region around the late 1800s and/or early 1900s:

- The predecessors practiced initiation ceremonies and the 'rite of passing from youth to manhood' — at [88].
- Women were not permitted to witness the ceremony on pain of death — at [89].
- Bora rings were used for these ceremonies and other rings were used for corroborees — at [89]. One bora ring was said to be located outside but proximate to the north-western boundary, which has been carefully preserved by the owners of the land on which it is situated — at [89]. Another is situated near the north-eastern boundary — at [89].
- The predecessors believed in supernatural forces, such as a death could have been 'willed' by a personal enemy — at [90]. In addition, pointing a sharpened bone could cause the victim destruction and there is 'sufficient evidence' that many death have been caused by this means — at [91].
- Particular trees located in the upper Brisbane River region were considered to be totems by the predecessors — at [91].
- The predecessors told stories where 'they likened the actions of birds and animals, reptiles and fish to those of human beings' — at [93].

[167] In their affidavits, the claimants detail their knowledge of their traditional laws and customs. For instance, [name 27 deleted] says that:

- There are strict kinship laws in place, for instance you should not marry the same totem, wrong skin or bloodline — affidavit of 20 April 2013 at [27].
- The claim group has traditional adoption practices where children are raised as their own and taught culture — at [28].
- Members can be 'expelled and shunned' by the group — at [29].
- Decisions are made in consultation amongst elders and if rules are broken you are punished, such as by being 'smoked' which is a process of cleansing the body, spirit and mind and is part of their ceremonial processes 'sometimes used to welcome people onto country and or leaving country as well as for healing, opening up to spirit' — at [30].
- His totems are the scrub turkey and sand goanna and he teaches his children to understand their connection to their totems, namely 'that the animals and mother earth are our teachers, healers and guides' — at [31]. His grandmother told him that he needs to protect his totems and not kill, eat or harm them. His father told him that people from other tribes who have the same totem are his tribal brothers and sisters and if they are older, he must call them aunty or uncle. He says this is part of their kinship system, which helps them to stay connected — at [31].
- His grandmother was a medicine woman and would speak to birds in language. She taught him 'how to tune into and speak to the spirit of the land' and he has taught his children this ability as well — at [32].

- He seeks permission, protection and guidance from ancestral spirits and elders to hunt, fish and gather. His elders taught him where and when to hunt and gather fruits, seeds and berries. He says he communicates 'with the spirit of the plants, they tell [them] how to care for them and how [they] can use them' — at [33].
- His family continues to gather and prepare bush tucker using traditional patterns and practices with modern elements. He has taught his eldest children who have taught his other children — at [34].
- He has taught his children how to fish and hunt and they have taught the younger children — at [39] to [41]. He has also taught his children and grandchildren how to locate, identify, gather, prepare, cook and administer bush plants and tucker — at [35]. He taught his eldest children 'to thank the spirit of the animals, plants and trees and how to practice and acknowledge reciprocal relationship, protocols and practices of [their] ancestors in the presence of spiritual ancestors so they too learn the ways of the old people' — at [36].
- He has been shown pathways and camp grounds by his grandparents. He speaks of knowing a song and dance, which his son continues to perform and teach — at [37].
- His grandmother, the granddaughter of Molly and Ted Myers, told him 'when the family camped in the old days they moved on with the seasons, taking only what was needed and helping the strong animals to thrive' — at [50]. He says that his family still do the same today, they 'don't overfish or hunt and [they] move camp visiting the places [where their] grandparents camped' — at [50].
- He knows the story about the sand goanna and the warrior's face that can be seen on the ranges that are west of the application area — at [42] and [44]. He has shared these stories with his children and has shown them where the warrior rests — at [45].
- He and his uncles have taught his sons how to make traditional tools and weapons and his daughter has knowledge of plants and their usage — at [46]. His daughter is also a weaver, healer and a medicine woman and is responsible for aspects of women's knowledge, culture and business. She uses knowledge passed on to her from her grandmothers and passes these traditions to children through storytelling and traditional instruction methods to children — at [48].

[168] I note that the information extracted in my reasons for s 190B(5)(a) is also relevant to my consideration of the requirement at subsection (b).

Consideration

[169] In my view, the factual basis identifies a relevant pre-sovereignty society in the application area which consisted of the predecessors of the native title claim group who acknowledged and observed a body of laws and customs. The society encompasses a wide area of land and has a dynamic system of local organisation such that land is held at a localised level by various subgroups or tribes, including the Yugara/YUgarapul people. I understand that membership to the society is through descent or by kinship. The factual basis provides that the pre-sovereignty society acknowledged and observed a body of laws and customs regarding, amongst other things, rights to country, system of social classification and organisation with rules about kinship

and marriage, belief in totems, and practices such as burial and initiation rites, hunting, fishing and gathering resources for various purposes.

[170] In my view, the asserted facts indicate that the Yugara/YUgarapul people belong to the pre-sovereignty society. I understand from the factual basis the Yugara/YUgarapul country, which includes the application area, is situated within this society and their traditional laws and customs are said to be derived from it. In my view, within this society, the rights and interests in land that are asserted to be held by the Yugara/YUgarapul people are based on regionally held laws and customs. Relevant to this proposition, I note the observations of Lindgren J in *Harrington-Smith on behalf of the Wongatha People v State of Western Australia (No 5)* [2003] FCA 218 that:

> [i]t is conceivable that the traditional laws and customs under which the rights and interests claimed are held might, in whole or in part, be also traditional laws and customs of a wider population, *without that wider population being a part of the claim group* [emphasis added] — at [53].

[171] In my view, the factual basis demonstrates that at least some of the apical ancestors were living within Yugara/YUgarapul country, or were amongst the generation born to those who were living or present in Yugara/YUgarapul country, at the time of European contact. In this sense, I understand that the information supports the assertion that at least some of the apical ancestors were born into, or were descendants of the persons who were part of, the Yugara/YUgarapul claim group of the society that existed at and prior to European contact — see *Gudjala 2009* at [55] and also my reasons at s. 190B(5)(a) above. From the anthropological material and affidavits, I understand the current claim members are descendants of these ancestors.

[172] I am also of the view that there is information contained within the factual basis material from which the current laws and customs can be compared with those that are asserted to have existed at sovereignty. Particularly pertinent are facts relating to the continued observance of a pre-contact system of landholding which defines a boundary of country on the basis that members are descendants of the Yugara/YUgarapul people. These ancestral landholdings confer proprietary rights on the basis of cognatic ties, in particular being an 'offspring of a member of the group' — see report dated 3 December 2013. In relation to a particular ancestor's country, this system of landholding gives rights to speak for country, economic and management rights, and responsibility to protect its sites and resources. The anthropological material indicates that the descendants of the apical ancestors are entitled to assert such rights or where there are no descendants, the rights can be acquired through succession. I consider the factual basis material shows that current members of the claim group have knowledge of the areas their predecessors were associated with and have tried to maintain a connection to those places. For instance, apical ancestors Kitty and Ted and Molly Myers are asserted to be associated with the Brisbane area and a descendant of these apical ancestors, [name 25 deleted], says he was born, lived in and has travelled this and the surrounding areas. [Name 11 deleted] says that his relatives from the Bilin and Bungaree descent lines have been buried in the ancestral areas of these apical ancestors — see my reasons at s 190B(5)(a) above. Current claimants also have knowledge of, and continue to visit, significant sites on the application area, such as learning places, waterholes and bora rings.

[173] The factual basis also contains some information which speaks to the way the claim group continues to speak and preserve their language, and that they possess knowledge of traditional songs and dances, rights to country, and stories about the dreamtime, the sand goanna and the

geography of their country. The factual basis also speaks to the group following a kinship system that prescribes rules about marriage and modes of behaviour, and that the group perform traditional practices such as hunting, fishing, gathering natural resources for various purposes such as to use as medicine and making traditional tools and weapons — see also my reasons at s 190B(5)(a) above. The factual basis reveals that claim group members have knowledge of traditional hunting grounds and of water holes and creeks which were important sources of food for their predecessors. The asserted facts indicate that current members continue to believe in totems and traditional healing and medicinal practices. The claimants continue to talk to the spirits of their ancestors on country to seek permission, protection and guidance to hunt, fish and gather and they are also able to speak to birds and the spirit of the land. There are also references to claimants continuing to practice and acknowledge ceremonial processes, such as smoking, and reciprocal relationship, protocols and practices of their ancestors in the presence of spiritual ancestors.

[174] The factual basis, in my view, is sufficient to support the assertion that the relevant laws and customs of the society at pre-contact, have been passed down through the generations to the current claim group, and have been acknowledged and observed by them without substantial interruption. I understand that knowledge of the laws and customs is passed down the generations to the current claimants through modes of oral transmissions, such as being told stories, and by traditional instruction and common practice. The younger generations are taught by their parents, grandparents, aunts, uncles and siblings, which in my view reveals a continuing practice of teaching laws and customs to descendants. The factual basis, in my view, is also sufficient to support the assertion that the apical ancestors practiced these modes of teachings. For instance, [name 27 deleted] refers to learning from his grandmother who was the granddaughter of ancestors Molly and Ted Myers. His grandmother, who was a medicine woman and could speak to birds, taught him how to 'tune into and speak to the spirit of the land' and he has taught this to his own children. Given that the laws and customs have been passed between a few generations from the apical ancestors to the current claimants, I infer that they are relatively unchanged from those acknowledged and observed by their predecessors at the time of sustained European contact. It follows that, in my view, the laws and customs currently observed and acknowledged are 'traditional' in the *Yorta Yorta* sense as they derive from a society that existed at the time of European contact.

[175] Given the above, I am **satisfied** that the factual basis provided is sufficient to support the assertion at s 190B(5)(b).

Reasons for s 190B(5)(c)

[176] This condition 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 in accordance with their traditional laws and customs.

[177] In *Martin*, French J held that:

> [u]nder s 190B(5)(c) the delegate had to be satisfied that there was a factual basis supporting the assertion that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs. This is plainly a reference to the traditional laws and customs which answer the description set out in par (b) of s 190B(5) — at [29].

[178] Accordingly, meeting the requirements of this condition relies on whether there is a sufficient factual basis to support the assertion at s 190B(5)(b) that there exist traditional laws and customs which give rise to the claimed native title rights and interests. In my view, the assertion at s 190B(5)(c) relates to the continued holding of native title through the continued observance of the traditional laws and customs of the group.

[179] 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:

> [c]lear 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 — at [33].

Consideration

[180] There is, in my view, information within the factual basis material that goes to explaining the transmission and continuity of the native title rights and interests held in the application area in accordance with relevant traditional laws and customs.

[181] The affidavit material provides references to the predecessors telling stories and teaching practices to the younger generation. For instance, [name 27 deleted] says that his grandmother, who was a medicine woman and could speak to birds, taught him how to 'tune into and speak to the spirit of the land', which he has taught to his own children. His grandmother and father taught him about his totems and the kinship system. He was taught by his elders where and when to hunt, fish and gather and prepare bush tucker and he has taught this to his children. He knows the story about the sand goanna and the warrior's face which he has shared with his children. He and his uncles have taught his sons how to make traditional tools and weapons and his daughter has knowledge of plants and their usage, and is a weaver, healer and a medicine woman. She is also responsible for aspects of women's knowledge, culture and business. She uses knowledge passed to her from her grandmothers and passes these traditions to children through storytelling and traditional instruction methods.

[182] In reaching my view in relation to this requirement, I have also considered my reasons in relation to s 190B(5)(b) and in particular that:

- the relevant pre-sovereignty society has been identified and some facts in relation to that society have been set out;
- there is some information pertaining to the acknowledgement and observance of laws and customs by previous generations of Yugara/YUgarapul People in relation to the application area;
- the factual basis was sufficient to support an assertion of a pre-sovereignty society acknowledging and observing a normative system.

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

Conclusion

[184] 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.

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

The nature of the task at s 190B(6)

[186] The requirements of this section are concerned with whether the native title rights and interests identified and claimed in this application can be prima facie established. Thus, 'if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis' — *Doepel* at [135]. Nonetheless, it does involve some 'measure' and 'weighing' of the factual basis and imposes 'a more onerous test to be applied to the individual rights and interests claimed' — at [126], [127] and [132].

[187] In *Gudjala 2007*, Dowsett J noted that the requirements of s 190B(6) are to be considered in light of the definition of 'native title rights and interests' at s 223(1) — at [85]. I must, therefore, consider whether, prima facie, the individual rights and interests claimed:

- exist under traditional laws and customs in relation to any of the land or waters in the application area;
- are native title rights and interests in relation to land or waters; and
- have not been extinguished over the whole of the application area.

[188] I also understand that the claimed native title rights and interests:

> must nonetheless be rights and interests possessed under the traditional laws acknowledged and the traditional customs observed by the peoples in question. Further, the connection which the peoples concerned have with the land or waters must be shown to be a connection by their traditional laws and customs. For the reasons given earlier, "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 — *Yorta Yorta* at [86], cited in *Gudjala 2007* at [86].

[189] I am therefore of the view that a claimed native title right and interest can be prima facie established if the factual basis is sufficient to demonstrate that they are possessed pursuant to the traditional laws and customs of the native title claim group.

[190] I note that the 'critical threshold question' for recognition of a native title right or interest under the Act 'is whether it is a right or interest "in relation to" land or waters' — *Western Australia v Ward* [2002] HCA 28 (*Ward HC*) per Kirby J at [577]. I also note that the phrase 'in relation to' is 'of wide import' — *Northern Territory of Australia v Alyawarr, Kaytetye, Wurumunga, Wakaya Native Title Claim Group* [2005] FCAFC 135 at [93]. Having examined the native title rights and interests set out in Attachment E of the application, I am of the opinion that they are, prima facie, rights or interests 'in relation to land or waters.'

[191] I also note that I consider that Schedule B and Attachment E of the application sufficiently address any issue of extinguishment, for the purpose of the test at s 190B(6).

[192] Before I consider the rights and interests claimed, I note that my reasons at s 190B(6) should be considered in conjunction with, and in addition to, my reasons and the material outlined at s 190B(5).

Rights prima facie established

1. The right to exclusive possession, occupation and use of the land

[193] The majority of the High Court in *Ward HC* considered that '[t]he expression "possession, occupation, use and enjoyment … to the exclusion of all others" is a composite expression directed to describing a particular measure of *control over access to land* [emphasis added]' — at [89]. The High Court further noted that the expression, collectively, conveys 'the assertion of rights of control over the land', which necessarily flow 'from that aspect of the relationship with land which is encapsulated in the assertion of a right to speak for country' — at [93].

[194] In *Griffiths v Northern Territory of Australia* [2007] FCAFC 178, the Full Court, whilst exploring the relevant requirements to proving that such exclusive rights are vested in a native title claim group, stated that:

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

[195] I also note the Full Court's observations in relation to control of access to country that:

> [i]f control of access to country flows from spiritual necessity because of the harm that "the country" will inflict upon unauthorised entry, that control can nevertheless support a characterisation of the native title rights and interests as exclusive. The relationship to country is essentially a "spiritual affair". It is also important to bear in mind that traditional law and custom, so far as it bore upon relationships with persons outside the relevant community at the time of sovereignty, would have been framed by reference to relations with indigenous people. The question of exclusivity depends upon the ability of the [native title holders] effectively to exclude from their country people not of their community. If, according to their traditional law and custom, spiritual sanctions are visited upon unauthorised entry and if they are the gatekeepers for the purpose of preventing such harm and avoiding injury to the country, then they have … an exclusive right of possession, use and occupation — at [127].

[196] I note that Attachment E defines the right to be claimed in relation to any area where there has been no previous extinguishment of native title, any area of natural water resources and the solid land beneath the water where the water is found not to be tidal, any areas affected by category C and D past and intermediate period acts, and/or s 47A reserves and s 47B vacant crown land covered by claimant applications.

[197] The above paragraphs point to the nature of this right in land and waters. In examining whether the claimants' material prima facie establishes its existence, I am of the view that this right materialises from traditional laws and customs that permit the native title claim group to exhibit control over all others in relation to access to the land and waters.

[198] The factual basis is such that it is asserted that at the time of sustained European contact, there existed an association between the Yugara/YUgarapul People and its land and waters — see my reasons at s 190B(5)(a).

[199] Early records indicate that a tribe could not enter another tribe's boundary without an invitation unless they knew they were welcome, such as if there was intermarriage between the groups — notes prepared by [anthropologist name deleted] dated March 2014 — at [2] and [3] and document titled 'Some notes on the manners and customs of the Aborigines of South East Queensland' at [99]. The 'trespass of one group upon the lands of another was an act of aggression' — at [99].

[200] The anthropological material provides that the descendants of the Yugara/YUgarapul ancestors assert a right to speak for country, where the most senior member of the descent group, unless permission is given to another member of the descent group, exercises the right to speak for and about their ancestor's country — report dated 3 December 2013 at [116].

[201] Current members of the claim group speak of being taught that permission must be sought before entering 'another tribe's country' — affidavit of [name 12 deleted] affirmed 30 May 2013 at [25].

[202] One claimant says that:

> Never pick up leaves, flowers, seed, stones from any area you do not know. The spirits of that place will be angry with you and … if you don't get sick someone you love dearly will.
>
> If you need to collect wood and rocks for a fire, speak to your Guardians first. Ask them if it's right to do so — affidavit of [name 26 deleted] of 22 November 2013 at [41] and [42].

[203] The claimants also speak of the necessity to seek permission, protection and guidance from ancestral spirits and elders to hunt, fish and gather — affidavit of [name 27 deleted] at [33].

[204] I am of the view that the factual basis material asserts that current members of the native title group maintain vast knowledge of their country. The knowledge of the laws and customs of the current members, as owners of their traditional land and waters, elicit that other people should seek permission to access their country. In my view, such control flows from a right to speak for country and a spiritual necessity to protect country from harm and from country harming others.

[205] I consider that this right is prima facie established.

2. The right to live on the land

3. The right to access land and waters in the claim area

[2] The claim group members speak of their regular use of country. Many members live within the application area or regularly access country to visit. The anthropological and affidavit material also indicates that the apical ancestors and other predecessors resided on or accessed the application area.

[206] It is my view that the factual basis material prima facie establishes that these rights are possessed pursuant to the traditional laws and customs of the native title claim group.

4. The right to maintain and protect sites of significance to the native title holders

[207] The asserted facts indicate that the bora rings within Yugara/YUgarapul country were 'carefully preserved' by the owners of country around the late 1800s or early 1900s — see document titled 'Some notes on the manners and customs of the Aborigines of South East Queensland' at [89]. There are references within the factual basis that current claim members consider special or sacred places need to be looked after — affidavit of [name 11 deleted] of 28 May 2013 at [46]; see also report dated 3 December 2013 at [115]. In my view, the factual basis material is sufficient to indicate that this right is one that is held under the laws and customs passed down through the generations to the claimants.

[208] I am satisfied that this right is prima facie established under the traditional laws and customs of the native title claim group.

5. The right to conduct social, religious and cultural activities within the claim area

[209] The factual basis material refers to various ceremonies including initiation and burial rituals and other cultural activities being performed in the Yugara/YUgarapul traditional country. For instance, there are references in the factual basis that the ancestors of the claim group went through traditional rites and were initiated. There are also references to the descendants of these ancestors participating in initiation ceremonies — affidavit of [name 11 deleted] of 28 May 2013 at [12] and [24]. The factual basis also speaks of the claim group performing other activities such as smoking ceremonies.

[210] I am of the view that this right is prima facie established pursuant to the traditional laws and customs of the native title claim group.

6. The right to harvest, fish, cultivate, grow and manage plants, timber, animals, birds and fish located within the claim area

8. The right to make things from plants, timber and animals located within the claim area;

12. The right to teach and pass on knowledge of the claimant group's traditional laws and customs pertaining to the area and knowledge of the places in the area

13. The right to learn about and acquire knowledge concerning the claimant group's traditional laws and customs pertaining to the area and knowledge of places in the area

[211] The factual basis material provides information about the predecessors and current members of the native title claim group hunting, fishing and gathering natural resources — see for instance document titled 'Some notes on the manners and customs of the Aborigines of South East Queensland' and affidavit of [name 27 deleted] of 20 April 2013. The claimants are taught by their elders traditional practices such as where and when to hunt, fish and gather fruits, seeds and berries. They are taught to practice and acknowledge reciprocal relationship, protocols and practices of their ancestors. The claimants hunt and fish porcupine, kangaroo, mussels, oysters, crabs and yams. They collect natural resources such as seeds, sticks and rocks. Using the resources they collect, they make things like spears, clubs, boomerangs, necklaces, flint knives, digging sticks and clap sticks — affidavit of [name 27 deleted] of 20 April 2013 at [33], [34], [36], [39], [40], [41], [46] and [48]. There are also references to the predecessors stitching possum skins to make coverings for cold nights, using mussel shells to chop fern root and making stone axes — see email from [name 13 deleted] of 2014.

[212] In my view, these rights are prima facie established pursuant to the traditional laws and customs of the native title claim group.

11. The right to control access and use between the native title holders and any other Aboriginal people who recognise themselves as being governed by the traditional laws and customs acknowledged and observed by the native title holders and who seek access to, or use of, the land in the claim area in accordance with traditional law and custom

[213] Like the exclusive right referred to at paragraph 1 above, this right is claimed in relation to any area where there has been no previous extinguishment of native title, any area of natural water resources and the solid land beneath the water where the water is found not to be tidal, any areas affected by category C and D past and intermediate period acts, and/or s 47A reserves and s 47B vacant crown land covered by claimant applications — see Attachment E.

[214] The way this right is expressed, in my view, exerts a degree of control indicating a level of exclusivity. I therefore consider that the case law in relation to this right is closely linked to that involving 'the right to determine use and enjoyment' of land. The High Court expressed concern in *Ward HC* of non-exclusive rights expressed in exclusive terms and stated that 'without a right [as against the whole world to possession of land], it may be greatly doubted that there is any right to control access to land or make binding decisions about the use to which it is put' — at [52].

[215] In *De Rose v South Australia* [2002] FCA 1342, however, O'Loughlin J recognised the non-exclusive right to make decisions about access to the application area for Aboriginal people who were *bound* by the traditional laws and customs of the native title holders — at [553]. His Honour, however, did not make a subsequent determination of native title. In the consent determination in *Mundraby v Queensland* [2006] FCA 436, the Court recognised the non-exclusive right to 'make decisions in accordance with traditional laws and customs concerning access thereto and use and enjoyment thereof by aboriginal people who are *governed* by the traditional laws acknowledged, and traditional customs observed by, the native title holders [emphasis added]' — at [3(c)(ii)]. I also note that in another consent determination, the Full Federal Court held that:

> there is a clear distinction between a right to control access … and a right to make decisions about the use and enjoyment of land by Aboriginal people who recognise those decisions and observe them pursuant to their traditional laws and customs. The continued presence of the former is compatible with a pastoral leasee entitling the pastoral leasee to determine who has access to the land; the latter is not — *Ward v WA* [2006] FCAFC 283 at [27].

[216] In light of the case law cited above, I consider that there is a willingness for courts to uphold such non-exclusive rights in situations where those rights are qualified to be against persons who are bound by the laws and customs of the native title holders. The right being claimed here is, in my view, qualified or limited this way. I consider that where the material supports the prima facie existence of the right, it will be able to be recognised for the purposes of s 190B(6).

[217] The claimants are taught by their elders from an early age about places that they are not to visit throughout the Yugara/YUgarapul traditional lands including the application area. For instance, they are told about some waterholes that they are not allowed to visit and swim in as they may catch 'some mysterious sickness' which can only be cured by 'clever' men or women — affidavit of [name 11 deleted] of 28 May 2013 at [26] and [32].

[218] I am satisfied that this right has been prima facie established pursuant to the traditional laws and customs of the native title claim group.

Rights prima facie not established

[219] I note that the provisions of s 190(3A) of the Act are available to the applicant if there is further information which would support a decision under that section to include rights that are not prima facie established on the Register.

7. The right to exchange plants, timber, animals, birds and fish located within the claim area with third parties for other things

9. The right to exchange things made from plants timber and animals located within the claim area with third parties for other things

[220] I consider that there is insufficient information within the factual basis that speaks to the observance of these rights by the predecessors and current members of the claim group.

[221] I am therefore unable to be satisfied that these rights are prima facie established.

10. The right to make decisions about and to control the access to, and the use and enjoyment of, the land and waters of the claim area and the plants, timber, animals birds and fish within the claim area

[222] Like the rights referred to at paragraphs 1 and 11 above, Attachment E defines the right to be claimed in relation to any area where there has been no previous extinguishment of native title, any area of natural water resources and the solid land beneath the water where the water is found not to be tidal, any areas affected by category C and D past and intermediate period acts, and/or s 47A reserves and s 47B vacant crown land covered by claimant applications.

[223] I am of the view that the right described here exerts a degree of control, however unlike the right at 11, this right has not been qualified or limited to be against persons who are bound by the laws and customs of the native title holders. I note that, in my view, this right is claimed in areas where exclusive possession cannot exist.

[224] In light of the above, I am unable to be satisfied that this right has been prima facie established.

Conclusion

[225] As I am satisfied that at least one of the native title rights and interests claimed has been prima facie established, 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.

[226] I consider the High Court's decision in *Yorta Yorta* and the Federal Court's decision in *Gudjala 2009* to be of primary relevance in interpreting the requirements of s 190B(7). In the latter case, Dowsett J observed that it 'seems likely that [the traditional physical] connection must be in exercise of a right or interest in land or waters held pursuant to traditional laws and customs' — at [84]. As indicated earlier in my reasons, the members of the joint judgment in *Yorta Yorta*, whilst interpreting connection in the 'traditional' sense as required by s 223 of the Act, felt that:

> the 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].

[227] Whilst the test is not the same as would be applied in a determination of native title, 'it does require the Registrar to be satisfied of a particular fact', being that at least one member of the native title claim group has or had a traditional physical connection with part of the claim area — *Doepel* at [18].

[228] I refer to my reasons above at s 190B(5)(b) that I am satisfied there is a sufficient factual basis to support the assertion that the Yugara/YUgarapul People acknowledge and observe the traditional laws and customs of the pre-sovereignty society.

[229] I consider that the factual basis material contain some facts that show a traditional physical association of the Yugara/YUgarapul People with the application area. For instance, the affidavit material provides information about the claimants and their predecessors residing, visiting and travelling across the application area. The factual basis also contains other references to a traditional physical association of members of the native title claim group which I have referred to earlier in my reasons at ss 190B(5) and (6).

[230] 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 s 61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.
>
> Section 61A provides:
>
> (1) A native title determination application must not be made in relation to an area for which there is an approved determination of native title.

(2) If :

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

(b) either:

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

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

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

(3) If:

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

(b) either:

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

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

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

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

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

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

[231] 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)

[232] The geospatial assessment states that no determinations of native title fall within the external boundaries of the application area. The results of my own search of the Tribunal's mapping database confirm that there is no overlap with any native title determination at the time of making this decision. It follows that the application is not made in relation to an area for which there is an approved determination of native title.

[233] In my view the application **does not** offend the provisions of s 61A(1).

Section 61A(2)

[234] The application is not made over areas covered by a previous exclusive possession act, except to the extent that ss 47, 47A or 47B of the Act may apply — see Schedule B.

[235] In my view the application **does not** offend the provisions of s 61A(2).

Section 61A(3)

[236] I am satisfied that the application does not claim native title rights and interests that confer possession, occupation, use and enjoyment to the exclusion of all others in an area that is, or has been, subject of a previous non-exclusive possession act, except to the extent that ss 47, 47A or 47B of the Act may apply — see Schedule B.

[237] In my view, the application **does not** offend the provisions of s 61A(3).

[238] 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.

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

Section 190B(9)(a)

[240] Schedule Q of the application provides that the native title claim group does not claim ownership of minerals, petroleum or gas where they are wholly owned by the Crown.

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

Section 190B(9)(b)

[242] Schedule P of the application states that there is no claim being made to exclusive possession of all or part of an offshore place.

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

Section 190B(9)(c)

[244] There is nothing, in my view, within the application or accompanying documents which indicate that the native title rights and interests claimed have otherwise been extinguished.

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

Conclusion

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

[End of reasons]

Attachment A

Summary of registration test result

Application name	**Yugara/YUgarapul People**
NNTT file no.	**QC2011/008**
Federal Court of Australia file no.	**QUD586/2011**
Date of registration test decision	**27 August 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**

Test condition	Subcondition/requirement		Result
		s 62(2)(h)	met
s 190C(3)			met
s 190C(4)			Overall result: not met
	s 190C(4)(a)		n/a
	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: met
	re s 190B(5)(a)	met
	re s 190B(5)(b)	met
	re s 190B(5)(c)	met
s 190B(6)		met
s 190B(7)(a) or (b)		met
s 190B(8)		Aggregate result: met
	re s 61A(1)	met
	re ss 61A(2) and (4)	met

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

[End of document]