



Registration test decision

Application name	Phillip Creek Pastoral Lease
Name of applicant	Bunny Narrurlu, Colin Freddie, Geoffrey Taylor, Janice Waistcoat, Lenny Williams, Michael Williams, Ronald Hughes, Sharon Bill and William Stokes on behalf of the members of the Kankawarla, Kanturrpa, Jajjinyarra, Linga, Patta, Pirrtangu, Purrurtu, Wapurru and Yurtuminyi landholding groups
NNTT file no.	DC2014/009
Federal Court of Australia file no.	NTD50/2014

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

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

Date of decision: 23 February 2015

Heidi Evans

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 accept the claim for registration pursuant to s 190A of the Act.

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

Application overview and background

[3] The Registrar of the Federal Court of Australia (the Federal Court) gave a copy of the Phillip Creek Pastoral Lease claimant application to the Registrar on 2 December 2014 pursuant to s 63 of the Act. This has triggered the Registrar's duty to consider the claim made in the application under s 190A of the Act.

[4] Given that the claimant application was made on 28 November 2014 and has not been amended, I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply.

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

[6] By email of 2 February 2015, the case manager for the application advised me of a section 29 notice issued in relation to the application area. That notice is for exploration licence 30614, with a notification date of 17 December 2014. I understand, therefore, that I must use my best endeavours to make a decision in relation to registration of the claim by 17 April 2015.

Registration test

[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 s 190C requirements first, in order to assess whether the application contains the information and documents required by s 190C before turning to questions regarding the merit of that material for the purposes of s 190B.

[8] Pursuant to ss 190A(6) and (6B), the claim in the application must be accepted for registration because it does satisfy all of the conditions in ss 190B and 190C.

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] The information that I have considered in making this decision is set out as follows:

- Phillip Creek Form 1, filed in the Federal Court on 28 November 2014;
- geospatial assessment and overlap analysis dated 16 December 2014 (GeoTrack: 2014/2284);
- additional map prepared by the Tribunal's Geospatial Services, provided in an email from the case manager of 5 February 2015;
- section 29 notice for exploration licence 30614.

[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.

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

Procedural fairness steps

[14] As a delegate of the Registrar and as a Commonwealth Officer, when I make my decision about whether or not to accept this application for registration I am bound by the principles of administrative law, including the rules of procedural fairness, which seek to ensure that decisions are made in a fair, just and unbiased way. I note that the common law duty to afford procedural fairness may be excluded by express terms of the statute under which the administrative decision is made or by any necessary implication—*Hazelbane v Doepel* [2008] FCA 290 at [23]–[31]. The steps that I and other officers of the Tribunal have undertaken to ensure procedural fairness is observed, are set out below.

[15] On 9 December 2014, the case manager for the application wrote to the representative body for the application area, namely the Central Land Council (CLC), providing the CLC with a copy of the application (see s 66(2A)).

[16] Also on 9 December 2014, the case manager wrote to the Northern Territory government, providing the government with a copy of the application, and an opportunity to make a

submission in relation to the application by 24 December 2014. Nothing was received from the Northern Territory government within this period.

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.

[17] 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.

[18] In reaching my decision for the condition at s 190C(2), I understand that this condition is procedural only and simply requires me to be satisfied that the application contains the information and details, and is accompanied by the documents, prescribed by ss 61 and 62. This condition does not require me to undertake any merit or qualitative assessment of the material for the purposes of s 190C(2)— *Attorney General of Northern Territory v Doepel* (2003) 133 FCR 112 (*Doepel*) at [16] and also at [35]–[39]. In other words, does the application contain the prescribed details and other information?

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

[20] Below I consider each of the particular parts of ss 61 and 62, which require the application to contain details/other information or to be accompanied by an affidavit or other documents.

Native title claim group: s 61(1)

[21] In discussing the Registrar's role at this condition, Mansfield J in *Doepel* made clear that it is only where it appears that the description of the native title claim group excludes persons of the group, or indicates that the persons described are in fact a subgroup of the actual native title claim group, that the application will fail to meet this requirement – *Doepel* at [36]. Noting that the condition at s 190C(2) is procedural only, I am not required to undertake any merit assessment of

the description or consider whether the group described is in reality the correct native title claim group – *Doepel* at [37].

[22] A description of the native title claim group appears at Schedule A of the application. There is nothing on the face of the application that indicates that the group described is a subgroup, or part only, of the native title claim group.

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

Name and address for service: s 61(3)

[24] The names of the persons comprising the applicant and their address for service appear at Part B of the application.

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

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

[26] It is my understanding that all I am required to be satisfied of at s 61(4) for the purposes of s 190C(2) is that the application contains the information required, that is, that it either names the persons comprising the native title claim group, or describes those persons. I am not permitted to consider the correctness of this information – *Wakaman People 2 v Native Title Registrar and Authorised Delegate* [2006] FCA 1198 (*Wakaman*) at [34]; *Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*) at [31] and [32].

[27] As above, a description of the persons comprising the native title claim group is contained in Schedule A of the application.

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

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

[29] The application is accompanied by an affidavit sworn by each of the nine persons named as the applicant. It is my view that each of those affidavits contains the statements required by ss 62(1)(a)(i)–(v).

[30] All nine affidavits are signed, dated and have been competently witnessed.

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

Details required by s 62(1)(b)

[32] Subsection 62(1)(b) requires that the application contain the details specified in ss 62(2)(a)–(h), as identified in the reasons below.

Information about the boundaries of the area: s 62(2)(a)

[33] Schedule B contains a written description of the boundaries of the application area, and a written description of those areas within the boundaries that are excluded from the application area.

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

[34] A map showing the external boundaries of the application area appears at Attachment B of the application.

Searches: s 62(2)(c)

[35] Details of searches undertaken by the native title claim group or on their behalf are contained in Schedule D.

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

[36] A description of the native title rights and interests claimed by the native title claim group appears at Schedule E of the application. I note that the description is more than a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law.

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

[37] Schedule F of the application contains a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist.

Activities: s 62(2)(f)

[38] The activities currently carried out by members of the native title claim group in relation to the land and waters of the application area are listed in Schedule G of the application.

Other applications: s 62(2)(g)

[39] Schedule H states that the applicant is not aware of any other applications seeking a determination of native title made in relation to any part of the application area.

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

[40] Information pertaining to such notices appears at Schedule HA of the application.

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

[41] Schedule I contains details of s 29 notices.

Conclusion

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

Subsection 190C(3)

No common claimants in previous overlapping applications

The Registrar/delegate must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:

- (a) the previous application covered the whole or part of the area covered by the current application, and
- (b) the previous application was on the Register of Native Title Claims when the current application was made, and
- (c) the entry was made, or not removed, as a result of the previous application being considered for registration under s 190A.

[43] It is only where a previous application meets all of the criteria set out in subsections (a)–(c) of s 190C(3) that the requirement for me to consider whether there are common members between the native title claim groups for the previous application and the current application, is triggered – *Western Australia v Strickland* [2000] FCA 652 (*WA v Strickland*) at [9].

[44] Pursuant to s 190C(3)(a), therefore, I must first consider whether there are any other applications that cover the whole or part of the area covered by the current application. The geospatial assessment and overlap analysis (geospatial assessment) prepared by the Tribunal's Geospatial Services in relation to the map and description of the application area (GeoTrack: 2014/2284, dated 16 December 2014) provides that no applications as per the Register of Native Title Claims and Schedule of Applications – Federal Court fall within, or cover any of the area covered by the current application.

[45] As the criterion at s 190C(3)(a) is not satisfied, I have not turned my mind to the remaining criteria at s 190C(3).

[46] 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.

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

[47] 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.

[48] Schedule R of the application contains various information under the heading, 'Certification of Native Title Determination Application'. It is my understanding, therefore, that the application is certified, and that it must satisfy the requirement at s 190C(4)(a).

[49] In addressing the difference between the requirements of ss 190C(4)(a) and 190C(4)(b), Mansfield J in *Doepel* held that '[t]he contrast between the requirements of subs 4(a) and (4)(b) is dramatic. In the case of subs 4(a), the Registrar is required to be satisfied about the fact of certification by an appropriate representative body. In the case of subs 4(b), the Registrar is required to be satisfied of the fact of authorisation by all members of the native title claim group' – at [78]. In this way, I understand that my consideration for the purposes of s 190C(4)(a) requires me to turn my mind to two matters only: firstly, whether there is an appropriate representative body who can certify the application, and secondly, whether the certification before me is valid in accordance with the requirements set out in s 203BE(4).

[50] The geospatial assessment provides that the application area falls entirely within the area for which the Central Land Council (CLC) is the representative body. The Tribunal's 'Representative Aboriginal/Torres Strait Islander Body Areas' map, available on the Tribunal's website, provides that the Central Land Council is a recognised Aboriginal/Torres Strait Islander Body pursuant to s 203AD(1). On this basis, I understand that the CLC has been delegated all of the responsibilities of a representative body, including certification.

[51] Paragraph [2] of the certification addresses this issue, and states that '[u]nder Resolution No.FC98:61 the Central Land Council delegated its certification power to the Director of the Central Land Council and in his/her absence to the Native Title Manager of the Central Land Council'. The certification is dated 26 November 2014 and has been signed by the Director of the Central Land Council.

[52] Consequently, I am satisfied that there is an appropriate representative body that can certify the application, namely the CLC, and that it is this body that has provided the certification before me.

[53] Section 203BE(4) sets out the requirements for a valid certification. It provides that:

- (4) A certification of an application for a determination of native title by a representative body must:
 - (a) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (2)(a) and (b) have been met; and

- (b) briefly set out the body's reasons for being of that opinion; and
- (c) where applicable, briefly set out what the representative body has done to meet the requirements of subsection (3).

[54] Paragraph [3] of the certification sets out those statements required pursuant to s 203BE(4)(a), regarding the CLC's opinion about the authorisation of the applicant by all the persons in the native title claim group, and the making of all reasonable efforts to ensure that the application describes or otherwise identifies all the persons in the group.

[55] Paragraph [4] of the certification sets out various information pertaining to those two requirements, providing that such information is the basis upon which the CLC holds the stated opinion. It is my view that this information is sufficient in 'briefly setting out the body's reasons for being of that opinion', pursuant to s 203BE(4)(b).

[56] Section 203BE(4)(c) refers to subsection (3) of s 203BE, which requires a representative body, where there are applications overlapping the current application, to make all reasonable efforts to achieve agreement between the persons in respect of whom the applications are made, and to minimise the number of applications covering the land or waters. Paragraph [5] of the certification speaks to the condition at s 203BE(4)(c) regarding this requirement by stating that '[t]he Central Land Council is not aware of any other application or proposed application that partly or wholly covers the application area'.

[57] I am, therefore, satisfied that the certification meets all of the requirements at subsections (a)–(c) of s 203BE(4), and that it is a valid certification.

[58] For the reasons set out above, I am satisfied that the requirements set out in s 190C(4)(a) are met because the application has been certified by each representative Aboriginal/Torres Strait Islander body that could certify the application.

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.

[59] Noting the wording of s 190B(2), it is specifically the written description of the boundary of the application area at Schedule B of the application, and the map at Attachment B, to which I have turned my mind in my consideration at this condition.

[60] Schedule B describes the application area as NT Portions 408, 5005, 5006, 5476 and the parcel of land formerly identified as NT Portion 7025. Schedule B specifically excludes certain portions, and a number of roads. Schedule B also adopts a general exclusion clause for any area within the boundaries of the application area subject to a previous exclusive possession act pursuant to s 23B. I do not consider that there is anything problematic with this approach in the description satisfying the requirement at s 190B(2) – see *Strickland* at [50]–[55].

[61] Schedule C refers to Attachment B as containing a map of the area covered by the application. Attachment B contains a coloured copy of a map entitled, ‘Phillip Creek PPL Native Title Determination Application Area’, prepared by Central Land Council and dated 20 November 2014. The map includes:

- the application area depicted by a bold green outline with green cross hachuring;
- surrounding land tenure marked, labelled and coloured by tenure type;
- select topographic features marked and labelled;
- scalebar, northpoint, coordinate grid and legend; and
- notes relating to the source, currency and datum of data used to prepare the map.

[62] The geospatial assessment concludes that the map and description of the area are consistent and identify the application area with reasonable certainty. Having turned my mind to this information within the application as required by ss 62(2)(a) and (b), I have formed the view that I agree with that assessment, and subsequently, that it can be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

[63] 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.

[64] As above, a description of the native title claim group appears at Schedule A of the application. Consequently, I consider that it is the requirements of s 190B(3)(b) that are applicable in my consideration at this condition of the registration test.

[65] Regarding the Registrar's task at s 190B(3)(b), Mansfield J in *Doepel* held that 'the focus is whether the application enables the reliable identification of the persons in the native title claim group' – at [51]. His Honour further commented that the correctness of the description was not a matter for the Registrar's consideration in applying the conditions of the registration test – at [37]. This approach was followed by Kiefel J in *Wakaman People 2 v Native Title Registrar* [2006] FCA 1198 (at [34]), and again, His Honour emphasised the focus of the task as being an 'assessment of the sufficiency of the description of the group for the purpose of facilitating the identification of any person as part of the group' – at [34].

[66] I note that the fact that the identification of the members of the group involves some factual inquiry does not mean that the group has not been described sufficiently clearly – *Western Australia v Native Title Registrar* [1999] FCA 1591 (*WA v NTR*) at [67].

[67] There is a considerable amount of information contained in Schedule A regarding the membership of the native title claim group. I have extracted the relevant parts below.

[68] Paragraph [1] provides that '[t]he native title claim group comprises the members of the Kankawarla, Kanturrpa, Jajjinyarra, Linga, Patta, Pirrtangu, Purrurtu, Wapurru and Yurtuminyi landholding groups', and in accordance with their traditional laws and customs, these persons have spiritual, physical and/or historical associations with the application area through:

- descent from ancestors (including adoption) connected with the application area; and
- non-descent based connections.

[69] Paragraph [7] of Schedule A is entitled 'Membership of the native title claim group' and provides that:

In accordance with the claimants' system of traditional laws and customs in relation to membership of a landholding group and the possession of rights and interests in land the native title claim group comprises all those persons who are:

- (a) descendants (by birth or adoption) of one or more of the following named and un-named ancestors of the landholding groups ("the ancestors") [a list of named and un-named ancestors for each of the landholding groups follows];

- (b) accepted as members of one (or more) of the landholding groups by senior descent based members of the native title claim group on the basis of their non-descent connections to the estate.

[70] Further details regarding the latter criteria for membership of the group, namely through non-descent connections, are set out at paragraph [9]. That paragraph provides that:

Under the claimants' system of traditional laws and customs a person who is not descended from the ancestors becomes a member of a landholding group when accepted by senior descent based members of the group. The non-descent connections considered relevant in the recruitment of a particular individual are:

- (a) conception and/or birthplace affiliation with an estate;
- (b) long-term residential and/or historical connection to an estate;
- (c) shared section/subsection and/or moiety affiliation;
- (d) close kinship ties, including intermarriage;
- (e) authority and responsibility for shared Dreaming tracks and/or places of significance connected with an estate;
- (f) seniority in traditional matters concerning the landholding group and/or the estate;
- (g) ceremonial knowledge.

[71] In this way, I understand that there are two criteria for membership to the claim group, and that either one must be satisfied in order for an individual to be considered part of the group. The first criterion is descent from identified ancestors, including biological descent and descent by adoption. The second criterion is that a person is accepted as a member of one of the relevant landholding groups comprising the native title group, on the basis of a non-descent connection.

[72] It is clear, therefore, that determining whether an individual is a member of the group will involve some factual inquiry, however, as above, I do not consider that this prevents the description being sufficiently clear – *WA v NTR* at [67]. In *WA v NTR*, Carr J found that a description involving criteria that included descent from named ancestors was sufficient for the purposes of s 190B(3). His Honour found that it was possible to start with one person, then through some inquiry apply the relevant criteria to that person to determine whether they fell within one of the criteria, and were, therefore, a member of the group.

[73] I note that the factual inquiry in this instance could be made difficult due to the fact that some of the ancestors listed are unnamed. In my view, this similarly causes ambiguity and uncertainty in the description as a whole. The following excerpt from Schedule A demonstrates this issue:

Unnamed Jangali

Jimmy Ngalarimanu Jampin

Andrew Brian Jappaljarri (adopted MF) and siblings and descendants.

Unnamed Jampin

Frank Lauder Jangali/Jappaljarri (MF) and siblings and descendants.

Unnamed Nampin

No known descendants.

[74] While the description includes a number of unnamed ancestors, as can be seen from this excerpt, the generation following this unnamed person is identified using named individuals. The description states that the ancestors identified (names in bold) are the 'uppermost generation of the known ancestors of members of the native title claim group'. I accept that not all of the ancestors of that generation are known by name to the native title claim group, however it is clear that in these circumstances, certain descendants of those persons are clearly known. Consequently, I consider that where an ancestor is unnamed, an individual could identify as a member of the group through descent from one of those unnamed persons' descendants, who are also set out in the description in Schedule A.

[75] It is my view, therefore, that through certain research regarding the family history of an individual, it could be determined whether that individual met this criterion of descent from those ancestors identified in the description.

[76] Regarding the latter criterion, of non-descent based connection, I am also of the view that with factual inquiry, it could be determined whether an individual is a member of the group. The rules surrounding the basis upon which a person will be recognised as a member of one of the landholding groups through non descent based connections is clearly set out within the description. These rules provide that it is specifically the senior descent-based members of the landholding group who have the authority to recognise a person as a non-descent based member, and also provide specific factors that will influence that decision by those senior persons.

[77] I consider, therefore, that one could approach the senior descent-based persons of the relevant landholding group and inquire as to whether a particular individual is a member of that group. One could then inquire as to the basis of that decision, and consider whether it is in line with the factors set out above. My view is that this factual inquiry would enable you to affirm or deny the membership of that individual to the native title claim group.

[78] On this basis, I have formed the view that the persons in the group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

[79] 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.

[80] Once again, the wording of this condition directs my attention primarily to the information contained in the application as required by s 62(2)(d), namely a description of the native title rights and interests claimed in relation to particular land or waters. This information is found in Schedule E of the application.

[81] French J in *Strickland v Native Title Registrar* [1999] FCA 1530 (*Strickland*) found that there was ‘scope for evaluative judgment’ in the Registrar reaching the required level of satisfaction as to the sufficiency of the native title rights and interests claimed – at [60]. This was on the basis that the Registrar is a person with ‘relevant specialist experience’, acting in an ‘expeditious administrative process’ – at [60].

[82] This approach appears to have been followed by Mansfield J in *Doepel* where His Honour held that:

[Section 190B(4)] was a matter for the Registrar to exercise his judgment upon the expression of the native title rights and interests claimed. He reached the required satisfaction that [...] the claimed native title rights and interests did meet the requirements of being understandable as native title rights and interests and of having meaning... It was open to the Registrar to read the contents of Schedule E together, so that properly understood there was no inherent or explicit contradiction in Schedule E – at [123].

[83] It is my understanding, therefore, that in order to satisfy the requirement at s 190B(4), the native title rights and interests claimed must be ‘understandable and have meaning’ – see also *Doepel* at [99].

[84] His Honour’s comments also suggest the rights and interests claimed must be able to be identified as ‘native title rights and interests’, with reference to s 223(1). While I have considered the description at Schedule E in light of that definition in my consideration at this condition, I have not undertaken an individual assessment of each of the individual rights and interests claimed against the requirements of this definition. It is my view that this is the relevant task at the corresponding merit condition of s 190B(6), regarding whether I consider that those rights and interests, *prima facie*, exist.

[85] The description of the rights and interests claimed at Schedule E lists eleven non-exclusive rights and interests. I note that the description does not include a claim to exclusive possession – see paragraph [3]. Following this list, there are a number of qualifications or statements clarifying

the nature and extent of the rights claimed, including that the native title rights and interests are subject to and exercisable in accordance with valid laws of the Northern Territory and the Commonwealth, and that the distribution of rights and interests within the group and in respect of different parts of the application area is governed by the claimants' system of traditional laws and customs.

[86] I have read and considered the contents of Schedule E together, and am satisfied that there is no inherent or explicit contradiction within the description of rights and interests. In turning my mind to the particular rights and interests claimed, I have formed the view that they are understandable and have meaning. Consequently, I consider that the description contained in the application is sufficient to allow those rights and interests claimed to be readily identified.

[87] 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.

[88] While s 62(2)(e) requires only a 'general description' of the factual basis in support of the claim to native title, the nature of the material required to satisfy s 190B(5) must be more than 'assertions at a high level of generality' and be in sufficient detail to allow the Registrar to undertake a 'genuine assessment' of the application – *Gudjala People #2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala 2008*) – at [92]. This view is supported by the explanatory memorandum to the 1998 amendments to the Act, introducing the registration test provisions, which provided that the purpose of the test was to 'ensure that only claims which have merit are registered on the Register of Native Title Claims' – at [29.2].

[89] The applicant is not, however, required to produce evidence of the type necessary to make out the claim in subsequent proceedings – *Gudjala 2008* at [92]. In my consideration of the factual basis material before me, I understand that I am able to rely on the statement made in the affidavits sworn by each of the applicant persons, that 'the applicant believes that all of the statements made in the application are true' (see s 62(1)(a)(iii)) – *Gudjala 2008* at [92].

[90] My role at this condition, therefore, is to 'address the quality of the asserted factual basis for those claimed rights and interests; but only in the sense of ensuring that, if they are true, they

can support the existence of those claimed rights and interests’ – *Doepel* at [17]. It is to ‘determine whether the asserted facts can support the claimed conclusions’ – *Doepel* at [17].

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

Reasons for s 190B(5)(a)

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

[93] Where the material before me is unable to disclose an association with the entirety of the application area, or relies on broad statements that lack geographical particularity to the land and waters of the application area, it is my understanding that it will not be sufficient to satisfy the requirement at s 190B(5)(a) – *Martin v Native Title Registrar* [2001] FCA 16 (*Martin*) at [26].

[94] In *Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*), Dowsett J discussed the requirements of s 190B(5) in some detail. In relation to subsection (a), His Honour held that the following kinds of information may be required:

- information about how the claim group as a whole presently has an association with the area, although it is not a requirement that all members must have such an association at all times; and
- information regarding an association between the predecessors of the whole group and the area over the period since sovereignty – at [52].

[95] I have summarised the factual basis material before me relevant to the assertion at s 190B(5)(a) below:

- the native title claim group comprises nine landholding groups, namely the Kankawarla, Kanturrrpa, Jajjinyarra, Linga, Patta, Pirrtangu, Wapurru and Yurtuminyi landholding groups – Schedule A at [1];
- these landholding groups are part of a wider society whose territory extends beyond the application area – Schedule F at [3];
- in accordance with the traditional laws and customs of the members of the native title claim group, they are the owners of the land and waters of the application area – Schedule F at [1];
- there is a communal belief amongst members of the society to which the claim group belong that the physical and cultural landscape, the legal, social, kinship and religious systems, and the conditions for their continuity, were produced by spiritual ancestors who travelled on, above or below the land in a creative era long ago (the English word for this time is the ‘Dreaming’) – Schedule F at [5];
- the network of Dreaming tracks in the region forms the basis for the socio-spatial organisation of landholding groups – Schedule F at [7];

- local land areas or estates of the application area are not neatly bounded areas, they consist of assemblages of sites and the surrounding land and waters associated with a predominant Dreaming – Schedule F at [7];
- rights and interests in an estate is inherited through either descent from common ancestors, including descent by adoption, or conferred on persons accepted as members of a landholding group by senior descent-based members of that group on the basis of non-descent connections – Schedule F at [12];
- those affiliated with an estate have responsibilities to look after country, and specific roles regarding ceremony on country – Schedule F at [14];
- other features of the land tenure system include fulfilment of spiritual obligations towards one's estate, observation of restrictions imposed by gender, age, ritual knowledge and experience/status or arising from the presence in the country of Dreamings and/or sites of significance – Schedule F at [15];
- knowledge of descent connections is transmitted orally although individuals beyond the grandparental level are rarely remembered – Schedule F at [17];
- earlier ancestors are believed to be spiritually descended from the Dreaming ancestors – Schedule F at [17];
- the applicant asserts that the ancestors named in Schedule A and their predecessors were entitled to possess, occupy, use and enjoy the land and waters of the application area since prior to sovereignty – Schedule F at [17];
- ethnographic and historical sources confirm that at the time of contact and settlement of the region, Eastern Anmatyerr and Northern Arrernte people, the descendants of who include members of the native title claim group, occupied and used the application area – these sources are dated as early as 1865 – Schedule F at [19];
- members of the native title claim group assert an ongoing spiritual association with the area, founded on a communal belief that the spiritual ancestors of the group created the land and formed ongoing relationships with it – Schedule F at [19];
- members of the group continue their connection with the spiritual properties of the land and waters of the application area by observing customary secular and spiritual practices, which commonly relate to Dreaming tracks and associated sites of significance – Schedule F at [19];
- the members of the group and the predecessors have maintained their connection to country despite the presence and activities of non-Aboriginal people in the region – Schedule F at [20];
- no other Aboriginal group has, in the past, occupied the area or asserted that they possess traditional rights in it – Schedule F at [21].

[96] Schedule A of the application also contains relevant information, namely that each landholding group is affiliated with a particular part of the application area, set out within Schedule A as follows:

- (a) Kankawarla – central;
- (b) Kanturrpa – western;
- (c) Jajjinyarra – north eastern;
- (d) Linga – western;
- (e) Patta – central south;

- (f) Pirrtangu – eastern;
- (g) Purrurtu – central;
- (h) Wapurru – central north;
- (i) Yurtuminyi – central west.

[97] In addition to this, the affidavits sworn by the applicant persons that accompany the application provide various information relevant to the assertion at s 190B(5)(a). The following excerpts from those affidavits are examples. One elderly claimant estimates her birth date to be approximately 1930 (see affidavit of Bunny Narrurlu at [4]), and she states that:

My mother, *[name deleted]* was mangaya for Kanturrpa country and she was born in the bush near Kalumpurlpa on Karlantijpa North Aboriginal Land Trust, just north of the application area. My mother's mother she passed away and was buried up there. When my mother was about 5 or 6 her mother passed away and she was taken to live at 7 Mile Aboriginal Reserve with her mother's sisters *[name deleted]* and *[name deleted]*. She grew up there at 7 Mile. She walked all over that country with her uncle and his family and across to Phillip Creek, all around. They walked all around and through Phillip Creek up to Banka Banka station and all around. They used to hunt and camp all over that country. They got water from the waterholes, and they made cooking fires from that wood all around there. They lived traditional way and got their food from that country. My mother's father grew up in the bush around Phillip Creek and his country. In those days people walked around and didn't stay in one place. He worked most of his life at Banka Banka Station and was mangaya for Kanturrpa – affidavit of Bunny Narrurlu at [9].

[98] She then states that:

My father worked at Blue Moon Mine on Tennant Creek station. He used to collect firewood to make charcoal. He was married then with two wives. My parents were just walking around in the bush before we were born, they used to live from the land and later they got jobs and worked at the station. They worked on many stations including Banka Banka and then he became the postman and he used to walk from Newcastle Waters to Barrow Creek taking the mail everywhere. He was a good postman. He always used to stay on and visit his country in the bush even when he was working as a postman – affidavit of Bunny Narrurlu at [11].

[99] Another claimant states that:

My father's father, *[name deleted]* he died a long time before I was born. My father, *[name deleted]* was born *[sic]* grew up walking around in the bush on his country hunting, camping and getting water traditional way. They lived in bush camps and used to build bush shelters. As a young men *[sic]* he and his brother lived at Phillip Creek Mission and that's where he met my mother. They lived there and used to go hunting and getting bush food form *[sic]* the application area. After he got married he and his brother went to work on cattle stations. My father worked Alroy Downs and his brother worked on Rockhampton Downs – affidavit of Michael Williams at [8].

[100] And another claimant states that:

My father's father, grew up around Phillip Creek Mission and 7 Mile Reserve somewhere around there. He walked all over that country with his family, no car there. They walked all the way up to the stations up around Rockhampton Downs. They used to hunt and camp all over that country, getting water and cooking their food on fires. They used to camp in windbreak and have a little fire, and then walk again. Those old people were frightened of white people in the old days and they used to camp up in a cave not far from my boundary. They camped up there up on the hill – affidavit of Colin Freddie at [8].

[101] And another claimant states that:

I have taught my sons and nephews my Dreamings and I took them onto country to teach them. Our Dreamings are Yakkula (Two Women), Jalajirpa (White Corella), Lalkarra (Grub) Mantigarr (Python). They are all on Phillip Creek station. Those Dreaming sites are on Phillip Creek. We go out and check up on our sites on the application area. The young men go out to and check up too and if they find any damage or something wrong they come back and tell us older men. We then go out and have a look. We need to check the country and look after it for the next generations. We need to protect those places so we can show our kids and their kids. Protect them for future generations because they are special for our families. It's important – affidavit of Lenny Williams at [13].

[102] And another claimant states that:

I have been told that my father used to come down for ceremony time every year. He never missed ceremony. There used to be a big ceremony ground on North Hayward Creek on Jajinyarra country, his country. So he would come down and do the Star ceremony on his own country. He knew his country all the way through; he knew his Law. His father, [name deleted] used to come down too and teach those young men about those Dreamings and the Law. [Name deleted] was taught by my father about the Law for my country, about the Star and Snake Dreamings so he could know that and carry it on – affidavit of Sharon Bill at [13].

My consideration – s 190B(5)(a)

[103] The application area can generally be understood as comprising the area subject to the Phillip Creek pastoral lease in the central part of the Northern Territory. I note that the native title claim group is comprised of nine landholding, or estate, groups, each of which is affiliated with a different part of the pastoral lease area – see Schedule A at [3]. From my consideration of the information regarding the areas with which each estate group is affiliated, including that the local estates are not neatly bounded areas, I accept that the material asserts that those groups together have an association with the entirety of the application area – see Schedule A at [3] and Schedule F at [7].

[104] As to whether the factual basis material possesses the necessary geographical particularity to the application area, I have before me affidavits sworn by each of the nine applicant persons,

one from each of the nine landholding groups – see Schedule A at [5]. All of those persons refer to Phillip Creek in their affidavit, namely Phillip Creek Mission, or Phillip Creek station. They speak to Phillip Creek being a place where they currently spend time with their families, camping and hunting and gathering resources on the application area, or as a place where their predecessors grew up, or walked around in the bush living off the land. For example, one claimant states that:

My father's father was born and grew up on his country and he walked all over that country with his family. My father, *[name deleted]* lived mainly at Phillip Creek Mission and he grew up walking around. He was a leader for the people living there. They still went hunting and looking around at all the places they knew on the application area. They knew where to go. They took all their kids around and showed them where the waterholes are. The first time they took the kids to the waterhole they made them wet so the country knows them. They introduced the kids to the country. They used to go hunting and camping and getting water at the waterholes and soakages. He worked as a butcher at the mission – affidavit of Lenny Williams at [8].

[105] From the material of this nature, it is clear, in my view, that at least one member of each of the nine landholding groups currently has an association with their local estate area within the application area. I consider it reasonable to infer that the association asserted by each of the applicant persons is merely an example of the association of other members of their estate group, and therefore, the native title claim group as a whole. I note that the statements made by the applicant persons refer to their family members who also currently access and spend time on the application area. In this way, I am satisfied that the factual basis is sufficient to support an assertion that the claim group as a whole presently has an association with the area.

[106] The applicant persons speak to a number of specific places or sites where they have previously, or where they currently, spend time, and that they consider part of their traditional country. To assist me in undertaking the task at s 190B(5)(a), I requested that an officer of the Tribunal's Geospatial Services prepare a map marking these places in relation to the boundary of the application area. That map was supplied to me on 5 February 2015.

[107] I note that the application asserts that the native title claim group form part of a broader society of persons, and that the territory of that broader society extends beyond the boundaries of the area covered by the application – see Schedule F at [3]. Having considered the map prepared by Geospatial Services, it is clear that a number of the places referred to by the applicant persons as locations where they and their predecessors travelled and spent time fall outside the boundaries of the application area.

[108] There are clear indications, in my view, within the statements made by the applicant persons that their traditional country, namely the country inhabited and owned by their predecessors pursuant to their traditional laws and customs, spanned a much larger area than the application area. This is seen in statements by the applicant persons that speak to the large

distances travelled by themselves and their predecessors across and through the application area. For example, one elderly applicant person states:

I was born at Kwarita in the bush on the Gosse River in the flood country on Tennant Creek station. My mother showed me that big tree I was born under. My parents were living at 7 Mile Aboriginal Reserve just to the east of the application area on what is now Wartiyangu Aboriginal Land Trust at that time getting rations. But they were also walking around hunting and camping out when I was born. They used to walk around between 7 Mile, Banka Banka, Phillip Creek, all over there. I grew up walking all over that Waramungu country, in the bush with them. We used to be walking around in the bush collecting bush tucker. We used to get conkerberry, passionfruit, wild orange, bush banana, bush potato, everything. We all used to live out in the scrub with our parents and we lived in wind breaks and cooked our food on little fires. My parents made fires to keep us warm. Sometimes we also lived at 6 Mile Aboriginal Reserve a bit further west from 7 Mile reserve on Tennant Creek station – affidavit of Bunny Narrurlu at [12].

[109] While some of the places referred to in the affidavits are not within the application area, from statements such as these, it is clear to me that it was an inherent part of the lifestyle of the predecessors of the members of the group, to travel across and about the application area between locations, and that these patterns of travel were often related to Dreaming tracks. For example, one applicant person states: 'I went through Young Men's Business at Elliott and after I went through that ceremony I was taken onto my country and shown those places for Mantigarr, my Dreaming. That Dreaming goes through Elliott and Phillip Creek' – affidavit of Ronald Hughes at [11]. Having considered the paths of travel between locations described by applicant persons, I consider that the material clearly asserts a physical association of the group and its predecessors with the specific land and waters of the application area.

[110] I consider, therefore, that the factual basis is sufficient to support an assertion of an association of the group and the predecessors of the group, with the entirety of the application area, and that the material has geographic particularity to the land and waters of the application area.

[111] Noting that the requirement at s 190B(5)(a) is that the factual basis support an assertion of an association between the members of the native title claim group, and their predecessors, with the application area, it is my understanding, therefore, that the factual basis material must speak to an association between the predecessors of the group and the area over the period since sovereignty – *Gudjala 2007* at [52].

[112] The material does not assert a particular date or time at which first contact or European settlement occurred. Schedule F states, however, that ethnographic and historical sources place the predecessors of members of the group in the application area at the time of settlement. A considerable list of those sources is provided, dating from 1865, and otherwise with dates primarily around the 1880s and 1890s. From this, I have inferred that first contact is likely to have

occurred around 1865, with settlement of the area occurring sometime after this date in the 1880s and 1890s. Noting the remote location of the application area, I accept the assertion in the material that contact took place a significant period of time after sovereignty in 1788.

[113] Statements made by members of the claim group give further insight into an approximate date asserted by the material when settlement took place. I consider these statements to suggest that claimants have living memory of persons who were living prior to, or at least around the time of, European settlement. For example, applicant person Bunny Narrurlu states in her affidavit that she was about 12 years old in 1942, such that I can infer her birth date to be approximately 1930. She speaks of her mother's association with the application area, and in my view, it is reasonable to infer that her mother would have been born in approximately 1900. She states that her mother 'walked all around and through Phillip Creek up to Banka Banka station and all around... they lived traditional way and got their food from that country' – at [9]. Bunny then speaks of the association of her mother's father with the area. I consider that I can infer that this man was born in approximately 1870. Bunny states that he 'grew up in the bush around Phillip Creek', and that '[i]n those days people walked around and didn't stay in one place' – at [9].

[114] From these statements, and from the information pertaining to the dates of historical sources placing the claimants' predecessors in the application area at settlement, I have inferred that Bunny's grandfather was in the application area around the time at which first contact occurred, being a time roughly between 1860 and 1870.

[115] I consider that further statements made by other applicant persons support an inference that the predecessors of the claim group, two generations prior (that is, the grandparents of the claimants), were present in the application area at the time at which settlement took place. For example, one elderly claimant refers to his father's father, and that he walked all around his country with his family, that there were no cars then, and that the 'old people were afraid of white people in the old days and they used to camp up in a cave' – affidavit of Colin Freddie at [8]. In my view, this information is sufficient to allow me to infer that the predecessors of the group comprising the generation of this applicant person's grandfather were unused to interaction with white people, and therefore that settlement was still taking place around the time of his life. Colin states his birth date to be 1951, and on this basis, I have inferred that his grandfather would have been born sometime around 1890. This accords with the dates of the historical sources listed.

[116] Further support for these inferences regarding settlement and association of the predecessors of the claim group, I consider to be found in Schedule A. Schedule A states that '[t]he ancestors identified in [the claim group description] are the uppermost generation of known ancestors of members of the native title claim group' – at [8]. In addition to naming the uppermost generation (that is, the apical ancestors), the description of the native title claim group

also names the persons comprising the following two generations. I note that a number of the persons comprising those two later generations are referred to by the applicant persons in their affidavits, or include the applicant persons themselves.

[117] For example, in his affidavit, applicant person Michael Williams speaks of his father's father, [name deleted], who died long before Michael was born (Michael states his birth date as 1958). Schedule A provides that [name deleted] is the descendant of one of the uppermost generation of the *Kanturrrpa* estate group, being an unnamed *Jappaljarri* person. Schedule A then lists Michael Williams as one of [name deleted] known descendants. In this way, I understand that there are only two or three generations separating the members of the claim group today with the persons comprising the uppermost generation of each of the estate groups, and that it is this generation (the apical ancestors), and perhaps their children, who occupied the area at the time at which white people began to access the area and settle there.

[118] In light of the fact that all of the applicant persons speak to an association of their parents and grandparents with specific places within and across the application area, I consider that the factual basis is sufficient to support an assertion of an association of the predecessors of the group with the area over the period since European settlement.

[119] In my view, the factual basis material is similarly sufficient in supporting an assertion of an association of the claim group members and their predecessors with the area, that is both physical and spiritual. The physical aspects of this association are discussed above, however additionally, various statements made by the applicant persons in their affidavits indicate a strong spiritual connection to their country, including the application area. For example, the applicant persons speak of practices they employ upon accessing their country, wanting to let the land know that they are entering the area, and seeking its favour and protection. One applicant person states:

A lot of family members passed away on Phillip Creek Mission and they are buried out there. We brushed that ground with the leaves. We did that everywhere where people were buried. My grandmother's mother was killed by her husband, next to Yurtuminyi, two soakages and she was buried there. When we went to see where she was buried we cried and brushed the ground. We cry out to tell the land we are coming – affidavit of Bunny Narrurlu at [10].

[120] In further support of a spiritual association of the claim group with the area, Schedule F provides general assertions regarding the beliefs of members of the group about the way in which the landscape was created by their ancestor spirits in the Dreamtime, or at the time of creation – see Schedule F at [5]. It is also clear that these beliefs have been handed down to the claim group by its predecessors – Schedule F at [5]. In my view, the material of this nature within the application is sufficient to support an assertion of a physical and spiritual association of the claim group and the predecessors of the group with the application area.

[121] In light of the discussion above, I have formed the view that the factual basis is sufficient to support an assertion that the native title claim group have, and the predecessors of those persons had, an association with the application area. The application satisfies the requirement at s 190B(5)(a).

Reasons for s 190B(5)(b)

[122] There is much similarity between the wording of the assertion at s 190B(5)(b), that ‘there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title’, and the definition of ‘native title rights and interests’ at s 223(1). Subsection (a) of that definition provides that ‘native title rights or interests’ are ‘the communal, group, or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where the rights or interests are *possessed under the traditional laws acknowledged and the traditional customs observed*, by the Aboriginal peoples or Torres Strait Islanders’ (s 223(1)(a)) [emphasis added].

[123] Consequently, it is my view that my consideration at s 190B(5)(b) needs to be guided by the leading authority in relation to the definition at s 223(1), namely *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58 (*Yorta Yorta*). This was the approach taken by Dowsett J in *Gudjala 2007*, where His Honour referred to the principles enunciated by the High Court in *Yorta Yorta* regarding the definition of native title rights and interests, and sought to apply them to the task at s 190B(5).

[124] Particularly in relation to the assertion at s 190B(5)(b), referring to the decision in *Yorta Yorta*, Dowsett J held that traditional laws and customs are those that ‘have their source in a pre-sovereignty society and have been observed since that time by a continuing society’ – at [63]. His Honour further indicated that information of the following type may be required to satisfy the condition at s 190B(5)(b):

- information about the existence at the time of European settlement of a society of people living according to a system of identifiable laws and customs, having a normative content – at [65] and [66];
- an explanation of the link between the claim group described in the application and the area covered by the application, which process may involve identifying some link between the apical ancestors and any society existing at sovereignty – at [66] and [81].

[125] Dowsett J revisited the task of the Registrar’s delegate at s 190B(5)(b) in *Gudjala People #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala 2009*), and held that the factual basis may also need to address the following matters:

- an explanation of how the laws and customs of the group can be said to be traditional, that is, the laws and customs of a pre-sovereignty society relating to rights and interests in land and waters – at [52] and [53];

- a mere assertion that current laws and customs are traditional will not be a sufficient factual basis - at [52] and [53]; and
- details of the claim group's acknowledgement and observance of the traditional laws and customs pertaining to the claim area – at [74].

[126] I have summarised below the information within the factual basis that speaks to these matters:

- the nine estate groups comprising the native title claim group are part of a society that includes members of the broader Warumungu and Warlmanpa landholding and language groups and covers an area greater than the application area – Schedule F at [3];
- the members of that society share a common system of traditional laws and customs – Schedule F at [3];
- there is a communal belief amongst the members of the group that the physical and cultural landscape, the legal, social and kinship and religious systems, and the conditions for their continuity were all produced by spiritual ancestors who were active in the area during the creative era, known as *Wirnkarra* in Warumungu and *Puwarrija* in Warlmanpa – in English, this is mostly referred to as the 'Dreamtime' – Schedule F at [5];
- the system of laws and customs acknowledged and observed by the society has its foundation in the Dreamtime and it is held by members of the group to be unchanged since that time, having been transmitted to each succeeding generation by the ancestors – Schedule F at [5];
- in accordance with those laws and customs, the members of the native title claim group have rights and interests in the application area through descent from ancestors who it is believed themselves are descended from the Dreaming ancestors who initially created the landscape and the Law, or through non-descent connections – Schedule F at [4], [12] and [17];
- knowledge of laws and customs has been passed from generation to generation by traditional modes, including oral transmission and the observation of common practice – Schedule F at [17];
- interrelated to the system of laws and customs is a strong kinship system, which dictates relationships between people, their country and the Dreamtime – Schedule F at [8];
- features of that kinship system include recognition of common spiritual ancestors, recognition of behavioural rules and sanctions such as preferred marriage partners and avoidance practices, defined roles within a ritual context, recognition of group/individual responsibilities to the country of one's estate – Schedule F at [9];
- at the time of contact and white settlement, ethnographic and historical sources confirm that the Eastern Anmatyerr and Northern Arrernte people, including the predecessors of the native title claim group, occupied and used the application area, and had physical, spiritual and other cultural connections to that country – Schedule F at [19];
- members of the native title claim group have a connection with the area based on knowledge received from the ancestors, personal experience and their continued acknowledgement and observance of laws and customs – Schedule F at [19];
- continuity of spiritual and ancestral connections to country are founded on a communal belief that spiritual ancestors created the land and ongoing human relationships with it – Schedule F at [19];

- continued observance of customary secular and spiritual practices, including practices relating to Dreaming tracks and associated sites of significance, by members of the native title claim group, reaffirms their connection to the spiritual aspects of the land – Schedule F at [19];
- the members of the group and their predecessors have maintained their connection with the application area, despite the presence and activities of non-Aboriginal people in the region – Schedule F at [20].

[127] In addition to this, statements made by the applicant persons in their affidavits also address aspects of the assertion at s 190B(5)(b). Examples of these relevant statements are set out below. One applicant person explains the way his grandfather used the application area, including taking part in ceremonies, and further explains methods for burial. I understand that these practices are asserted as being in accordance with and pursuant to the traditional laws and customs of the group:

My father's father, *[name deleted]* was born and grew up around his country. He walked all over that country with his family and they used to hunt and camp all over that country. He lived at 7 Mile Aboriginal Reserve and also at 6 Mile Aboriginal Reserve. He grew up in a traditional camp across the creek at 7 Mile. They used to get their water from the soakage there. They had to dig for that water. They hunted for food in the traditional way and made fires to cook their dinner. They went hunting and getting bush food and wood and everything all around there on the application area. Those old people lived in humpies and windbreaks. There was a big ceremony round there. That old man is buried there at 7 Mile, traditional way in the tree – affidavit of Geoffrey Taylor at [8].

[128] And another applicant person explains how he was taught laws and customs relating to his country, by the elder generations of his estate group, and how this transmission of knowledge continues today:

After I came back to my country after Young Men's ceremony I was taken onto my country on the application area by my older brothers and my cousin and shown those sites and taught songs and stories for Purrurtu country. We went all around learning those places and those designs. I was learning the Law in the bush the proper way. We must learn in private by the right people, only right family can hear that and teach those stories and show the land and the sites. When we go to those places and those sites and waterholes, we take that branch and brush the land to show respect for that place and to tell the land we are looking after it properly. We do that every time we go to those sites. We still take young men onto the country on the application area and we teach them the same way, in private on their country. We have to show them the right way to be on their country and to show respect and look after that country – affidavit of Lenny Williams at [12].

[129] Another applicant person explains how and by whom she was taught her laws and customs, and the way in which she continues to pass on that knowledge:

I was taught about my Dreamings by my father, my uncle, my aunty and other old people. I learnt about Karnkka (Moon Man Dreaming) from my father, Milwayijarra (Snake Dreaming) from my aunties and my mother; Karli (Boomerang Dreaming) from my uncle. I only learnt about the

women's side, that's how I knew all about it. When they taught me they took me out there and showed me that country and taught me all about it. Not men's side. They showed us where we couldn't go because there were men's places there. We had to stay behind. Women's stories are right there. I was taught that by my mothers, aunties and grandmothers. I am teaching all the younger women all that Law so I am passing on that knowledge to younger women so they carry on. They've got that knowledge now but they still come and ask me to help them.

The old people showed me where there was a big ceremony ground on the application area where they used to dance in the old days. I know all those songs and dances for my Dreamings. We dance and sing at Young Men's ceremony and keep that knowledge going. I make sure they know. Some of the women who are a bit younger and who are learning from me went out to that country and they were dancing and singing songs on the application area. They had to do that in private, that's our stories – affidavit of Bunny Narrurlu at [11] and [12].

[130] The same applicant person further describes how she learned from her elders through observing their practice:

As young girls we used to watch the older people get wood to make carriers and coolamons. We used to watch them and see how it was done. That's how we learnt that. My sister used to make nice coolamons. They got wood from all around that station. We used to make yam sticks and the boys made boomerangs. We used to get white ochre from Phillip Creek and red ochre from Helen Springs. The older people used to get that ochre and share it with the Kayetye mob. They used to meet up every year for ceremony – affidavit of Bunny Narrurlu at [6].

[131] And another applicant person refers to both her father and grandfather partaking in spiritual activities on the application area, and the way in which they knew the Law, and passed that knowledge on:

I have been told that my father used to come down for ceremony time every year. He never missed ceremony. There used to be a big ceremony ground on North Hayward Creek on Jajjinyarra country, his country. So he would come down and do the Star ceremony on his own country. He knew his country all the way through; he knew his Law. His father, [name deleted] used to come down too and teach those young men about those Dreamings and the Law. [Name deleted] was taught by my father about the Law for my country, about the Star and Snake Dreamings so he could know that and carry it on – affidavit of Sharon Bill at [13].

[132] Another applicant person explains the rules and restrictions around who can speak for country and make decisions about country, and who can access particular places on country:

My father has the right to speak and make decisions for Pirttangu because he is kirda for that country and he has the knowledge. I am a younger woman and so I am still learning and the senior people are the ones who speak and make decisions. I can help out because I am kirda but I am too young to do it by myself. When I am older and the senior women pass away, I will speak and make decisions. The elders make decisions about where Aboriginal people who are not from here can go

on my country and they must listen and obey those old people. They tell them where they are allowed to go and where they have to stay away from. They have to stay away from men's sites. There are women's sites out there and the men can't go there or there would be trouble – affidavit of Janice Waistcoat at [14].

My consideration – s 190B(5)(b)

[133] The starting point of the task at s 190B(5)(b) is the identification of a society in existence at European settlement in the area, living according to identifiable laws and customs of a normative content – see *Gudjala 2007* at [65]. I have already discussed above in relation to the requirement of s 190B(5)(a), the reasons for which I was satisfied that the factual basis is sufficient to support an assertion that first contact with white people took place sometime around 1865, with European settlement occurring in the 1880s and 1890s – see at [112] to [114]. I have also discussed the reasons for which I consider the factual basis sufficient to support an assertion that the persons occupying the area at that time of European settlement were, in fact, the grandparents and great grandparents of members of the claim group – see at [113] to [117].

[134] Schedule A names grandparents and great grandparents of members of the claim group as the apical ancestors with reference to whom the native title claim group can be described. In my view, therefore, it is clear that the material asserts that the link between those apical ancestors and any society at European settlement is that they were in fact part of that society.

[135] As to the nature of the society at settlement, the factual basis provides that ethnographic and historical sources confirm that it was the Eastern Anmatyerr and Northern Arrernte people who occupied the application area at contact and settlement. There is no further information within the factual basis that speaks to these particular groups, however, their relationship to the claim group is described in the assertion that the groups include 'members of the native title claim group and their ancestors' – Schedule F at [19]. In relying on the statements made by the applicant persons pursuant to s 62(1)(a)(iii) that the information contained in the application is true, I accept that the ancestors of the group were Eastern Anmatyerr and Northern Arrernte people, and that these are much broader, regional divisions of Indigenous people.

[136] Schedule F states that the native title claim group is part of a society whose territory extends beyond the application area, the members of whom acknowledge and observe a common system of laws and customs. The claim group comprises nine different landholding or estate groups which fall within the territory of the Warumungu and Warlmanpa language groups. The description of the native title claim group at Schedule A states that:

The landholding groups are associated with the Warumungu (Kankawarla, Jajjinyarra, Patta, Pirrtangu, Purrurtu, Wapurru and Yurtiminyi) and Warlmanpa languages (Kanturrpa and Linga). They are all members of the Arandic group of languages. Under the traditional laws acknowledged and customs observed by members of the native title claim group rights in land are not acquired

through membership of a language group. Accordingly, linguistic affiliation or language group identity is not necessarily indicative of a person's connection to particular land and waters – Schedule A at [4].

[137] While the kinship system that the material asserts as inherently connected to the system of laws and customs is premised on the Warumungu and Warlmanpa group divisions, it is my understanding that the basis of the society asserted by the material is connection to land and waters, that is, the application area, and that the society can only be defined, therefore, by reference to landholding groups.

[138] Consequently, my understanding of the material is that it asserts that the relevant society at settlement was simply the ancestors of each of the nine landholding groups. Those groups can be affiliated with the Warlmanpa and Warumungu language groups, and they can be understood as being part of the much broader regional groups of the Eastern Anmatyerr and Northern Arrernte people, however these references do not assist in the identification of the relevant society occupying the area at settlement. Noting that Schedule A names various ancestors of the generation occupying the area around the time of settlement for each of the nine landholding groups, I consider that the factual basis is sufficient to support an assertion that there was, at settlement, a relevant society in the application area.

[139] The requirement at s 190B(5)(b) is that the society at settlement is one that is 'defined by recognition of laws and customs from which such traditional laws and customs are derived' – *Gudjala 2007* at [66]. The material before me sets out in considerable detail the system of traditional law and custom asserted as acknowledged and observed by the members of the group today. I note, however, that a mere assertion that laws and customs are traditional is not enough to satisfy the condition. There must be an outline of the facts of the case, namely, facts pertaining to how the existing laws and customs are derived from the laws and customs of the society at settlement – *Gudjala 2009* at [29], [72] and [74]. There are a number of reasons for which I have formed the view that the factual basis is sufficient to support an assertion that the laws and customs acknowledged and observed by the group are, in fact, traditional. These are set out below.

[140] Firstly, the material asserts that there is a strong practice of the transmission of laws and customs between generations. From statements made by the applicant persons in their affidavits, and information in Schedule F, I understand the material to assert that this practice involves both oral transmission and the observation of common practice of one's elders, while out on country see excerpt above at [128] and [130].

[141] The material further asserts that this practice continues today, and that there are strict rules and restrictions that apply in how that knowledge is transmitted and by whom – see for example the excerpt above at [132]. In my view, it is also clearly asserted by the material that these rules

and restrictions apply today in the same way that they were adhered to by the predecessors of the claim group. The following statement is an example of this material:

[My uncle] *[name deleted]* looked after our country Law way before he passed away. He knew that Law and that country and looked after the sites on our country to protect them from damage. His sons *[names deleted]* have been through the Law and have been taken out to that country to learn properly. They were taken onto my country on the application area and taught the songs and stories for our country. When men are taught the Law on country they must learn that in private. *[Name deleted]* is the main kirda who looks after our country because I am in Darwin. Old Colin Freddie, our kurdungurlu, also looks after our country now for us. He always goes out there and checks up on those places and makes decisions for us. He does the talking for us – affidavit of William Stokes at [16].

[142] I note that statements within the material include elderly applicant persons describing the way in which they were taught by their grandparents – see for example the excerpt above at [129]. As explained in my reasons above at s 190B(5)(a), I am satisfied that the factual basis is sufficient to support an assertion that it is the grandparents of those elderly members of the claim group who were in fact present in the application area around the time of settlement in the 1880s and 1890s. From material of the nature described above, I have formed the view, therefore, that the factual basis is sufficient to support an assertion that the transmission of laws and customs by the group and their predecessors has continued in the same way for at least the preceding two or three generations, including back to the time of settlement.

[143] Secondly, it is my understanding that the material asserts there to be a strong spiritual element underlying the laws and customs of the group. Specifically, Schedule F states that the foundation of the Law is in *Wirnkarra*, or the Dreamtime, and that the Law is understood by members of the group to be unchanged from the time of creation, having been transmitted to each succeeding generation by the ancestors. The material also asserts that the Dreamtime includes various features that provide an ongoing foundation for the exercise of native title rights and interests in relation to the area. These features include spiritual ancestors and accounts of their exploits and travels, religious laws and objects, places, ritual, songs, and events and directives of both a sacred and everyday nature – Schedule F at [6].

[144] In their affidavits the applicant persons describe some of these aspects of their spiritual interactions with their country, such as the practice of brushing the ground with leaves upon arriving on their country, to let the land know they are there and they are taking care of it – see excerpt above at [128]. They also describe the way in which they and their predecessors travelled across the application area following Dreaming tracks or sites, carrying out their responsibilities to care for those sites – see excerpt above at [101]. From such information it is clear, in my view, that the material asserts members of the claim group to have a significant awareness of their

spiritual responsibilities to their estate area, and that this awareness largely dictates the way in which they interact with the land and waters.

[145] Further, I consider the material to assert that members of the group believe that they will incur punishment for failing to meet those responsibilities, or for behaving inappropriately in relation to their country. For example, one applicant person states:

I have the right to speak and make decisions for Purrurtu country because I am mangaya and I have the knowledge... I can make decisions about where other Aboriginal people who are not from this country can go on our country and what they can do. There are places where they can't go hunting because there might be men's sites or ceremony grounds... They can't go to those places. There would be trouble if they did and the elders would make the decision about the punishment. They might not be allowed to go onto that country again... - affidavit of Lenny Williams at [15].

[146] And another applicant person states:

[Name deleted] taught me about our Dreamings, the Kunakiji (Snake) and Lukkurnu (Star). He showed us those open places. My father also told me about the Star Dreaming. When [name deleted] showed us our sites he showed us how to brush the rock and ground with the branches so we don't get sick when we go into those places. My father knew those places – affidavit of Sharon Bill at [12].

[147] In this way, I consider the material sufficient to support an assertion that due to the fear of punishment held by members of the group and their predecessors for failing to properly adhere to laws and customs as they relate to country, there has not been any change in the acknowledgement and observance of those laws and customs as transmitted down through the generations.

[148] Further support for the assertion that the laws and customs of the group are unchanged I consider to be found in my satisfaction above at s 190B(5)(a), that the factual basis is sufficient to support an assertion that there are only two or three generations separating the society at settlement and the members of the group acknowledging and observing the laws and customs today. Statements made by the applicant persons in their affidavits, in my view, indicate that they have living memory of those persons who were present in the area during settlement, and the way in which those persons acknowledged and observed laws and customs in relation to their country – see for example excerpt above at [127] and [130].

[149] I note the isolated location of the application area in the central part of the Northern Territory, and the fact that the material does not speak to any interruptions to the access and use of the area by the members of the group and/or their predecessors as a result of settlement or the encroachment of white society upon the area. From the material, and having considered maps available through the Tribunal's iSpatial database of the application area, it is my understanding that the primary nature of the settlement of the area was the establishment of pastoral leases and

that since this time further interference with the area by white people has been relatively minimal.

[150] In light of the above reasons and discussion, therefore, I have formed the view that the factual basis is sufficient to support an assertion that the laws and customs of the group acknowledged and observed today are, in fact, those same laws and customs acknowledged and observed by the society occupying the area at settlement, namely persons who are the grandparents and great grandparents of the claim group members. For this reason, I accept that the factual basis is sufficient to support an assertion of 'traditional' laws and customs, being laws and customs derived from the laws and customs of a society at settlement that are of a normative character.

[151] I am, therefore, satisfied that the factual basis is sufficient to support an assertion 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.

[152] The application satisfies the condition at s 190B(5)(b).

Reasons for s 190B(5)(c)

[153] My understanding of the assertion at s 190B(5)(c), noting its reference to 'those traditional laws and customs', is that it relates directly to the requirement at s 190B(5)(b) – *Martin* at [29]. In this way, where the factual basis is found to be insufficient in supporting an assertion of traditional laws and customs giving rise to the claim to native title (s 190B(5)(b)), it cannot be found sufficient to support an assertion of continuity of native title held pursuant to such laws and customs (s 190B(5)(c)).

[154] In *Gudjala 2007*, Dowsett J's comments suggest the following kinds of information may be necessary to meet the requirement at s 190B(5)(c):

- information about a society at sovereignty that observed traditional laws and customs from which the identified existing laws and customs were derived and were traditionally passed to the current claim group – at [82];
- that there has been continuity in the acknowledgement and observance of traditional law and custom going back to sovereignty, or at least European settlement – at [82].

[155] In *Yorta Yorta*, the High Court described this latter element or requirement of 'traditional laws and customs', as a requirement that the acknowledgement and observance of the traditional laws and customs have 'continued substantially uninterrupted since sovereignty' – at [87]. Further, the High Court held that the normative system under which the rights and interests are possessed must be a system that has had 'a continuous existence and vitality since sovereignty' – at [47].

[156] Schedule F of the application states that ‘the members of the native title claim group continue to acknowledge and observe the traditional laws and customs passed onto them by their ancestors’ – at [18]. It further states that the ‘continued observance of customary secular and spiritual practices by members of the native title claim group reaffirms their connection with the perceived spiritual properties of the land and waters in the application area’ – at [19]. Schedule F also provides that members of the group have maintained their connection with the area ‘notwithstanding the presence and activities of non-Aboriginal people in the region’ – at [20].

[157] These general assertions regarding the continued acknowledgement and observance of traditional laws and customs by the group and their predecessors, I consider to be supported by the statements made by the applicant persons in their affidavits. For example one elderly applicant person explains her living memory of the way in which the ‘old people’ used resources from the application area in accordance with their laws and customs:

As young girls we used to watch the older people get wood to make water carriers and coolamons. We used to watch them and see how it was done. That’s how we learnt that. My sister used to make nice coolamons. They got wood from all around that station. We used to make yam sticks and the boys made boomerangs. We used to get white ochre from Phillip Creek and red ochre from Helen Springs. The older people used to get that ochre and share it with others, like Kayetye mob. They used to meet up every year during holiday time for ceremony – affidavit of Bunny Narrurlu at [6].

[158] She also explains the way in which she was taught different aspects of her laws and customs by her mother, her aunties, her father, her uncle and her grandmothers, and the way in which she continues to pass this knowledge on – see excerpt above at [129].

[159] Another applicant person describes her knowledge of the transmission of laws and customs within her estate group through up to four generations:

I have been told that my father used to come down for ceremony time every year. He never missed ceremony. There used to be a big ceremony ground on North Hayward Creek on Jajinyarra country, his country. So he would come down and do the Star ceremony on his own country. He knew his country all the way through; he knew his Law. His father, *[name deleted]* used to come down too and teach those young men about those Dreamings and the Law. *[Name deleted]* was taught by my father about the Law for my country, about the Star and Snake Dreamings so he could know that and carry it on.

[Name deleted] took my nephew *[name deleted]* and some other young fellas out there to see those main sacred sites. He showed them and told them the stories. They walked a long way and they had to hear those stories in private. That’s the right way to learn. *[Name deleted]* goes up to Elliott every year for Ceremony and to help out with Young Men’s Ceremony. He is training up *[name deleted]*, grandson for my father, to take over that Star Dreaming. *[Name deleted]* is working on Rockhampton Downs and the Star Dreaming goes right through there and back to his own country, Jajinyarra – affidavit of Sharon Bill at [13] and [14].

[160] It is this type of information within the material that allows me to be satisfied that the factual basis is sufficient to support an assertion of a strong pattern of the transmission of laws and customs through the preceding generations to the claim group today, as discussed in my reasons above at s 190B(5)(b) – see [140] to [142]. I note that I have set out above the reasons for which I am satisfied that the factual basis is sufficient to support an assertion that this practice has continued in the same way for the preceding two or three generations, including back to European settlement of the area – at [142]. In my view, without conflicting information, it is reasonable to infer that things had continued in the same manner, uninterrupted, in the period between sovereignty in 1788, and the settlement of the application area.

[161] From the material, I consider it clearly asserted that the native title claim group and their predecessors have not, at any time since sovereignty, been prevented from accessing and using the land and waters of the application area for the purposes of exercising their native title rights and interests in relation to their traditional country – see Schedule F at [20]. In my view, the statements made by the applicant persons, one from each of the nine landholding groups, describe the way in which they, their parents, and their grandparents have continued to do this. Statements of this nature include elderly applicant persons sharing their living memory of the way in which their grandparents and the ‘old people’ used and enjoyed their country pursuant to their laws and customs, and passed relevant laws and customs, and practices pursuant to those laws and customs, onto the succeeding generations, including the claim group members themselves – see for example the excerpt at [157].

[162] In this way, and on the basis of the information of this nature before me, I have formed the view that the factual basis is sufficient to support an assertion of continuity in the acknowledgement and observance of traditional laws and customs by the group and its predecessors. In the same way, noting the numerous statements made by the applicant persons regarding the way in which they and their families continue to access, use and enjoy the application area in accordance with their traditional laws and customs, and the way they teach their children and grandchildren those laws and customs whilst out on country, I consider the factual basis sufficient to support an assertion that the system of laws and customs acknowledged and observed by the group is one that has had a ‘continuous existence and vitality since sovereignty’ – *Yorta Yorta* at [87].

[163] I am, therefore, satisfied that the factual basis is sufficient to support an assertion that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

[164] The application satisfies the requirement of s 190B(5)(c).

Conclusion

[165] 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.

[166] The wording of s 190B(6) makes clear that it is not a requirement that all of the rights and interests claimed satisfy the condition in order for the application to be registered – see *Doepel* at [16].

[167] I note that the focus of the test is ‘prima facie’. Consequently, the meaning to be applied to that term is of particular relevance in understanding the nature of the task at s 190B(6). In *Doepel*, Mansfield J held that it was the ordinary meaning of the phrase, namely ‘at first sight; on the face of it; as appears at first sight without investigation’, that was appropriate – at [134]. This was the definition adopted by the High Court in *North Ganalanja Aboriginal Corporation v Queensland* [1996] HCA 2 – see *Doepel* at [134]. Mansfield J held that ‘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’ – at [135].

[168] The subject matter for my consideration at s 190B(6) is ‘native title rights and interests’. For this reason, I am of the view that the task must be undertaken with specific reference to the definition of that term in s 223(1). That provision appears as follows:

- (1) The expression *native title* or *native title rights and interests* means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
 - (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
 - (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
 - (c) the rights and interests are recognised by the common law of Australia.

[169] For the purposes of s 190B(6), therefore, it is my understanding that the application must demonstrate that the rights and interests claimed are held pursuant to traditional laws and customs, that they are rights and interests in relation to land and waters, and that those rights and interests have not been extinguished over the entirety of the application area.

[170] The claimed native title rights and interests that I consider can be prima facie established are identified in my reasons below. I note that there is no claim to a right of exclusive possession, and that the rights listed below are, therefore, non-exclusive in nature.

Consideration

Right to access and travel over any part of the land and waters

[171] Each of the applicant persons in their affidavits speaks to the way in which they and their predecessors travelled across the application area, following Dreaming tracks or visiting family, and camping and gathering resources for food along the way. For example one applicant person states:

My mother, [name deleted] was mangaya for Kanturrpa country and she was born in the bush near Kalumpurlpa on Karlantijpa North Aboriginal Land Trust, just north of the application area. My mother's mother she passed away and was buried up there. When my mother was about 5 or 6 her mother passed away and she was taken to live at 7 Mile Aboriginal Reserve with her mother's sisters [names deleted]. She grew up there at 7 Mile. She walked all over that country with her uncle and his family across to Phillip Creek, all around. They walked all around and through Phillip Creek up to Banka Banka station and all around. They used to hunt and camp all over that country. They got water from the waterholes, and they made cooking fires from that wood all around there. They lived traditional way and got their food from that country. My mother's father grew up in the bush around Phillip Creek and his country. In those days people walked around and didn't stay in one place. He worked most of his life at Banka Banka Station and was mangaya for Kanturrpa – affidavit of Bunny Narrurlu at [9].

[172] And another applicant person states:

I was born in 1951 at Rockhampton Downs when my parents were working there. I grew up there in the stock camp and lived there until I was 14 years old. I didn't ever go to school. We would always come down and visit our country on the application area during holiday time. We would come and visit the old people and get ready for Business. When I was a little one we walked all the way. Hot one. Same thing we would camp in windbreaks and go hunting and we would get water for [sic] soakages and rockholes. The men would go and get kangaroo and cook some where they were and bring the rest back for us back at camp. They got ochre from eastern side and western side. We still get it from there – affidavit of Colin Freddie at [11].

[173] In addition to this Schedule F provides the general assertion that the members of the group have maintained their connection with the application area despite the presence and activities of non-Aboriginal people in the region. It is clear, therefore, in my view, that the material provides a prima facie case for the existence of this right. Noting that the right is one spoken of by an elderly claimant as being exercised by her grandfather (see at [171]), a man who would have occupied the area around the time of settlement, I consider that the right is asserted as one that exists pursuant to the traditional laws and customs of the native title claim group.

[174] The right to access and travel over any part of the land and waters of the application area is, therefore, prima facie, established.

Right to live on the land, and for that purpose, to camp, erect shelters and other structures

[175] Again, all of the applicant persons of each of the landholding groups speak to the way in which they and their predecessors lived on the application area. It is clear from these statements that this typically involved a nomadic lifestyle, whereby the predecessors of the group moved in a continuous manner across the land and waters of the application area, camping and gathering the sustenance they required from the natural environment around them. Statements indicate that structures were erected for the purpose of shelter while the predecessors moved across their country.

[176] For example, one applicant person states:

My father's mother, [name deleted] grew up around her country and around Banka Banka Station and then later she came back to Phillip Creek. She spent all her later life at Yurtuminyi and she died and is buried there. My father, [name deleted] was born at Yurtuminyi Rockhole on his father's mother's country, his kurdungurlu country. He grew up there but they would also go and visit family at 7 Mile. He grew up walking around his country, all over on the west side. They travelled around in those days. They never stayed in one place. They used to get their food by going hunting and eating wild food. Lots of bush potato. They used to camp there and live out there. They lived in wind breaks mainly, from grass. During rain time they used to build a little humpy from that blue sharp grass. They used to get water from the creeks or bush wells. In the creek beds they used to dig and make a little waterhole for the water to come up. We used to do that too. My grandfather showed me how to do that. He showed me all that country and he taught me when we were out there in the bush – affidavit of Bunny Narrurlu at [10].

[177] And another applicant person states:

In the early 1980s I got that outstation at Mungalawurru on my father's country, just west of the application area on Karlantijpa North Aboriginal Land Trust. My brother [name deleted] put that application in so we could get our land. After we got out [sic] land back I came back to live on my country and I'm still there now. My brothers and I started up a cattle business – affidavit of Colin Freddie at [13].

[178] In my view the information of this nature within the material is sufficient in allowing me to consider that the right is, prima facie, established. The latter statement above indicates that today, members of the group continue to live on their country, and have sought permission to construct shelters for the purpose of living there. Noting that the exercise of the right has been passed down through the generations to the claim group members today, I consider that the right is one held pursuant to the traditional laws and customs of the group.

[179] The right to live on the land, and for that purpose, to camp, erect shelters and other structures is, prima facie, established.

Right to hunt, gather and fish on the land and waters

[180] There are numerous references by the applicant persons in their affidavits to themselves and their predecessors spending time on the application area hunting and gathering resources from the area. The applicant persons also speak to the way in which they are continuing to pass on methods for hunting onto their children and grandchildren, in accordance with the patterns of teaching pursuant to their traditional laws and customs. For example one applicant person states that:

I still go hunting out on the application area and so do my nephews and the younger men. They all go out there hunting for turkey, kangaroo, emu and goanna. We get lots of bush food like berries, bush banana, bush oranges at the right time of year when there is fruit. After the rains the ladies go to near the old mission to get water lilies at the swamp there and lots of goannas there. The young men go out there camping and also on the old mission. When they stay at the mission they go out from there to go hunting, it's just next to the application area. The young men who go out and get kangaroo bring it back and share with people back in town. We also build a fire and cook food out there sometimes. When we go out hunting there we also go and check up on the sites to make sure there has been no damage. We do that at the same time – affidavit of Lenny Williams at [11].

[181] And another applicant person states that:

I still go hunting out on the application area, especially around Kuna. We go to hunt turkey and goanna and emu. We cooked the turkey in a hole in the ground, and lit a fire under it – affidavit of Ronald Hughes at [10].

[182] These statements refer to the claim group members currently exercising the right, however the statements excerpted in relation to some of the rights above make it clear that it was also a right exercised by their predecessors, including back to the time of settlement when traditional nomadic lifestyles were prevalent. In this way, I consider the right is one held pursuant to the traditional laws and customs of the group.

[183] In light of the material of this nature before me, I consider that the right to hunt, gather and fish on the land and waters is, prima facie, established.

Right to take and use the natural resources of the land and waters

[184] In the same way, the applicant persons frequently describe the way in which their predecessors, including back two or three generations, and themselves and their families, spent/spend time on the application area gathering the natural resources of the area. For example one applicant person states that:

I was born in 1980 in Tennant Creek and I grew up in Tennant Creek. My father has taken us, me and my brother out to our country. He also now takes his grandchildren out there and shows them his country. He used to take us hunting for kangaroo, emu and bush turkey. My mother shows us how to get bush tucker like wild oranges, bush potato and goannas. All sorts of bush food. We used to get bush medicine so we can boil it up and drink it when we are sick. We bring that back so we can have it at home and share with the grandchildren. They have been teaching us like his father taught him. He took us walking around, showing us out [sic] country so we learnt. Sometimes we used to go camping in the bush and my parents would make fires to cook our food and to keep warm. We still do that today. We go on weekends after the kids have finished school. My parents still come with us. Some of those old people used to get wood to make boomerangs and other things like coolamon and water carriers – affidavit of Janice Waistcoat at [11].

[185] And another applicant person states:

I still go hunting out on the application area, on the western side on our country. Our outstation is just to the west of the Phillip Creek boundary so we come across all the time to go hunting and look around. We also come across the boundary to look after our sacred sites, Ngappa (Rain) Dreaming sites. I have a few sites there on Phillip Creek and I must go and look after them. We go across to Yurtuminyi to hunt turkey and north to get kangaroo and emu. We get plenty of goanna, bush food, anything. Plenty of bush tucker out there. We get it and bring it back home and share with others. If we catch it early we cook it there on a fire and eat it. We still get bush medicine out there and make that medicine. We often go along the old road near the pipeline looking for bush medicine and bush food. Anything. We can get water from soakages out there if we need to. Sometimes we run out of water so we dig that soakage to get water – affidavit of Colin Freddie at [14].

[186] From these statements, it is clear that the applicant persons and their families presently spend time on the application area gathering natural resources with their family members, and that they continue to pass on methods of gathering to their children and grandchildren, in accordance with the patterns of teaching pursuant to their traditional laws and customs. Other statements excerpted above in relation to other rights, in my view, make clear that the predecessors of the claim group members also gathered resources from the environment around them, as they needed.

[187] In light of the information of this nature, I consider that the right to take and use the natural resources of the land and waters of the application area is, prima facie, established.

Right to access, take and use the natural water on or in the land except water captured by the holder of a pastoral lease

[188] Included within the resources gathered by the applicant persons and their predecessors is water. This is clear, in my view, from the statements provided within the affidavits. For example one applicant person states:

My father, [name deleted] was born at Phillip Creek Mission when those old people were walking through up to Rockhampton Downs and Brunchilly stations. He grew up walking around through the bush with the old people. They used to hunt and camp and get water from rockholes and soakages. They would walk until they found that water... My father he showed me all that. He told me stories from those days. He used to get lots of bush food out there. And they made damper from grass seeds - affidavit of Colin Freddie at [9].

[189] And another applicant person states:

My father's father, [name deleted] was born and grew up around his country. He walked all over that country with his family and they used to hunt and camp all over that country. He lived at 7 Mile Aboriginal Reserve and also at 6 Mile Aboriginal Reserve. He grew up in a traditional camp across the creek at 7 Mile. They used to get their water from the soakage there. They had to dig for that water. They hunted for their food traditional way and made fires to cook their dinner. They went hunting and getting bush food and wood and everything all around there on the application area... - affidavit of Geoffrey Taylor at [8].

[190] From these statements, I understand that the predecessors of the group back two or three generations exercised this right and have passed on that knowledge to the succeeding generations, including the claim group members. I understand that this transmission of knowledge to younger generations is in accordance with patterns of teaching pursuant to the traditional laws and customs of the group.

[191] Consequently, I consider that the right to access, take and use the natural water on or in the land except water captured by the holder of a pastoral lease is, prima facie, established.

Right to light fires for domestic purposes, but not for the clearance of vegetation

[192] A number of the statements by the applicant persons excerpted above in relation to other rights speak to the way in which the claim group members and their predecessors have exercised this right. This includes predecessors of the applicant persons back to the approximate time of settlement, namely those who are the grandparents of the applicant persons. Another example of this information is the following statement:

My father's father, grew up around Phillip Creek Mission and 7 Mile Aboriginal Reserve somewhere around there. He walked all over that country with his family, no car there. They walked all the way up to the stations up around Rockhampton Downs. They used to hunt and camp all over that country, getting water and cooking their food on fires. They used to camp in windbreak [sic] and have a little fire, and then walk again. Those old people were afraid of white people in the old days and they used to camp up in a cave not far from my boundary. They camped up there up on the hill - affidavit of Colin Freddie at [8].

[193] Consequently, I consider that the right is shown to be one that has been passed down through the generations to the claim group members today, in accordance with traditional patterns of teaching.

[194] I consider, therefore, that the right to light fires for domestic purposes, but not for the clearance of vegetation is, *prima facie*, established.

Right to access and to maintain and protect sites and places on or in the land and waters that are important under traditional laws and customs

[195] The material provides considerable information that speaks to this right. For example one applicant persons states:

I have taught my sons and nephews my Dreamings and I took them onto country to teach them. Our Dreamings are Yakkula (Two Women), Jalajirra (White Corella), Lalkarra (Grub) Matigarr (Python). They are all on Phillip Creek station. Those Dreaming sites are on Phillip Creek. We go out and check up on our sites on the application area. The young men go out to and check up too and if they find any damage or something wrong they come back and tell us older men. We then go out and have a look. We need to check the country and look after it for the next generations. We need to protect those places so we can show our kids and their kids. Protect them for future generations because they are special for our families. It's important – affidavit of Lenny Williams at [13].

[196] And another applicant person states:

I go out and look after my country and protect the sacred sites with Sacred Sites mob (Aboriginal Areas Protection Authority) and Central Land Council. I go out with [name deleted] and keep an eye on our sacred sites and protect them from damage, especially that mining companies might do. We don't want any damage like has been done on some countries – affidavit of Michael Williams at [15].

[197] In my view, it is clear from this information that the members of the claim group place a strong significance on their obligations to maintain and protect sites and places of importance. While these two statements speak to the current exercise of the right, noting that the material asserts the knowledge regarding sites to have been passed down to them by their predecessors in accordance with traditional patterns of teaching (see excerpt at [204]), I am of the view that the right is shown to be one held pursuant to the traditional laws and customs of the group.

[198] I consider that the right to access and to maintain and protect sites and places on or in the land and waters that are important under traditional laws and customs is, *prima facie*, established.

Right to conduct and participate in cultural, ceremonial, meeting, cultural practice and teaching activities on the land and waters

[199] Schedule E sets this right out as follows:

(h) The right to conduct and participate in the following activities on the land and waters:

- i. cultural activities
- ii. ceremonies
- iii. meetings
- iv. cultural practices relating to birth and death including burial rites;
- v. teaching the physical and spiritual attributes of sites and places on the land and waters that are important under traditional laws and customs

and, subject to the rights of any person arising under the laws in force in the Northern Territory to be present on the land, the right to privacy in the exercise and enjoyment of those activities.

[200] In my view, therefore, the right at (h) is in fact comprised of six individual rights and interests. That is, it includes the right of the members of the group to conduct and participate in each of the five activities listed in paragraphs (i) to (v), and it includes the right of the claim group members to conduct and participate in those activities in private. While I consider that these rights and interests do have similarities in their substance, I have considered them individually below. Regarding a right to conduct and participate in cultural activities, the material includes the following statement by one applicant person:

I have been taught my Dreaming Pirttangu (Flying Fox) by my family. I know those stories and I dance at Young Men's ceremony time. I'm still learning all those stories but I've been taken out to those open places on Phillip Creek station and shown those places. Those old ladies have done that Yaluwu women's ceremony out there, dancing and singing songs on the application area. I am still learning. We need to learn that in private – affidavit of Janice Waistcoat at [12].

[201] Regarding a right to conduct and participate in ceremonies, another applicant person states:

I went through Young Men's Business at Elliott and after I went through that ceremony I was taken onto my country on the application area and shown those places for Mantigarr, my Dreaming. That Dreaming goes through Elliott and Phillip Creek – affidavit of Ronald Hughes at [11].

[202] Regarding a right to conduct and participate in meetings, another applicant person states:

When I was about 15 years old I went through Young Men's Business on Rockhampton Downs. I still went through the Law for my kirda country and learnt my Law. There were a lot of people from our country living there then on the stations and we all got together for ceremony – affidavit of Michael Williams at [10].

[203] Regarding a right to conduct and participate in cultural practices relating to birth and death, including burial rites, another applicant person states:

In about 1947 I left school and started work in the dormitory at Phillip Creek School washing clothes. I still went out hunting and getting bush food with my cousins and sisters. We went looking for bush food everywhere there, lots of witchetty grubs. My sister used to catch wallaby with a dog, she was a

very good wallaby catcher. We used to catch them and bring them back to share with everyone. I was still walking all across the application area, looking after my country. In 1956 my father died there at the old Phillip Creek Mission and we buried him there. We were very sorry and cut our hair and got painted with white ochre – affidavit of Bunny Narrurlu at [7].

[204] And regarding a right to teaching the physical and spiritual attributes of sites and places on the land and waters, an applicant person states:

When I was in my early 20s I came down to try to find out about my father's country. I met [*name deleted*] and he took me out to Pawuwa Springs and showed me around and telling me about my country. Then in about 1995 I got a job at the Warrego Mine so I was close to my father's country. [*name deleted*] and Colin Freddie came to that place and took me down to Kankawarla and showed me around. We stayed down there for about two or three weeks. We were walking all around my country, hunting and camping in the bush. They showed me where all the waterholes are and where to get water. We got plenty of bush food and hunted for kangaroo and goanna and made fires to cook our food. Those old men taught me about my country and showed me the sacred sites and told me the stories. It was just us, learning in private. That's the proper way to learn about that Business, in private – affidavit of William Stokes at [14].

[205] I note that the statements excerpted above are only examples of the more extensive information I have before me that speaks to each of these individual rights. In this way, I consider that there is material before me providing a prima facie case for the existence of the rights. I also consider that the material supports those rights as being held pursuant to the traditional laws and customs of the native title claim group.

[206] Regarding a right to privacy in the conduct and participation of the claim group members in those activities, I consider that there is information within the application that speaks to such a right. For example, one applicant person states:

After I went through that Young Men's Ceremony I was taken onto my country on the application area and I was taught songs and stories for Linga country, those Ngappa places. Only the right people can be there when we learn and we are showed the sacred sites and told the stories and those songs. We must learn that Law in the bush, the proper way. Those old men they took me, my kurdungurlu and kirda and they taught me, but that must be done in private. Only the right people can be there, not outsiders, not whitefellas, just the right people for me who know that Law. Proper way. We still take young men and teach them about the same way, in private on their country. I learnt about my kurdungurl country the same way. The right way – affidavit of Colin Freddie at [16].

[207] Despite this, however, with reference to the definition of 'native title rights and interests' at s 223(1)(b), that rights and interests must be in relation to land or waters, I am of the view that this right cannot be prima facie established. A right of the claim group members to privacy in the conduct of certain activities is a personal right, that is, a right relating to persons, not land or waters.

[208] I note that the Federal Court has previously recognised the ‘power [of the native title claimants] to regulate the presence of others at any of these activities [where the activities listed are in similar terms to those appearing at subparagraphs (i) to (v) of paragraph (h)] on the Recognition Area’ – see *Patta Warumungu People v Northern Territory of Australia* [2007] FCA 1386 at paragraph [5(d)]. In my view, however, there is a clear distinction to be made between a claim to the ‘right to privacy in the exercise and enjoyment of’ activities, and a claim to the ‘power to regulate the presence of others at’ any of the activities. Specifically, the latter claim is not to a right, but merely provides clarification as to how the other rights to engage in the activities will be exercised. I consider a right to privacy to have a far broader scope and substance.

[209] Consequently, I consider that the five rights set out in paragraph (h) of Schedule E are, prima facie, established, but that the right of the members of the claim group to privacy in the exercise and enjoyment of those rights is not, prima facie, established.

Right to speak for country and make decisions about the use and enjoyment of the land and waters by Aboriginal people who recognise themselves to be governed by the traditional laws and customs of the native title holders

[210] In my view there is clearly information before me that speaks to a right of the members of the claim group to speak for country and make decisions about the use and enjoyment of the application area by the persons who are governed by the traditional laws and customs of the native title holders. For example one applicant person states:

I have the right to speak and make decisions for Purrurtu country because I am mangaya and I have the knowledge. Me and my two brothers need to make those decisions. The young men come to us if they need to know something or we need to make a decision about our country. They need to come to the senior men for our country. I can make decisions about where other Aboriginal people who are not from this country can go on our country and what they can do. There are places where they can't go hunting because there might be men's sites or ceremony grounds. We can tell them that they can go this way but they can't go that way. There are places and sites where women and children can't go and also those young boys who haven't been through the Law. They can't go to those places. There would be trouble if they did and the elders would make the decision about the punishment. They might not be allowed to go onto that country again. We also won't let outside people who might want to go hunting when the Young Men are going through the Law, we won't let people go then. We stop them – affidavit of Lenny Williams at [15].

[211] And another applicant person states:

I have the right to speak and make decisions for Linga country because I am mangaya/kirda and I am a senior man. I can also do that for Kanturra and Kankawarla countries because I am kurdungurlu and I have the knowledge. I can make decisions about where other Aboriginal people who are not from this country can go on our country and what they can do and where the areas where they can't go. There are men's sites where other people can't go. So we tell them to stay away from those areas. Women and children can't go or young boys who haven't been through the Law, they can't go. They

can go women's side. If someone went it [sic] there would be trouble and they would be told to leave because they did the wrong thing. We can tell them that they can go this way but they can't go that way, they have to listen – affidavit of Colin Freddie at [20].

[212] I note that a right to speak for country and a right to make decisions about the use of country are generally understood as being synonymous with a right to exclusive possession, but that the rights and interests listed in Schedule E are non-exclusive in nature. Having considered the case law authorities regarding these rights as non-exclusive rights, however, I have formed the view that they are prima facie, established.

[213] In *Wandarang, Alawa, Marra and Ngalakan Peoples v Northern Territory* [2004] FCAFC 187, the Full Court of the Federal Court recognised the non-exclusive right of the native title claim group to speak for country (see at paragraph [3(b)]). In *Patta Warumungu People v Northern Territory* [2007] FCA 1386, the Federal Court recognised the non-exclusive right of the native title claim group to 'make decisions about the use and enjoyment of the Recognition Area by Aboriginal people who recognise themselves as governed by Aboriginal traditional laws and customs and who acknowledge the traditional laws and customs of the native title holders' – at [5(e)].

[214] On that basis, and in light of the fact that there is material before me that speaks to the existence of the right, including information that speaks to the right as being one held pursuant to the traditional laws and customs of the group, I consider that it is, prima facie, established.

Right to share or exchange natural resources obtained on or from the land and waters

[215] There are a number of statements by applicant persons in their affidavits that speak to a right of the claim group members to share and exchange natural resources obtained on or from the application area. In my view it is clear that this was a right exercised by both the predecessors of the group, including back two or three generations, and by the members of the group today. For example one applicant person states:

As young girls we used to watch the older people get wood to make water carriers and coolamons. We used to watch them and see how it was done. That's how we learnt that. My sister used to make nice coolamons. They got wood from all around that station. We used to make yam sticks and the boys made boomerangs. We used to get white ochre from Phillip Creek and red ochre from Helen Springs. The older people used to get that ochre and share it with others, like Kayetye mob. They used to meet up every year during holiday time for ceremony – affidavit of Bunny Narrurlu at [6].

[216] And another applicant person states:

I still go hunting out on the application area and so do my nephews and the younger men. They all go out there hunting for turkey, kangaroo, emu and goanna. We get lots of bush food like berries, bush banana, bush oranges at the right time of year when there is fruit. After the rains the ladies go to near the old mission to get water lilies at the swamp there and lots of goannas there. The young men go out there camping and also on the old mission. When they stay at the mission they go out

from there to go hunting, it's just next to the application area. The young men who go out hunting and get kangaroo bring it back and share with people back in town. We also build a fire and cook food out there sometimes. When we go out hunting there we also go and check up on the sites to make sure there has been no damage. We do that at the same time – affidavit of Lenny Williams at [11].

[217] In light of this material, I am of the view that the right to share or exchange the natural resources of the application area is shown as being one held pursuant to the traditional laws and customs of the native title claim group, passed down from generation to generation to the claim group today. I consider, therefore, that it is, prima facie, established.

Right to be accompanied on the land and waters by persons who are not native title holders

[218] The right described in Schedule E states that the persons who are not native title holders who the group claim a right to be accompanied onto the application area by include:

- (i) people required by traditional law and custom for the performance of ceremonies or cultural activities on the land and waters;
- (ii) people who have rights in relation to the land and waters according to the traditional laws and customs acknowledged by the native title holders;
- (iii) people required by the native title holders to assist in, observe or record traditional activities on the areas.

[219] Again, there are a number of references by the applicant persons to this right in statements made in their affidavits. For example one applicant person states:

When other senior men come for ceremony and we need to see a site we can take them onto my country and show them and show them our country and our places. The same if I went to their country. People who are married into our country, like my wife or my sister's husbands, they can't go by themselves onto our country they would have to go with a family member. My wife would have to go with one of my sisters to look around and go hunting. I have the right to take them and show them around, just like my sisters – affidavit of Michael Williams at [18].

[220] And another applicant person states:

When people, like anthropologists, want to do research about my country, they have to speak to the right people so we can take them and show them. They can't just go by themselves and can't just go with anyone, it must be the right person. I am kirda so I can go with them but [*name deleted*] always goes with us because he knows all the way through – affidavit of Sharon Bill at [16].

[221] From these statements and others within the material, it is clear that it is and/or has been a common occurrence for other persons to come onto the application area, particularly for the purposes of ceremony, and for the purposes of documenting culture, laws and customs (that is,

persons such as anthropologists). In my view the information within the factual basis that speaks to this right indicates that senior men coming onto country for ceremony is a practice that has been passed down to the members of the claim group today by their predecessors, in accordance with traditional patterns of teaching. Consequently, I am of the view that the right is one held pursuant to the traditional laws and customs of the native title claim group.

[222] I consider, therefore, that the right to be accompanied onto the land and waters by non-native title holders is, prima facie, established.

Conclusion

[223] 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.

[224] In *Gudjala 2007*, Dowsett J approved the approach of the Registrar's delegate to the task at s 190B(7) where the delegate had considered the use of the word 'traditional' to require that the connection be in accordance with the laws and customs of the group having their origin in the laws and customs of a society at sovereignty. His Honour held that:

The delegate considered that the reference to 'traditional physical connection' should be taken as denoting, by the use of the word "traditional", that the relevant connection was in accordance with laws and customs of the group having their origin in pre-contact society. This seems to be consistent with the approach taken in *Yorta Yorta*. As I can see no basis for inferring that there was a society of the relevant kind, having a normative system of laws and customs, as at the date of European settlement, the Application does not satisfy the requirements of subs 190B(7) – at [89].

[225] In this way, it is my understanding that where the factual basis is not sufficient for the purposes of s 190B(5)(b), regarding the existence of traditional laws and customs, and thereby a society at sovereignty acknowledging and observing a normative system of laws and customs, the application cannot meet the requirement at s 190B(7).

[226] In *Yorta Yorta*, comments from the High Court indicate that s 190B(7) requires information pertaining to an actual presence on the land – at [184]. Further support for this approach is found

in the explanatory memorandum to the Native Title Amendment Bill 2007, which states that the connection 'must amount to more than a transitory access or non-native title access' – at [29.19].

[227] Mansfield J in *Doepel*, held that the condition required the Registrar to be satisfied of a particular fact or facts, and consequently, that it was necessary that the application contain evidentiary material relating to the particular matters prescribed by s 190B(7) – at [18]. His Honour further held, however, that the Registrar was not to approach that material in the same way as the Court in determining an application for a determination of native title rights and interests – at [18]. The focus of the test is to be upon 'the relationship of at least one member of the native title claim group with some part of the claim area' – *Doepel* at [18].

[228] Noting that the focus of the test is upon the relationship of one member of the group with some part of the application area, I have set out below the information regarding the 'traditional physical connection' of claim group member Bunny Narrurlu.

[229] Ms Narrurlu is a senior woman of the Yurtuminyi landholding group, possessing rights and interests in the central western part of the application area. In her affidavit, Ms Narrurlu explains that this is by way of her descent from her father's mother, [*name deleted*]. Ms Narrurlu also attests that she has rights and interests in Kanturrpa country, in the western part of the application area, through her mother's father.

[230] Schedule M of the application sets out specific information regarding an asserted traditional physical connection of Ms Narrurlu with the application area. In summary, Schedule M provides that:

- Ms Narrurlu has lived and worked on and around the application area for most of her life;
- she currently has an outstation on the application area where she spends time with family members and from which she goes out hunting and gathering bush food on the application area;
- Ms Narrurlu learned about the application area from her older family members, particularly her grandfather who took her around the country, teaching and showing her things as they walked;
- in the same way Ms Narrurlu learned from her elders, she now passes on her knowledge of the physical and spiritual aspects of the application area to the younger generations;
- Ms Narrurlu learned the Dreamings and all their associated dances and songs from her elders;
- she dances and sings at Young Man ceremony time to keep that knowledge going;
- Ms Narrurlu is required to accompany senior women from other places when they come to her country for ceremony;
- she grew up walking around the application area, camping in windbreaks made from grasses, hunting animals like wallaby and goanna and collecting bush foods like conkerberries, passionfruits, witchetty grubs, wild oranges bush bananas and bush potatoes;

- she and her family would gather water from the soakages and waterholes on the area, and they would make fires to cook their food;
- Ms Narrurlu is active in looking after her country in accordance with her role within her landholding group: she drags leaves on the ground to tell the land she is there and when she visits a place where family members are buried;
- Ms Narrurlu has the authority to speak for her country and make decisions about what happens on her country;
- when outsiders, such as mining companies or anthropologists, want to come onto the application area or talk about the application area, Ms Narrurlu must be involved in the discussions and accompany them on country.

[231] The statements made by Ms Narrurlu in her affidavit speak to all of these aspects of the traditional physical connection she has with the area set out in Schedule M.

[232] I have discussed above at s 190B(5)(b) the various aspects of the system of traditional laws and customs asserted by the material. These aspects include a strong pattern of the transmission of knowledge of laws and customs and country to younger generations, where elders take children out on country and walk with them, demonstrating practices in relation to land and waters. Another aspect is the spiritual affiliation of claim group members with the application area, whereby individuals have specific roles and responsibilities in relation to their country, and they adhere to certain practices on country to ensure its protection, and to avoid harm to themselves.

[233] The assertions in Schedule M regarding the traditional physical connection of Ms Narrurlu with the application area, and the statements she provides in her affidavit, in my view, address all of these aspects of the system of laws and customs asserted by the material. In addition to this, I note that the material asserts that Ms Narrurlu was primarily taught about her country and the laws and customs of the group regarding that country, by her grandfather. I have discussed in relation to the condition at s 190B(5)(a) above, the reasons for which I am satisfied that the factual basis is sufficient to support an assertion that Ms Narrurlu's grandfather was present in the application area around the time at which settlement was occurring.

[234] It is clear from the material before me that Ms Narrurlu has had, and continues to have, a physical connection with the land and waters of the application area. In light of the discussion above and on the basis of that material, I have formed the view that that physical connection is one that is traditional, namely, that it is in accordance with the traditional laws and customs of the group.

[235] I am, therefore, satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with the land and waters of the application area.

[236] 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 in relation to an area; and

(b) either:

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

(ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in s 23E in relation to the act;

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

(3) If:

(a) a previous non-exclusive possession act (see s 23F) was done in relation to an area; and

(b) either:

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

(ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in s 23I in relation to the act;

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

(4) However, subsection (2) or (3) does not apply to an application if:

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

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

[237] 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)

[238] Section 61A(1) provides that a native title determination application must not be made in relation to an area for which there is an approved determination of native title. The geospatial assessment provides that there are no determinations of native title covering any part of the application area as at 16 December 2014. I have accessed today, the Tribunal's iSpatial database and produced an overlap analysis for the application area. This confirms that as of the date of this decision, there are no determinations of native title covering any part of the application area.

Section 61A(2)

[239] Section 61A(2) provides that a claimant application must not be made over areas covered by a previous exclusive possession act, unless the circumstances described in subparagraph (4) apply. As above in my reasons at s 190B(2), the written description of the application area at Schedule B of the application specifically excludes areas within the boundary of the application area in relation to which a previous exclusive possession act has been done.

Section 61A(3)

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

Conclusion

[241] In my view the application does not offend any of the provisions of ss 61A(1), 61A(2) and 61A(3) and therefore the application satisfies the condition of s 190B(8).

Subsection 190B(9)

No extinguishment etc. of claimed native title

The application and accompanying documents must not disclose, and the Registrar/delegate must not otherwise be aware, that:

- (a) a claim is being made to the ownership of minerals, petroleum or gas wholly owned by the Crown in the right of the Commonwealth, a state or territory, or
- (b) the native title rights and interests claimed purport to exclude all other rights and interests in relation to offshore waters in the whole or part of any offshore place covered by the application, or
- (c) in any case, the native title rights and interests claimed have otherwise been extinguished, except to the extent that the extinguishment is required to be disregarded under ss 47, 47A or 47B.

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

Section 190B(9)(a)

[243] Schedule Q of the application provides that the applicant does not claim ownership of minerals, petroleum or gas wholly owned by the Crown.

Section 190B(9)(b)

[244] Schedule P has a subheading, 'Details of any claim by the native title claim group of exclusive possession of all or part of an offshore place', and then states '[n]ot applicable'. My understanding of this information is that the applicant does not make any claim for native title rights and interests over any offshore place.

Section 190B(9)(c)

[245] There is nothing within the information before me that suggests that the native title rights and interests claimed have been otherwise extinguished.

Conclusion

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

[End of reasons]

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Phillip Creek Pastoral Lease
NNTT file no.	DC2014/009
Federal Court of Australia file no.	NTD50/2014

In accordance with ss 190(1) and 186 of the *Native Title Act 1993* (Cth), the following is to be entered on the Register of Native Title Claims for the above application.

Section 186(1): Mandatory information

Application filed/lodged with:

Federal Court of Australia

Date application filed/lodged:

28 November 2014

Date application entered on Register:

23 February 2015

Applicant:

Bunny Narrurlu, Colin Freddie, Geoffrey Taylor, Janice Waistcoat, Lenny Williams, Michael Williams, Ronald Hughes, Sharon Bill and William Stokes on behalf of the members of the Kankawarla, Kanturrpa, Jajjinyarra, Linga, Patta, Pirrtangu, Purrurtu, Wapurru and Yurtuminyi land holding groups

Applicant's address for service:

Central Land Council
PO Box 3321
Alice Springs NT 0871

Area covered by application:

- (a) **The area covered by the application**

1. NT Portion 408 comprising an area of 3,624 square kilometres 51 hectares held under Perpetual Pastoral Lease 946 by Charles John Warby and Judy-Anne Warby.
2. NT Portion 5005 comprising an area of 10 square kilometres 80 hectares held for an estate in fee simple by the Yurtuminyi Aboriginal Corporation (Yurtuminyi ILUA DI2004/016 registered on 11 July 2005).
3. NT Portion 5006 comprising an area of 23 square kilometres 69 hectares held for an estate in fee simple by the Jurntu Jungu Aboriginal Corporation (Pingala ILUA DI2004/015 registered on 11 July 2005).
4. NT Portion 5476 comprising an area of 7 square kilometres 26 hectares 9,000 square metres held under Crown Lease Term 1880 by the AustraAsia Railway Corporation.
5. The parcel of land formerly identified as NT Portion 7025 comprising an area of 14 square kilometres 44 hectares held under Crown Lease Term 2004 by Global Port Solution Pty Ltd (Phillip Creek PPL Bulk Handling Facility ILUA DI2009/003 registered on 17 November 2009). That title was cancelled on 8 October 2014 but nevertheless describes a part of the area covered by the application. No new title has been issued as at the date of this application.
6. The area covered by the application and its boundaries are shown on the map referred to in Schedule C. Copies of the Indigenous Land Use Agreements are attached and labelled "Attachment A".

(b) Any areas within those boundaries that are not covered by the application

7. NT Portion 1421 comprising an area of 8,460 square metres held for an estate in fee simple by the Australian Telecommunications Commission.
8. NT Portion 1754 comprising an area of 25 square kilometres 28 hectares held for an estate in fee simple by the Warumungu Aboriginal Land Trust.
9. NT Portion 4848 comprising an area of 3 square kilometres 29 hectares 5,000 square metres held for an estate in fee simple by the Pawuwa Aboriginal Corporation.
10. A road 100 and 150 metres wide (Stuart Highway).
11. A road 100 metres wide which traverses NT Portion 408 from the Stuart Highway to NT Portion 1754.
12. A road 100 metres wide (Warrego Road) which traverses NT Portion 408 from the boundary with NT Portion 494 (Tennant Creek) north and east to the boundary with NT Portion 3555 (Karlantijpa North ALT).
13. A road 100 metres wide which traverses NT Portion 408 from the Warrego Road south to the boundary with NT Portion 3556 (Karlantijpa South ALT).
14. A road 100 metres wide (Kalumpurlpa Road) which traverses NT Portion 408 from the Warrego Road north to the vicinity of the Alice Springs-Darwin Railway.
15. Subject to Schedule L, any area within the boundaries of the area covered by the application in relation to which a previous exclusive possession act under section 23B of the NTA has been done is excluded from the application.

Persons claiming to hold native title:

1. The native title claim group comprises the members of the Kankawarla, Kanturrpa, Jajjinyarra, Linga, Patta, Pirrtangu, Purrurtu, Wapurru and Yurtuminyi landholding groups (“the landholding groups”). Those persons according to the traditional laws acknowledged and customs observed by them:
 - (a) have spiritual, physical and/or historical associations with the area described in Schedule B (“the application area”) and are traditionally connected to the area through:
 - (i) descent from ancestors (including adoption) connected with the application area as described in paragraph 7(a) below; or
 - (ii) non-descent based connections as described in paragraphs 7(b) and 9 below;
 - (b) hold the common or group rights and interests comprising the native title in the application area.
2. The application area is located in Warumungu and Warlmanpa territory respectively. The common body of traditional laws acknowledged and customs observed by members of the native title claim group govern how rights and interests in land are acquired and who holds them in particular parts of this territory, including the application area. The nine landholding groups which together comprise the native title claim group constitute a community or group whose members hold the common or group rights comprising the native title over the application area as a whole.
3. The term “estate” is used to describe the land and waters associated with a landholding group. The landholding groups are named after their respective estate areas and are affiliated to the following parts of the application area:
 - (a) Kankawarla – central;
 - (b) Kanturrpa – western;
 - (c) Jajjinyarra – north eastern;
 - (d) Linga – western;
 - (e) Patta – central south;
 - (f) Pirrtangu – eastern;
 - (g) Purrurtu – central;
 - (h) Wapurru – central north;
 - (i) Yurtuminyi – central west.

4. The landholding groups are associated with the Warumungu (Kankawarla, Jajjinyarra, Patta, Pirttangu, Purrurtu, Wapurru and Yurtuminyi) and Warlmanpa languages (Kanturrpa and Linga). They are all members of the Arandic group of languages. Under the traditional laws acknowledged and customs observed by members of the native title claim group rights in land are not acquired through membership of a language group. Accordingly, linguistic affiliation or language group identity is not necessarily indicative of a person's connection to particular land and waters.

5. The persons authorised to make the application are members of the following landholding groups:

Kankawarla: William Stokes
Kanturrpa: Michael Williams
Jajjinyarra: Sharon Bill
Linga: Colin Freddy
Patta: Geoffrey Taylor
Pirttangu: Janice Waistcoat
Purrurtu: Lenny Williams
Wapurru: Ronald Hughes
Yurtuminyi: Bunny Narrurlu

6. Members of the following landholding groups have been recognised as the traditional Aboriginal owners of neighbouring land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and as native title holders under the *Native Title Act 1993* (Cth):

Kankawarla

Warlmanpa, Warlpiri, Mudbura and Warumungu Land Claim (Group C3, Japurla Japurla)

Report by the Aboriginal Land Commissioner, Mr Justice Toohey, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1981, pp 39-40, 55-56.

Wampana Land Claim (Japurla Japurla)

Application No. 108 disposed of without an enquiry. Land included in Schedule 1, No 66 of 1994.

Warlmanpa (Muckaty Pastoral Lease) Land Claim (Yapayapa group)

Warlmanpa (Muckaty Pastoral Lease) Land Claim, Report No. 50. Report and recommendation of the Aboriginal Land Commissioner, Justice Gray, to the Minister for Aboriginal and Torres Islander Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1997, pp 34-37, 43-44, 54-56.

Kanturrpa

Warlmanpa, Warlpiri, Mudbura and Warumungu Land Claim (Group A2, Kanturlpa)

Report by the Aboriginal Land Commissioner, Mr Justice Toohey, to the Minister for

Aboriginal Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1981, pp 17, 45-46.

McLaren Creek Land Claim

McLaren Creek land Claim, Report No. 32. Findings, Recommendation and Report of the Aboriginal Land Commissioner, Mr Justice Olney, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1990, pp 1-4, 15, 26-32.

Warlmanpa (Muckaty Pastoral Lease) Land Claim (Milwayi group)

Warlmanpa (Muckaty Pastoral Lease) Land Claim, Report No. 50. Report and recommendation of the Aboriginal Land Commissioner, Justice Gray, to the Minister for Aboriginal and Torres Islander Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1997, pp 17-22, 39-40, 45-47.

Kanturrpa-Kanttaji Land Claim

Application No. 114 disposed of without an enquiry. Land included in Schedule, No 6 of 1993.

Jajjinyarra

Warumungu Land Claim (Group 3, Kunakiji and Lukkurnu)

Warumungu Land Claim, Report No. 31. Report by the Aboriginal Land Commissioner, Mr Justice Maurice, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1988, pp 104-109, 270.

Linga

Warlmanpa, Warlpiri, Mudbura and Warumungu Land Claim (Group C1, subgroup of Ngapa)

Report by the Aboriginal Land Commissioner, Mr Justice Toohey, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1981, pp 37-38, 51-54.

Patta

Warumungu Land Claim (Group 2, Partta)

Warumungu Land Claim, Report No. 31. Report by the Aboriginal Land Commissioner, Mr Justice Maurice, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1988, pp 68-79, 265.

Tennant Creek Native Title Determination. *Patta Warumungu People v Northern Territory of Australia* [2007] FCA 1386.

Pirttangu

Warumungu Land Claim (Group 2, Pirttangu)

Warumungu Land Claim, Report No. 31. Report by the Aboriginal Land Commissioner, Mr

Justice Maurice, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1988, pp 68-79, 265.

Purrurtu

Warlmanpa, Warlpiri, Mudbura and Warumungu Land Claim (Group D2, Kirriji-kujarra)

Report by the Aboriginal Land Commissioner, Mr Justice Toohey, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1981, pp 42, 65-66.

Warumungu Land Claim (Group 4, Purrurtu)

Warumungu Land Claim, Report No. 31. Report by the Aboriginal Land Commissioner, Mr Justice Maurice, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1988, pp 99-103, 269.

Wapurru

Warlmanpa, Warlpiri, Mudbura and Warumungu Land Claim (Group D4)

Report by the Aboriginal Land Commissioner, Mr Justice Toohey, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory. Commonwealth of Australia 1981, p 42.

Membership of the native title claim group

7. In accordance with the claimants' system of traditional laws and customs in relation to membership of a landholding group and the possession of rights and interests in land the native title claim group comprises all those persons who are:

(a) descendants (by birth or adoption) of one or more of the following named and unnamed ancestors of the landholding groups ("the ancestors"):

KANKAWARLA (Jangali/Nangala-Jampijinpa/Nampijinpa)

Descendants of two unnamed Jangali and one unnamed Nangala.

Unnamed Jangali

Jimmy Ngalarimanu Jampin

Andrew Brian Jappaljarri (adopted, MF) and siblings and descendants.

Unnamed Jampin

Frank Lauder Jangali/Jappaljarri (MF) and siblings and descendants.

Unnamed Nampin

No known descendants.

Maudie "Larry" Nampin

No known descendants.

Hector Baxter Jampin

Dianne Stokes Nampin, Dennis Brian Stokes Jampin, Noel James Baxter Jampin (dcd), Jeffrey Holt Jangali (FF) their siblings and descendants.

Topsy Nampin

Geoffrey Taylor Jappangarti, Kathleen Brown (FM); Jean McCarthy Nakkamarra, Andrew Ah Kit, Elizabeth Taylor (MM) their siblings and descendants.

Unnamed Jangali

Hughie Jampin

Peter Jackson Jampin, Pauline Jackson Nampin, Gregory Jampi, Prescilla Nampin, Paula Perkins Nampin, Jenny Hayes Nampin (FF); Ritchie Fejo Jappaljarri (MF) their siblings and descendants.

Ned Pinjilkarri Jampin

No known descendants.

Edgar Purpartinjina Jampin

Geoffrey Lauder Juppurla (adopted, FF) and siblings and descendants.

Maudie Pikapinali Nampin

Hagar Lovegrove Nappangarti (FM) and siblings and descendants.

Unnamed Nangali

Unnamed Naljarri

Hilda Kingston Nangali/Nappangarti (MM) and siblings (dcd). No living descendants.

KANTURRPA (Japaja/Napaja-Jungurra/Namurlpa)

Descendants of one unnamed Naljarri (Napaja) and two unnamed Jappaljarri (Japaja).

Unnamed Naljarri

Unnamed Juppurla

Elizabeth Newcastle Narrurlu (FF); Penny Williams Namikili, Kevin Morrison, Ronald Morrison, Jim Morrison (MF) their siblings and descendants.

Unnamed Jappaljarri

Unnamed Jungarrayi

Mark Brown Mirlamirla Jungarrayi (FF); Mona Kidd Narrurlu, Rainmaker Jack Juppurla (dcd) (Louie Martin Nakamarra), Willy Kelly Juppurla (dcd) (Doris Kelly), Mavis Kelly Narrurlu (dcd) (Joseph, Barbara, Michael Driver), Judy Kelly Narrurlu (dcd) (Peggy Dixon Jones Nappangarti), Hector Raymond Kelly Juppurla (dcd)

(Glen Raymond Jakamarra) (MF) their siblings and descendants.

Talbert Jungarrayi

Michael Sambo Jungarrayi, Lorna Stokes Namikili (dcd) (Dianne Stokes Nampin), Sammy Sambo Jungarrayi (dcd) (Henry Sambo Jappaljarri), Jean Sambo Namikili, Albert Brown Jungarrayi, Gladys Brown Namikili, Marshall Bennett Jungarrayi (FF); Angus Riley Juppurla (dcd) (Warren Riley Jakamarra) (MF) their siblings and descendants.

Unnamed Namikili

Nora Graham Nappanangka, Nelson Jappanangka (MM) their siblings and descendants.

Unnamed Namikili

Lena Dixon (dcd) (FM), Eva Kelly Nappanangka (MM) their siblings and descendants.

Unnamed Namikili

Mary Rankin Nappanangka, Marie Rennie Nappanangka (MM) their siblings and descendants.

Unnamed Namikili

Sydney Jappanangka (MM) and siblings and descendants.

Unnamed Namikili

Frank Lauder Jangali/Jappaljarri (FM); Beryl Nappanangka (MM) their siblings and descendants.

Unnamed Jappaljarri

Unnamed Jungarrayi

Harry Brewster Jungarrayi (FF) and siblings and descendants.

Unnamed Jungarrayi

Penny Williams Namikili, Jill Foster Namikila (FF) their siblings and descendants.

Unnamed Jungarrayi

Elsie Narrurlu, Amy Narrurlu, Bunny Narrurlu, George Juppurla (dcd) (Ronnie Booth Juppurla), Donald Graham Juppurla (dcd) (William Graham Jakamarra) (MF) their siblings and descendants.

Mick Bilanga Jungarrayi

Nita Namikili, Bronwyn Newcastle Namikili, Anthony Newcastle Jungarrayi (FF); Frank Anderson Juppurla, Elizabeth, Jean, Nellie Newcastle Narrurlu, Amy Newcastle Narrurlu (MF) their siblings and descendants.

Jack Jungarrayi

Robert Thompson Jungarrayi, Pansy Willian Namikili (dcd) (Gordon Noonan Jampin), Rosie Williams (dcd) (Chris Noonan Jampin), Eileen Williams Namikili, Ivan Williams Jungarrayi, April Williams Namikili, Dianne Willian Namikili, Hannah Williams Namikili, Henry Williams Jungarrayi, Susie Williams Namikili, Beverley Williams Namikili, Michael Williams Jungarrayi (FF) their siblings and descendants.

JAJJINYARRA (Jappanangka/Nappanangka- Jappangarti/Nappangarti)

Descendants of one unnamed Jappanangka

Mysie Minpirrngali Nampin

Kathleen Fitz Nappanangka (MF) and siblings and descendants.

Roderick Mirijilkari Jampin

Brian Morrison Jangali/Jappangarti (F); Sharon Bill Namikili Pinkamanya, Maureen Bill Namikili, Harold Bill Jungarrayi (adopted, dcd), Nita Bostock Namikili (adopted) (FF); Roy Kingston Jangali, Eileen Nangali (dcd), Gladys Nangali (MF) their siblings and descendants.

Unnamed Jappangarti

No known descendants.

Rosie Burt Nappangarti Pinkamanya

Dick Foster Jangali (MF) his siblings and descendants.

Tarrkingali Nappangarti

No known descendants.

Elsie Karimalanya Nappangarti

Winnie Frank (dcd) (MM) and and descendants.

LINGA (Jampijinpa/Nampijinpa-Jangali/Nangala)

Descendants of two unnamed Jangali and five unnamed Nangali.

Unnamed Jangali

Unnamed Namikili (Kanturrpa)

Nora Graham Nappanangka (dcd) (Bessie Nakamarra), unnamed Nappanangka (Lucy Nakamarra and Richard Jakamarra) (MM) their siblings and descendants.

Unnamed Namikili (Kanturrpa)

Rosie Nappanangka (dcd) (Louie Martin), Howard Japanangka (dcd) (Timothy Dickenson), Eva Kelly Nappanangka (dcd) (Doris Kelly Nakamarra), Ruby Nappanangka (MM) their siblings and descendants.

Unnamed Namikili (Kanturrpa)

Mary Rankin Nappanangka, Marie Rennie Nappanangka (MM) their siblings and descendants.

Unnamed Jangali

Sydney Jappanangka (MF) and siblings and descendants.

Unnamed Namikili (Kanturrpa)

Frank Lauder Jangali/Jappaljarri, Peter Lauder Janglai/Jappaljarri, Colin Freddy Jangali/Jappaljarri, Penelope Nangali/Naljarri, Toby Lauder Jangali/Jappaljarri (FM); Beryl Nappanangka (MM) their siblings and descendants.

Unnamed Nangali

Max Jones Jangali (dcd) (Jimmy Jones (dcd), Mavis Ricky Nampin), Mark Brown Mirlamirla Jungarrayi, George Brown Jungarrayi (dcd) (Ronald Brown Jappaljarri, Miranda Brown Naljarri), Wendy Brown Namikili (dcd) (Ina Brwon Nampin, Magdalene Brown Nampin) (FM); Willy Kelly Juppurla (dcd) (Doris Kelly), Mavis Kelly Narrurlu (Phyllis Kidd Driver Nappangarti (dcd) (Barbara, Michael Driver), Judy Kelly Narrurlu (dcd) (Peggy Dixon Jones Nappangarti), Raymond Kelly Hector Juppurla (dcd) (Glen Raymond Jakamarra, Angus Raymond Jakamarra) (MM) their siblings and descendants.

Unnamed Nangali

Michael Sambo Jungarrayi, Lorna Stokes Namikili (dcd) (Danny Stokes Jampin), Sammy Sambo Jungarrayi (dcd) (Christine, Theresa, David Sambo, Sally Sambo), Jean Sambo Namikili, Albert Toprail Brown Jungarrayi, Gladys Toprail Brown Namikili, Bernadine Bennett Namikili, Marshall Bennett Namikili, Joice Murray Namikili, Marlene Bennett Namikilii (FM); Angus Riley Juppurla (dcd) (Warren Riley Jakamarra), Nancy Riley Narrurlu (dcd) (Josephine Nappangarti), Lady Benson Narrurlu (dcd) (Beverley Benson Nappangarti) (MM) their siblings and descendants.

Unnamed Nangali

Harry Brewster (FM) and siblings and descendants.

Unnamed Nangali

Mona Kidd Narrurlu (FM) and siblings and descendants.

Unnamed Jangali

Mary Martin Nangali (dcd) (Binny Naljarri (dcd), Leslie Anderson Juppurla) (FF) their siblings and descendants.

Unnamed Nangali

Jemima Naljarri (dcd) (Elsie Narrurlu), Daisy Newcastle (dcd) (Amy Narrurlu) (M) their siblings and descendants.

PATTA (Jappanangka/Nappanangka-Jappangarti/Nappangarti)

Descendants of one unnamed Jappanangka, one unnamed Jappaljarri, Patta Warinyi Naljarri and two unnamed Naljarris.

Unnamed Jappanangka

Dick Cubadgee Jappangarti

No known descendants.

Zulu Jappangarti

James Taylor Jappangarti (dcd) (Robin Taylor Nappanangka), Kathleen Brown Nappangarti, Betty Taylor Nappangarti, Eddie Taylor Jappangarti, Geoffrey Taylor Marrkajaja Jappangarti. Evelyn Crafter Kupartinkarli Nappangarti (dcd) (Brian Crafter Jangali, Glenys Crafter Nangali, Brenda Crafter Nangali) (FF); Day Day Frank Jakamarra (dcd) (Patricia Frank Narrurlu), Jimmy Frank Jakamarra (dcd) (Danny Frank Juppurla, Norman Frank, Jimmy Jnr Frank), Bluey Frank Jakamarra (dcd) (Michelle Frank), Jean McCarthy Nakamarra, Dorothy Hingston Nakamarra (dcd) (Paul Hingston Jungarrayi), Patrick Ah Kit Jakamarra, Elizabeth Taylor Nakamarra (MF) their siblings and descendants.

Unnamed Nappangarti

Nancy Karitiya Naljarri (dcd) (John Johnson Juppurla (dcd)) (MM) their siblings and descendants.

Unnamed Jappaljarri

Unnamed Namikili

Henry O'Keefe (dcd) (FM).

Unnamed Namikili

Johnny Jangali (dcd) (Stanley Stokes) (FM) and descendants.

Patta Warinyi Naljarri

Unnamed Narrurlu

Eileen Nelson Nappanangka (dcd) (Cliff Williams Jakamarra, Lennie Williams Jakamarra, Ross Williams Jakamarra, Kenny Williams Jakamarra, Noelene Nelson), Kathleen Fitz Nappanangka (FM); Dora Dawson Nangali (dcd) (June Dawson Naljarri, Ruth Dawson Naljarri), unnamed Nangali (dcd) (Cliff Garrett Jappaljarri), Edward Jangali (dcd) (Dean Martin Jampin), Alec Jones Jangali (dcd), Lorna Curtis (dcd) (Bert Jakamarra, Polly Nappanangka (dcd) (Rhonda Kelly Narrurlu), Peter Dixon Jappanangka (dcd) (Jacinta Dixon Nappanangka, Michael Dixon Nappanangka) (MM) their siblings and descendants.

Unnamed Naljarri

Nellie Narrurlu

Stella Carter Nappanangka/Naljarri, Dick Foster Jappanangka/Jappaljarri, Ivy Hampton Nappanangka/Naljarri (dcd) (Jeanette Hampton), Peggy Foster Nappanangka/Naljarri, Eileen Foster Nappanangka/Naljarri, Josie Foster Nappanangka/Naljarri, Gaye Foster Nappanangka/Naljarri (FM); Judy William Nangali (MM) their siblings and descendants.

Unnamed Naljarri

Pansy Narrurlu

Kevin Anderson Jappangarti (FM) and siblings and descendants.

Ngartarrpangali Narrurlu

Dick Foster Jangali, Dinah Nangali (dcd) (Ruby Frank Narrurlu) (MM) their siblings and descendants.

PIRTTANGU (Jappaljarri/Naljarri and Jungarrayi/Namikili)

Descendants of one unnamed Jappanangka who had two sons, an unnamed Jappangarti and an unnamed Jungarrayi. They in turn had two sons, Harry Sackle Jappanangk and Cabbage Jappangarti.

Zulu Jappangarti

Geoffrey Taylor Jappangarti (FF) and descendants.

Old Slopper Jappangarti

Roy Waistcoat Jappangarti, Mabel Nappangarti, "Bulawaddy" Brian Jappangarti, Adam Jappangarti (dcd) (Darryl Jappanangka) (FF); Hilda Graham Nakamarra (dcd) (Jill Namikili), Daisy Weston Nakamarra (dcd) (Olive Weston Namikili), Johnny Manfong Jakamarra (dcd) (Belinda Manfong Narrurlu), William Graham Jakamarra, Lucy Morrison Nakamarra (dcd) (Penny Williams Namikili), David Newcastle (MF) their siblings and descendants.

Biangu Big Frank Jappangarti

Hilda Holden Nappangarti, Dianne Naljarri (FF); Kay Johnson Nakamarra (MF) their siblings and descendants.

Micky Dowdow Jappangarti

Hagar Lovegrove Nappangarti, Harris Lovegrove Jappangarti (FF) Margaret Nappanangka and Lorna Cubillo who were grown up by Micky Dowdow their siblings and descendants.

Manangali Ginny Nappangarti

Jessie Grant (F) and siblings and descendants.

McGowan Jungarrayi

Rosie Graham Namikili, Linda Graham Namikili (dcd) (Vanessa Nampin), Lisa Graham Namikili, Max Graham Jungarrayi, Alma Graham Namikili, Kevin Nixon Jungarrayi (FF); Rosemary Plummer Narrurlu, Lena Williams Narrurlu (dcd) (Dianne Nappangarti), Rosie Williams Narrurlu, Jeremy Dickenson Juppurla, Shane Juppurla, Patricia Frank Narrurlu (MF) their siblings and descendants.

Carrie Namikili

David Hughes Karlkarl Jangali/Juppurla (FF); Phillip Holden Jappanangka (dcd), Hild Johnson Nappanangka (dcd) (MM) their siblings and descendants.

PURRURTU (Jakamarra/Nakamarra-Juppurla/Narrurlu)

Descendants of Jerry Jakamarra, Jacob Jakamarra, Beantree Jakamarra and Cockney Jakamarra.

Jerry Jakamarra

Trevor Nandy Jakamarra (FF) and siblings and descendants.

Jacob Jakamarra

Tony Foster Jakamarra, Lisa Foster Nakamarra, Edith Graham Nakamarra (dcd), Paddy Williams (dcd) (Darrell Williams Juppurla), Teddy Plummer Jakamarra (dcd) (Rosemary Plummer Narrurlu), Lennie Williams Jakamarra, Nancy Peterson Nakamarra, Day Day Frank Jakamarra (dcd) (Patricia Frank Narrurlu), Jimmy Frank (dcd) (Miriam Frank, Danny Frank Juppurla, Norman Frank Juppurla, Lenny Frank Juppurla), Bluey Frank (dcd) (Michelle Frank Narrurlu), Jean McCarthy Nakamarra, Dorothy Hingston Nakamarra (dcd) (Gina Hingston Namikili) (FF); Geoffrey Taylor Jappangarti (adopted), Julie Grant Nappangarti, Kennedy Ricky Jappangarti (MF) their siblings and descendants.

Beantree Jakamarra

No known descendants.

Cockney Jakamarra

Keith "Gumboot" Jakamarra (FF) and descendants.

WAPURRU (Jakamarra/Nakamarra-Juppurla/Narrurlu)

Descendants of Juppurla 'Karlkarl'.

David Hughes Karlkarl Jangali/Juppurla, Wendy Hughes Nangali/Narrurlu, Colin Hughes Jangali/Juppurla, Ronald Hughes Jangali Juppurla (FF); Phillip Holden Jungarrayi/Jappanangka (dcd) (Steven Jappangarti), Hilda Johnson Namikili/Nappanangka (dcd) (Kay Johnson Nakamarra) (MF) their siblings and descendants.

YURTUMINYI

Descendants of one unnamed Jappangarti.

Harry Benson Jakamarra

Andrew Walker Jakamarra, Ronnie Booth Junior Jakamarra, Reeves Jakamarra, Tony Booth Junior Jakamarra, Desmond Booth Jakamarra (FF); Pansy Martin Nappangarti (dcd) (Sheila Johnson Nangali), Isobel Phillips Nappangarti, Ruth Nappangarti, Annie Grant Nappangarti (adopted), Ronnie Murphy Jappangarti (MF) their siblings and descendants.

Jackson Jakamarra

Daryl Jackson Jappangarti (dcd).

- (b) accepted as members of one (or more) of the landholding groups by senior descent based members of the native title claim group on the basis of their non-descent connections to the estate.

KANKAWARLA

Include Dick Foster Jangali and Bunny Narrurlu.

KANTURRPA

Include Cowboy George Roder Jungarrayi, Gerard Driver Jampin and John Duggie Jakamarra.

LINGA

Include Joe Bird Jangali, Dick Foster Jangali, May Foster Nappanangka, Jeffery Lauder Juppurla and Mark Lane Jangali.

PATTA

Include Dianne Stokes Nampin, Rosie Thompson Nakamarra, Bunny Narrurlu, Michael Jones Jampin and Mavis Ricky Nampin.

PIRTTANGU

Include Dick Foster Jangali, Michael Jones Jampin, Harry Morrison Juppurla. May Foster Nappanangka and Connie Lovegrove Narrurlu.

PURRURTU

Include Bunny Narrurlu, Dick Foster Jangali, Michael Jones Jampin, Peppi Simpson Jakamarra, Harry Morrison Juppurla, George Johnson Jakamarra and Gordan Noonan Jampin.

WAPURRU

Include Dick Foster Jangali and Pompey Raymond.

YURTUMINYI

Include Dick Foster Jangali, Collin Freddy Jangali, Donald Thompson Jakamarra, John Duggie Jakamarra.

8. The ancestors identified in paragraph 7(a) are the uppermost generation of the known ancestors of members of the native title claim group.
9. Under the claimants' system of traditional laws and customs a person who is not descended from the ancestors becomes a member of a landholding group when accepted by senior descent based members of the group. The non-descent connections considered relevant in the recruitment of a particular individual are:
 - (a) conception and/or birthplace affiliation with an estate;
 - (b) long-term residential and/or historical connection to an estate;
 - (c) shared section/subsection and/or moiety affiliation;
 - (d) close kinship ties, including intermarriage;
 - (e) authority and responsibility for shared Dreaming tracks and/or places of significance connected with an estate;
 - (f) seniority in traditional matters concerning the landholding group and/or the estate;
 - (g) ceremonial knowledge.
10. The claimants' system of traditional laws and customs includes rules about succession. There have been no instances of succession in relation to the application area. Additional material concerning traditional laws and customs relating to succession is contained in Schedule F.
11. Under the claimants' system of traditional laws and customs descent is the most important basis for the possession of rights and interests in land. Subject to individual circumstances members of the landholding groups who are descended from one of the ancestors possess and transmit a wide range of traditional rights and interests in their respective estates.
12. Under the claimants' system of traditional laws and customs rights and interests in land are inherited through all four grandparental lines. However, the members of a landholding group with descent connections through father's father and mother's father are generally able to activate the widest range of rights and interests in relation to the estate.
13. Under the claimants' system of traditional laws and customs the range of rights and interests in land possessed by members of a landholding group who are not descended from the ancestors depends on individual circumstances, including the nature and extent of their non-descent connections to the estate.

14. A number of members of the native title claim group are members of more than one landholding group, for example, due to different grandparental links to multiple estates, and/or a mix of descent and non-descent based affiliations.

Registered native title rights and interests:

1. The native title rights and interests of the native title holders are the rights possessed under and exercisable in accordance with their traditional laws and customs, including the right to conduct activities necessary to give effect to them, being:
 - (a) the right to access and travel over any part of the land and waters;
 - (b) the right to live on the land, and for that purpose, to camp, erect shelters and other structures;
 - (c) the right to hunt, gather and fish on the land and waters;
 - (d) the right to take and use the natural resources of the land and waters;
 - (e) the right to access, take and use natural water on or in the land except water captured by the holder of a pastoral lease;
 - (f) the right to light fires for domestic purposes, but not for the clearance of vegetation;
 - (g) the right to access and to maintain and protect sites and places on or in the land and waters that are important under traditional laws and customs;
 - (h) the right to conduct and participate in the following activities on the land and waters:
 - i. cultural activities
 - ii. ceremonies
 - iii. meetings
 - iv. cultural practices relating to birth and death including burial rites;
 - v. teaching the physical and spiritual attributes of sites and places on the land and waters that are important under traditional laws and customs

[text deleted]
 - (i) the right to speak for country and to make decisions about the use and enjoyment of the land and waters by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the native title holders;
 - (j) the right to share or exchange natural resources obtained on or from the land and waters, including traditional items made from the natural resources;
 - (k) the right to be accompanied on the land and waters by persons who, though not native title holders, are:
 - i. people required by traditional law and custom for the performance of ceremonies or cultural activities on the land and waters;

- ii. people who have rights in relation to the land and waters according to the traditional laws and customs acknowledged by the native title holders;
 - iii. people required by the native title holders to assist in, observe, or record traditional activities on the areas.
2. All the rights and interests listed in paragraph 1 existed and continue to exist in relation to the application area as a whole.
3. The native title rights and interests claimed do not confer possession, occupation, use and enjoyment of the application area to the exclusion of all others.
4. The applicant acknowledges that the native title rights and interests are subject to and exercisable in accordance with valid laws of the Northern Territory of Australia and the Commonwealth of Australia.
5. The common or group rights and interests comprising the native title are held by the members of the landholding groups that together comprise the native title claim group over the application area as a whole. However, the distribution of rights and interests within the group and in respect of different parts of the application area is governed by the claimants' system of traditional laws and customs, including:
 - (a) the particular association that members of the native title claim group have with one or more of the landholding groups and their respective estate areas; and
 - (b) individual circumstances, including age, gender, knowledge and physical and mental capacity.

The activities referred to in Schedules G and M were and are undertaken in the exercise of the native title rights and interests set out in paragraph 1.

[End of document]