National Native Title Tribunal

Registration test decision

Application name	Ankamuthi People
Name of applicant	Larry Woosup, Beverley Mamoose (formerly known as Beverley Tamwoy), Richard Woosup, Charles Woosup, George Mamoose, Michael Toby, Asai Pablo, Tracey Ludwick, Ella Hart (Deemal), Nelson Stephen, Ben Tamwoy, Catherine Salee and Mark Gebadi
NNTT file no.	QC1999/026
Federal Court of Australia file no.	QUD6158/1998
Date application made	15 July 1999
Date application last amended	12 February 2015

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 C are met. I accept this claim for registration pursuant to s 190A of the *Native Title Act 1993* (Cth).

Date of decision: 13 May 2015

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Radhika Prasad

Delegate of the Native Title Registrar pursuant to sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cth) under an instrument of delegation dated 4 May 2015 and made pursuant to s 99 of the Act.

Reasons for decision - Edited

Introduction

[1] This document sets out my reasons, as the delegate of the Native Title Registrar (Registrar), for the decision to accept the amended native title determination application made on behalf of the Ankamuthi People (the application) for registration pursuant to s 190A of the Act.

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

Application overview

[3] In October 1997, the Ankamuthi People (QUD6158/1998; QC1997/051), Ankamuthi People #2 (QUD6159/1998; QC1997/052) and Ankamuthi People #3 (QUD6160/1998; QC1997/053) native title determination applications were filed in the Federal Court of Australia (the Court).

[4] The Court made orders for the three applications to be combined and the combination application was filed with the Court. A delegate of the Registrar accepted this application for registration because it satisfied all of the conditions set out in ss 190B and 190C.

[5] On 9 December 2014 and 6 February 2015, the Registrar of the Court granted leave to amend the application.

[6] On 12 February 2015, the amended application was filed with the Court. The amendments to the application include the following:

- the persons who comprise the applicant have been altered;
- the details of the authorisation meeting have been altered in Item 2 (Authorisation), Part A of the Form 1;
- Schedule A has been changed to revise the list of apical ancestors;
- Schedule B and Attachment C have been amended to change the written description and map of the application area;
- Schedule E has been altered to revise the rights and interests claimed in relation to different parts of the application area;
- Schedule F has been amended to provide a general description and Attachment F has been deleted;
- The text in schedules G, H and J to Q has been amended and a new Attachment J has been inserted;
- Schedule HA has been added;
- Schedule I has been amended to reflect recent notifications;

- Schedule R has been amended to refer to a new certification by Cape York Land Council Aboriginal Corporation (CYLC) which is attached as Attachment R1;
- Schedule S has been changed to reflect current amendments; and
- Part B has been amended to reflect changes to the applicant's address for service.

[7] On 12 February 2015, the Registrar of the Court gave a copy of this application to the Registrar pursuant to s 64(4) of the Act. This has triggered the Registrar's duty to consider the claim made in the application under s 190A of the Act.

Background

[8] A notice has been issued in relation to the grant of tenements (ML20676, ML20688 and ML20689) in accordance with s 29 of the Act with a notification date of 14 January 2015. The amended application was filed within the three month timeframe over the area affected by the future act notice and this has required me to use my best endeavours to finish considering the claim by the end of four months after the notification day, that is 14 May 2015 — see s 190A(2).

Information considered when making the decision

[9] Subsection 190A(3) directs me to have regard to certain information when testing an application for registration; there is certain information that I *must* have regard to, but I *may* have regard to other information as I consider appropriate.

[10] I am also guided by the case law (arising from judgments in the courts) relevant to the application of the registration test. Among issues covered by such case law is the issue that some conditions of the test do not allow me to consider anything other than what is contained in the application while other conditions allow me to consider wider material.

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

- the information contained in the amended application and accompanying documents;
- the information contained in the documents accompanying the application filed in July 1999;
- the additional information referred to the delegate by the applicant on 16 March 2015;
- the Geospatial Assessment and Overlap Analysis (GeoTrack: 2015/0232) prepared by the Tribunal's Geospatial Services on 23 February 2015 (geospatial assessment), memorandum (GeoTrack: 2015/0341) prepared by the Tribunal's Geospatial Services on 5 March 2015 and email dated 6 May 2015 from the Tribunal's Geospatial Services; and
- the results of my own searches using the Tribunal's mapping database.

[12] I have not considered any information that may have been provided to the Tribunal in the course of the Tribunal providing assistance under ss 24BF, 24CF, 24CI, 24DG, 24DJ, 31, 44B, 44F, 86F or 203BK of the Act. Also, I have not considered any information that may have been provided to the Tribunal in the course of mediation in relation to this or any claimant application.

Procedural fairness steps

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

- On 16 February 2015, the case manager for this matter sent a letter to the State of Queensland (the State) enclosing a copy of the application summary which shows details of the application as amended. That letter informed the State that any submission in relation to the registration of this claim should be provided by 4 March 2015 and that the delegate anticipates making the registration test decision by 14 May 2015.
- The case manager, also on 16 February 2015, wrote to inform the applicant that any additional information should be provided by 4 March 2015 and that the delegate anticipates making the registration test decision by 14 May 2015.
- On 16 March 2015, the applicant requested, by email, that the delegate have regard to the information provided directly to the Registrar on 10 and 26 November 2014 in respect of the Ankamuthi #2 (QUD392/2014; QC2014/003) amended application (Ankamuthi #2 application).
- On 17 March 2015, the State advised, by email, that it did not wish to provide any comments in relation to the registration of the claim.
- On 17 March 2015, the case manager wrote to inform the State that the applicant has requested the delegate to consider the material provided directly to the Registrar in relation to the Ankamuthi #2 claim. The State advised that it did not wish to make any submission in relation to the additional material.

Requirements of s 190A

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

- subsection 190A(1A) does not apply as the application was not amended because an order was made under s 87A by the Court; and
- subsection 190A(6A) does not apply because the effect of the amendments to the native title determination application, which includes changes to the composition of the native title claim group and certification of the application, falls outside the exceptions to undertaking a full registration test set out in subparagraphs 190A(6A)(d)(i) to (v).

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

[16] Section 190B sets out conditions that test particular merits of the claim for native title. Section 190C sets out conditions about 'procedural and other matters'. Included among the procedural conditions is a requirement that the application must contain certain specified information and documents. In my reasons below, I consider the requirements of s 190C first, in order to assess whether the application contains the information and documents required by s 190C *before* turning to questions regarding the merit of that material for the purposes of s 190B.

[17] In making this decision in relation to the application, it has been useful to consider the statement of reasons that I prepared for my decision dated 26 February 2015 in relation to the Ankamuthi #2 application. I understand that I must consider the entirety of the current application afresh against each registration test condition. However, I note the following relevant matters:

- the native title claim group is the same in the current application and the Ankamuthi #2 application;
- one of the areas that are covered by this application adjoins the Ankamuthi #2 application area;
- the claims made within each application is essentially the same with some schedules in each Form 1 being identical;
- the material relied upon by the applicant in each application is the same;
- there is no new information before me to indicate any change to the circumstances/material which prevailed when I made my earlier decision.

[18] In these circumstances and in the interests of brevity, after considering the conditions afresh and where I form the view that the conclusions are correct, I have simply stated that the application satisfies the particular condition for the same reasons that I provided when making my Ankamuthi #2 decision. Further, where it is my view that the law in relation to a particular condition has not changed, I refer to and rely on my statement of that law within the reasons for my earlier decision.

[19] As discussed in my reasons below, I consider that the claim in the application does satisfy all of the conditions in ss 190B and 190C and therefore, pursuant to s 190A(6), it must be accepted for registration. Attachment A contains information that will be included in the Register of Native Title Claims (the Register).

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.

[20] 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.

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

[22] I understand that the condition in s 190C(2) is procedural only and simply requires me to be satisfied that the application contains the information and details and is accompanied by the documents prescribed by ss 61 and 62. This condition does not require me to undertake any merit or qualitative assessment of the material for the purposes of s 190C(2). As explained by Mansfield J in *Northern Territory v Doepel* (2003) 133 FCR 112; [2003] FCA 1384:

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

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

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

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

Native title claim group: s 61(1)

[26] Schedule A of the application provides a description of the native title claim group. The application indicates that the persons comprising the applicant are included in the native title claim group and have been authorised by all the persons in the native title claim group to make the application and deal with all matters arising in relation to it — see s 62(1)(a) affidavits of the persons comprising the applicant. There is nothing on the face of the application that causes me to conclude that the requirements of this provision, under s 190C(2), have not been met.

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

Name and address for service: s 61(3)

[28] The names of the persons comprising the applicant appear at Part A of the Form 1 — at p 2.

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

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

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

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

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

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

[33] The application is accompanied by affidavits sworn by each of the persons who comprise the applicant. The affidavits are identical to each other and, in my view, contain the statements required by s 62(1)(a) (i) to (v), including stating the basis on which the applicant is authorised as mentioned in subsection (iv) — at [1] – [5].

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

Details required by s 62(1)(b)

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

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

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

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

[37] Attachment C contains a map showing the external boundary of the areas covered by the application.

Searches: s 62(2)(c)

[38] Schedule D provides that the applicant has not conducted any historical tenure searches.

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

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

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

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

Activities: s 62(2)(f)

[41] A list of the activities currently undertaken by members of the claim group on the land and waters covered by the application appears at Schedule G of the application.

Other applications: s 62(2)(g)

[42] Schedule H states that the applicant is not aware of any application or determination covered by this application.

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

[43] Schedule HA of the application provides that the applicant is not aware of any notifications under paragraph 24MD(6B)(c) of the Act.

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

[44] Schedule I contains details of four notices issued under s 29 of the Act that relate to the whole or part of the areas covered by the application of which the applicant is aware.

Conclusion

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

Subsection 190C(3)
No common claimants in previous overlapping applications

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

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

[46] It is my view that the statement of the law relevant to the condition at s 190C(3) as set out in my Ankamuthi #2 decision at pp 8 and 9 is still correct. In the interests of brevity, I do not restate any analysis of the law and simply refer to and rely on it for this fresh consideration of the current application against this provision.

[47] The geospatial assessment does not identify a previous application that covered the whole or part of the areas covered by the current application except this application being the current application.

[48] I have also undertaken a search of the Tribunal's mapping database and am of the view that there is no previous application that covered the whole or part of the areas covered by the current application. I note that my search shows an overlap with the Kaurareg People #2 (QUD267/2008; QC2008/007) native title determination application but I understand this to be technical in nature — see email dated 6 May 2015 from the Tribunal's Geospatial Services.

[49] I am therefore satisfied that there is no previous application to which ss 190C(3)(a) to (c) apply. Accordingly, I do not need to consider the requirements of s 190C(3) further.

[50] 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.

[51] 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.

[52] Schedule R indicates that a copy of the certificate of the representative Aboriginal body accompanies the application at Attachment R1. Accordingly, I am of the view that it is necessary to consider whether the requirements of s 190C(4)(a) are met.

[53] It is my view that the statement of the law relevant to the conditions at s 190C(4) as set out in my Ankamuthi #2 decision at pp 10 and 11 is still correct. In the interests of brevity, I do not restate any analysis of the law and simply refer to and rely on it for this fresh consideration of the current application against this provision.

Identification of the representative body and its power to certify

[54] Attachment R1 is titled 'Certification under section 203BE of the [Act] — Ankamuthi People Native Title Determination Application' (certification). It is dated 6 February 2015 and signed by the Chief Executive Officer of CYLC.

[55] The certificate states that the areas of land and waters of the Ankamuthi claim are in the Cape York Region representative body area and that CYLC is the representative body recognised under s 203AD(1) of the Act for the Cape York Region. The certificate also provides that the application has been certified by CYLC pursuant to s 203BE of the Act — see note to s 190C(4)(a) which allows an application to be certified under s 203BE.

[56] The geospatial assessment identifies CYLC to be the only representative body for the area covered by the application.

[57] Having regard to the above information, I am satisfied that CYLC was the relevant representative body for the application area and that it was within its power to issue the certification.

The requirements of s 203BE

Subsection 203BE(4)(a)

[58] This provision requires a statement from the representative body confirming that they hold the opinion that the conditions at subsections (2)(a) and (2)(b) have been met.

[59] The certification contains the statement required by s 203BE(4)(a).

Subsection 203BE(4)(b)

[60] Pursuant to s 203BE(4)(b), the certification must also briefly set out the body's reasons for making the required statements under s 203BE(4)(a).

[61] In that regard, the certification sets out details pertaining to the authorisation of the applicant, including that:

> CYLC engaged [an] anthropologist … from March 2010 to April 2014 to:
>
> (a) review existing ethnographic material for areas including the Ankamuthi claim area;
>
> (b) do field work with relevant traditional owner groups, including the Ankamuthi People; and
>
> (c) advise CYLC on the composition of the [native title claim group] for the Ankamuthi claim area.
>
> [The anthropologist] did:
>
> 1. 205 days of research work between March 2010 and April 2014;
> 2. Advised CYLC on the composition of the Ankamuthi People [native title claim group];
> 3. Met, along with CYLC, with the [native title claim group] on 19 March 2014 where the description of the [claim group] was reviewed and accepted, and the Ankamuthi claim authorised in accordance with traditional law and custom; and
> 4. Advised CYLC that the Ankamuthi claim was authorised pursuant to section [251B(a)] of the [Act].

[62] I am of the opinion that the certificate meets the requirement of s 203BE(4)(b).

Subsection 203BE(4)(c)

[63] This subsection applies where the application area is covered by an overlapping application for determination of native title.

[64] I do not consider that any application currently overlaps the application area — see my reasons at s 190C(3) above. Accordingly, in my view, the requirements of s 203BE(3) are not applicable to the areas covered by this application.

[65] I am of the view that the requirements of s 203BE(4) of the Act have been satisfied.

[66] For the reasons set out above, I am satisfied that requirements of s 190C(4)(a) are met.

[67] The application **satisfies** the condition of s 190C(4).

Merit conditions: s 190B

Subsection 190B(2)
Identification of area subject to native title

> The Registrar must be satisfied that the information and map contained in the application as required by ss 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

[68] Schedule B contains a description prepared by the Tribunal's geospatial services on 8 January 2015 which references cadastral boundaries and the Ducie River. Schedule B also lists general exclusions.

[69] Attachment C is a colour copy of a map titled 'Native Title Determination Application – QUD6158/1998 Ankamuthi People (QC1999/026)' prepared by the Tribunal's geospatial services on 5 January 2015. The map includes:

- the application area depicted by a bold outline;
- land tenure and topographic features;
- scalebar, coordinate grid, legend and locality map; and
- notes relating to the source, currency and datum of data used to prepare the map.

Consideration

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

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

[72] 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.

[73] This definition of the native title claim group has been changed from that contained in the original application. However, I note that the definition is now identical to the definition in the Ankamuthi #2 application, which I had decided on 26 February 2015 satisfied this condition of the

registration test — see Ankamuthi #2 decision at pp 13 - 14. I also note that as this condition requires that I be satisfied on the basis of the material contained in the application, I have been informed by the information contained in Schedule F which is the same as that in the Ankamuthi #2 application, although the Ankamuthi #2 application also referred to an anthropological report however this report was not attached to that application.

[74] I have read the material again and have afresh decided, for the reasons outlined in my Ankamuthi #2 decision, that I am satisfied that the description of the native title claim group contained in the application is such that, on a practical level, it can be ascertained whether any particular person is a member of the group. Accordingly, focusing only upon the adequacy of the description of the native title claim group, I am satisfied of its sufficiency for the purpose of s 190B(3)(b).

[75] 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.

[76] The description of the native title rights and interests claimed is found in Schedule E of the application and is essentially identical to the description I considered when making my Ankamuthi #2 decision. There is no new information before me which would cause me to change that decision. Having reconsidered the information afresh, for the same reasons that I provided for my decision dated 26 February 2015, I remain satisfied that the description of the claimed native title rights and interests is clear and understandable.

[77] 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.

[78] It is my view that the statement of the law relevant to this condition at p 18 of my Ankamuthi #2 decision is still correct. I also agree with my statement of the law relating to the three particular assertions at pp 19, 22, 24, 25, 27 and 29 of my decision dated 26 February 2015. In

the interests of brevity, I do not restate any of the analysis of the law and simply refer to and rely on it for this fresh consideration of this amended application against s 190B(5).

[79] The information within the application at Schedules F, G and M are relevant to the factual basis and appear to be the same as that contained in the Ankamuthi #2 application. I consider that the additional material provided by the applicant on 20 and 26 November 2014 in relation to the Ankamuthi #2 application, to which I have been referred to by the applicant, is also relevant to the factual basis. That material consists of:

- anthropologist report titled 'Authorisation Report: Ankamuthi and NCY#1 NTDA' and dated 14 April 2014 (report of April 2014);
- anthropologist report titled 'A Northern Cape York Peninsula Regional Society' and dated June 2012 (report of June 2012);
- anthropologist report titled 'Northern Cape York #1 QUD157/11 Native Title Connection Report' (connection report) excluding the appendices; and
- anthropologist report titled 'NCYP #1 and #2 Native Title Claims: Supplementary Report' and dated 26 June 2013 (supplementary report).

[80] I extensively reviewed this material in the statement of reasons I provided for my decision dated 26 February 2015. I have considered this material and my reasons and believe that I accurately related the contents of the material in my decision — see my statement of reasons at pp 19 – 30. In the interests of brevity, I do not propose to again set out the contents of that material in this decision and simply refer to and rely on my earlier reasons in this fresh consideration of the assertions at s 190B(5).

[81] I note that I consider that the affidavits of [name 1 deleted] sworn 26 May 1999 and [name 2 deleted] sworn 31 May 1999, which accompanied the application filed in July 1999, are also relevant to the factual basis. I will take into account this information and refer to it where necessary in this fresh consideration of the assertions at s 190B(5).

[82] I also note, however, that I will consider s 190B(5)(a) in full and do not propose to rely on my consideration of this subsection in my Ankamuthi #2 decision as the areas covered by this application is different, although one area is adjoining or proximate to the Ankamuthi #2 application area. I note however that the factual material extracted there is pertinent to my consideration here as the extracted facts are also relevant to the claim group's association of areas covered by this application. I do not intend to restate all those facts, but instead rely on those facts as well as the statement of law regarding s 190B(5)(a) whilst making a full consideration of this subsection below.

[83] I note that I will 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)

[84] I note that there are three areas that are covered by the application, which I will call for the purposes of consideration of this provision area 1, area 2 and area 3. Area 1 is located in the northeastern part of the Cape Region around the Jardine Swamps (which predominantly covers the eastern and southern regions of area 1). Area 2 is south of area 1 and is between Vrilya Point

in the northwestern region, Crystal and Mousy Creeks on the eastern side and the southern boundary is just north of the Cotterell River. Area 3 is south of the second area and is formed by the Skardon and Dulhunty Rivers as its northern boundary and Port Musgrave and the Ducie River as its southern boundary. The Dulhunty River flows through the middle of area 3. For the purposes of s 190B(5)(a), I must be satisfied that there is a sufficient factual basis to support an asserted association with the entire claim area, rather than an association with only a part of it.

[85] In my view, the factual basis contains the following relevant information about the association of the predecessors of the claim group to the areas covered by the application:

- 'The [Ankamuthi] Seven River group are the descendants of people whose traditional homelands include places located in the lower catchments of the western coastal rivers of Northern Cape York … collectively known as the Seven Rivers [which refers] to the country extending across the lower catchments of the Jardine River, Crystal Creek, Doughboy River, McDonald River, Jackson River, Skardon River [I understand the Doughboy, McDonald and Jackson Rivers are situated between area 2 and area 3 respectively] and the Dulhunty River — report of April 2014 at [12].
- Explorers in the early seventeenth century encountered inhabitants at the Skardon River — connection report at [3].
- A report from 1900 suggest that some of the predecessors of the group were situated around the Jardine River — report of June 2012 at [120].
- In the 1920s, 'native dwellings [were] seen at the Skardon River', and 'Aboriginal people were living in camps on the Ducie and Dulhunty Rivers' — supplementary report at [90] and connection report at [20].
- The predecessors established a small settlement/village proximate to the northeastern boundary of area 1 prior to World War 1 — supplementary report at [94]. The predecessors had built bark huts and carried on gardening and fishing — at [95].
- Current claimants speak of their predecessors coming into contact with the Red Island people in an area within or proximate to the western region of area 1 — connection report at [208].
- The Ankamuthi people have traditional hunting grounds around the Ducie River which they share with another group — supplementary report at [127].
- Relevant to the apical ancestors of the claim group, the records state that 'Mamoose located tribe on [south] shore of Mapoon Bay, [south] to [Janie] Creek, bordered [north] of Pennefather [I note that this river and Janie Creek is located proximate to the southwestern boundary of area 3]' — connection report at [122]. In particular, apical ancestor Mammus was associated with the Warranggu/Namaleta Creek area (within the southwestern region of area 3) — supplementary report at [122]. In addition, I understand that the daughter of apical ancestor Toby Seven River was born between 1877 and 1893 at either near the northeastern boundary of area 1 or near the southern boundary of area 3 — connection report at [43].

[86] The factual basis contains the following relevant information about the current association of the claim group with the areas covered by the application:

- The major townships that are permanently occupied by the native title claim group and other neighbouring groups include Injinoo, Bamaga, Seisa, Umagico and New Mapoon, which are all located proximate to the northeastern boundary of area 1 — supplementary report at [78]. Current claimants also continue to camp and live on country, such as at the Jardine River, as well as hunt on the Skardon River — at [99] and connection report at [481].
- Current claimants continue to use outstations and other light structures at Vrilya Point for purposes such as fishing, hunting and camping — at [79]. They use the structures on the Jardine River which is the dry season residence of a number of Ankamuthi claimants and their families, as well as occupy and use structures on the Dulhunty River as a base for cultural programs designed for the management of country — at [79].
- Research indicates that current claim members, in particular certain family groups, are descendants of Ankamuthi ancestors including those identified in Schedule A, and have a 'well-accepted association' with Ankamuthi country — connection report at [39] – [43], [50] – [53] and Table 2.4.1; see also fn 59.
- One family group identify themselves after a place located in the southwestern region of area 3 and are associated with the western region of area 3 — report of April 2014 at [14] and [22]. This family group is recognised by Ankamuthi elders as being part of the claim group and anthropological research indicates that they are connected to other Ankamuthi families as well as apical ancestors Mammus and Toby Seven River — at [19] – [20].
- Within the boundary of the wider Ankamuthi country there are different localised groupings, such as the '[Vrilya], Ducie, [Mutee] and the Red Island' groups, which represent a form of local organisation — connection report at [254]. These local groups are associated with particular tracts of country and are formed on the basis of cognatic descent of an ancestor and are generally regarded as family groups — at [258]. Current claim group members continue to follow a form of this traditional land tenure system — at [265] – [269]. For instance, the tract of country around the southern and western regions of area 3 is said to be associated with members of a family descended from apical ancestor Mammus and this association is assumed to have been derived prior to sovereignty — at [133].
- The claimants have knowledge of the foundational stories of the mythical beings creating the wider Ankamuthi country including the islands proximate to the western boundary of area 1, stone formation at a creek proximate to the southern boundary of area 3 and a creek/spring proximate to the northeastern boundary of area 1, as well as travelling across the region creating the rivers and inhabiting lagoons within the southern, central and northeastern regions of area 3 — supplementary report at [26] and [84] – [85], report of June 2012 at [22], [28], [110] and [177] and connection report at [432], [438] – [439] and [493] – [494].
- Current claimants continue to observe and acknowledge traditional laws and customs practiced by their predecessors such as initiation ceremonies and burial rites — connection report at [368], [374], [377] – [378] and [393] – [394]. The claimants bury deceased relatives in the tract of country 'with which those persons, and/or their ancestors, were most clearly associated through their life histories and in regard to their

family's connections to country' — at [394]. Current claimants take the remains of their deceased relatives to certain parts of country including the northwestern region of area 2 where their spirits return — at [394] and [451].

- They believe that the spirits of their ancestors and other beings are present on country and they continue to speak to the spirits when hunting, fishing or taking other resources from country. For instance, there are references to the spirits being acknowledged when turtles have been taken proximate to the southwestern region of area 3 or leave meat/fish behind for the spirits whilst hunting or fishing in the northwestern region of area 2 — at [398] and [487].
- The Ankamuthi people also continue to believe in and perform increase ceremonies. One increase site, a 'story stone' place, is located along or proximate to the southern boundary of area 3 — at [381].
- The affidavit material also contains information pertinent to the current association of the native title claim group to the areas covered by the application. For instance, one of the elders of the claim group says that he is an Ankamuthi man and takes his identity from his father's side — affidavit of [name 2 deleted] at [3] – [4]. He was born proximate to the northeastern boundary of area 1 in 1928, which is where he attended school and has lived for all his life — at [1] and [5] – [6]. His father and grandfather would take him to the swamps at the mouth of the Jardine River where they would hunt and gather food — at [7] – [8]. His sons continue to hunt in the Jardine Swamps to get food for their families and his family still camp and stay in that area — at [11]. He has also lived within the northwestern region of area 2, which is a camping and hunting place for the Ankamuthi people — at [12]. There are also story places near this location and the claimants find and eat yams, sugar bags and oysters there — at [12]. The claimants would build houses within the northwestern region of area 2 and within or proximate to the southwestern region of area 3 when they travelled through and lived in that country — at [13]. They would camp and stay within and proximate to the southwestern boundary of area 3 — at [13]. He would often camp north of the Ducie River and Port Musgrave, within area 3, with his grandmother, parents and other family members when they were living in the northwestern region of area 2 and proximate to the southern boundary of area 3 — at [19]. They would also travel to areas proximate to the southern boundary of area 3 by canoe — at [19]. He says that he 'spent a lot of time living in the [northern, western, central and southern regions of area 3] and carrying out traditional activities there such as hunting, ceremony, and caring for country' — at [19].

Consideration

[87] I note that in my consideration of this subsection below, when I refer generally to the factual basis, I am referring to my views in relation to not only the information that I have extracted above but also to the information extracted in my Ankamuthi #2 decision dated 26 February 2015. I proceed with my assessment of the sufficiency of this material in supporting the assertion at subsection (a) below.

[88] I consider that the factual basis must provide information pertaining to the identity of the native title claim group, the predecessors of the group and the nature of the group's association

with the area covered by the application. In that regard, I consider that the factual basis material identifies the native title claim group and acknowledges the relationship the Ankamuthi People have with their country, being both of a physical and spiritual nature. The factual basis reflects the knowledge claim group members have of traditional Ankamuthi land and waters including places relating to their predecessors and mythical sites of the ancestral beings.

[89] There is also, in my view, a factual basis that goes to showing the history of the association that members of the claim group have, and that their predecessors had, with the areas covered by the application — see *Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*) at [51]. The factual basis contains references to the presence of the predecessors within the application area prior to the date of 'effective settlement', which I understand from the factual basis to have occurred around the mid-1860s.

[90] The factual basis indicates that the native title claim group followed a traditional landholding system whereby ownership and rights to country were passed down to members from their predecessors who would have been present on Ankamuthi country prior to effective settlement. Apical ancestor Mammus and his siblings had rights and were traditionally associated with area 3. Ancestor Mammus was born around 1888 and originated from, and inhabited the land and waters within and around, area 3. The family group that is descended from this apical ancestor continues to be associated with area 3 and the surrounding areas. This family is also connected to apical ancestor Toby Seven Rivers. I also understand that the daughter of Toby Seven Rivers was born in the period between the late 1870s and early 1890s in a location that is either proximate to area 1 or within area 3, which in my view suggests that apical ancestor Toby Seven Rivers may have been associated with either or both of these areas. I note that some of the claim members were born in the 1920s which suggests that their grandparents or great-grandparents were associated with Ankamuthi country prior to settlement. The descendants of the other ancestors continue to remain connected to the wider Ankamuthi country including the areas covered by the application.

[91] The factual basis is also sufficient to support the assertion that the Ankamuthi people have a spiritual association with the areas covered by the application and is sufficient to show the history of that association. The claim members have knowledge of the dreaming stories of the mythic beings including about their travels and actions creating the rivers, springs and creeks across Ankamuthi country as well as the stone formation near the southern border of area 3 and mythical lagoons within area 3. Members of the claim group continue to believe in the presence of spirits on country and acknowledge those spirits and leave behind gifts whilst hunting and fishing. They perform traditional increase and mortuary ceremonies, including taking remains to certain parts of the country such as in the northwest region of area 2. The dreaming stories, belief in spirits, practice of ceremonies and rituals have been passed down through the generations by the immediate predecessors so that the younger generations continue to have a spiritual association with country.

[92] In my view, the factual basis provides information that is sufficient to support the assertion that the ancestors were associated, both spiritually and physically, with the areas covered by the application prior to effective settlement. It is also, in my view, sufficient to support the assertion that this association has been continued by their descendants through to the current members of the claim group. The factual basis demonstrates the intergenerational transfer of knowledge about the stories of the mythical beings, sacred places, ceremonies, beliefs and other practices.

[93] For the purposes of s 190B(5)(a), I must also be satisfied that there is sufficient factual material to support the assertion of an association between the group and the whole area. I note that area 1 and area 2 are not very large, specifically area 1 is about 50 sq kilometres and area 2 is about 75 sq kilometres. Pertinent to those two areas, there are references to the claimants and their predecessors living in a village proximate to the northeastern boundary of area 1. The predecessors were situated around the Jardine River and they would come into contact with neighbouring groups within or proximate to the western/southwestern region of area 1. The claimants use structures along the eastern region of area 1 and continue to camp, hunt and live out on country in the eastern and southeastern regions. The claim members also use structures, hunt, fish, camp and live in the northwestern region of area 2. They bring remains of their deceased relatives to this area where the spirits have returned. There are also references to the claimants travelling and living along country from area 2 to area 3.

[94] In relation to area 3, the predecessor's inhabited the northwestern, southwestern, central and southeastern regions. Traditional hunting grounds are located near the southern region. The current claimants, in particular one family group, continue to remain associated with this country. The claimants access country to hunt around the northwestern region, use structures along the central and northeastern regions, camp and build houses in or proximate to the southwestern region and perform increase ceremonies around the southern boundary.

[95] I also consider, as mentioned earlier, that the claim group has a spiritual association with the application area. The anthropological material refers to the mythical sites created by the ancestral beings proximate to the eastern/northeastern boundary of area 1 and southern boundary of area 3, the islands to the west of area 1 and mythical lagoons across area 3 as well as the rivers, creeks and springs that flow through each of the areas covered by the application.

[96] From the above information, I consider that the factual basis is sufficient to support the assertion of an association, both physical and spiritual, 'between the whole group and the area' — see *Gudjala 2007* at [52]. In my view, the factual basis material provides sufficient examples and facts of the necessary geographical particularity to support the assertion of an association between the whole group and the whole area.

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

Reasons for s 190B(5)(b)

[98] The factual basis in relation to paragraph (b) is unchanged from that considered when making my Ankamuthi #2 decision. I have read the material again and have afresh decided, for the reasons there outlined and on the basis of my consideration of subsection (a) above, that in my view the factual basis:

- identifies a relevant pre-sovereignty society within which Ankamuthi country is said to be situated and under which Ankamuthi traditional laws and customs are said to operate;
- supports the assertion that the apical ancestors or their predecessors were born into the Ankamuthi language group of the relevant society that existed prior to sovereignty;

- supports the assertion of a connection between the society that existed prior to effective settlement and the current native title claim group and a continued association by the claim group with the application area (see also my reasons at s 190B(5)(a) above);
- reveals that the laws and customs currently observed and acknowledged by the Ankamuthi are organised around, amongst other things, their belief in the mythical/ancestral beings, other spiritual beliefs, systems of kinship and descent, and accompanying systems of rights, interests and responsibilities;
- is sufficient to compare the current laws and customs with those that are asserted to have existed prior to sovereignty and is sufficient to support the assertion that the current system of rights and interests finds its origin in the pre-sovereignty normative system; and
- is sufficient to support the assertions that the relevant laws and customs, acknowledged and observed by this society, have been passed down through the generations to the claim group, such as by being told stories and shown traditional practices, and have been acknowledged by them without substantial interruption, which will allow the laws and customs to be passed to future generations ensuring their vitality and continuity.

[99] It follows that, in my view, the laws and customs currently observed and acknowledged are 'traditional', as defined in *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] 214 CLR 422; HCA 58, as they derive from a society that existed at the time of effective settlement. These traditional laws and customs, in my view, give rise to the claim to native title rights and interests.

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

Reasons for s 190B(5)(c)

[101] There has also been no relevant change to the factual basis material in relation to this subcondition since I made my Ankamuthi #2 decision. I have reread the material and have decided afresh, for the reasons there outlined, that in my view the factual basis:

- goes to explaining the transmission and continuity of the native title rights and interests held in the application area in accordance with traditional laws and customs; and
- is sufficient to support the assertion that the Ankamuthi system of laws and customs originate from their ancestors prior to sovereignty and that by passing on traditional knowledge such as through verbal and visual instruction, telling stories about mythical beings, ancestors and places of significance and teaching traditional practices intergenerationally ensures continuity in the acknowledgement and observance of those laws and customs.

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

[103] 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.

[104] The description of the claimed native title rights and interests set out in Schedule E of the application is essentially identical to the rights and interests I considered when making my Ankamuthi #2 decision. The information in support of whether those rights and interests can be prima facie established is also the same. I have considered the reasons that I made in relation to this condition in my decision dated 26 February 2015 and am of the view that the statement of law, as set out at pp 30 and 31, is still correct. I have also reviewed the applicant's material in support of the rights and interests claimed and my reasons in relation to each right and interest claimed and consider that I accurately related the contents of the material in my decision — see my statement of reasons dated 26 February 2015 at pp 31 – 36. In the interests of brevity, I do not restate any analysis of the law or the material in support of the claimed native title rights and interests and simply refer to and rely on it for this fresh consideration of this amended application against s 190B(6).

[105] Having considered this condition afresh, I remain satisfied that the requirements of s 190B(6) are met and therefore rely on my reasons in my Ankamuthi #2 decision — refer to decision dated 26 February 2015 for the claimed native title rights and interests that I consider can be prima facie established.

[106] 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.

[107] The Ankamuthi #2 application satisfied this condition of the registration test. The information that is currently before me is the same as the information which was before me for that application. I have considered the reasons that I made in relation to this condition in my decision dated 26 February 2015 and am of the view that the statement of law relevant to this condition is still correct and that I accurately related the contents of the material in my decision — see my statement of reasons at p 37. In the interests of brevity, I do not restate any analysis of the

law or the material in support of this condition and simply refer to and rely on it for this fresh consideration of this amended application against s 190B(7).

[108] Having considered this condition afresh, I remain satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with the land or waters within the application area. I therefore rely on the reasons in my earlier decision.

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

Subsection 190B(8)
No failure to comply with s 61A

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s.61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.

Section 61A provides:

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

(2) If :

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

(b) either:

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

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

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

(3) If:

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

(b) either:

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

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

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

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

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

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

[110] In the reasons below, I consider 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.

[111] I note that the Ankamuthi #2 application satisfied this condition of the registration test. I consider that the statements of law there referred are still correct and I rely upon those statements for this fresh consideration of this application against s 190B(8) — see statement of reasons at p 39.

Reasons for s 61A(1)

[112] 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.

[113] The geospatial assessment states that no determinations of native title fall within the external boundaries of the application area. The results of my own search of the Tribunal's mapping database confirm that there is no overlap with any native title determination — see email confirmation dated 6 May 2015 from the Tribunal's Geospatial Services. It follows that the application is not made in relation to an area for which there is an approved determination of native title.

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

Reasons for s 61A(2)

[115] 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.

[116] I consider that the application is not made over areas covered by a previous exclusive possession act except to the extent ss 47A and 47B may apply — see Schedules B and L.

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

Reasons for s 61A(3)

[118] 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.

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

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

Conclusion

[121] In my view the application **does not** offend any of the provisions of ss 61A(1), (2) and (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.

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

Reasons for s 190B(9)(a)

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

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

Reasons for s 190B(9)(b)

[125] Schedule P indicates that the native title claim group does not claim exclusive possession of any offshore places.

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

Reasons for s 190B(9)(c)

[127] The application does not disclose, nor is there any information before me to indicate, that the native title rights and interests claimed have otherwise been extinguished.

Conclusion

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

[End of reasons]