National Native Title Tribunal

Registration test decision

Application name	Warrabinga Wiradjuri #4
Name of applicant	Wendy Lewis, Mavis Agnew, Martin de Launey (applicant)
Application made	29 March 2016
Federal Court No.	NSD443/2016

My decision under s 190A of the *Native Title Act 1993* (Cth)[1] is that the claim in the Warrabinga Wiradjuri #4 application satisfies all of the conditions in ss 190B and 190C of the Act. It follows that the claim must be accepted for registration[2] and entered on the Register of Native Title Claims.[3]

Date of decision: 29 April 2016

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Susan Walsh, Practice Manager[4]

1 All legislative sections are from the *Native Title Act 1993* (Cth) (the Act), unless I state otherwise.
2 See s 190A(6) of the Act.
3 See s 190(1) of the Act.
4 Delegate of the Native Title Registrar under a written delegation dated 20 November 2015 pursuant to s 99 of the Act.

Introduction

[1] The application is made on behalf of the Warrabinga Wiradjuri #4 native title claim group in relation to the land and waters covered by two mining lease applications in the vicinity of Bylong and Upper Bylong (which is south east of Ulan) in New South Wales. The Deputy Registrar of the Federal Court gave a copy of the application and accompanying affidavits filed in the Court to the Native Title Registrar (Registrar) on 29 March 2016. This has triggered the duty to consider the claim in the amended application against the registration test conditions set out in ss 190B and 190C.[5] If the claim satisfies all of the conditions, then the Registrar must accept the claim for registration.[6] If the claim does not satisfy all of the conditions, the Registrar must not accept the claim for registration.[7] My decision is that the claim satisfies all of the registration test conditions and my reasons against each condition now follow.

Conditions about the merits of the claim: s 190B(1)

Decision on identification of area subject to native title: s 190B(2)

[2] The claim meets the requirements of s 190B(2) as I am satisfied that the written description and the map of the external boundary and the written description of internally excluded areas are sufficient to identify with reasonable certainty the particular land or waters covered by the application. My reasons now follow.

What is needed to meet s 190B(2)?

[3] To meet s 190B(2), the Registrar 'must be satisfied that the information and map contained in the application … 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.' The two questions for this condition are whether the information and map provides certainty about: (a) the external boundary of the area of land or waters covered by the claim; and (b) any areas within that external boundary not covered.[8]

Does the information provided about the external boundary meet this condition?

[4] Schedule B of the application Schedule B describes the application area as being the external boundaries of Mining Lease Application MLA503 and MLA 504. Attachment C of the application contains a colour copy of a map prepared by Geospatial Services (NNTT), titled 'Warrabinga Wiradjuri #4' dated 18/03/2016. The map includes the external boundary depicted by a bold blue outline; coloured topographic image background; MLA 504 and 503 depicted as red and green

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5 See s 190A(1).

6 See s 190A(6). I note that s 190A(6A) does not apply as the claim in the application made on 18 June 2015 has not previously been accepted for registration nor entered on the Register of Native Title Claims.

7 See s 190A(6B).

8 See Mansfield J in *Northern Territory v Doepel* (2003) 133 FCR 112; (2003) 203 ALR 385; [2003] FCA 1384 (*Northern Territory v Doepel*) at [122].

outline with a cross hachuring; scalebar, northpoint, coordinate grid and location diagram; and notes relating to the source, currency and datum of data used to prepare the map.

[5] I find that the written description and the map are comprehensive, detailed and consistent. Armed with this information, the external boundaries of the area can be located on the earth's surface with a reasonable degree of certainty. Accordingly, the information satisfies the requirements of s 190B(2) insofar as the external boundary is concerned.

Does the information about excluded areas within the external boundary meet this condition?

[6] Schedule B of the application contains a written description of internally excluded areas by reference to relevant provisions of the Act and the *Native Title (New South Wales) Act 1994 (NSW)*. This essentially excludes from coverage areas where there has been extinguishment of native title, for example by a previous exclusive possession act defined in s 23B of the Act and extinguishment cannot be disregarded as a result of the operation of either Act.

[7] I find that the written description of the internally excluded areas is reasonably clear. It will be possible to work out any internally excluded areas affected by the extinguishment defined in Schedule B, once a search of historical and current tenure for the application area is completed.[9]

Decision on identification of native title claim groups: s 190B(3)

[8] The claim meets the requirements of s 190B(3) as I am satisfied that the application contains a sufficiently clear description of the persons in the native title claim group, so that it can be ascertained whether any particular person is in that group, as required by subsection (b). My reasons now follow.

What is needed to meet s 190B(3)?

[9] To meet s 190B(3), 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.' The only question for this condition is 'whether the application enables the reliable identification of persons in the native title claim group.'[10] There is no place under this condition to consider whether the application identifies the correct native title claim group.[11]

Does the description of the persons in the native title claim group meet this condition?

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9 This approach is supported by the decisions in *Daniel for the Ngaluma People & Monadee for the Injibandi People v Western Australia* [1999] FCA 686 (Nicholson J) and *Strickland v Native Title Registrar* (1999) 168 ALR 242; [1999] FCA 1530 at [51] to [52] (French J, as the Honourable Chief Justice then was).

10 *Northern Territory v Doepel* at [51] and also at [37].

11 *Northern Territory v Doepel* at [37] and the decision of Dowsett J in *Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*), that this condition 'requires only that the members of the claim group be identified, not that there be a cogent explanation of the basis upon which they qualify for such identification'—at [33].

[10] Schedule A of the application does not name all of the persons in the claim group in the manner identified by subsection (a). The question is therefore whether the description of the native title claim group in Schedule A satisfies subsection (b). Schedule A of the application states that the native title claim group is comprised of the descendants of six persons, all of whom are named in Schedule A.

[11] The description is sufficiently clear under this condition. It has long been accepted that defining the current members of a claim group as descendants of named persons even where those persons were alive long ago, is sufficient as it provides a 'substantial factual element'[12] and a clear basis for a 'factual inquiry'.[13]

Decision on identification of claimed native title: s 190B(4)

[12] The claim meets the requirements of s 190B(4) as I am satisfied that the description in the application is sufficient for me to clearly understand and identify the itemised rights as 'native title rights and interests'. My reasons now follow.

What is needed to meet s 190B(4)?

[13] To meet s 190B(4), the Registrar 'must be satisfied that the description contained in the application as required by paragraph 62(2)(d) is sufficient to allow the claimed native title rights and interests to be readily identified'. The question for this condition is whether the claimed rights are described clearly, comprehensively and in a way that is meaningful and understandable, having regard to the definition of the term 'native title rights and interests' in s 223 of the Act.[14]

Does the description of the native title rights and interests meet this condition?

[14] Attachment E of the application provides a description of the claimed native title rights and interests. In areas where there has been no extinguishment to any extent of native title or where extinguishment must be disregarded, the asserted rights are to exclusive native title, described as 'possession, occupation, use and enjoyment of land and waters as against the whole world.'

[15] Over areas where native title is only partially recognisable because of extinguishment the claimed rights are described as the non-exclusive rights to:

(a) have access to, remain on and use the land and waters

(b) access and take the resources of the land and waters

(c) protect places, areas and things of traditional significance on the land and waters.

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12 *Ward v Registrar, National Native Title Tribunal* (1999) 168 ALR 242; [1999] FCA 1732 at [27] (Carr J).

13 *Western Australia v Native Title Registrar* (1999) 95 FCR 93; [1999] FCA 1591 at [63] to [69] (Carr J).

14 *Northern Territory v Doepel* at [99] and [123].

[16] This description is carefully drafted and clearly explains the identified native title rights and interests. The description is sufficient for me to clearly understand and identify the itemised rights as 'native title rights and interests'.

Decision on factual basis for claimed native title: s 190B(5)

[17] The claim meets the requirements of s 190B(5) as I am satisfied that the factual basis on which it is asserted that the claimed native title rights and interests exist is sufficient to support the assertion and the three particular assertions in that section. My reasons now follow.

What is needed to meet s 190B(5)?

[18] To meet s 190B(5), 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.' Section 190B(5) then states that the factual basis must support three particular assertions relating to:

(a) an association by the claim group and their predecessors with the area;

(b) the existence of traditional laws and customs acknowledged and observed by the native title claim group giving rise to the claimed native title; and

(c) the claim group continuing to hold the native title under those traditional laws and customs.[15]

[19] The question for this condition is whether the factual basis is sufficient to support the general assertion that the claimed native title exists and the three particular assertions set out in s 190B(5)(a), (b) and (c). Answering this does not involve a hearing by the Registrar of the Warrabinga Wiradjuri #4's claim to hold native title in relation to the area covered by the application. At the end of the day, whether or not the Warrabinga Wiradjuri #4 hold native title is for the Federal Court to hear and determine.

[20] That the Registrar's consideration of the claim against this condition is limited is supported by the case law. After generally considering the provisions of ss 190B and 190C, Mansfield J held in *Northern Territory v Doepel* that:

> It is trite to observe that the nature of the Tribunal's task is defined by those provisions. Its task is clearly not one of finding in all respects the real facts on the balance of probabilities, or on some other basis. Its role is not to supplant the role of the Court when adjudicating upon the application for determination of native title, or generally to undertake a preliminary hearing of the application.[16]

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15 See the particular assertions set out in subsections (a), (b) and (c).

16 *Northern Territory v Doepel* at [16].

[21] Mansfield J went on to find that the task for the condition of s 190B(5) 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'.[17] Mansfield J also said that it is not for the Registrar to 'test whether the asserted facts will or may be proved at the hearing, or to assess the strength of the evidence which may ultimately be adduced to establish the asserted facts'.[18]

[22] A Full Court of the Federal Court in a later case agreed with Mansfield J about the limits of s 190B(5), holding that what is not required to satisfy this condition is 'evidence that proves directly or by inference the facts necessary to establish the claim'.[19] Nonetheless, the Full Court found that the factual basis 'must be in sufficient detail to enable a genuine assessment of the application by the Registrar under s 190A and related sections, and be something more than assertions at a high level of generality.'[20]

[23] If there is a sufficient factual basis for each particular assertion of s 190B(5), then there will also be a sufficient factual basis to support the general assertion at the head of s 190B(5) that the claimed native title rights and interests exist.[21] I therefore consider below the sufficiency of the factual basis against each of the three particular assertions of ss 190B(5)(a), (b) and (c).

Decision on s 190B(5)(a)

[24] I am satisfied that the factual basis is sufficient to support the assertion of s 190B(5)(a).

What is needed to provide a sufficient factual basis for s 190B(5)(a)?

[25] To meet s 190B(5)(a), the factual basis must support the assertion that 'the native title claim group have, and the predecessors of those persons had, an association with the area'. Generally on what is needed for the 'association' assertion:

(a) it is not necessary for the factual basis to support an assertion that all members of the native title claim group have an association with the area at all times;[22]

(b) it is necessary that the material is sufficient to support that the group as a whole presently has an association with the area and to also support an association with the area by the predecessors of the whole group over the period since sovereignty, or at least since European settlement;[23] and

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17 *Northern Territory v Doepel* at [17].

18 *Northern Territory v Doepel* at [17].

19 *Gudjala People No 2 v Native Title Registrar* (2008) 171 FCR 317; [2008] FCAFC 157; (*Gudjala 2008*), per French J(as the Honourable Chief Justice then was) & Moore and Lindgren JJ at [83] and [92].

20 *Gudjala 2008* at [92].

21 *Northern Territory v Doepel* at [131]–[132] and *Gudjala 2007* at [43].

22 *Gudjala 2007* at [52].

23 *Gudjala (2007)* at [51] and [52].

(c) the materials must support that the association both presently and by the group's predecessors relates to the area as a whole.[24]

Is there a sufficient factual basis for the assertion of s 190B(5)(a)?

[26] 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 area.

[27] Attachment F of the application provides a general description of the factual basis. It asserts that before the assertion of sovereignty in 1788, there was a Wiradjuri nation who acknowledged and observed a set of laws and customs that governed the holding of rights in relation to land and waters across a broad area of country within which the smaller area covered by this polygon claim lies. The Wiradjuri nation, it is claimed, was made up of 'inter-linked regional kin networks extending across several land-holding groups (which might be pictured as a series of overlapping circles)'. These groups 'did share the knowledge necessary to determine who held rights to speak [in] particular areas within the relevant region'—para 1, Attachment F.

[28] Attachment F asserts that the predecessors of the native title claim group acknowledged and observed the traditional laws and customs of the Wiradjuri nation. These predecessors, it is claimed, collectively held native title rights and interests in relation to an area shown on a map in Attachment F1 of the application under the traditional laws and customs of the Wiradjuri nation. The application area, which is covered by future act notices under s 29 of the Act, falls within the north-eastern reaches of this wider 'dialect area'—paras 4 & 5, Att F.

[29] The Attachment F1 dialect area known as 'Wiradjuri-Warrabinga country was settled in the 1820s. This saw the decimation of the claim group's predecessors as a result of massacres. The few families which survived assumed rights and responsibilities for the whole of the dialect area, a phenomenon replicated throughout the wider Wiradjuri nation. This represented an adaptation of the law of group succession of the Wiradjuri nation whereby neighbouring kin had the right and responsibility to assume ownership of orphaned country. The Dabee clan are the clan with rights and responsibilities for the application area as a result of the operation of the succession laws of the Wiradjuri nation—para 6, Att F.

[30] The survivors of these massacres, including the claim group's apical ancestors Peggy and Jimmy Lambert, Dianna Mudgee and James "Tracker" Macdonald and the next two to three generations of their families were able to sustain their association with the area by living and working on their country. Jimmy and Peggy Lambert lived and worked on Dabee station which gave them freedom to continue to visit significant sites, to hunt and gather there and to transmit the laws and customs relating to the land of their forebears to successive generations. There were active kin networks such that the remaining families maintained knowledge of each other as

[24] See *Martin* at [23]–[26], affirmed by Siopis J in *Corunna v Native Title Registrar* [2013] FCA 372 (24 April 2013) at [35]–[39] and [42]–[44].

persons holding rights and interests in relation to their country under the laws and customs of the wider Wiradjuri nation—para 6, Att F.

[31] There are approximately 300 to 400 people in the native title claim group and approximately 50% presently live within the Attachment F1 dialect area and the remainder regularly visit that country, at least three to four times a year. The oldest members of the claim group are in their 80s and there has been a continuous transmission of traditional laws and customs that dates back to those of the predecessors known to have survived the settlement era—paras 6 and 8, Att F.

[32] Further information about the predecessors of the native title claim group are found in an affidavit by **[name removed]** dated 3 February 2016:

(a) Peggy and Jimmy Lambert were a married couple; both were from the Rylstone area and born around 1830. They were survivors of the massacre at Bremar, in the Capertee Valley.

(b) Dianna Mudgee was born circa 1820-1826 in the Mudgee area. She lived at Piambong until her death in 1902.

(c) James 'Tracker' Macdonald was born circa 1872.

(d) Thullagunmaulli was born circa 1800 and a member of the Dabee tribe (near Rylstone).

(e) Aaron was a guide and there is a place near Cudgegong, Rylstone, Kandos and Charbon known as 'Aaron's Pass'

[33] These places all lie within the wider Attachment F1 dialect area and are also proximate to the area covered by this new Warrabinga Wiradjuri claim. (The application covers the area of two mining lease applications, approximately 5 kms out of Bylong Village.)

[34] **[Name removed]** states in her affidavit that this is near an area that is particularly rich in art, occupation sites and axe grinding grooves. **[Name removed]** states that her Nan explained to her that this area always has good, fresh water because of the nature of the valley system—para 19 of **[Name removed]**'s affidavit. **[Name removed]** calls this area the 'subject area' when discussing the association that the native title claim group currently have with the area and also by their predecessors. **[Name removed]** describes this association as having existed throughout the post contract era from the time of their predecessors, Peggy and Jimmy Lambert, in the 1830s. **[Name removed]** provides the following description of this association in her affidavit:

(a) **[Name removed]**' grandmother told her that Jimmy Lambert is known to have often walked and camped along a trail that passes through the subject area, running from Budden to Widden. Jimmy Lambert made eucalyptus oil which he then sold, something he was permitted to do under Wiradjuri law. This association continues to the present time, including by **[Name removed]**'s daughter, **[Name removed]**, who passed through the area approximately 6 months ago.

(b) Approximately 50–60 members of the claim group regularly camp, hunt and fish there abiding by the laws and customs which have been transmitted from each generation of the claim group to the next, since long before settlement, including the following laws and customs:

    i. when hunting for kangaroo, wallaby and eel game, take only the male and what is needed to eat;

    ii. game must be shared with other members of the group who need it;

    iii. because they are freshwater people, they are only allowed to eat water creatures from their country being yellow-belly fish, yabbies and eels;

    iv. before cooking echidna, the tongue must be removed.

(c) The trips onto the subject area include camping where they build shelters from branches and light camp fires. **[Name removed]** recalls hunting there for kangaroo, wallaby and echidna during the early 1950s as a young girl. She recalls getting yabbies, eel and freshwater mussels.

(d) There are springs and soaks located on the subject area. **[Name removed]**'s Nan taught her how to dig them out to find water which they used for washing and drinking.

(e) Warrabinga-Wiradjuri people gather reeds, as did their predecessors, to make twine which is used to weave baskets or as fishing lines.

(f) There is one plant found on the subject area that is used to heal cuts. Another tree found on the subject area has a leaf that you can suck on if thirsty. There is a pink–flowering ironbark tree with honey that is found on the subject area. The honey comes from native bees that do not sting, so it is easy to raid their nests. These plant resources continue to be used for these traditional purposes by current claim group members, as taught to them over the generations by their predecessors.

(g) There is a sacred story which runs right through the subject area. (**[Name removed]** tells the content of this story, which tells how the landscape was formed and involves the travels of mythical beings through bodies of water on their country.)

(h) There is an art site with hand-stencils made by men and women within the subject area that must be protected under the laws and customs of the native title claim group. There is another significant women's site within the subject area which was a birthing place and must be protected.

[35] The applicant has provided an extract of a map for the region in which the subject area lies. The applicant has marked the places discussed by **[Name removed]** in her affidavit and has also marked the approximate location of tracks running through Widden Valley that have been used by the group and their predecessors, including their apical ancestor, Jimmy Lambert.[25]

[36] The information reviewed above is sufficient to support an assertion that the claim group have, and their predecessors had, an association with the area. The information is detailed and specific about how that association has manifested itself in a direct line of descent from the apical ancestors Jimmy and Peggy Lambert, who were alive in the early settlement era. The association with the broader reach of the Warrabinga-Wiradjuri dialect area is also explained in **[Name removed]**'s affidavit where she discusses the claim group's predecessors and their known association with the Attachment F1 dialect area.

Decision on assertion of s 190B(5)(b)

[37] I am satisfied that the factual basis is sufficient to support the assertion of s 190B(5)(b).

What is needed for the assertion of s 190B(5)(b)?

[38] To meet s 190B(5)(b), the factual basis must support the 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 rights and interests'. The wording of s 190B(5)(b) is almost identical to paragraph (a) of the definition of 'native title rights and interests' within s 223(1) of the Act. Dowsett J approached this in *Gudjala 2007* by considering s 190B(5)(b) in light of the case law regarding s 223(1)(a), particularly the leading decision of the High Court of Australia in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; [2002] HCA 58 (*Yorta Yorta*).[26]

[39] According to the High Court's decision in *Yorta Yorta*, a law or custom is 'traditional' where:

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25 See map attached to letter from applicant's legal representative dated16 April 2016.

26 *Gudjala 2007* at [26] and [62] to [66].

(a) it 'is one which has been passed from generation to generation of a society, usually by word of mouth and common practice'—at [46];

(b) the origins of the content of the law or custom concerned can be found in the normative rules of a society[27] which existed before the assertion of sovereignty by the Crown—at [46];

(c) the normative system has had a 'continuous existence and vitality since sovereignty'—at [47];

(d) the relevant society's descendents have acknowledged the laws and observed the customs since sovereignty and without substantial interruption—at [87].

[40] Dowsett J found that a sufficient factual basis must therefore demonstrate that the laws and customs relied on by the claim group 'have their source in a pre-sovereignty society and have been observed since that time by a continuing society'. Dowsett J held that a 'starting point must be identification of an indigenous society at the time of sovereignty or, for present purposes, in 1850-1860'. His Honour concluded that a sufficient factual basis must also establish the link between the native title claim group described in the application and the area covered by the application, which involves 'identifying some link between the apical ancestors and any society identified at sovereignty'.[28]

Is the factual basis sufficient to support the assertion of s 190B(5)(b)?

[41] It is not appropriate that I impose too high a burden when assessing these matters, having regard to the limited nature of the enquiry when assessing the factual basis condition of s 190B(5).[29] With these constraints in mind, I find that the factual basis provides specific and detailed information to explain the identity of the relevant pre-sovereignty normative system, which operated in the region occupied by the area of this polygon claim.

[42] Attachment F of the application provides the following information about the asserted traditional laws and customs:

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27 The term 'society' in this context is 'understood as a body of persons united in and by its acknowledgment and observance of a body of law and customs'—*Yorta Yorta* at [49].

28 See *Gudjala 2007* at [63] and [66] respectively. Although the Full Court found error in Dowsett J's evaluation of the factual basis materials, the Full Court did not disagree with his Honour's assessment of what a sufficient factual basis for this assertion must address—see *Gudjala 2008* at [71]–[72]. The Full Court also agreed with Dowsett J that one question a sufficient factual basis must address is whether 'there was, in 1850–1860, an indigenous society in the area, observing identifiable laws and customs'—*Gudjala 2008* at [96]. (1850–1860 is the time of European settlement of the Gudjala application area.)

29 I refer also to my analysis of the case law at the outset of the reasons for this condition. I refer also to a recent decision by Barker J that 'it must be borne in mind that the provisions of the NTA dealing with registration are not, nor could they be, concerned with the proof that native title exists'—*Stock v Native Title Registrar* [2013] FCA 1290 (29 November 2013) at [64] and also at [65]–[66].

(a) The native title claim group acknowledges and observes the traditional laws and customs of the pre-sovereignty Wiradjuri Nation society, which exists in relation to a large area of New South Wales, including the dialect area shown on the map in Attachment F1 of the application.

(b) The Wiradjuri nation divides into a number of regional kin networks, who are inter-connected and extend across several land-holding groups.

(c) The relevant land-holding group for the application area is that of the Warrabinga-Wiradjuri, who make up a number of clans, including the Dabee clan.

(d) The Warrabinga Wiradjuri group and the Dabee clan holds native title rights in relation to the specific area covered by the application under the laws and customs of the Wiradjuri Nation.

(e) These laws and customs provide that members of the society inherit rights in land because of rules around descent and filiation from a parent or grandparent who belonged to the Warrabinga-Wiradjuri land-holding group entity.

(f) The Warrabinga-Wiradjuri land-holding group continues to observe the Wiradjuri Nation traditional laws and customs. This connects them to the dialect area shown on the map in Attachment F1. They have rights to use the resources (such as game) in the dialect area provided they observe traditional laws and customs around these things.

(g) Current members of the Warrabinga-Wiradjuri claim group have inherited rights in this area in a continuous line of descent from the ancestors named in Schedule A.

[43] The affidavit by **[Name removed]** supports these assertions. Her main teachers were her grandmother and father, who taught her through 'a combination of spoken word (for example, telling me where the boundaries of our country are) and practical instruction (for example, by showing me how to manufacture twine from the sinews of a wallaby)'—para 12.

[44] **[Name removed]** describes the rights and interests exercised by the claim group under Wiradjuri Nation traditional laws and customs. She tells of Warrabinga-Wiradjuri walking through and monitoring the country, which they do, as they are responsible to care for country under Wiradjuri law. **[Name removed]** describes how Nan told her that Jimmy Lambert often walked and camped along a trail that passes through the subject area from Budden to Widden—at para 22.

[45] There are rules that the Warrabinga-Wiradjuri observe when hunting game and fish, described in my reasons at [34] above.

[46] There are stories that Warrabinga-Wiradjuri have passed on through the generations and which Warrabinga-Wiradjuri pass onto their own children and grandchildren. This is an

important means of transmitting laws and customs relating to country. They do this by visiting the sites in question. One such story related by **[Name removed]** in para 15 of her affidavit about Murrigan a native cat or quoll who tracked Gurandagee the eel through different bodies of water and forming landscape along the way. When Murrigan caught Gurandagee he only took enough flesh to feed himself and the others he had accompanied him on his journey.

[47] I am satisfied that the factual basis is sufficient to support the assertion that there exist traditional laws and customs derived from a pre-sovereignty Wiradjuri nation society identified and that the claim group and their apical ancestors can demonstrate their links to this group over time since the region was settled in the 1820s. There is information about current laws and customs including those relating to hunting and fishing, travelling over trails and visiting important story places, which appear to have normative content. There is information to link the claim group's predecessors with the Warrabinga-Wiradjuri dialect area and with the claim area.

Decision on assertion of s 190B(5)(c)

[48] I am satisfied that the factual basis is sufficient to support the assertion of s 190B(5)(b).

What is needed for the assertion of s 190B(5)(c)?

[49] To meet s 190B(5)(c), the factual basis must support the assertion 'that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.'

[50] The factual basis must address that the claim group has continued to hold the claimed native title rights and interests by acknowledging and observing the traditional laws and customs of a pre-sovereignty society in a substantially uninterrupted way. This is the second element to the meaning of the word 'traditional' when used in the s 223(1)(a) definition of 'native title rights and interests' discussed at [47] and [87] of *Yorta Yorta*.

[51] The case law on this assertion indicates the following kinds of information are required:

(a) That there was a society that existed at sovereignty observing traditional laws and customs from which the identified existing laws and customs were derived and were traditionally passed on to the current claim group;

(b) That there has been a continuity in the observance of traditional law and custom going back to sovereignty or at least to European settlement.[30]

Is the factual basis sufficient to support the assertion of s 190B(5)(c)?

[52] The factual basis material identifies the pre- sovereignty society and the persons who acknowledged and observed the laws and customs of the relevant society, being the Wiradjuri

30 See *Gudjala (2007)* at [82] and *Gudjala FC* at [96].

Nation. There is information within the factual basis that goes to showing a similarity in laws and customs acknowledged and observed by the ancestors and those of the current native title claim group. There is material that outlines the transmission of laws and customs throughout the generations that can be found in **[Name removed]**'s affidavit. I examined this information in my reasons above for the assertion of s 190B(5)(c). It is also sufficient to find that there is traditional laws and customs have continued to be acknowledged and observed over the period since European settlement of the region occupied by the claim.

Decision on prima facie case: s 190B(6)

[53] The claim meets the requirements of s 190B(6) as I consider that, prima facie, at least some of the claimed native title rights and interests claimed in the application can be established. My reasons now follow.

What is needed to meet s 190B(6)?

[54] To meet s 190B(6), there must be some substance to the material before the Registrar to show on a prima facie basis that some of the claimed native title rights and interests can be established. The case law guides the Registrar in relation to this condition:

(a) it requires some measure of the material available in support of the claim;[31]

(b) although s 190B(5) directs attention to the factual basis on which it is asserted that the native title rights and interests are claimed, this does not itself require some weighing of that factual assertion as that is the task required by s 190B(6);[32]

(c) s 190B(6) appears to impose a more onerous test to be applied to the individual rights and interests claimed.[33]

(d) the use of the term 'prima facie' means 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'.

Are some of the claimed rights and interests prima facie established?

[55] I consider that the non-exclusive rights described in Attachment E can be established on a prima facie basis. These are the rights to:

(a) have access to, remain on and use the land and waters;

(b) access and take the resources of the land and waters; and

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31 *Northern Territory v Doepel* at [126].

32 *Northern Territory v Doepel* at [127].

33 *Northern Territory v Doepel* at [132].

(c) protect places, areas and things of traditional significance on the land and waters.

[56] Attachment F describes:

(a) The traditional laws and customs of the Wiradjuri Nation whereby native title rights and interests were exercised across country by several land-holding groups who shared the knowledge necessary to determine who held rights to speak in particular areas within the relevant country of the overall Wiradjuri nation—paras 1 and 3.

(b) The Warrabinga-Wiradjuri group holds rights in the dialect area shown on the map in Attachment Fl of the application—para 4.

(c) Rights in land are based on filiation to a parent or grandparent who also held rights in the land. This gives the members of a particular land-holding group rights to all the resources within the group's particular territory which they must use in ways that comply with the laws and customs of the Wiradjuri nation, including how and when to hunt certain animals—para 3.

(d) The ancestors of the Warrabinga Wiradjuri People are said to have lived in areas in the vicinity of the application area and to have accessed the land covered by the application under Wiradjuri traditional laws and customs and the active kin networks of the land holding groups allowed them to maintain knowledge of each other as persons holding rights in relation Wiradjuri country—para 6.

(e) The particular native title rights and interests claimed are group rights and interests held under the communal native title of the wider Wiradjuri nation—para 7.

(f) The native title claim group number approximately 300 to 400 people and about 50% of them live within the dialect area shown on the Attachment F1 map. Those that do not live on country visit there regularly. The oldest claim group members are in their 80s—para 8.

(g) The native title claim group have been able to maintain connections with the dialect area of their land-holding group, as did their predecessors in the post-contact era of the 1820s and beyond. They have sustained active kin-networks and practiced an independent lifestyle on or close to their country and have continued to collectively acknowledge and observe the traditional laws and customs of their predecessors—para 6.

[57] **[Name removed]** provides an illustration of these matters in her affidavit dated 3 February 2016:

(a) She was born in **[year removed]**, and has an unbroken line of descent from the apical ancestors Peggy and Jimmy Lambert who are her great-great-great grandparents—para 3.

(b) Her teachers were her Grandmother, Nan and her father. As long as **[Name removed]** can remember they would visit their country and she would go with them as a child and later as an adult. When her father became too old to travel and monitor his country, he started to transfer more and more responsibility onto **[Name removed]** and her sisters—para 11.

(c) **[Name removed]** was shown the boundaries of her country and taught about the history and mythology of its important places. Her Nan taught her to use the sinew from wallabies as a sewing thread to stitch the skins together and how to use a poisonous berry found on their country to stun fish, which would then be easy to grab—para 14.

(d) She describes stories that she and other claim group members transmit to younger generations as they were told to her as an important way to learn about the landscape and its special places. She describes how they visit and camp at these places to impart the knowledge of these sacred stories—paras 15, 16 & 18.

(e) There is a walking trail used by the apical ancestor Jimmy Lambert that traverses the application area, which is still used today. Jimmy would collect Eucalyptus leaves and sell the oil that he made. This was permitted to him under the Wiradjuri law which say that the resources of land belonging to a land-holding group were the property of that group—para 22.

(f) There are special rules about hunting and fishing (described in my reasons at [x] above) which were practiced by the group's predecessors and have been passed down to current members of the group—para 23.

(g) When camping on their country, claim group members build shelters from branches and light fires, as they are allowed under Wiradjuri law and custom. **[Name removed]** has camped on her country throughout her life, hunting and fishing there, including on the creeks that traverse the application area. There are soaks and springs where she learned from her Nan to extract drinking and washing water. She knows how to gather reeds to produce twine for basket weaving and fishing line—paras 24–26.

(h) **[Name removed]** relays some stories of their country and how they preserve and protect the sites associated with these stories—paras 30–32.

[58] Based on this information from Attachment F and **[Name removed]**'s affidavit, I consider that the non-exclusive rights relating to accessing the application area, accessing its resources and protecting its significant areas are established on a prima facie basis. This material shows a history of access to the wider dialect area and to the application area that dates back to the times of Jimmy Lambert, who survived the settlement of the area in the 1820s. The use of resources are subject to rules and the claim group camp and visit the area to access, teach about and protect its significant sites.

[59] I do not consider that the exclusive right of possession, occupation, use and enjoyment as against the whole world can be established. I have relied on decisions of the Full Court in *Griffiths v Northern Territory* (2007) 243 ALR 7 (*Griffiths*) and *Banjima People v State of Western Australia (No 2)* [2015] FCAFC 171 (*Banjima*) which indicate that this right, to be established, must be accompanied by evidence that the practice of seeking permission to go onto another's country is grounded in a spiritual imperative that gives the practice normative force. This may be expressed by way of 'spiritual sanction visited upon unauthorised entry' and as the 'gatekeepers for the purpose of preventing harm and avoiding injury to country'.[34] In the more recent case of *Banjima*, the Full Court referred to these statements from *Griffiths* and held that 'controlling access to country, expressed by the need to obtain permission to enter under pain of spiritual sanction ... is readily recognisable as a right of exclusive possession.'[35]

[60] The information discloses that the people who acknowledge the traditional laws and customs of the Wiradjuri Nation as a whole were connected with the land and waters covered by the area depicted on Map F1 which includes the application area. Attachment F describes that rights were held 'collectively' and persons in the native title claim group are described as members of a 'land-holding entity'. Attachment F refers to the requirement of permission from other land- holding entities within the Wiradjuri Nation in order to use resources within 'each other's country'. Attachment F also refers to the right of land holding groups (whose country 'might be pictured as a series of overlapping circles') to speak for particular areas. **[Name removed]** describes how this operates in her affidavit dated 3 February 2016. She describes in paragraph 33 that her Nan and father would tell her, "This is your country". **[Name removed]** says in para 33 that 'because the country belongs to the claim group under Wiradjuri law, we are allowed to occupy and use it and to exclude other groups. If Wellington–base Wiradjuri try to speak for parts of our country, we tell them to leave. It is not their country, and that means that they can't speak for it, access it, or use its resources without our permission.'

[61] These statements are of a relatively broad and general nature. They lack clear examples which illustrate how the claimed exclusive right arise under the traditional laws and customs of

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34 *Griffiths FFC* at [127].

35 *Banjima FFC* at [38].

the relevant Wiradjuri society. The information is not sufficient, in my view, to support the assertion that the claim group members have a right under traditional laws and customs to effectively exclude from their country people not of their community.

Decision on traditional physical connection: s 190B(7)

[62] The claim meets the requirements of s 190B(7) as I am satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application. My reasons now follow.

What is needed to meet s 190B(7)?

[63] The case law on this condition provides the following guidance:

(a) 'It does require the Registrar to be satisfied of a particular fact or particular facts' and 'some evidentiary material to be presented to the Registrar'.

(b) However the focus is confined and not 'the same focus as that of the Court when it comes to hear and determine the application for determination of native title rights and interests. The focus is upon the relationship of at least one member of the native title claim group with some part of the claim area'.[36]

Is there evidence that a member of the claim group has a traditional physical connection with the area?

[64] I am satisfied that **[Name removed]** is a member of the claim group and currently has a traditional physical connection with the area covered by the application. The evidence surrounding this connection is provided in her affidavit dated 3 February 2016, the contents of which I consider in my reasons above for the conditions in ss 190B(5) and (6). The evidence shows that **[Name removed]** is a descendant of the claim group's apical ancestors Jimmy and Peggy Lambert. The evidence shows that she has a lifelong association with Warrabinga-Wiradjuri country, including with a walking trail that traverses the area and a story site there. The evidences shows that she hunts, camps and fishes there and interacts with the country of her Warrabinga-Wiradjuri ancestors under traditional laws and customs of the Wiradjuri nation.

Decision on no failure to comply with s 61A: s 190B(8)

[65] The claim meets the requirements of s 190B(8) as I am satisfied that the application and accompanying documents do not disclose and I am 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. My reasons now follow.

What is needed to meet s 190B(8)?

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[36] *Northern Territory v Doepel* at [17].

[66] This section provides that applications must not be made:

(a) over areas already covered by an approved determination of native title;[37]

(b) over areas where a previous exclusive possession act attributable to the Commonwealth or a State or Territory was done.[38]

(c) which claim exclusive possession, occupation, use and enjoyment in relation to areas where a previous non-exclusive possession act was done and is attributable to the Commonwealth or a State or Territory.[39]

Does the application meet these three requirements?

[67] I am satisfied that there is no prohibition against the claim under this condition:

(a) a search has revealed that there are no approved native title determinations over the application area, thus meeting s 61A(1);

(b) schedule B expressly excludes any such areas covered by a previous exclusive possession act, thus meeting s 61A(2);

(c) schedule E expressly states that there is no claim to a right of exclusive possession occupation use and enjoyment where there has been no extinguishment of such a right by a previous non-exclusive possession act, thus meeting s 61A(3).

Decision on no extinguishment etc. of claimed native title: s 190B(9)

[68] The claim meets the requirements of s 190B(9) as I am satisfied that the application and accompanying documents do not disclose and I am not otherwise aware, that:

(a) to the extent that the native title rights and interests claimed consist of or include ownership of minerals, petroleum or gas—the Crown in right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;

(b) to the extent that the native title rights and interests claimed relate to waters in an offshore place—those rights and interests purport to exclude all other rights and interests in relation the whole or part of the offshore place;

(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

[69] The claim meets this condition because:

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37 See subsection 61A(1).

38 See subsection 61A(2).

39 See subsection 61A(3).

(a) Schedule Q of the application states that there is no claim to ownership of minerals, petroleum or gas wholly owned by the Crown;

(b) the application area does not extend to any offshore places;

(c) there is no information before me to indicate that the native title rights and interests claimed have been otherwise extinguished.

Conditions about procedural and other matters: s 190C(1)

Decision on prescribed information and accompanying affidavit: s 190C(2)

[70] The claim meets the condition of s 190C(2) as I am satisfied that it contains the details and other information and is accompanied by the documents prescribed by ss 61 and 62. My reasons now follow.

Applications that may be made: s 61(1)

[71] Section 61(1) provides that a native title determination application may be made by 'a person or persons authorised by all the persons (the native title claim group) who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed, provided the person or persons are also included in the native title claim group'. I must check to see that there is information about the native title claim group and the authority of the applicant. I am not empowered to go behind this information unless there is something on the face of the application to indicate that 'not all the persons in the native title claim group were included, or that it was in fact a sub-group of the native title claim group'—see *Northern Territory v Doepel* at [36]. There is nothing on the face of the application to indicate that the claim is not made on behalf of all the persons in the native title claim group.

Applicant's name and address for service: s 61(3)

[72] See the first and final pages of the Form 1 application for these details.

Applications authorised by persons: s 61(4)

[73] This section provides that a 'native title determination application that persons in a native title claim group authorise the applicant to make must: (a) name the persons; or (b) otherwise describe the persons sufficiently clearly so that it can be ascertained whether any particular person is one of those persons'. Schedule A contains a description of the persons in the native title claim group. Dowsett J held that the task here is merely to assess that the persons are named or a description provided and whether those details are sufficient is the task of the corresponding merit condition in s 190B(3).[40]

Affidavits in prescribed form: s62(1)(a)

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40 See *Gudjala 2007* at [31] and [32].

[74] The three persons who comprise the applicant have provided affidavits, which make the statements required by this section.

Information about the boundaries of the area covered by the application and any areas within those boundaries not covered and map showing the boundaries: s 62(2)(a) & (b)

[75] See the information in Schedule B, Attachment B and a map showing the boundaries in Attachment C.

Searches of any non-native title rights and interests carried out: s 62(2)(c)

[76] Schedule D states that there are no searches.

Description of native title rights and interests claimed in relation to particular land or waters: s 62(2)(d)

[77] Attachment E contains a description of the claimed native title rights and interests. See my reasons above at s 190B(4) which analyses the adequacy of the description and finds it be sufficient to allow the rights claimed to be readily identified. It follows that the description does not consist 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.

Activities: s 62(2)(f)

[78] These details are in Schedule G.

General description of factual basis for assertion that native title exists: s 62(2)(e)

[79] This description is in Attachment F of the application. See my reasons above for the condition of s 190B(5). Attachment F suffices as a general description of the factual basis for the assertion that the claimed native title exists and for the particular assertions provided in subsections (i) to (iii) of s 62(2)(e).

Other applications: s 62(2)(g)

[80] Schedule H identifies that there is an overlapping claimant application by the Wonnarua Traditional Custodians No 3 (NSD1295/2015).

Future act notices: ss 62(2)(ga) and (h)

[81] Schedule HA states that there are no notices under s 24MD, of which the applicant is aware. The details of s 29 notices of which the applicant is aware in relation to the application are in Schedule I

Decision on no common claimants in previous overlapping applications: s 190C(3)

[82] The claim meets the requirements of s 190C(3). My reasons now follow.

[83] To meet s 190C(3), the Registrar 'must be satisfied that no person included in the native title claim group for the application (the ***current application***[41]) was a member of a native title claim group for any previous application'. To be a 'previous application':

(a) the application must overlap the current application in whole or part;
(b) there must be an entry for the claim in the previous application on the Register of Native Title Claims when the current application was made; and
(c) the entry must have been made or not removed as a result of the previous application being considered for registration under s 190A.

[84] A search[42] reveals that there is one overlapping application called the Wonnarua Traditional Custodians No 3 (NSD1295/2015) however it is not a previous application in the sense required by s 190C(3) as it was not on the Register of Native Title Claims when the current application was made. Therefore, there is no requirement for me to consider the issue of common members.

Decision on identity of claimed native title holders: the authorisation condition of s 190C(4)

[85] The claim meets the requirements of s 190C(4) as I am satisfied that the applicant is a member of the native title claim group and is authorised by that group to make the application and to deal with matters arising in relation to it

What is required to meet s 190C(4)?

[86] To meet s 190C(4), one of two things must be in place:

(a) the Registrar must be satisfied that the application has been certified by the representative Aboriginal/Torres Strait Islander body or bodies for the area covered by the application;[43] or
(b) the Registrar must consider the information contained in the application and form the opinion that he is satisfied that 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.[44]

[87] Section 251B states what it means for a person or persons to be authorised by all the persons in the native title claim group to make a claimant native title determination application.[45] It provides that all the persons in a native title claim group authorise another person or persons, to make and deal with a native title determination application:

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41 Emphasis in original.
42 See Geospatial overlaps analysis dated 5 April 2016.
43 See ss 190C(4)(a).
44 See ss 190C(4)(b) and (5). Subsection (5) prescribes the information required in the event that the application is not certified by the representative body.)
45 See the notes to ss 61(1) and 190C(4).

(a) where there is a process of decision–making that, under the traditional laws and customs of the persons in the native title claim group, must be complied with in relation to authorising things of that kind—the persons in the native title claim group authorise the person or persons to make the application, and deal with matters arising in relation to it, in accordance with that process;
(b) where there is no traditionally mandated decision–making process, the persons in the native title claim group authorise the person or persons to make and deal with the application, in accordance with a process of decision–making agreed to and adopted, by the persons in the native title claim group.

[88] The Courts do not interpret the stipulation that 'all' the persons in the native title claim group must authorise an applicant literally.[46] Nonetheless, there must be information to demonstrate that authorisation has flowed as a result of a decision or decisions in which the native title claim group as a whole has been afforded a reasonable opportunity to participate (absent a traditionally mandated decision–making process which provides otherwise) using one of the two decision–making processes identified in s 251B.

[89] The following legal principles govern my consideration of whether the applicant is authorised by all the other persons in the native title claim group:

(a) unanimous decision–making is not mandated, unless this is the case under the group's traditional laws and customs which must be followed;
(b) in those cases where there is no traditionally mandated decision–making process that must be , s. 251B does not mandate any one particular decision–making process, only that it be agreed to and adopted by the persons in the native title claim group;
(c) agreement to a particular process may be proved by the conduct of the parties even in the absence of proof of a formal agreement;
(d) authorisation by a majority of those who comprise the native title claim group following an agreed and adopted process is possible;
(e) 'agreed to and adopted by' imports the giving to all of those in the native title claim group, whose whereabouts are known and have capacity to authorise, every reasonable opportunity to participate in the adoption of a particular process and the making of decisions pursuant to that process.[47]

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46 *Lawson on behalf of the 'Pooncarie' Barkandji People v Minister for Land and Water Conservation for the State of New South Wales (NSW)* [2002] FCA 1517 (9 December 2002) (*Lawson*), [25].

47 *Fesl v Delegate of the Native Title Registrar* [2008] FCA 1469 (*Fesl*) at [26] and [71]–[72] (Logan J) distilled these principles from earlier case law on the requirements of s 251B. See also *Lawson v Minister for Land and Water Conservation (NSW)* [2002] FCA 1517 (*Lawson*) at [25], Stone J; *Wharton on behalf of the Kooma People v State of Queensland* [2003] FCA 790 (*Wharton*) at [34], Emmett J; *Noble v Mundraby* [2005] FCAFC 212 at [18] and *Noble v Murgha* [2005] FCAFC 211 at [34], North, Weinberg and Greenwood JJ; and *Harrington-Smith v Western Australia (No 9)* [2007] FCA 31 at [1265], Lindgren J.

[90] I have considered the condition of s 190C(4) in the way dictated by subsection (b) as the representative body for the area has not certified the application. Before doing so, I note that the application contains information in Attachment R and in the accompanying affidavits by the applicant, which amounts to the statement and brief settling out of the grounds on which the Registrar should consider that it has been met. The two questions to consider under subsection 190C(4)(b) are:

(a) is the applicant a member of the native title claim group;

(b) is the applicant authorised by all the other persons in that group to make the application and to deal with matters arising in relation to it.

Is the applicant a member of the native title claim group?

[91] Attachment R states that the three applicant persons are members of the claim group because of their descent from an apical ancestor or ancestors named in Schedule A. **[Name removed]** is a descendant of Peggy and Jimmy Lambert. **[Names removed]** are descendants of Dianna Mudgee. This is sufficient information for me to be satisfied that the applicant is a member of the native title claim group—para 2.

Is the applicant authorised by the native title claim group?

[92] Attachment R states that the applicant received authority at a meeting attended by the persons in the native title claim group held at Charbon, New South Wales on 18 June 2011. The decision was made as a result of an agreed and adopted decision making process which permitted decisions of this kind, provided a majority voted in favour by a show of hands—paras 3 and 4.

[93] There are a number of additional affidavits provided directly to the Registrar in relation to the authorisation of the applicant.[48] The following evidence emerges from these materials:

(a) The native title claim group do not have a traditionally mandated decision making process;[49]

(b) Those organising the meeting extended a reasonable opportunity to the native title claim group to attend the authorisation meeting held on 18 June 2011. These efforts included:

i. publishing notice of the forthcoming meeting in two newspapers, one with a national circulation and another that circulated regionally in the Warrabinga-Wiradjuri dialect area on 2 and 3 June 2011;[50]

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48 See affidavits by the applicant's legal representative, **[Name removed]**, dated 27 June 2011 and 18 April 2013, **[Name removed]** dated 30 June 2011, **[Name removed]** dated 30 June 2011 and **[Name removed]** dated 3 February 2016.

49 See statement to this effect in para 6 of **[Name removed]**'s affidavit and also the statements in each of the applicant's affidavits filed with the application.

50 See Affidavit by **[Name removed]** dated 30 June 2011.

ii. posting a copy of the notice to all known members of the claim group in early June 2011;[51]

iii. personally contacting the only known descendants of one of the apical ancestors, James "Tracker" MacDonald, so that they were informed and given an opportunity to attend the authorisation meeting due to the public notices not identifying him as one of the group's apical ancestors;[52]

(c) The persons at the authorisation meeting agreed that a majority vote by a display of hands was to be their decision-making process for authorising the applicant. They proceeded to use this process to come to a decision to give to standing authority to the applicant to make this and any other claimant application necessary to respond to notices under s 29 of the Act within the Warrabinga-Wiradjuri dialect area shown on the map in Attachment F1.

[94] I am satisfied that the applicant is authorised to make this new application under the standing authority given at the authorisation meeting on 18 June 2011. The application area falls within the wider dialect area shown on the Attachment F1 map. The evidence I have reviewed shows that the native title claim group do not have traditional laws and customs, which mandate a particular decision–making process. The evidence shows that the applicant is authorised using a 'majority vote' agreed and adopted decision–making process at the meeting in Charbon on 18 June 2011, after extending a reasonable opportunity to known members of the native title claim group to participate in the authorisation process.

[95] I am satisfied that the participants in the authorisation process (either in person or by apology) agreed and adopted the relevant process and then used that process to authorise the applicant to make this native title determination application and to deal with matters arising in relation to it.

[End of reasons]

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51 See para 34 of **[Name removed]**' affidavit dated 3 February 2016.

52 See paras 4–6 of **[Name removed]**'s affidavits dated 30 June 2011. See also the evidence in **[Name removed]**'s affidavit dated 18 April 2013 regarding his contact with the families descended from this apical ancestor in 2013.