National Native Title Tribunal

Registration test decision

Application name	Maduwongga
Name of applicant	Marjorie May Strickland, Anne Joyce Nudding
NNTT file no.	WC2017/001
Federal Court of Australia file no.	WAD186/2017

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

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

Date of decision: 3 August 2017

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Heidi Evans

Delegate of the Native Title Registrar pursuant to sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cth) under an instrument of delegation dated 8 June 2017 and made pursuant to s 99 of the Act.

Reasons for decision

Introduction

[1] This document sets out my reasons, as the delegate of the Native Title Registrar (the Registrar), for the decision to accept the claim for registration pursuant to s 190A of the Act.

[2] The Registrar of the Federal Court of Australia (the Federal Court) gave a copy of the Maduwongga claimant application to the Registrar on 26 April 2017 pursuant to s 63 of the Act. This has triggered the Registrar's duty to consider the claim made in the application under s 190A of the Act.

[3] Given that the claimant application was made on 21 April 2017 and has not been amended, I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply.

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

[5] On 19 May 2017, the State of Western Australia (the State) provided submissions in relation to the registration testing of the application. By letter of 16 June 2017, the applicant provided a response to those submissions. On 6 July 2017, the State was provided with a copy of that response, and given an opportunity to comment on it. No further submissions were made by the State. I have addressed the material received, where relevant, in my reasons below.

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.

[6] 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.

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

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

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

Native title claim group: s 61(1)

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

[11] A description of the persons comprising the native title claim group appears at Schedule A. It is only where, on the face of the application, it appears that the group described is a sub-group,

or part only, of the actual native title claim group that the application will fail to meet this condition – *Doepel* at [36].

[12] Having considered the description at Schedule A, there is nothing to indicate that it seeks to exclude persons, or that the group described is not the whole of the native title claim group.

Name and address for service: s 61(3)

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

[14] The applicants are named immediately above Part A of the Form 1 and the address for service of the applicant appears at Part B.

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

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

[16] As above, a description of the native title claim group appears at Schedule A. At this condition, I am only concerned with whether the application contains information that either names or describes the persons in the group in the terms prescribed by s 61(4) – *Wakaman People 2 v Native Title Registrar and Authorised Delegate* [2006] FCA 1198 (*Wakaman*) at [34].

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

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

[18] Two affidavits accompany the application for registration, one sworn by each of the applicant persons. They contain identical statements. I have considered those statements and am satisfied that they address the matters prescribed by ss 62(1)(a)(i) to (v).

Details required by s 62(1)(b)

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

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

[20] This information is contained in Attachment B and in Schedule B.

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

[21] The map is contained in Attachment C.

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

[22] Attachment D to Schedule D sets out details of searches carried out by the applicant.

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

[23] This description appears at Schedule E.

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

[24] This description appears at Schedules F, G and M. The State submits (submissions of 19 May 2017) that the applicant has not provided sufficient detailed information in Schedule F to constitute a general description of the factual basis. In reply ('Response to State's submissions' of 16 June 2017), the applicant points to the information contained in Schedules F, G and M, and submits that together, this information is sufficient to constitute the general description required by s 62(2)(e).

[25] Section 62(2)(e) requires only a 'general description' of the factual basis, and does not require the relevant description to be contained in any particular schedule within the application. Schedules G and M provide detailed information about activities undertaken by members of the claim group on the claim area today, and activities they have undertaken on a regular basis throughout their lives, on the area, as they were taught by their ancestors. Having read together Schedules F, G and M, I consider that there is sufficient information, beyond merely a restatement of the assertions at s 190B(5), to constitute a general description of the factual basis on which it is asserted the native title rights and interests claimed exist.

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

[26] Schedule G sets out these activities.

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

[27] This information is contained in Schedule H.

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

[28] Schedule HA of the Federal Court's Form 1 template provides for the inclusion of details of any s 24MD(6B)(c) notifications 'of which the applicant is aware'. Noting the absence of any information at Schedule HA, it is my understanding that the applicant is not aware of any such notifications.

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

[29] Schedule I contains this information.

Conclusion

[30] 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.

[31] The application satisfies the condition at s 190C(3).

[32] It is only where there is a previous application meeting all three criteria in ss 190C(3)(a), (b) and (c) that I am required to consider whether there are common claimants between the claim group for that previous application and the claim group for the current application.

[33] The geospatial assessment prepared by the National Native Title Tribunal (Tribunal)'s Geospatial Services on 8 May 2017 (GeoTrack: 2017/0624) provides that there are no applications overlapping any part of the current application. I can, therefore, be satisfied that no person included in the native title claim group for the current application was a member of the claim group for a previous overlapping application.

Subsection 190C(4)
Authorisation/certification

Under s 190C(4) the Registrar/delegate must be satisfied that either:
(a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application, or
(b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.

Note: The word ***authorise*** is defined in section 251B.

Section 251B provides that for the purposes of this Act, all the persons in a native title claim group authorise a person or persons to make a native title determination application . . . and to deal with matters arising in relation to it, if:
a) where there is a process of decision–making that, under the traditional laws and customs of the persons in the native title claim group, must be complied with in relation to authorising things of that kind—the persons in the native title claim group . . . authorise the person or persons to make the application and to deal with the matters in accordance with that process; or
b) where there is no such process—the persons in the native title claim group . . . authorise the other person or persons to make the application and to deal with the matters in accordance with a process of decision–making agreed to and adopted, by the persons in the native title claim group . . . in relation to authorising the making of the application and dealing with the matters, or in relation to doing things of that kind.

Under s 190C(5), if the application has not been certified as mentioned in s 190C 4(a), the Registrar cannot be satisfied that the condition in s 190C(4) has been satisfied unless the application:

(a) includes a statement to the effect that the requirement in s 190C(4)(b) above has been met, and
(b) briefly sets out the grounds on which the Registrar should consider that the requirement in s 190C(4)(b) above has been met.

[34] The information in Schedule R confirms that the application is not certified. Therefore, I must be satisfied that the requirements set out in s 190C(4)(b) are met, in order for the condition of s 190C(4) to be satisfied. For the reasons below, I am satisfied that the requirements set out in s 190C(4)(b) are met.

The requirement at s 190C(5)

[35] Where an application is not certified, s 190C(5) imposes a further requirement on the application. That is, the application must contain a particular statement regarding the applicant being a member of the native title claim group and being authorised by the persons in the group to make the application and deal with matters arising in relation to it – see s 190C(5)(a). The application must also 'briefly set out the grounds' on which the Registrar can consider that requirement stated for the purposes of s 190C(5)(a) has been met – see s 190C(5)(b).

[36] Having considered the information in Schedule R, I am satisfied that it contains the necessary statement, and briefly sets out the grounds on which the Registrar can consider that requirement has been met. Therefore, the application satisfies s 190C(5).

The requirement at s 190C(4)(b)

[37] To meet the requirement of s 190C(4)(b), the application must contain sufficient information to allow me to be satisfied of the 'fact of authorisation by all members of the native title claim group' – see *Doepel* at [78]. The case law indicates that 'authorisation is a matter of considerable importance and fundamental to the legitimacy of native title determination applications' – *Strickland v Native Title Registrar* [1999] FCA 1530 (*Strickland*) at [57]. Where the authorisation material consists only of formulaic or generic statements, it is unlikely to satisfy the requirements of the condition – *Strickland* at [57].

[38] The applicant's authorisation material consists of the information in Schedule R, statements contained in the applicant persons' affidavits, in Attachment R and in various documents provided by the applicant directly to the Registrar in relation to this condition, on 16 June 2017. I note that at this condition of the registration test, I am not confined to the material contained in the application and can consider additional material supplied by the applicant – see *Strickland* at [57].

[39] Schedule R asserts a resolution of the native title claim group at a meeting held in Boulder, Western Australia on 11 November 2016, as the basis of the applicant's authority to make the application. It asserts that this resolution was passed by the members of the group using a

decision-making process agreed to and adopted by those persons for the purpose of authorising the applicant at the meeting.

[40] Where an agreed to and adopted decision-making process at a meeting of the claim group forms the basis of the applicant's authority, it is not a requirement that all the persons in the native title claim group are involved in making the decision. It is sufficient if a decision is made once the members of the group are given 'every reasonable opportunity to participate in the decision-making process' – see *Lawson on behalf of the 'Pooncarie' Barkandji (Paakantyi) People v Minister for Land and Water Conservation NSW* [2002] FCA 1517 (*Lawson*) at [25].

[41] Schedule R states that 'reasonable notice of the authorisation meeting was provided to members of the claim group via word-of-mouth, letter and/or text message'. The further material provided by the applicant on 16 June 2017 sets out the following information regarding the notice given to claim group members of the meeting:

- 55 letters, enclosing a copy of the notice for the meeting and a map of the proposed claim area were mailed to members of the claim group, as confirmed by applicant person Marjorie Strickland's personal records (a copy of these records is provided).
- Text messages were sent to 21 persons in a 'Maduwongga People Group' maintained on applicant person Marjorie Strickland's mobile phone on 2 November 2016.
- The text message included a copy of the meeting notice and a map of the proposed claim area.
- The meeting notice states the venue, time, date and purpose for the meeting – it also includes the claim group description and the contact details of Ms Strickland for persons who were unable to attend.
- Ms Strickland has personally maintained a register of members of the claim group for a number of years.
- In the weeks and months prior to the authorisation meeting, Ms Strickland made numerous requests for members of the group to provide her with their current contact information.
- The authorisation meeting was planned to coincide with the 50th wedding anniversary of applicant person Joyce Nudding as Ms Strickland and Ms Nudding were aware that many members of the native title claim group would travel to Kalgoorlie and Boulder to attend the anniversary celebrations. It was anticipated that a greater number of family members would attend due to the recent ill-health of Ms Nudding.
- Ms Strickland opted not to publish the meeting notice in newspapers as she could not afford to do so.
- Representatives from each family group within the native title claim group attended the authorisation meeting.
- Prior to the meeting, four persons submitted apologies for not being able to attend.

[42] In light of this information, I am satisfied that the steps taken by the applicant ensured all of the persons comprising the native title claim group were given every reasonable opportunity to participate in the decision-making process.

[43] Regarding the way in which the authorisation meeting proceeded, the materials provide the following information:

- Those present at the meeting agreed unanimously and resolved that there is no process of decision-making that, under traditional laws and customs of the persons in the group, must be complied with in relation to authorising the making of a native title determination application.
- Those present agreed unanimously to adopt a process of decision-making involving majority vote of the persons at the meeting for or against resolutions moved.
- The persons present unanimously resolved to authorise the applicant to make the application and to deal with matters arising in relation to it.

[44] In addition to this, Attachment R provides a meeting sign-in sheet which indicates that 25 persons attended the meeting in Boulder. Minutes of the meeting, signed and dated by the applicant persons, provide that the above resolutions were considered and passed by those persons in attendance.

[45] In *Ward v Northern Territory* [2002] FCA 171 (*Ward v NT*), O'Loughlin J found the information before him about the meeting that formed the basis of the applicant's authority 'wholly deficient' – at [24]. He posed a number of hypothetical questions, and commented that the relevant material must address at least the substance of the answers to those questions – at [24] and [25]. Those questions indicate that the material about an authorisation meeting asserted must address matters such as who convened the meeting, the agenda and purpose for the meeting, who attended the meeting, and what resolutions were passed.

[46] Having considered the material before me, it is my view that it provides information addressing the substance of these matters. It is my understanding that the meeting was convened by Ms Strickland, and that she took various steps to notify the persons she knew to be the members of the native title claim group of the meeting. The meeting notice clearly started the intended purpose of the meeting, allowing those persons invited to consider whether they should or whether it was necessary that they attend. The meeting attendance sheet indicates that 25 persons attended, and four persons made apologies. I'm also aware that those in attendance included persons from each of the family groups comprising the native title claim group. The meeting minutes indicate that all resolutions were passed unanimously by the persons in attendance, in accordance with an agreed to and adopted decision-making process. This includes the resolution to authorise the applicant to make the application, and to deal with all matters arising in relation to it. I note that there is nothing before me to suggest that there was any dissent or disagreement about the way the meeting was conducted, or about the resolutions passed.

[47] Having set out the decision-making process used to authorise the applicant, being one agreed to and adopted by those in attendance at the meeting, and having confirmed the

resolution of the meeting attendees that there is no relevant traditional decision-making process for this purpose, I am satisfied that the material sufficiently addresses the requirement of s 251B.

[48] It follows that I am 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.

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.

[49] The application satisfies the condition of s 190B(2) because the information and map contained in the application are sufficient for the application area to be identified with reasonable certainty.

[50] A written description of the boundary of the application area is contained in Attachment B. It is a metes and bounds description prepared by MapWise, dated 14 March 2017 and refers to topographic features and coordinate points.

[51] Schedule B contains a list of general exclusion clauses, that is, general descriptions of areas excluded from the application area. I do not consider that there is anything problematic in the applicant adopting this approach at s 190B(2) to identify excluded areas – see *Strickland v Native Title Registrar* [1999] FCA 1530 at [50] to [55].

[52] A map showing the external boundary of the application area is contained in Attachment C. The map has been prepared by MapWise and is dated 14 March 2017. It includes:

- the application area depicted by bold blue dark outline;
- coloured topographic background;
- commencement point and points of interest;
- scalebar, northpoint and coordinate grid;
- notes relating to the source, currency and datum of data used to prepare the map.

[53] The Tribunal's Geospatial Services have prepared a geospatial assessment and overlap analysis in relation to the map and description provided. The assessment provides that the description and map are consistent and identify the application area with reasonable certainty. Having considered the information contained in those documents accompanying the application, I agree with the assessment.

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.

[54] The application satisfies the condition of s 190B(3) because the persons in the group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

[55] Schedule A sets out a description of the persons comprising the native title claim group. It provides: 'The claim is brought on behalf of the descendants of Kitty Bluegum.'

[56] While it may take some factual inquiry to determine the persons comprising the group at any one point in time, I do not consider that this prevents the description from being sufficiently clear for the purposes of s 190B(3) – *Western Australia v Native Title Registrar* [1999] FCA 1591 at [67]. By starting with one individual and applying the criteria set out in the description, that is, by engaging in factual inquiry to determine whether that person is a descendant of Kitty Bluegum, I am satisfied that the persons in the group can be known.

[57] I note that the description does not specify whether descent must be biological, or whether descent by adoption also qualifies a person for membership to the group. Again, however, I consider that through a process of factual inquiry, involving consideration of the group's laws and customs around descent, the persons comprising the group could be ascertained with sufficient clarity.

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.

[58] The application satisfies the condition of s 190B(4) because the description of the native title rights and interests claimed is sufficient to allow those rights and interests to be readily identified.

[59] The description required at s 190B(4) is one that is clear and easily understood, where the native title rights and interests claimed have meaning as 'native title rights and interests', as that term is defined in s 223(1) – *Doepel* at [99]. I have not, at this condition, undertaken an assessment of whether each individual right or interest claimed satisfies the requirements of that definition, as I consider that a more appropriate task at the condition of s 190B(6), regarding whether rights and interests can be prima facie, established. This is addressed in my reasons below at that condition.

[60] The description required by s 62(2)(d) appears in Schedule E. The description is broken into two parts, under the headings 'Area A rights' and 'Area B rights'. There are 60 rights and interests listed under Area A rights. One of these rights is the right to 'possess, occupy, use and enjoy the area as against the world', which I understand to be a claim to a right of exclusive

possession. Under the heading 'Area B rights', the description provides that the rights and interests claimed in relation to Area B are 'all the rights claimed above in relation to Area A, except the right to possess, occupy, use and enjoy the area as against the world' and another five rights.

[61] Following this description of those Area B rights is another paragraph which sets out nine 'rights held by the native title claim group in accordance with traditional laws acknowledged and traditional customs observed by' the native title claim group. It is my understanding, noting the word 'held', that this paragraph is merely an assertion of the rights and interests that the group currently possess in relation to the area. On that basis, I do not consider these nine rights are to be considered as part of the description of rights and interests claimed by the group in the application. In any event, my view is that the substance and content of these nine rights is already captured in the list of 60 rights under the heading Area A rights.

[62] Therefore, my reading of Schedule E is that the description of rights and interests claimed by the Maduwongga native title claim group in relation to the application area is restricted to the information under the headings 'Area A rights' and 'Area B rights', and the final paragraph of nine rights 'held' is merely information to support or clarify that description.

[63] As above, I have considered the contents of Schedule E, and the rights and interests described. It is my view that the description is clear and easily understood, and that the rights and interests claimed, in relation to both Area A and Area B, have meaning as native title rights and interests.

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.

[64] 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).

[65] At this condition, I am to 'address the quality of the asserted factual basis for [the] claimed rights and interests; but only in the sense of ensuring that, if they are true, they can support the existence of those claimed rights and interests' – *Doepel* at [17]. I am not to 'test whether the

asserted facts will or may be proved at the hearing, or to assess the strength of the evidence', as this is the role of the Federal Court – *Doepel* at [17].

[66] Section 62(2)(e) requires only a 'general description' of the factual basis. However, where the facts provided are not at a sufficient level of detail to enable a genuine assessment of the application by the Registrar, the application may not be able to satisfy the condition. The material must comprise 'more than assertions at a high level of generality' – *Gudjala People 2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala 2008*) at [92].

[67] To satisfy the condition, therefore, the material must contain sufficient details addressing the particular native title, claimed by the particular native title claim group, over the particular land and waters of the application area – see *Gudjala People 2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*) at [39].

[68] Through reliance on the statements contained in the affidavits sworn by the applicant persons pursuant to s 62(1)(a) and accompanying the original application that they believe the statements contained in the application to be true, I have accepted the asserted facts as true – *Gudjala 2008* at [91] to [92].

[69] The applicant's factual basis material comprises the information contained in Schedules F, G and M, and a number of other documents provided by the applicant directly to the Registrar for the purposes of the registration test on 19 May 2017. These documents are:

- Anthropological and Ethnohistorical Report, by [Anthropologist 1], August 2016 (the [Anthropologist 1] Report);
- Maduwongga Native Title Claim Anthropological Report, by [Anthropologist 2], August 1998 (the [Anthropologist 2] Report);
- A Genealogy Report for [Name removed];
- A Genealogy Report for Kitty Bluegum;
- Descendants of [Name removed];
- Descendants of [Name removed].

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

Reasons for s 190B(5)(a)

[71] The application satisfies the condition at s 190B(5)(a), as the factual basis is sufficient to support an assertion that the native title claim group have, and the predecessors of those persons had, an association with the application area.

[72] The case law indicates that the following is required at this condition:

- material supporting an association of the group as a whole presently with the area – *Gudjala 2007* at [51] and [52];
- material supporting an association of the predecessors of the whole claim group with the area over the period since sovereignty, or at least European settlement – *Gudjala 2007* at [51] and [52];
- it is not necessary for the factual basis to support an association of all members of the group with the area at all times – *Gudjala 2007* at [52];
- material supporting the association of the group presently, and of the group's predecessors, as being with the whole of the area – *Martin v Native Title Registrar* [2001] FCA 16 (*Martin*) at [23] to [26].

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

[73] I am satisfied that the factual basis is sufficient to support an assertion that the predecessors of the group had an association with the area at settlement. The [Anthropologist 1] Report provides that a distinct tribal group in the claim area was first identified by anthropologists in the region in 1925 and 1938, which they called 'Yindi', but that it was Tindale in 1974 who identified the Indigenous people occupying the Kalgoorlie Goldfields by the name Maduwongga. According to the Report, tribal maps prepared at various dates throughout the twentieth century all showed a tribal territory attributed to Yindi or Maduwongga consistent with the application area – at [107].

[74] From the material, I understand settlement in the region occurred with the arrival of the gold rushes in Western Australia in the 1890s – see for example the [Anthropologist 1] Report at [414]. The [Anthropologist 1] Report provides that from historical and ethnographic records, it's understood that the apical ancestor of the Maduwongga claim group, Kitty Bluegum, was born around 1880, and that her father, [Name removed], was born circa 1860. According to the [Anthropologist 1] Report, both Kitty and her father were born at and associated with Edjudina, within the claim area. The material asserts, therefore, that both Kitty and her father were present in the application area at the time settlement took place.

[75] Regarding an association of the predecessors of the group over the period since settlement, it is explained in the [Anthropologist 1] Report that the impacts of the gold rushes on the Maduwongga and surrounding tribes of the area were significant and that by 1900 the Aboriginal people of Kalgoorlie were almost 'wiped out' – at [362]. The Report asserts that the claim group are the direct descendants of a very small number of people who survived the gold rushes, and claimed a country between Edjudina, Coolgardie and Menzies in the mid-nineteenth century – at [419].

[76] The [Anthropologist 1] Report contains detailed information about each of the persons descended from Kitty, including their places of birth, burial, and where they lived and worked throughout their lives. For example, it provides that Kitty's son, [Name removed], was born in

the bush at Kanowna (also within the claim area) sometime around 1910, and that in his younger years, he worked at Edjudina Station and Pinjin Station (both within the claim area) with his biological white father, [Name removed], and [Name removed]'s brother, [Name removed]. In his later years, with his wife [Name removed], the Report explains that [Name removed] and his family, including their daughters, lived and worked throughout the application area. This includes places such as Bulong Station and Coolgardie Gorge. It states that [Name removed] showed his daughters Maduwongga country, and along with the girls' aunts and mother, taught them stories and bush skills and took them to ceremonies.

[77] I note that [Name removed] is the father of applicant persons Marjorie Strickland and Joyce Nudding. In this way, I consider the factual basis material addresses an association of the predecessors of the group over the period since settlement.

[78] Regarding an association of the claim group with the application area today, Schedule G lists activities the members of the group engage in while on Maduwongga country. According to this information, among other activities, the claimants 'hunt Mallee fowl and collect their eggs in the sandy (*dully*) country in Coolgardie, Ora Banda and Kalgoorlie, the Southern region of the claim area, and they 'visit ceremonial grounds at Mulgabbie, near Lake Rebecca and at Kirgella Rock Hole in the Northernmost corner of the claim area'. I note that all of these places are within or adjacent to the boundaries of the claim area.

[79] The [Anthropologist 2] Report provides further information about the association members of the group have today with the claim area. For example, it states that claimants camp and hunt near Lake Yindarlgooda, and go on day trips ('picnics') to Gnarlbine Rocks, Yowie Rockhole and Rowles Lagoon. As set out in the Report, claimants explain that these trips are an opportunity for members of the group to gather bush foods, and to teach younger generations traditional knowledge of their country and its socio-cultural associations – at p 102.

[80] The material asserts that today, the Maduwongga families stay close and the majority of those persons live in Boulder, within the claim area. Statements provided by Marjorie Strickland within the [Anthropologist 1] Report explain that those who are required to go away for work, regularly return home for family events or just to spend time on their country – at [517]. The material provides that almost all of the Maduwongga descendants are buried in the Kalgoorlie cemetery with their ancestors.

[81] A spiritual association of the claim group and its predecessors is also addressed in the material. As described in the [Anthropologist 1] Report, claimants continue to possess a detailed knowledge of sacred and important sites within the claim area, and of dreamings and song lines that cross the area. For example, the report refers to claimants' knowledge of two stories, the mallee fowl dreaming and the Wati Gutjara song line. The former crosses the claim area from the south at the Gnarlbine soaks, running through Mount Burgess and ending near Menzies in the

north. The latter crosses the claim area from Coolgardie to Leonora. From this information, I accept that the material asserts the native title claim group to have a spiritual, as well as physical, association with the area.

[82] At s 190B(5)(a), the factual basis must speak to an association of the group and its predecessors with the entirety of the area claimed. The material before me names many places with which members of the group today are, and predecessors of the group were, associated. Using the Tribunal's Native Title Vision Plus database, I have considered the location of these places with reference to the boundary of the application area. In my view, those places named in the material are geographically spread across the entirety of the application area, such that I can consider the factual basis sufficient to support an assertion that the association of the group and its predecessors is with the whole of the area claimed.

Reasons for s 190B(5)(b)

[83] I am satisfied that the requirement at s 190B(5)(b) is met, as the factual basis is sufficient to support an assertion that there exist traditional laws acknowledged, and traditional customs observed, by the native title claim group giving rise to the claim to native title.

[84] The case law indicates the following is required of the material at s 190B(5)(b):

- information supporting the existence of a society of people living in the area at sovereignty, or at least European settlement, acknowledging laws and customs of a normative character – *Gudjala 2007* at [63];
- an explanation of how the laws and customs of the claim group are 'traditional', that is, how they have been passed down through the generations to the claim group and how they are rooted in the laws and customs of a society at sovereignty – *Yorta Yorta* at [46] and *Gudjala 2009* at [72];
- an explanation of the link between the claim group described in the application and the area covered by the application, which may require identification of a link between the apical ancestors named in Schedule A, and the society at sovereignty – *Gudjala 2007* at [66] and [81];
- evidence of the claim group's acknowledgement and observance of laws and customs in relation to the claim area – *Gudjala 2009* at [74].

[85] I have addressed each of these aspects of the requirement at s 190B(5)(b) below.

Does the factual basis address a pre-sovereignty society in the area acknowledging and observing normative laws and customs?

[86] I am satisfied that the factual basis is sufficient to support an assertion of a society at sovereignty acknowledging and observing normative laws and customs in the application area.

[87] As above, the material asserts that settlement in the region took place with the arrival of the gold rushes in the 1890s. I consider it reasonable to infer that the nature of any society in the claim

area at that time was relatively unchanged from the nature of any pre-sovereignty society, as there would not have been any significant interruption to the patterns of life of those persons prior to the arrival of Europeans in the region. On that basis, my reasons below refer to the society at settlement for the purposes of this condition.

[88] The material includes a discussion of ethnohistorical literature in relation to the claim area, and includes excerpts from relevant sources. Based on that information, the [Anthropologist 1] Report concludes that there is evidence of a tribal territory consistent with the claim area, and that it was the Yindi/Jindi or Maduwongga who occupied this territory – at [107].

[89] Following a consideration of various anthropological sources, the Maduwongga society is described in the [Anthropologist 1] Report as a language group who were not part of the Western Desert cultural bloc. According to the Report, the Maduwongga society at settlement had neither a section system nor totemic clans. The Report concludes there was a clear linguistic, kinship, ritual and territorial boundary between the Maduwongga and their Western Desert Waljen neighbours – at [183].

[90] The material refers to a number of historical sources which indicate the lifestyle and/or practices of the Indigenous people occupying the claim area at settlement. Firstly, the [Anthropologist 2] Report refers to artefact scatters at certain locations in the claim area which provide evidence of camp sites, and the use of those sites by Indigenous people, going back hundreds of years. In my view, this information provides support for an assertion of laws and customs of the pre-sovereignty society surrounding access to the application area, use of particular sites, and use of natural resources at those sites.

[91] Secondly, the [Anthropologist 1] Report includes excerpts from historical sources, in which early settlers record their observations of the claim area and its Indigenous occupants. In the late 1890s, one settler wrote of finding many Aboriginal artefacts in his travels within the claim area, including spears, waddies and other weapons. He also came across native wells and corroboree grounds. In my view, this information provides support for an assertion of laws and customs acknowledged and observed by the society at settlement surrounding defending territory, and/or techniques for hunting, access to and use of water resources within the claim area, and ceremonial life and rituals.

[92] Another excerpt within the Report records the observations of a white settler in the area regarding the Indigenous persons of Coolgardie. He explains the detailed knowledge those persons possess of water sources within the area, and techniques employed by them to hunt emu and kangaroo. He also describes the way they gather bush foods. Again, in my view, this information supports an assertion of laws and customs prescribing normative behaviour around access to and use of resources in the claim area, and around knowledge about country.

[93] In my view, this information is sufficient to support a society at settlement in the area acknowledging and observing normative laws and customs.

Does the factual basis address the links between the society at settlement, the claim group and their apical ancestors?

[94] I am satisfied the factual basis addresses a link between the pre-sovereignty society, the claim group and the group's apical ancestor, Kitty Bluegum.

[95] As I discussed in my reasons above at s 190B(5)(a), the material asserts apical ancestor Kitty Bluegum and her father [Name removed] to have occupied the claim area at the time of settlement in the region. Johnny's approximate birth date is given as 1860, well before the gold rushes came to Kalgoorlie in the 1890s. I understand, therefore, that the material asserts [Name removed] and Kitty to have been members of the society at settlement in the area.

[96] Regarding the remaining persons who comprised the Maduwongga society at settlement, the [Anthropologist 1] Report gives much detail of the impact of the gold rushes on the Indigenous occupants of the region. In particular, the loss of life and reduction in the Indigenous population of the claim area and surrounding tribal territories is emphasised – see for example at [362]. On that basis, the Report states that the native title claim group are the descendants of a very small number of survivors of the settlement era. From this, I understand the material to assert that the pre-sovereignty society would have comprised a significantly larger group of persons than Kitty's father, but that those persons did not survive the impacts of the gold rushes, and/or had no descendants.

[97] In light of the information described above and in the material before me, I am satisfied that the factual basis material is sufficient in supporting a link between the claim group described, and the application area, namely that Kitty Bluegum, the group's apical ancestor, was a member of the Maduwongga society at settlement in occupation of the area.

Is the factual basis sufficient to support an assertion of traditional laws and customs of the claim group today?

[98] I am satisfied the factual basis is sufficient to support an assertion of traditional laws and customs. As above, the material describes Kitty Bluegum, the claim group's apical ancestor, as being a member of the society at settlement in the claim area. The material explains that the two applicant persons, Marjorie Strickland and Anne Nudding, are the daughters of [Name removed], who was Kitty's son. From this, I understand the material to assert that there are only two generations separating the members of the claim group today with their apical ancestor who occupied the application area at settlement.

[99] Traditional laws and customs are those that have been passed down from generation to generation, usually by word of mouth and common practice – *Yorta Yorta* at [46]. The [Anthropologist 1] Report provides that [Name removed] was an initiated Lawman, as was his grandfather, [Name removed] – at [470]. According to the Report, while [Name removed] was the last Maduwongga man to be initiated, one claimant explains that he took her eldest son aside for a conversation about 'becoming a man' – at [527].

[100] The material also speaks about the knowledge possessed by [Name removed] about Maduwongga country and Maduwongga laws and customs, and the way he passed on that knowledge to Mrs Strickland and Mrs Nudding. For example, the [Anthropologist 1] Report provides that [Name removed], his wife, [Name removed], and their two daughters spent a great deal of time in the bush in Maduwongga country, where [Name removed] and his wife and the girls' aunts taught them stories for their country and bush skills – at [512].

[101] The material explains that the applicant persons possess a detailed knowledge of sacred women's sites and song lines within the claim area, which I understand to have also been taught to them by their parents and aunts – at [249] to [255]. The [Anthropologist 1] Report provides that Tindale, in 1939, also recorded one of these song lines, as explained to him by a Waljen man – at [253].

[102] In the Report, the applicants' memories of attending ceremonies with their parents are described, including dancing ceremonies held at Menzies, at the north of the claim area – at [512]. The Report further provides that one of the claimants' daughters has participated in ritual dances with women from neighbouring groups – at [528].

[103] There is also information before me explaining how stories about the 'old people' attached to places within the claim area continue to be repeated to further generations of Maduwongga people. For example, the [Anthropologist 2] Report provides that claimants tell a story about [Name removed] (Kitty's adopted daughter) who wandered off from a camp at Mulline in the north of the claim area and became disoriented in the bush. She slept under a tree that night, exhausted, and had a dream where the Maduwongga ancestors appeared to her and told her which way she should walk in the morning – at p 105. The Report explains that these stories continue to be told on country by elders to younger generations, and that they continue to be a way for Maduwongga people to affirm their connection to these places.

[104] From the information set out above, I consider the material sufficient in supporting an assertion of laws and customs which are rooted in those acknowledged and observed by the Maduwongga society at settlement. In particular, the material speaks of the role of initiated Lawmen, and describes how this responsibility has been passed down through the generations, including to male members of the claim group today; it speaks of corroboree grounds observed in early settlement times, and then of ceremonial life and dances observed by the claimants today,

and observed by certain Maduwongga predecessors; it speaks of knowledge and stories about the 'old people' at particular locations throughout the claim area that continue to be taught to younger generations at those places today; and finally, it speaks of song lines recorded by Tindale around the time Kitty Bluegum and her father occupied the claim area that the claimants recite in detail today.

[105] Consequently, I consider the factual basis sufficient to support an assertion of traditional laws and customs acknowledged and observed by the claim group today.

Reasons for s 190B(5)(c)

[106] The application satisfies the condition of s 190B(5)(c) because the factual basis is sufficient to support an assertion that the native title claim group have continued to hold their native title in accordance with the group's traditional laws and customs.

[107] The case law indicates the following matters must be addressed by the factual basis at this condition of the registration test:

- that there was a society at settlement that observed traditional laws and customs from which the identified existing laws and customs were derived and were traditionally passed to the claim group;
- that there has been a continuity in the observance of traditional law and custom going back to sovereignty or at least European settlement – *Gudjala 2007* at [82].

[108] I have already discussed above at s 190B(5)(b), the reasons for which I am satisfied the factual basis is sufficient to support an assertion of a society at settlement, acknowledging and observing laws and customs from which the existing laws and customs of the claim group were derived. Regarding whether there has been continuity in the acknowledgement and observance of those traditional laws and customs, without substantial interruption, I have set out below the reasons for which I am satisfied the factual basis is sufficient in addressing this matter.

[109] As also discussed in my reasons above at s 190B(5)(b), there are only two generations separating the claimants today and Kitty Bluegum, the Maduwongga apical ancestor, who was a member of the Maduwongga society at settlement. In my view, there is information contained in the material before me that speaks to the acknowledgement and observance of Maduwongga laws and customs by each of those generations.

[110] For example, the [Anthropologist 1] Report provides that both Kitty and her father [Name removed] were born and lived at Edjudina Station in the claim area. The Report also provides that a letter to the Chief Protector in 1908 recorded that the Indigenous persons on the Station "make a corroboree when they kill a kangaroo" – at [454]. From this material, I understand that corroborees and dance ceremonies were a part of the acknowledgment and observance of laws

and customs by the Maduwongga people at Edjudina, including Kitty and [Name removed], in early settlement times.

[111] According to the material, it was around this time that Kitty's son, Arthur was born, and the material indicates that he was passed knowledge of laws and customs by his elders on the Station. The material also provides that [Name removed] was later initiated as a Lawman.

[112] As explained above at s 190B(5)(b), [Name removed] and his wife, [Name removed], took part in ceremonial life in both [Name removed's and [Name removed]'s traditional country, including the application area. The [Anthropologist 1] Report explains how they took their daughters, elders of the claim group today, along with them to these ceremonies, and passed onto them knowledge of these rituals and knowledge of their country. Finally, the Report provides that one of the claimant's daughters continues to participate in ceremonial dances with women from neighbouring groups.

[113] Consequently, through this example of the continued acknowledgement and observance of laws and customs surrounding ceremonial life and corroborees, I consider the factual basis sufficient in supporting the continued acknowledgment and observance of traditional Maduwongga laws and customs.

[114] In addition to this, I note that [Name removed, Kitty and Kitty's children all lived on pastoral stations within their traditional country (including the claim area) throughout the settlement era. The material suggests that the owners of Edjudina and Pinjin, the two stations with which the Maduwongga predecessors were associated, had strong relationships with their Indigenous workers, and treated them well – see the [Anthropologist 1] Report at [454]. Noting this, the [Anthropologist 1] Report asserts that the Maduwongga were able to continue to acknowledge and observe their traditional practices on their country without interference – at [454] to [456]. Once the Maduwongga families left the Stations, they primarily continued to work within the application area, such as when [Name removed] took a job caring for Clydesdales at Coolgardie Gorge, where his daughters, elders of the claim group, were born and raised.

[115] It follows that I consider the factual basis sufficient to support an assertion of the continued acknowledgement and observance of traditional laws and customs by the native title claim group and their predecessors since settlement.

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.

[116] The application satisfies the condition at s 190B(6).

[117] The native title rights and interests that I consider can be prima facie established are set out in my reasons below.

[118] The condition at s 190B(6) will be met even if only some of the native title rights and interests claimed can be prima facie established – see *Doepel* at [16].

[119] The case law indicates the test at s 190B(6) requires 'some measure of the material available in support of the claim' – *Doepel* at [126]. In applying the standard of 'prima facie', I am to consider 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' – *Doepel* at [135].

[120] In undertaking the task at this condition, I have also considered whether each right or interest satisfies the definition of 'native title rights and interests' at s 223(1). That is, does the material provide prima facie support for the right or interest as one that is:

- held pursuant to the traditional laws and customs of the native title claim group;
- a right or interest in relation to land or waters; and
- recognised by the common law of Australia.

[121] Where a right or interest does not meet the requirements of that definition, it is my view that it cannot be, prima facie, established at s 190B(6).

[122] I have addressed the material in support of each right or interest claimed below.

Consideration

[123] As I have explained at s 190B(4) above, there are 60 rights and interests claimed by the native title claim group in relation to the claim area. Having considered those rights, it is my view that many of them are the same or similar in substance. That is, in the group exercising those rights in the area, the same or similar activities are involved. For that reason, below, I have grouped those rights of similar content and substance, and provided examples of the material addressing each group.

Exclusive possession

[124] I consider this right established, prima facie.

[125] The nature of a native title right to exclusive possession was discussed in *Western Australia v Ward* [2002] HCA 28 (*Ward*), where the High Court held that:

> A core concept of traditional law and custom [is] the right to be asked permission and to 'speak for country'. It is the rights under traditional law and custom to be asked permission and to 'speak for country' that are expressed in common law terms as a right to possess, occupy, use and enjoy land to the exclusion of all others – at [88].

[126] Since *Ward*, the following principles have emerged from the case law, indicating what the material may need to address in providing prima facie support for a right of exclusive possession:

- a native title right to exclusive possession includes the right to make decisions about access to and use of the land by others – *Sampi v State of Western Australia* [2005] FCA 777 at [1072];
- the right cannot be formally classified as proprietary - its existence depends on what the evidence discloses about its content under traditional law and custom – *Griffiths v Northern Territory* [2007] FCAFC 178 (*Griffiths*) at [71];
- the material must speak to how, pursuant to their laws and customs, the group is able to 'exclude from their country people not of their community', acting as 'gatekeepers for the purpose of preventing harm and avoiding injury to country' – *Griffiths* at [127].

[127] The application asserts numerous times the basis on which the native title claim group claim native title rights and interests in the area. I understand that according to Maduwongga traditional laws and customs, these rights to the land and waters of the claim area arise by way of: ancestral claims and filiation, knowledge of the land, the traditional transmission of knowledge, and the continuing physical association with the ancestral land – see the [Anthropologist 1] Report, 'Section 1 – Introduction'.

[128] I am satisfied that there is material before me that addresses the particular matters above, namely the elements comprising a native title right of exclusive possession as prescribed by the case law. I note, however, that a large part of this information is extracted from anthropological sources that are not specific to either the claim group and its predecessors, or the claim area.

[129] For example, the [Anthropologist 1] Report states that Berndt (1964) found in relation to tribal territories between indigenous groups generally, that fear of moving across territories was limited to a concern of deliberately or inadvertently interfering with a sacred site – see at [8]. Similarly, it provides that Tindale, in his research in the Western Australian goldfields, found that restrictions may apply to certain totemic sites within the tribal territory, and also, that some men are able to hunt across the entire tribal territory, but that others had to seek their in-laws' permission to do so – at [20]. In my view, these statements do not provide support for a particular right of the members of the claim group to exclude persons from their territory.

[130] Elsewhere, the Report refers to tribes at Mount Margaret Mission who often fought in the close confines of the mission, suggesting that strict territorial bounds did exist – at [45]. There is nothing to indicate, however, that the predecessors of the claim group were persons living at Mount Margaret Mission. I note that the Mission is some distance from the claim area, and the material asserts elsewhere that the claim group's predecessors have continually occupied the claim area, having been able to avoid removal to missions by the authorities in the twentieth century.

[131] Despite my view about this type of material and its insufficiency, I do consider that there is information sufficient in addressing an exclusive right of the native title holders. The [Anthropologist 1] Report provides that the author, through cultural heritage work in the Goldfields (including the application area), has 'been told many times that people who ventured into tribal territories without legitimate reason were physically repulsed and could be killed' – at [50]. The Report states that people kept track of each other by observing their camp fire smoke from high lookout places. This statement is supported elsewhere by a reference to a story told by a claim group member about how her father used to take her and her sister to higher grounds to spot camp fires of other Wonggai – at [92].

[132] Further, the [Anthropologist 1] Report states that another anthropologist, from research conducted in the Kalgoorlie area, noted in relation to areas within the town occupied by different groups that '[a]ccess is not forbidden to members of other groups but they come on the invitation and terms of their owners' – at [52]. The Report asserts that the boundary between Maduwongga country and Waljen territory is not flexible, and as an example, includes a statement from a claim group member describing that there is only one way across that border at Hobble Gap, near Edjudina. The Report suggests that claimants' perception of this single route of access over that border reflects patterns of control exercised by the Maduwongga in relation to their Waljen neighbours – at [180].

[133] In my view, the material briefly touches on the claimants acting as 'gatekeepers for the purpose of preventing harm and avoiding injury to country'. The [Anthropologist 2] Report provides that the claimants today, when camping out on Maduwongga country, avoid those sites where their ancestors, prior to colonisation, used to camp. The claimants report that they and their parents would not camp in these areas because they could feel the presence of their ancestors there. The Report explains that claimants' avoidance of the area is in accordance with laws and customs prescribing that the spirits of the dead are not to be disturbed – at p. 101. Elsewhere, the material talks about claimants' understanding of the harm that may befall them where they do not conform to certain behaviours within the claim area prescribed by their laws and customs – see the [Anthropologist 2] Report at p. 79.

[134] I accept, therefore, that there is some material that prima facie supports a right claimed by the group to regulate access to certain places within the claim area, and that this right arises from a belief that a failure to adhere to laws and customs within the claim area will result in harm to the offender.

[135] Regarding a right to speak for country, the [Anthropologist 1] Report provides that *wati* (senior Lawmen) from Spinifex country, that is, non-Maduwongga men, are custodians of particular sacred sites within Maduwongga country and the claim area, however these men make no claim to speak for that country, nor do they assert any political authority in relation to the area. The material asserts numerous times that the claimants' right to speak for country arises

from their knowledge of country, and the continuing occupation of the area by the group and its predecessors – see for example the [Anthropologist 1] Report at [549]. One way this right is exercised by claim group members today, as set out in the material, is through their participation in cultural heritage surveys in the claim area.

[136] In light of this material before me, therefore, I consider the right of the members of the claim group to exclusive possession is, prima facie, established. I note the definition of 'prima facie' requires only that I consider the right established 'on its face', and 'at first sight without investigation' – see *Doepel* at [134]. In this instance, my view is that the material before me is sufficient to allow me to consider the right established, on a prima facie basis.

Rights of access, occupation and enjoyment

[137] This group includes the following rights set out in Schedule E:

- A right to occupy the area;
- A right to use the area;
- A right to enjoy the area;
- A right to be present on or within the area;
- A right to be present on or within the area in connection with the society's economic life;
- A right to be present on or within the area in connection with the society's religious life;
- A right to be present on or within the area in connection with the society's cultural life;
- A right of access to the area;
- A right to live within the area;
- A right to reside in the area;
- A right to erect shelters upon or within the area;
- A right to camp upon or within the area; and
- A right to move about the area; and
- A right to enjoy all the features, benefits and advantages inherent in the environment of the area.

[138] I consider these rights, prima facie, established.

[139] The material speaks in some detail of the uninterrupted occupation of the claim area by the group and its predecessors – see the [Anthropologist 2]Report at p. 88-9. One claimant states in the material that the claim area is Maduwongga country because 'we have always been here'. Claimants tell stories of homes where they lived in towns within the application area throughout the twentieth century, and today – see for example the [Anthropologist 1] Report at [516].

[140] As set out in the material, this occupation includes and has always included frequent trips to the bush where claimants and their families camped and spent time at particular sites of significance. For example, the [Anthropologist 1] Report includes quotes from a claim group member who explains that when she was not at school, she and her family were camping in the bush, living in camps made of sheets of iron, brush and tents – at [516].

[141] Further, the [Anthropologist 2] Report describes that the camping sites used by claim group members today within the claim area are those same ones used by the groups' predecessors, that is, their parents and grandparents, back to settlement. Claimants possess knowledge of the sites used by their ancestors prior to colonisation and avoid these sites to ensure the spirits of the dead are not disturbed – at p 101.

[142] In my view, the rights that comprise this group are rights in relation to land and waters, and that the material speaks to them as rights held pursuant to traditional laws and customs. Further, my view is that the material is sufficient for me to consider the rights listed above, regarding access to, occupation of, and camping on the claim area, prima facie, established.

Rights of participation in cultural activities

[143] This group includes the following rights set out in Schedule E:

- A right to engage in cultural activities within the area;
- A right to conduct ceremonies within the area;
- A right to participate in ceremonies within the area;
- A right to hold meetings within the area;
- A right to participate in meetings within the area;
- A right to teach as to the physical attributes of the area;
- A right to teach as to the significant attributes of the area; and
- A right to teach as to the significant attributes within the area of the Aboriginal society connected to the area in accordance with its laws and customs.

[144] I consider these rights, prima facie, established.

[145] There are numerous references within the material to cultural activities engaged in by the claim group and their predecessors. For example, the [Anthropologist 1] Report includes a quote from an early pastoralist regarding the indigenous occupants of Pinjin and Edjudina stations in 1908. As explained in my reasons at s 190B(5) above, these persons included the predecessors of the claim group. He explains how upon catching a kangaroo, a corroboree would be held – at [453b]. Further, one claimant describes how her father insisted that a deceased member of the claim group be buried on Maduwongga country, rather than in his wife's country – at [517].

[146] Regarding a right to teach the significant attributes of the claim area, the [Anthropologist 2] Report sets out various trips taken by members of the group today on Maduwongga country, and explains how these trips provide an opportunity for younger generations to learn about their country – at p. 102.

[147] In my view, the rights listed above are rights in relation to land and waters, and supported by the material as being rights held pursuant to traditional laws and customs. It is also my view that the material is sufficient for me to consider the rights listed above, prima facie, established.

Rights to take, use and enjoy resources

[148] This group includes the following rights set out in Schedule E:

- A right to hunt in the area;
- A right to fish in the area;
- A right to take resources, other than minerals, petroleum and gas, used for sustenance from the area;
- A right to take resources, other than minerals, petroleum and gas, used for sustenance within the area;
- A right to gather resources, other than minerals, petroleum and gas, used for sustenance within the area;
- A right to use and/or enjoy resources, other than minerals, petroleum and gas, used for sustenance within the area;
- A right to use and/or enjoy resources, other than minerals, petroleum and gas, used for food, on, in, under or within the area;
- A right to use and/or enjoy resources, other than minerals, petroleum and gas, for shelter, on, in or within the area;
- A right to use and/or enjoy resources, other than minerals, petroleum and gas, for healing, on, in or within the area;
- A right to use and/or enjoy resources, other than minerals, petroleum and gas, for decoration, on, in or within the area;
- A right to use and/or enjoy resources, other than minerals, petroleum and gas, for social purposes, on, in or within the area;
- A right to use and/or enjoy resources, other than minerals, petroleum and gas, for cultural, religious, spiritual, ceremonial and/or ritual purposes on, in or within the area;
- A right to take fauna;
- A right to take flora (including timber);
- A right to take soil;
- A right to take sand;
- A right to take stone and/or flint;
- A right to take clay;
- A right to take gravel;
- A right to take ochre; and
- A right to take water.

[149] I consider these rights, prima facie, established.

[150] The material contains a number of references to the claimants' and their predecessors' use of the resources of the area. One example is in the [Anthropologist 1] Report where one claimant states that her father and uncle used to go hunting and take her with them, and that her father went hunting right up until a few days before he passed away. The material provides that he hunted kangaroo, wild turkey and bungarra – at [517].

[151] The material also speaks of the use of resources from the claim area for purposes other than food. For example, one claimant explains that her mother used kangaroo skins as floor coverings in their family home – [Anthropologist 1] Report at [516]. The [Anthropologist 2] Report explains that throughout the twentieth century, the claimants' predecessors supplemented their income through sandalwood collection and prospecting, and that this was merely a continuation of traditional practices around the use of resources from the area for maintaining a livelihood and remaining on the area – at p. 72.

[152] Having considered the rights listed in this group, it is my view that they are rights and interests in relation to land and waters, and that the material speaks to them as being rights held pursuant to traditional laws and customs. In addition, it is my view that the material is sufficient in allowing me to consider the rights, prima facie, established.

Rights around decision-making

[153] This group includes the following rights set out in Schedule E:

- A right to make decisions about the use and enjoyment of the area by members of the Aboriginal society to which the native title claim group belong; and
- A right to make decisions about the enjoyment of the area by members of the Aboriginal society to which the native title claim group belong.

[154] I consider these rights, prima facie, established.

[155] In my view, the material does speak to these rights. One example of the information before me of this type is where a claimant explains that her father insisted on having a deceased member of the claim group buried within the claim area, rather than in the deceased's wife's country. I understand this to be an example of a member of the group exercising a decision-making authority amongst Maduwongga people in relation to the use of the application area.

[156] Another example is in the [Anthropologist 2] Report where one claimant explains the food prohibitions imposed upon her as a child by her parents. I understand that the food spoken of by the claimant refers to food taken from the claim area. Again, I consider this an example of decision-making authority exercised by members of the claim group and their predecessors amongst Maduwongga people, around use and/or enjoyment of the claim area and its resources.

[157] From the material, I am satisfied that the rights included in this group are rights in relation to land and waters. I am further satisfied that the material supports these rights as being held pursuant to the traditional laws and customs of the claim group. In my view, the material before me is sufficient to allow me to consider the rights, prima facie, established.

Right to manufacture and trade in resources

[158] This right is expressed in Schedule E as follows:

> A right to manufacture from and trade in the said resources of the area, upon or within the area, other than minerals, petroleum and gas including the manufacture of objects, materials or goods for sustenance, and/or food, shelter, healing, decoration, social, cultural, religious, spiritual, ceremonial and/or ritual purposes and/or including objects, materials or goods in the form of tools, weapons, clothing, shelter and/or decoration.

[159] I consider this right, prima facie, established.

[160] As above, within the [Anthropologist 2] Report, it is explained that the predecessors of the claim group, throughout the twentieth century, gathered resources from the claim area to support their livelihood. This included harvesting sandalwood and undertaking small scale prospecting in the claim area.

[161] In addition to this, the material makes a number of references to inter-tribal gatherings where Maduwongga persons and those from neighbouring groups would 'dance, share food and exchange wives' – see the [Anthropologist 1] Report at [255]. The [Anthropologist 1] Report also relies on anthropological research to support the assertion that tribes in the region of the claim area intermarried, participated in ritual events and traded in objects such as spears and axes with one another – at [47]. Elsewhere, the Report refers to artefacts observed by an early settler in the claim area, which included spears, waddies, and other weapons – at [385]. From this information, it is my understanding that the Maduwongga, at settlement and since that time, have taken the resources of the claim area to manufacture various objects and goods, and further, that they have participated in inter-tribal gatherings where these objects and goods were exchanged.

[162] My view is that the right is one in relation to land and waters. It is also my view that the material speaks to the right as being held pursuant to the traditional laws and customs of the Maduwongga. Further, my view is that the material discussed above is sufficient for me to consider the right, prima facie, established.

Right to receive a portion of resources

[163] This group includes the following rights set out in Schedule E:

- A right to receive a portion of the said resources (other than minerals, petroleum and gas) taken by other persons who are members of the Aboriginal society from the area; and
- A right to receive a portion of the said resources (other than minerals, petroleum and gas), taken by persons other than those who are members of the Aboriginal society from the area.

[164] I consider these rights, prima facie, established.

[165] An example of the material that speaks to these rights, in my view, is in the [Anthropologist 1] Report, where one claimant explains that when her sons-in-law hunt in Maduwongga country, they always provide her with the customary part of the animal, or alternatively, bring them some of the firewood they have collected from the claim area – at [536]. It is my understanding from the

material that in-laws are generally not Maduwongga persons. Another example is in the [Anthropologist 2] Report, which explains that according to law and custom, a claimants' father was always given the best part of the animal following a hunt – at p. 86. From this information, it is my understanding that Maduwongga laws and customs provide for the right of the members of the claim group to receive a portion of resources taken from the claim area, whether it is Maduwongga persons or non-Maduwongga persons who secure those resources.

[166] It is my view that these rights are rights in relation to land and waters, and that the material speaks to these rights as being held pursuant to traditional Maduwongga law and custom. Further, it is my view that the material before me is sufficient to allow me to consider the rights listed above, prima facie, established.

Rights to protect and maintain significant places and objects

[167] This group includes the following rights set out in Schedule E:

- A right, in relation to any activity occurring on the area, to maintain, conserve, and/or protect significant places and objects located within the area, by preventing, by all reasonable lawful means, any activity which may injure, desecrate, damage, destroy, alter or misuse any such place or object; and
- A right, in relation to any activity occurring on the area, to maintain, conserve and/or protect significant ceremonies, artworks, song cycles, narratives, beliefs or practices by preventing, by all reasonable lawful means any activity occurring on the area which may injure, desecrate, damage, destroy, alter or misuse any such ceremony, artwork, song cycle, narrative, belief or practice; and
- A right, in relation to a use of the area or an activity within the area, to prevent any use or activity which is unauthorised or inappropriate in accordance with traditional laws and customs in relation to significant places and objects within the area or ceremonies, artworks, song cycles, narratives, beliefs or practices carried out within the area by all reasonable lawful means, including by the native title holders providing all relevant persons by all reasonable means with information as to such uses and activities, provided that such persons are able to comply with the requirements of those traditional laws and customs while engaging in reasonable use of the area and are not thereby prevented from exercising any statutory or common law rights to which that person may be entitled.

[168] I consider these rights, prima facie, established.

[169] While the material makes clear that the claim group and their predecessors have spent and continue to spend considerable time within the application area, there are limited examples within the material of members of the group engaging in activities to protect and maintain significant places. Despite this, the information before me that speaks to these rights, in my view, is sufficient for me to consider them prima facie, established.

[170] For example, the [Anthropologist 2] Report explains that members of the claim group hold a strong belief that the spirits of the dead should not be disturbed, and on that basis, avoid camping and visiting sites where their ancestors, prior to colonisation, camped and spent time – at p. 101. It is my understanding that this is one motivation behind claimants engaging in activities to protect those sites and places. Elsewhere, the Report speaks of claimants' distress at the impact of mining activities on the claim area where sites have been destroyed – at p. 105.

[171] The [Anthropologist 1] Report speaks in detail of claimants' knowledge of country, and the way this knowledge was passed down to them by their predecessors pursuant to traditional patterns of teaching. In particular, it provides that members of the group engage in cultural heritage surveys, to ensure sacred and significant sites within the claim area are documented – at [523]. From this, I understand that the claimants participate in activities aimed at protecting those places and sites within the claim area they hold as significant according to Maduwongga law and custom.

[172] In my view, the rights listed above are rights and interests in relation to land and waters, and the material supports the rights as being held pursuant to traditional law and custom. Further, it is my view that the material is sufficient to allow me to consider the rights, prima facie, established.

Right to be identified and acknowledged as native title holders

[173] This group includes the following rights set out in Schedule E:

- A right of individual members of the native title holding group or groups to be identified and acknowledged, in accordance with the traditional laws adhered to and traditional customs observed by the group or groups, as the holders of native title rights in relation to the land and waters of the area; and
- A right of the group or groups who hold common or group native title rights and interests to identify and acknowledge individual members of the native title holding group, in accordance with the traditional laws adhered to and traditional customs observed by the group or groups, as the holders of native title.

[174] I do not consider these rights, prima facie, established.

[175] Having considered the content and substance of these rights, it is my view that they are not rights and interests in relation to land and waters, and on that basis, I cannot consider them established, prima facie, as native title rights and interests. The rights and interests described relate primarily to the identity and status of members of the native title claim group. Existence of these rights does not involve or necessitate any particular engagement with the claim area by the claim group.

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.

[176] The application satisfies the condition at s 190B(7) because I am satisfied that at least one member of the native title claim group has a traditional physical connection with part of the application area. That claim group member is Marjorie Strickland.

[177] The following principles have emerged from the case law about what is required at s 190B(7):

- the material must satisfy the delegate of particular facts;
- evidentiary material is, therefore, required; and
- the focus is confined to the relationship of at least one member of the native title claim group with some part of the claim area – *Doepel* at [17];
- the physical connection must be shown to be in accordance with the traditional laws and customs of the claim group – *Gudjala 2007* at [89];
- the material may need to address an actual presence on the area – *Yorta Yorta* at [184].

[178] As per the Form 1, Marjorie Strickland is one of the applicant persons for the claim. The material before me sets out the following information about Ms Strickland regarding her physical connection with the claim area:

- she was born near the Coolgardie Gorge, where her father was employed by the Battery, caring for the Clydesdales – the [Anthropologist 1] Report at [516];
- her father purchased an old house in Kalgoorlie where her family lived so that she and her sister could attend the local high school – at [516];
- in the school holidays she and her family spent time in the bush, living in camps – at [516];
- her father and her uncle would take her hunting in the application area as a child – at [517];
- her mother and father would take her to corroborees and ceremonies in the claim area when they were children – at [512];
- she has knowledge of significant sites within the claim area, including sites associated with songlines, and sacred women's sites, taught to her by relatives of her father's – at [248] to [255];
- she was taught by her elders where Maduwongga boundaries lie – the [Anthropologist 2] Report at p. 91-2;

- she has knowledge of the resources available within the claim area and traditional use of those resources – at p. 95-8;
- she and her family lived at Ora Banda (within the claim area) and during that time, her parents would go prospecting – at p. 101;
- she currently lives in Boulder, within the claim area – affidavit of Marjorie Strickland sworn 18 April 2017.

[179] From this information, I understand that Ms Strickland has spent the most part of her life living within the claim area, and continues to reside their today. On that basis, it is clear that she has, or has had, a physical connection with the application area.

[180] Having considered the information about Ms Strickland's physical connection with the area, it is my view that it supports that connection as being a traditional one. That is, a connection that is in accordance with the traditional laws and customs of the Maduwongga people. In particular, I note that Ms Strickland was passed knowledge about her country by her father and other relatives, including knowledge about sacred sites and songlines within the claim area. She spent time on the area hunting and gathering resources from the application area, according to patterns shown to her by her parents and elders, and as a child, she attended dance ceremonies within the claim area. She has also spent considerable time camping in the bush, in the same way and in the same places her predecessors had camped at, including at settlement.

[181] As per my reasons above at s 190B(5)(b), these activities are all associated with the normative elements that comprise the system of Maduwongga traditional law and custom.

[182] It follows that I am satisfied that at least one member of the claim group currently has, or previously had, a traditional physical connection with some part of the claim area.

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

> The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s 61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.
>
> Section 61A provides:
>
> (1) A native title determination application must not be made in relation to an area for which there is an approved determination of native title.
>
> (2) If:
>
> (a) a previous exclusive possession act (see s 23B) was done in relation to an area; and
>
> (b) either:
>
> (i) the act was an act attributable to the Commonwealth; or
>
> (ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in s 23E in relation to the act;
>
> a claimant application must not be made that covers any of the area.
>
> (3) If:

(a) a previous non-exclusive possession act (see s 23F) was done in relation to an area; and
(b) either:
    (i) the act was an act attributable to the Commonwealth, or
    (ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in s 23I in relation to the act;

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

(4) However, subsection (2) or (3) does not apply to an application if:
(a) the only previous exclusive possession act or previous non-exclusive possession act concerned was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made; and
(b) the application states that section 47, 47A or 47B, as the case may be, applies to it.

[183] The application does not offend any of the provisions of ss 61(A), 61A(2) and 61A(3) and therefore the application satisfies the condition of s 190B(8).

Section 61A(1)

[184] Section 61A(1) provides that a native title determination application must not be made in relation to an area for which there is an approved determination of native title. The geospatial assessment provides that there are no determinations overlapping any part of the application area.

Section 61A(2)

[185] 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. Schedule B of the application states that the application area excludes those areas in relation to which a previous exclusive possession act was done.

Section 61A(3)

[186] 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. Schedule E contains a list of rights claimed in relation to Area A of the claim area, and Area B of the claim area. Area B rights do not include a right of exclusive possession.

[187] Area B is defined on page 2 of the Form 1 as land and waters within the application area that are subject to non-exclusive pastoral leases, or mining leases, or areas that are Crown reserves. Noting the reference to the definition of these instruments, and to the definition of 'previous non-exclusive possession act' in the Act, it is my understanding that exclusive native title rights are not claimed over that area within the claim boundary (Area B) that is subject to previous non-exclusive possession acts.

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.

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

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

Section 190B(9)(a)

[190] Schedule Q states that the native title claim group does not make any claim to any minerals, petroleum or gas owned by the Crown.

Section 190B(9)(b)

[191] Schedule P states that the native title claim group does not make any claim to exclusive possession of all or part of an offshore place.

Section 190B(9)(c)

[192] Schedule B states that those areas in relation to which native title has otherwise been wholly extinguished are excluded from the application area.

[*End of reasons*]

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Maduwongga People
NNTT file no.	WC2017/001
Federal Court of Australia file no.	WAD186/2017

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

Section 186(1): Mandatory information

Application filed/lodged with:

Federal Court of Australia

Date application filed/lodged:

21 April 2017

Date application entered on Register:

3 August 2017

Applicant:

[As per the Schedule]

Applicant's address for service:

[As per the Schedule]

Area covered by application:

[As per the Schedule]

Persons claiming to hold native title:

[As per the Schedule]

Registered native title rights and interests:

The native title rights and interests claimed in this application are subject to and exercisable in accordance with:

1. the common law, the laws of the State of Western Australia and the Commonwealth of Australia; and
2. valid interests conferred under those laws; and
3. the body of traditional laws and customs of the Aboriginal society under which rights and interests are possessed and by which the native title claim group have a connection to the area of land or waters the subject of this application.

The native title rights and interests in relation to Area A comprise:

(1) The right to possess, occupy, use and enjoy the area as against the whole world;

The native title rights and interests which are claimed in relation to Area B are:

(2) A right to occupy the area;

(3) A right to use the area;

(4) A right to enjoy the area;

(5) A right to be present on or within the area;

(6) A right to be present on or within the area in connection with the society's economic life;

(7) A right to be present on or within the area in connection with the society's religious life;

(8) A right to be present on or within the area in connection with the society's cultural life;

(9) A right to hunt in the area;

(10) A right to fish in the area;

(11) A right to make decisions about the use of the area by members of the Aboriginal society to which the native title claim group belong;

(13) A right to make decisions about the enjoyment of the area by members of the Aboriginal society to which the native title claim group belong by persons who are members of the Aboriginal society to which the native title claim group belong;

(15) A right of access to the area;

(16) A right to live within the area;

(17) A right to reside in the area;

(18) A right to erect shelters upon or within the area;

(19) A right to camp upon or within the area;

(20) A right to move about the area;

(21) A right to engage in cultural activities within the area;

(22) A right to conduct ceremonies within the area;

(23) A right to participate in ceremonies within the area;

(24) A right to hold meetings within the area;

(25) A right to participate in meetings within the area;

(26) A right to teach as to the physical attributes of the area;

(27) A right to teach as to the significant attributes of the area;

(28) A right to teach upon the area as to the significant attributes of the area;

(29) A right to teach as to the significant attributes within the area of the Aboriginal society connected to the area in accordance with its laws and customs;

(32) A right to take resources, other than minerals, petroleum and gas used for sustenance from the area;

(33) A right to take resources, other than minerals, petroleum and gas, used for sustenance within the area;

(34) A right to gather resources, other than minerals, petroleum and gas, used for sustenance within the area;

(35) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for sustenance from the area;

(36) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for food, on, in, under or within the area;

(37) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for shelter, on, in or within the area;

(38) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for healing, on, in or within the area;

(39) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for decoration, on, in or within the area;

(40) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for social purposes, on, in or within the area;

(41) A right to use and/or enjoy resources, other than minerals, petroleum and gas, for cultural, religious, spiritual, ceremonial and/or ritual purposes, on, in or within the area;

(42) A right to take fauna;

(43) A right to take flora (including timber);

(44) A right to take soil;

(45) A right to take sand;

(46) A right to take stone and/or flint;

(47) A right to take clay;

(48) A right to take gravel;

(49) A right to take ochre;

(50) A right to take water;

(52) A right to manufacture from and trade in the said resources of the area, upon or within the area, other than minerals, petroleum and gas including the manufacture of objects, materials or goods for sustenance, and/or food, shelter, healing, decoration, social, cultural, religious, spiritual, ceremonial and/or ritual purposes and/or including objects, materials or goods in the form of tools, weapons, clothing, shelter and/or decoration;

(53) A right to receive a portion of the said resources (other than minerals, petroleum and gas) taken by other persons who are members of the Aboriginal society from the area;

(54) A right to receive a portion of the said resources (other than minerals, petroleum and gas) taken by other persons other than those who are members of the Aboriginal society from the area;

(55) A right, in relation to any activity occurring on the area, to:

i. maintain;

ii. conserve; and/or

iii. protect significant places and objects located within the area, by preventing by all reasonable lawful means any activity occurring on the area which may injure, desecrate, damage, destroy, alter or misuse any such place or object;

(56) A right, in relation to any activity occurring on the area, to:

i. maintain;

ii. conserve; and/or

iii. protect significant ceremonies, artworks, song cycles, narratives, beliefs or practices by preventing, by all reasonable lawful means any activity occurring on the area which may injure, desecrate, damage, destroy, alter or misuse any such ceremony, artwork, song cycle, narrative, belief or practice;

(57) A right, in relation to a use of the area or an activity within the area, to:

i. prevent any use or activity which is unauthorised in accordance with traditional laws and customs

ii. prevent any use or activity which is inappropriate in accordance with traditional laws and customs

in relation to significant place s and objects within the area or ceremonies, artworks, song cycles, narratives, beliefs or practices carried out within the area by all reasonable lawful means, including by the native title holders providing all relevant persons by all reasonable means with information as to such uses and activities, provided that such persons are able to comply with the requirements of those traditional laws and customs while engaging in reasonable use of the area and are not thereby prevented from exercising any statutory or common law rights to which that person may be entitled;

(58) A right to enjoy all the features, benefits and advantages inherent in the environment of the area.

[*End of document*]