National Native Title Tribunal

Registration test decision

Application name	Gumbaynggirr People
Name of applicant	Barry Phyball, Larry (Laurie) Kelly, Richard Pacey, Christine Witt, Marion Witt, Frances Witt
NNTT file no.	NC1998/015
Federal Court of Australia file no.	NSD6104/1998

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).

The following contains my reasons for the decision on 28 February 2017 to accept this claim for registration pursuant to s 190A of the *Native Title Act 1993* (Cth).

Date of reasons: 1 March 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 20 November 2015 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 Court) gave a copy of the amended Gumbaynggirr People claimant application to the Registrar on 7 November 2016 pursuant to s 64(4) of the Act. This has triggered the Registrar's duty to consider the claim made in the application under s 190A of the Act.

[3] I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply to this claim. This is because the application was not amended as the result of an order of the Court, nor do the nature of the particular amendments to the application fall within the scope of s 190A(6A)(d).

[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.

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.

[5] 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.

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

[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] A description of the persons comprising the native title claim group is at Schedule A. I note that it is only where, on the face of the application itself, it appears that the description does not include all the persons of the group, or where the group described is a sub-group or part only of the actual native title claim group, that this requirement would not be met – *Doepel* at [36].

[11] Having considered the description in Schedule A, nothing on the face of the application itself indicates that the group described seeks to exclude people, or is anything less than the actual native title claim group.

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

Name and address for service: s 61(3)

[13] The name and address for service for the applicant appears in Part B of the Form 1.

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

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

[15] The only concern at s 61(4) for the purposes of s 190C(2) is whether the application contains information about the native title claim group in the terms prescribed by either ss 61(4)(a) or 61(4)(b) – *Wakaman People 2 v Native Title Registrar and Authorised Delegate* [2006] FCA 1198 (*Wakaman*) at [34]. As above, a description of the persons comprising the native title claim group appears in Schedule A of the application.

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

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

[17] The application is accompanied by six affidavits, one sworn by each of the persons comprising the applicant. The affidavits contain six paragraphs, all of which are identical apart from the first paragraph, which gives information about the basis of the deponent's membership of the native title claim group. I have considered the information contained in the five identical paragraphs in the affidavits and consequently, am satisfied that the affidavits speak to the matters prescribed by ss 62(1)(a)(i) to (v).

[18] As above, noting that the application was first made prior to September 2007, the affidavits do not need to comply with those further requirements of s 62, as it appears in its current form. Despite this, I am satisfied that the affidavits speak to all of the matters prescribed by s 62 as amended.

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

Details required by s **62(1)(b)**

[20] 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)*

[21] This information is contained in Schedule B.

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

[22] A map is contained in Attachment C to the application.

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

[23] This information is in Schedule D.

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

[24] Schedule E contains this description.

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

[25] Schedule F, and Attachments F(1), F(2) and F(3) contain this description.

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

[26] These activities are listed in Schedule G.

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

[27] Information about other applications is in Schedule H.

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

[28] This information is in Schedule I.

Conclusion

[29] 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.

[30] It is only where there is a previous application that satisfies all three criteria set out in ss 190C(3)(a), (b) and (c) that the requirement for me to consider the possibility of common claimants between the native title claim groups for overlapping applications is triggered – *Western Australia v Strickland* [2000] FCA 652 (*Strickland FC*) at [9].

[31] The geospatial assessment and overlap analysis (geospatial assessment) prepared by the Tribunal's Geospatial Services in relation to the map and description of the application area that accompany the application (GeoTrack: 2016/1802, dated 11 November 2016) provides that there is one application overlapping the current application. That overlapping application is the Gumbaynggirr People application, namely, the same application I am considering for registration here.

[32] In light of the wording of the provision, it is my view that s 190C(3) is aimed at identifying common claim group members for different and/or competing overlapping applications, and not amended applications. Therefore, as the underlying application is the very same application I am currently testing, I do not consider, for the purposes of s 190C(3)(a), that there is any overlapping application. This is supported by the fact that where my decision is to register this application, the geospatial record relating to the previous underlying application ceases to exist.

[33] Consequently, I am satisfied that no person included in the native title claim group for the current application is a member of the native title claim group for any previous application.

[34] The application satisfies the condition of s 190C(3).

Subsection 190C(4)
Authorisation/certification

Under s 190C(4) the Registrar/delegate must be satisfied that either:

(a) the application has been certified under Part 11 of the Act 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.

[35] I must be satisfied that the requirements set out in either ss 190C(4)(a) or (b) are met, in order for the condition of s 190C(4) to be satisfied.

[36] Where an application is not certified, s 190C(5) sets out further requirements, namely that the application must contain a particular statement, and then briefly set out the grounds upon which the Registrar can accept that statement. The information addressing authorisation within the application is contained in Schedule R, in affidavits sworn by the applicant persons pursuant to s 62(1)(a), and in further affidavits sworn by those same persons at Attachments R(1) to R(6). An affidavit sworn by the legal representative for the applicant, at Attachment R(7) also speaks to authorisation matters. Having considered that information in the application, I consider that Schedule R contains the statement required by s 190C(5)(a), and includes information that 'briefly sets out' the grounds upon which the Registrar should consider the authorisation requirement to have been met. Consequently, I am satisfied that the requirements of s 190C(5) are met.

[37] At s 190C(4)(b), I note that I am to be 'satisfied of the fact of authorisation by all members of the native title claim group' – *Doepel* at [78]. The basis of the applicant's authority to make the application before me, asserted within the material, is a meeting held on 18 and 19 November 2015 at Valla Beach in New South Wales. The decision-making process used by the group to authorise the applicant, again, set out within the material, was an agreed to and adopted process, pursuant to s 251B(b). That process is described in the affidavits sworn by the applicant persons pursuant to s 62(1)(a) as a process involving general discussion of issues, and a vote on resolutions carried by the majority present. In my view, therefore, the application addresses the matters prescribed by s 251B.

[38] The s 62(1)(a) affidavits sworn by the applicant persons also set out the basis of each applicant persons' membership of the native title claim group. Paragraph one of those affidavits states the apical ancestor from whom each of the applicant persons is descended, and on that basis, I am satisfied that each of the applicant persons is a member of the native title claim group.

[39] Where an agreed to and adopted decision-making process at a meeting of the native title claim group is asserted as the basis of the applicant's authority, there is no requirement that 'all' the members of the group are in attendance, or that those persons vote unanimously – *Lawson on behalf of the 'Pooncarie' Barkandji (Paakantyi) People v Minister for Land & Water Conservation for New South Wales* [2002] FCA 1517 (*Lawson*) at [25]. All that is required is that the members of the native title claim group are given every reasonable opportunity to attend the meeting – *Lawson* at [25].

[40] The material before me provides the following information about the way in which the meeting was notified:

- NTSCORP, the body charged with carrying out representative body functions for the area of the application, convened meetings of the Gumbaynggirr People at Valla Beach Tourist Park on 18 and 19 November 2015;
- around 27 October 2015 a copy of a notice setting out the details of the meetings was sent by post to Gumbaynggirr People whose names and addresses are on a mailing list maintained and updated over a number of years by NTSCORP for the members of the Gumbaynggirr People;
- the notice set out the details for the meeting, including date, time and location;
- it also included the agenda for the meeting scheduled for 18 November and the agenda for the meeting scheduled for 19 November 2015, including that the group would consider and authorise amendments to the application;
- the notice invited the persons comprising the native title claim group as described in the current entry on the Register of Native Title Claims, and the persons comprising a revised native title claim group, proposed and adopted in 2009, to attend;
- the description of each of these groups was included in the notice;
- a map of the application area appeared in the notice;
- those interested in attending were advised to contact NTSCORP such that arrangements could be made and assistance offered;
- between 28 October and 17 November 2015, NTSCORP staff had numerous discussions with Gumbaynggirr People about the meetings;
- NTSCORP staff made travel, meal and accommodation bookings in accordance with NTSCORP's assistance policy for approximately 60 people who registered to attend the meetings;
- the notice appeared in the Koori Mail on 4 November 2015;
- approximately 70 Gumbaynggirr People attended the meeting.

[41] In light of this information, I am satisfied that the Gumbaynggirr People were given every reasonable opportunity to attend the meeting. I note that one of the amendments to the application is a change to the description of the native title claim group. From the material, however, I consider it clear that the persons comprising both the formerly described group, and the revised group (the description of which was authorised by way of resolutions passed at the meetings on 18 and 19 November 2015), were notified of the meeting. This notice included personal notice from NTSCORP, and public notice by way of the Koori Mail advertisement.

Assistance to attend the meeting was offered by NTSCORP, and the meeting appears to have been relatively well-attended.

[42] In *Ward v Northern Territory* [2002] FCA 171 (*Ward v NT*), O'Loughlin J was highly critical of the information before him regarding a meeting from which the applicant's authority was asserted to stem. His Honour posed a number of hypothetical questions about the meeting, indicating the type of material required:

> …Who convened it and why was it convened? To whom was notice given and how was it given? What was the agenda for the meeting? Who attended the meeting? What was the authority of those who attended? Who chaired the meeting or otherwise controlled the proceedings of the meeting? By what right did that person have control of the meeting? Was there a list of attendees compiled, and if so, by whom and when? Was the list verified by a second person? What resolutions were passed or decisions made? Were they unanimous, and if not, what was the voting for and against a particular resolution? Were there any apologies recorded? – at [24].

[43] His Honour found that these questions must at least be answered in substance, if not on a more formal basis – at [25].

[44] In my view, the information does address these questions in substance. I have before me information about who convened the meetings, how they were notified, and detailed information about the way in which the meetings were conducted, including the resolutions passed by the persons in attendance. In particular, the information provides that those in attendance at the first meeting on 18 November 2015 were the members of the group as described (at that point in time) in the entry on the Register of Native Title Claims for the application. The Principal Solicitor of NTSCORP was present at the meeting, and at its commencement, she explained that those entitled to vote at that meeting were restricted to such persons.

[45] At that first meeting, the information provides that following a decision about the appropriate decision-making process, the group resolved that the persons in attendance were sufficiently representative of the members of the claim group. The group then passed a resolution to authorise the amendments to the claim group description.

[46] The material before me provides that the second meeting on 19 November 2015 was attended by the members of the revised native title claim group, and that at that meeting, using the same decision-making process agreed to and adopted at the commencement of the meetings, the group passed resolutions confirming the amendments to the claim group description, and authorising the applicant persons to make the amended application and deal with matters arising in relation to it.

[47] While I do not have before me information going to the number of votes recorded for and against these resolutions, nor do I have a copy of minutes taken at the meeting such that I could

determine whether there had been any significant divisions or disagreements among the persons in attendance, it is clear from the material that the resolutions at the two meetings were passed by the members of the native title claim group in accordance with the decision-making process agreed to and adopted by the group. There is no information that has been placed before me to indicate otherwise.

[48] For the reasons set out above, therefore, 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. The requirement at s 190C(4)(b) is met.

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 wording of s 190B(2) directs my attention to the map and written description of the application area contained in the application. The written description appears at Schedule B, and provides that the application area comprises 'all Crown land and waters east of the North Coast railway line, west of the mean high watermark of the Pacific Ocean, with the northern boundary at the southern boundary of Lot 102 in the Parish of Newry, County of Raleigh and the southern boundary at Nambucca Shire Council'.

[50] Schedule B specifically excludes certain areas within that external boundary from the application area, and then provides a list of general exclusion clauses. In my view, this is sufficient for the purposes of s 190B(2) in identifying excluded areas – see *Strickland v Native Title Registrar* [1999] FCA 1530 at [50] to [55].

[51] Attachment C to Schedule C contains a map showing the external boundary. It is entitled 'Native Title Application - NC98/015 Gumbaynggirr #4', and dated 23 August 1999. It has been prepared by the Tribunal and includes:

- the application area depicted as a red outline;
- topographic background;
- local government areas shown and labelled;
- scalebar, northpoint, and coordinate grid; and
- notes relating to the source, currency and datum of data used to prepare the map.

[52] The geospatial assessment provides that the map and description are consistent and identify the application area with reasonable certainty. The assessment also states that the area covered by the application has not been amended and/or reduced.

[53] Having considered the information contained in the application prescribed by ss 62(2)(a) and (b), it is my view that it allows for the area covered by the application to be identified on the earth's surface. I agree with the assessment, and am therefore satisfied that the information is sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

[54] The application satisfies the condition of s 190B(2).

Subsection 190B(3)
Identification of the native title claim group

The Registrar must be satisfied that:
(a) the persons in the native title claim group are named in the application, or
(b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

[55] As above, a description of the persons comprising the native title claim group appears at Schedule A. I note that my focus at this condition of the registration test is whether the application 'enables the reliable identification of the persons in the native title claim group' – *Doepel* at [51]. It is not upon the correctness of the description, or whether the persons described do in fact qualify as members of the native title claim group – *Doepel* at [37].

[56] The description of the native title claim group in Schedule A is in three parts. Firstly, it provides that the Gumbaynggirr People are described as Aboriginal persons who are the biological descendants of 26 named individuals and four named couples. Secondly, it provides that the Gumbaynggirr People are persons who have been adopted into the families of those persons (including biological descendants of such adopted persons). And thirdly, that the Gumbaynggirr People are persons who have been otherwise incorporated or who are direct descendants of a person who has been otherwise incorporated into the claim group and who identify as and are accepted as a Gumbaynggirr person in accordance with the group's laws and customs.

[57] Carr J, in *Western Australia v Native Title Registrar* [1999] FCA 1591 (*WA v NTR*) considered a similar description, where the identification of members of the claim group relied on the application of three rules, or three criteria. In that case, the rules before His Honour included that persons were the biological descendants of named apical ancestors, persons adopted by the named ancestors or their descendants, and persons who were biological descendants of the adopted persons.

[58] His Honour held that while identification of the members of the native title claim group may require some factual inquiry, this did not mean that the group had not been described sufficiently clearly – at [67]. In reaching this conclusion, Carr J relied upon the remedial character of the Act, referring to the decision of the Court in *Kanak v National Native Title Tribunal* (1995) 61 FCR 103 at [124] – *WA v NTR* at [67].

[59] In my view, the rules before me are notably similar to those considered by Carr J in *WA v NTR*. I accept that applying those rules would involve some factual inquiry in ascertaining who the persons comprising the native title claim group are. However, by starting with one individual and applying each of the criteria, I consider that those persons can be identified.

[60] Application of the first two rules, in my view, is a relatively straightforward investigation. The application of the third rule may require some deeper research, particularly into the laws and customs of the group surrounding incorporation of non-biological descendant and non-adopted descendant persons. In my view, however, through research regarding those laws and customs, and through speaking with existing members of the group, it would be possible to identify the incorporated persons.

[61] Consequently, I am satisfied that the persons in the group are described sufficiently clearly so that it can be ascertained whether any particular person is in the native title claim group.

[62] The application satisfies the condition of s 190B(3).

Subsection 190B(4)
Native title rights and interests identifiable

> The Registrar must be satisfied that the description contained in the application as required by s 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.

[63] The description of the rights and interests claimed by the native title claim group appears at Schedule E. In *Doepel*, Mansfield J approved the approach of the Registrar who found that the test of identifiability was 'whether the claimed native title rights and interests are understandable and have meaning' – at [99]. In that case, at s 190B(4), the Registrar also referred to s 223(1), turning his mind to whether the rights and interests described satisfied the definition of 'native title rights and interests'. In my view, however, this task is more appropriately carried out at the corresponding merit condition of s 190B(6), as to whether rights and interests can be prima facie, established. Consequently, I have addressed this matter in my reasons below.

[64] From *Doepel*, it is my understanding that s 190B(4) is a matter for me, as the Registrar's delegate, to 'exercise my judgement upon the expression of native title rights and interests claimed' – at [123]. It is open to me to read the contents of Schedule E together, ensuring there is no inherent or explicit contradiction in the description – at [123].

[65] Paragraph one of Schedule E is a claim to a right of possession, occupation, use and enjoyment of the land and waters to the exclusion of all others. In my view, there is nothing problematic in such a broad claim – *Strickland* at [60].

[66] Paragraph two of Schedule E contains a list of non-exclusive rights and interests. I have considered that list, and in my view, they are rights and interests that are easily understood and that have meaning.

[67] Following this, Schedule E sets out a number of qualifications on the rights and interests claimed. These include that rights and interests are exercisable in accordance with the laws of the

State and the Commonwealth, and the rights and interests conferred upon persons pursuant to those laws, and also that rights and interests are exercisable in accordance with the traditional laws and customs observed by the Gumbaynggirr People.

[68] I have read the contents of Schedule E together and do not consider that there is any inherent or explicit contradiction in the description. Consequently, I am satisfied that the description contained in the application is sufficient to allow the native title rights and interests claimed to be readily identified.

[69] The application satisfies the condition of s 190B(4).

Subsection 190B(5)
Factual basis for claimed native title

> The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:
> (a) that the native title claim group have, and the predecessors of those persons had, an association with the area, and
> (b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interest, and
> (c) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

[70] The task of the Registrar's delegate at s 190B(5) was expressed by Mansfield J in *Doepel* in the following way:

> Section 190B(5) is carefully expressed. It requires the Registrar to consider whether the 'factual basis on which it is asserted' that the claimed native title rights and interests exist 'is sufficient to support the assertion.' That requires the Registrar to address the quality of the asserted factual basis for those claimed rights and interests; but only in the sense of ensuring that, if they are true, they can support the existence of those claimed rights and interests. In other words, the Registrar is required to determine whether the asserted facts can support the claimed conclusions. The role is not to test whether the asserted facts will or may be proved at the hearing, or to assess the strength of the evidence which may ultimately be adduced to establish the asserted facts – at [17].

[71] This approach was approved by the Full Court in *Gudjala People #2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala 2008*). It was noted by the Full Court that the delegate was able to rely on the statements within the affidavits required by s 62(1)(a) sworn by the applicant persons that the statements in the application were true, in accepting the asserted facts – at [91]–[92].

[72] While s 62(2)(e) makes it clear that only a 'general description' of the factual basis that is required to be contained in the application, it is my understanding that for the purposes of s 190B(5), that description must be in sufficient detail to enable a 'genuine assessment of the application', and be 'more than assertions at a high level of generality' – *Gudjala 2008* at [92].

[73] It is the particular matters prescribed by subsections (a), (b) and (c) of s 190B(5) that the factual basis must address – *Doepel* at [130]. That is, the factual basis must provide information that relates to the particular native title claimed, by the native title claim group, over the land and waters of the application area – see *Gudjala 2007* at [39].

[74] 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)

[75] The assertion at s 190B(5)(a) is that 'the native title claim group have, and the predecessors of those persons had, an association with the area'. Where the factual basis addressing this association consists only of broad statements that lack geographical particularity to the land and waters of the claim area, or where the information fails to speak to an association with the entire area claimed, it is my understanding that it is unlikely to satisfy the condition at s 190B(5)(a) – *Martin v Native Title Registrar* [2001] FCA 16 (*Martin*) at [26].

[76] In *Gudjala 2007*, in an aspect of the decision not criticised by the Full Court on appeal, Dowsett J's comments indicate that the information required at this condition may need to address:

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

The applicant's factual basis material – s 190B(5)(a)

[77] The applicant's factual basis material is contained in Schedule F, in Attachments labelled F(1), F(2) and F(3), and in two reports provided as additional material by the applicant on 17 February 2017. The first report of 16 December 2015 is entitled 'Expert Historical Report' and has been prepared by [name removed] (the Historical Report). The second report, of 24 December 2015, is entitled, 'Expert Anthropological Report' and has been prepared by [name removed] (the Anthropological Report). In addition, Schedule G sets out various activities undertaken by the members of the claim group today in relation to the land and waters of the application area.

[78] The information contained in that material that I consider addresses the assertion at s 190B(5)(a) is summarised below:

- from prior to 1788 to the present day, the native title claim group and their ancestors have continuously occupied, been present on, used and enjoyed the application area in accordance with their laws and customs – Schedule F at [6];

- clear evidence of Aboriginal occupation of the region including the application area exists in large shell middens, carved trees and human remains recorded at locations within the area – the Historical Report at [13];
- linguistic and anthropological literature confirms claimants' understanding of the boundaries of Gumbaynggirr country, namely, that specific area where the Indigenous occupants speak/spoke the Gumbaynggirr language – the Anthropological Report at [320] to [322];
- in April and May of 1770, officers on board Captain Cook's Endeavour named Smokey Cape (to the south of the application area) for the smoke coming from camp fires seen onshore - the Historical Report at [14];
- settlement of the area did not occur until the 1840s with the arrival of timber cutters in temporary work camps on the Bellinger and Nambucca Rivers (again, in the immediate vicinity of the application area) - the Historical Report at [16];
- Clement Hodgkinson was a surveyor who recorded various observations of the local Indigenous people on two trips north from the Macleay River to the Bellinger River in 1841 and 1842 - the Historical Report at [16];
- these observations included that there were localised groups of approximately 80 to 100 people occupying smaller parcels or divisions of land within the area; that those groups would occasionally come together for ceremonies and fights; that the inhabitants knowledge of their country was detailed and included knowledge of the best places to cross rivers and the best places to access particular foods or other natural resources - the Historical Report at [17] and [20];
- following the discovery of gold in other parts of New South Wales around 1850, pastoralists welcomed the presence of Aboriginal people on their properties as a source of labour - the Historical Report at [50];
- claimants assert Gumbaynggirr country to be a wider region that includes the application area – one claimant explains that the southern border is around Yarrahapinni, and that Gumbaynggirr country goes all the way up to Grafton and the Clarence River – affidavit of Barry Phyball at [45];
- this claimant states that the application area is in the southern part of Gumbaynggirr country, and he knows the area very well as he has lived in the Nambucca Heads and Valla area his whole life – affidavit of Barry Phyball at [48] and [49];
- according to historical sources, apical ancestor King Bobby of Oban travelled down to Nambucca River for a corroboree where he was also presented with a wife – the Historical Report at [63];
- apical ancestor Davy Cowling gave an account of a tribal fight he engaged in at Mount England with neighbouring groups - the Historical Report at [73];
- apical ancestor King Ben Bennelong was engaged as a tracker by Europeans in 1871 to find a lost horse around the mouth of the Bellinger River - the Historical Report at [77];
- his eldest son, [name removed], was born in Urunga (in the vicinity of the application area) in 1857 - the Historical Report at [42];
- apical ancestor Darby Kelly was one member of an Aboriginal camp near Fernmount (in the vicinity of the application area) where poisoned rum killed a number of the camp residents - the Historical Report at [86] to [87];
- Darby Kelly died in Urunga in 1917 and was buried in the Urunga cemetery - the Historical Report at [112];

- residents of an Aboriginal Reserve at Cow Creek/Deep Creek (adjacent to Valla) in 1900 included apical ancestors Davy Cowling and Maggie Buchanan (who worked as a domestic servant on nearby properties) - the Historical Report at [91];
- apical ancestor Billy Lardner died of influenza at Cow Creek Aboriginal Reserve around 1920 - the Historical Report at [121];
- records indicate that the descendants of apical ancestors Ben Bennelong, [names removed] maintained residence at Urunga throughout most of the first half of the twentieth century - the Historical Report at [93];
- claimant Margaret Boney [deceased] had a camp in the application area to the north-west of Wenonah Head – other claimants who moved away from the area for work often returned to the area to visit Mrs Boney [deceased] and learn more about sites on their country - the Historical Report at [177];
- in 1991 claimants participated in an archaeological survey of a proposed road deviation of the Bellinger River Bridge at Raleigh – they recommended the deviation be re-routed to protect a significant site - the Historical Report at [175];
- claimants have spent time on country with their elders learning about sites of significance, the stories for their country, and laws and customs relating to use of country – affidavit of Margaret Witt at [2] to [5];
- members of the claim group continue to spend time on the application area, for example at the Second Headland near Urunga (in the application area), hunting, fishing and gathering resources – resources include periwinkles, oysters, cobra (wood worm), bream, whiting and lillipillies and yams – affidavit of Margaret Boney-Witt [deceased] at [11] to [17];
- as children, elders of the claim group camped with half a dozen Gumbaynggirr families at various places between Hungry Head and Oyster Creek (within the application area) – affidavit of Barry Phyball at [18];
- as children, elders of the claim group travelled with their parents, grandparents, aunties and uncles through the application area, including from Bellingen in the mountains, to the coast – following an old Aboriginal walking track that goes through Thumb Creek (in the vicinity of the application area, to the west) – affidavit of Barry Phyball at [17];
- claimants have worked on banana plantations at Valla (in the vicinity of the application area) – affidavit of Barry Phyball at [23];
- claimants possess a detailed knowledge of the application area, including the stories for that area and significant sites within it - affidavit of Barry Phyball at [48] to [50];
- today many young claimants work with National Parks and Wildlife Service in Gumbaynggirr country, using traditional methods to care for and maintain places around that area - affidavit of Barry Phyball at [59];
- historical records indicate that all of the Gumbaynggirr apical ancestors can be associated with a particular location within the wider Gumbaynggirr country, generally around the time at which settlement of the area was taking place – the Anthropological Report at [869];
- for example, from historical records and sources, King Ben Bennelong is understood to have been born around 1830, and to have spent time in the vicinity of the Bellinger River, including at the Urunga Island Reserve at its establishment in 1891 – the Anthropological Report at [877] and [878].

My consideration – s 190B(5)(a)

[79] The assertion at s 190B(5)(a) is that the native title claim group have, and the predecessors of those persons had, an association with the land and waters of the application area. I note that that association must be with the entirety of the area claimed, and to have existed between the group and its predecessors back to the time of sovereignty, or at least settlement, in the area.

[80] As set out above, settlement in the region took place in the 1840s with the arrival of timber cutters. In the decade that followed, a number of pastoral stations were established in the region including the application area, and the material explains the way in which the predecessors of the claim group became a valuable source of labour for these pastoralists.

[81] In my view, the information before me is of a considerable level of detail. For example, the Anthropological Report sets out information taken from historical records relating to each of the apical ancestors named in Schedule A, identifying locations within the region including the application area with which each of those persons was associated, and often the date at which that association was recorded. For example, the Anthropological Report provides that apical ancestor Maggie Buchanan was born around 1850, and was associated with the Nambucca Heads area, including time spent living at Cow Creek Aboriginal Reserve (adjacent to Valla and the application area) – the Anthropological Report at [924] and [928]. The Anthropological Report states that Maggie's descendants, the Buchanan family, consider the areas of Cow Creek, Valla, the Gumma Peninsular, South Beach/Forsters Beach, and lower Warrell Creek their traditional country since time immemorial – at [920].

[82] From the birth dates of the apical ancestors set out in the material, I understand that at least one of those persons was present in traditional Gumbaynggirr country as early as 1825, prior to settlement. I further understand that at least one of those persons (for example, Maggie Buchanan, born around 1850) was associated with the area including the application area in the time shortly following settlement. Having considered the information of this nature before me, I am satisfied that the factual basis is sufficient to support an association of the apical ancestors with the application area and broader Gumbaynggirr country around the time of settlement.

[83] In addition to this, noting the reference within the material to observations made by Captain Cook's naval officers as they sailed up the coast past the application area, and to archaeological evidence including shell middens, carved trees and human remains found in the area, I am satisfied that the factual basis is sufficient to support an association of the predecessors of the group with the area prior to settlement.

[84] Both the Anthropological Report and the Historical Report contain detailed information regarding the descendants of the apical ancestors of the claim group. This information includes the locations where those descendants were born, married, where they had children and/or where they were buried. Numerous place names are provided throughout this material. Using the Tribunal's mapping resources, I have considered those locations in relation to the external

boundary of the application area. While many of the places named are not within that external boundary, the material clearly explains that both anthropological sources and oral testimonies of claim group members identify Gumbaynggirr country as encompassing a much broader area than the claim area. The information provided about the association of the group and its predecessors is, in my view, consistent with this broader country assertion.

[85] Notwithstanding this, however, I am satisfied that the factual basis does address an association of the group and its predecessors with the specific area subject of the application. For example, one claimant explains how when he was a young child, during the warmer months, half a dozen Gumbaynggirr families would camp at certain places between Hungry Head and Oyster Creek. From my own research, I understand both Hungry Head and Oyster Creek, and the area between them, fall within the application area. Therefore, I am satisfied that the factual basis is sufficient to support an association of the group and its predecessors with the entirety of the application area.

[86] Regarding an association of the members of the claim group today with the area, it is my view that the material offers numerous illustrations in support of this assertion. While Schedule G lists the activities undertaken by members of the group in relation to the area today, the Historical Report, the Anthropological Report and the affidavits sworn by claim group members at Attachments F(1), F(2) and F(3), provide more detailed examples of the association. For instance, the Historical Report explains that applicant Margaret Boney [deceased] was living in a camp in the bush at Wenonah Head, within the application area, and that her niece who was living in Sydney at the time came to visit her there to learn about her traditional country. The niece describes what she experienced when Margaret [deceased] took her into nearby bushland:

> She took me and my sisters into the bush and she said, 'See that old girl there?' We looked and there was this huge echidna. Really huge! I've never seen one that big and it was so old. It lay there and its spikes were turning white. It held its head up and its beak was grey because it was so old. She said, 'That's one of your old fellas'. She took us further up and we were on a ledge looking at the ocean. There was a track going down and she said, 'You girls are not allowed down there'. She gave me her knowledge and that was my way of understanding our old ways and culture. I haven't been back there since. I have to ask permission to go back – the Historical Report at [178].

[87] In addition to this, in their affidavits, claimants explain how they continue to spend time on country teaching younger generations about their culture, laws and customs as they relate to the land and waters, and also, ensuring that significant sites are protected and maintained – see for example, affidavit of Barry Phyball at [58] to [63] and [89]. In light of this information before me, I am satisfied that the factual basis is sufficient to support an assertion of an association of the group presently with the area.

[88] It follows, therefore, that I am satisfied 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 land and waters of the application area.

[89] The requirement at s 190B(5)(a) is met.

Reasons for s 190B(5)(b)

[90] The requirement at s 190B(5)(b) is that I be satisfied that the factual basis is sufficient to support an assertion that there exist 'traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title'. Noting the focus of the assertion on the claimed native title, it is my view that the task at s 190B(5)(b) should be undertaken with reference to the definition of 'native title rights and interests' at s 223(1).

[91] Pursuant to subsection (a) of that definition, native title rights and interests are those communal, group or individual rights and interests in relation to land and waters where 'the rights and interests are possessed under the traditional laws acknowledged and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders'. In light of the similarities between this definition and the terms of s 190B(5)(b), I consider it appropriate that I have regard to the leading authority in relation to s 223(1), namely the decision of the High Court in *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58 (*Yorta Yorta*).

[92] In *Yorta Yorta*, the High Court held that not only are traditional laws or customs those that have been passed from generation to generation of a society, usually by word of mouth and common practice, but the meaning of the word 'traditional' in the context of the Native Title Act carries with it two other elements. Firstly, the origins of the laws and customs must be found in the normative content of the laws and customs acknowledged and observed by a group of Aboriginal people prior to sovereignty – at [46]. Secondly, the system of laws and customs under which native title rights are possessed, must have had a continuous existence and vitality since sovereignty – at [47].

[93] In *Gudjala 2007*, Dowsett J sought to apply the principles enunciated by the High Court in *Yorta Yorta* to the task of the Registrar's delegate at s 190B(5)(b). In doing so, His Honour held that the following types of information may be required to address the particular assertion:

- information that speaks to the existence at the time of European settlement of a society of people living according to identifiable laws and customs of a normative content – at [65], [66] and [81];
- information addressing how the laws and customs currently observed have their source in the laws and customs of a pre-sovereignty society – at [63];
- an explanation of the link between the claim group described in the application and the area covered by the application, which may involve identification of a link between the apical ancestors and the society existing at sovereignty or settlement – at [66] and [81].

[94] Dowsett J returned to the task at s 190B(5)(b) in *Gudjala People #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala 2009*). His Honour's comments suggest that the factual basis may also need to address the following:

- who the persons of the pre-sovereignty society acknowledging and observing the laws and customs of a normative character were – at [37];
- an explanation of how the current laws and customs can be said to be traditional, that is, laws and customs rooted in those of a pre-sovereignty society relating to rights and interests in land and waters, and more than a mere assertion that laws and customs are traditional – at [72];
- details of the claim group's acknowledgement and observance of the traditional laws and customs relating to the land and waters of the application area – at [74].

The applicant's factual basis material – s 190B(5)(b)

[95] The applicant's factual basis material that I consider addresses the assertion at s 190B(5)(b) is summarised below:

- prior to sovereignty, the Gumbaynggirr People had rights and interests in relation to an area which includes the application area, possessed under the laws and customs acknowledged and observed by them – Schedule F at [1];
- the Gumbaynggirr People have maintained that system of laws and customs since sovereignty even though those laws and customs have undergone some change since white settlement – Schedule F at [5];
- members of the claim group and their predecessors have and continue to transfer knowledge of their laws and customs to younger generations – Schedule F at [9];
- pursuant to their laws and customs, the Gumbaynggirr People are the owners of the application area – Schedule F at [4];
- laws and customs include those relating to religious and spiritual beliefs, social organisation and kinship, ownership of country and descent, totemism, belief in clever men, restrictions on access to certain foods, and ceremonies and knowledge – Schedule F at [11];
- settlement in the region including the application area took place in the 1840s with the arrival of timber cutters – the Historical Report at [16];
- during trips through the application area in 1841 and 1842, surveyor Clement Hodgkinson recorded various aspects of laws and customs acknowledged and observed by the indigenous inhabitants of the area – the Historical Report at [16];
- these observations included the presence of localised territorial groups of 80 to 100 people, further divided into 'parties' of eight to ten men accompanied by women and children – the Historical Report at [17];
- the groups came together occasionally for ceremonies and fights – the Historical Report at [17];
- when accessing another part of Gumbaynggirr country, Hodgkinson observed a process involving his trackers having to seek the permission of the clan of that area to access it or travel through it – the Anthropological Report at [78];

- Hodgkinson observed the use of various resources in the area by the indigenous occupants – including cobberra worm, kangaroo, fish and shellfish for food, and also wood for spears and palms and other plants – the Historical Report at [21] to [26];
- the participation of the local inhabitants in cultural ceremonies such as corroborees, initiations and organised fights was another observation made by Hodgkinson – the Historical Report at [28] to [31];
- the strong defence of the area against white settlers, often involving violence, was also noted by Hodgkinson – the Historical Report at [32];
- the establishment of pastoral properties in the region surrounding the application area provided work opportunities for Gumbaynggirr People in the early settlement times – the Historical Report at [50];
- a specific region including the application area and northwards is identified in historical and anthropological literature as being a distinct Gumbaynggirr linguistic area – the Anthropological Report at [320] to [322];
- these sources identify the social organisation of the Gumbaynggirr as involving smaller divisions or clans with ownership and occupation of defined territories within that linguistic area – those clans shared the same system of laws and customs – the Anthropological Report at [489] to [492];
- today, certain Gumbaynggirr families have strong associations to certain parts of Gumbaynggirr country – affidavit of Margaret Boney-Witt [deceased] at [19];
- the *Birrugun* creation mythology is central to Gumbaynggirr understandings of their country – it defines boundaries and distinguishes the group from neighbouring language groups such as Bundjalung – the Anthropological Report at [670];
- the story was first recorded in 1900 and has been documented numerous times since, told by Gumbaynggirr people – the Anthropological Report at [671];
- according to the story, *Birrugun* was responsible for the creation of all of the waterways in the application area – sites associated with the story are considered of significance and Gumbaynggirr People have continued to seek their protection – the Anthropological Report at [694] and [701];
- spiritual beliefs of the Gumbaynggirr People include that their ancestors continue to inhabit the landscape, along with other negative spirits that can inflict harm upon persons present in a particular area – the Anthropological Report at [706];
- there are a number of sites of significance within the application area, including sites where massacres are known to have occurred – affidavit of Barry Phyball at [49]; the Anthropological Report at [711].

My consideration – s 190B(5)(b)

[96] The starting point at s 190B(5)(b) must be the identification of a society of people in the area at the time of sovereignty, or at least European settlement, acknowledging and observing identifiable laws and customs – *Gudjala 2007* at [65] to [66]. In my view, the factual basis material addresses the existence of this society, and the normative laws and customs acknowledged and observed by the persons comprising that society.

[97] From the material, I understand that the Gumbaynggirr people at settlement were a linguistic group occupying a broader area including, and to the north of, the application area. Within this society, there were smaller divisions or clans, with connections to particular territory within the broader Gumbaynggirr country. Noting that settlement in the area is asserted to have taken place in the 1840s, and that the birth dates of the apical ancestors range from 1825 through to the 1850s, it is my understanding that the apical ancestors were persons who were either part of this society at settlement, or who were born into the society in the decade or so following settlement. In this way, I am satisfied that the factual basis is sufficient to support a link between the apical ancestors and the society at settlement, thereby supporting a link between the claim group (described by reference to the apical ancestors) and the claim area.

[98] The observations made by Hodgkinson and set out in the material, in my view, provide considerable detail regarding the laws and customs acknowledged and observed by the society in the area at settlement. For example, extracts from the writings of Hodgkinson before me speak of the existence of smaller clans associated with localised areas within Gumbaynggirr country, and the way in which his trackers sought the permission of the local occupants to access a particular area before they traversed through it – the Historical Report at [17]; the Anthropological Report at [78]. In addition to this, the Historical Report sets out Hodgkinson's observations of the methods and techniques used by the Gumbaynggirr people at settlement to obtain natural resources from the area, including hunting and fishing practices – at [21] to [26]. As provided in the Historical Report, Hodgkinson also recorded details of ceremonies and tribal fights the Gumbaynggirr people engaged in with neighbouring tribes, and his experience of an episode of frontier violence – at [28] to [33]. The Historical Report provides that Hodgkinson believed the main cause of the conflict to be the '"encroachment of white men on the prescribed haunts of the tribe"' – at [33].

[99] In these extracts, Hodgkinson refers to various place names within and in the immediate vicinity of the application area, for example, the Nambucca River, the Bellinger River and Warrell Creek. Based on this information before me, therefore, I am satisfied that the factual basis is sufficient to support an assertion of a society of people in the area at settlement acknowledging and observing laws and customs.

[100] The material similarly addresses in detail the laws and customs acknowledged and observed by the native title claim group today. In my view, there are various aspects of the system of laws and customs at settlement asserted by the material that appear relatively unchanged in the system of laws and customs acknowledged and observed by the group today.

[101] Firstly, claimants speak about the way particular Gumbaynggirr families are associated with particular parts of Gumbaynggirr country. One claimant states:

> The Buchanans won't fish and worm on this beach which is only for the Kellys and the Boneys. They will first ask permission because they respect that it is someone else's territory. Their area goes as far

> as Valla Beach and ours is this side of Valla Beach. In the same way, I won't go to their territory without permission. Aboriginal people don't go barging into other people's territory – affidavit of Margaret Boney-Witt [deceased] at [19].

[102] In my view, this mirrors the experience recorded by Hodgkinson and set out in the Anthropological Report, where he observed his Indigenous companions seeking the permission of the local inhabitants of an area before travelling through that area, and Hodgkinson's observations of the wider Gumbaynggirr-speaking people being comprised of smaller territorial divisions.

[103] Secondly, claimants describe the way they gather and use natural resources from the claim area. One claimant states:

> Cobra is another thing we catch. Cobra are what whitefellas call 'shipworms' or 'wood worms'. Cobra is found in logs in the river. You don't find cobra near the mouth of the rivers. It's best looking for them up from where the water is brackish. Upstream from Macksville, Bellingen and Maclean are good places for Cobra.
>
> To get cobra, we dive in the river and pick up logs. You bring the logs onto the bank and split it with a wagaal (axe). When you split the log you find the cobra – affidavit of Barry Phyball at [75] to [76].

[104] This description of the method by which the worms are obtained closely mirrors the technique employed by one of Hodgkinson's Indigenous companions on his trips through the application area at settlement. According to the Historical Report, he observed:

> …[the man] amused me very much by his curious method of diving to the bottom of the river in search of coberra, the large white worms resembling boiled macaroni, which abound in immersed wood. He swam to the center of the river with a tomahawk in his hand, and then breathing hard that his lungs might be collapsed, he rendered his body and tomahawk specifically heavier than water, and sand feet foremost to the bottom – the Historical Report at [24].

[105] Throughout the material, there is information about the way in which the intergenerational transfer of knowledge is a key element of the system of laws and customs acknowledged and observed by the Gumbaynggirr People. For example, one claimant states:

> The things I know have been handed down to me from my grandparents, parents and aunties and uncles. They were the ones who taught me that we are from this place and we should look after it. They taught me about our laws and customs and how they have been handed down by the old people, generation after generation. We still follow our law. It's not like white man's law; our law has been here all the time – affidavit of Barry Phyball at [52].

[106] In light of this material, I consider it reasonable to infer that the material asserts laws and customs, including methods and techniques by which resources are obtained, to have been passed down to the claimants through the generations from their ancestors at settlement in the

area. I note that claimants are able to recite the names of the individuals for each of the generations back to the ancestor from whom they have descended and in my view, this information supports a strong pattern of intergenerational transfer of knowledge as an aspect of Gumbaynggirr laws and customs. I consider that this intergenerational transfer of knowledge, further supports a system of laws and customs today that in substance appears unchanged from the system of laws and customs acknowledged and observed by the Gumbaynggirr people at settlement.

[107] Another example in the material before me of laws and customs acknowledged and observed today that closely resemble or mirror the laws and customs of the Gumbaynggirr People at settlement in the area asserted by the material, is seen in the following statement by a member of the claim group. He says:

> When Farringdon Field was built the Gumbaynggirr people went into horrors about it, and kicked up a huge stink. That place is no good for women and children because there was a bora ring where the field is, and just up on the top of the hill opposite there is the Diamond Tree.
>
> Looking after that site and protecting the women and children by stopping them going there was the most important thing to us. That includes protecting the white women and kids, not just the Gumbaynggirr people – affidavit of Barry Phyball at [62] and [63].

[108] From this statement, it is my understanding that members of the claim group seek to restrict access to places within the application area and the wider Gumbaynggirr country, because of a real fear that harm may come to persons who trespass on that area. Elsewhere, the material speaks of a belief among claimants that the spirits of their ancestors and other ghost-like creatures inhabit the landscape of Gumbaynggirr country and can inflict harm upon anyone who lacks a detailed knowledge of the correct behaviours and rules relating to access to and use of an area – the Anthropological Report at [702] to [706]. In their affidavits, claimants explain that their predecessors taught them these rules and behaviours – affidavit of Margaret Boney [deceased] at [3].

[109] From this information, therefore, I consider it reasonable to infer the material asserts that the Gumbaynggirr People, as owners of the area in accordance with their traditional laws and customs, seek to regulate access to their country, on the basis of a need to protect visitors from spiritual harm. In my view, this aspect of Gumbaynggirr law and custom regarding regulation of access to land is also seen in the information setting out Hodgkinson's observations of violence between the Gumbaynggirr ancestors and white settlers that followed the encroachment of the Europeans into parts of Gumbaynggirr country.

[110] From these examples, I consider the factual basis sufficient to support an assertion of a system of laws and customs, handed down through the generations, that is rooted in the laws and customs of a society at settlement in the area. It follows, therefore, that I am satisfied that 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.

[111] The requirement at s 190B(5)(b) is met.

Reasons for s 190B(5)(c)

[112] The assertion at s 190B(5)(c) which I must be satisfied that the factual basis is sufficient to support, is that 'the native title claim group have continued to hold the native title in accordance with those traditional laws and customs'. It is my understanding that the phrase 'those traditional laws and customs' is a direct reference to the laws and customs that the factual basis was required to address in answering the assertion at s 190B(5)(b) – see *Martin* at [29]. Consequently, where the factual basis is not sufficient for the purposes of s 190B(5)(b), I am of the view that it cannot be sufficient to meet the requirement at s 190B(5)(c).

[113] It is my understanding that the requirement at s 190B(5)(c), in dealing with continuity of native title, can be equated with the second element of the meaning given to the term 'traditional laws and customs' by the High Court in *Yorta Yorta*. Therefore, the factual basis must address the way in which the native title claim group have continued to hold their native title rights and interests by acknowledging and observing laws and customs rooted in those of a pre-sovereignty society, in a 'substantially uninterrupted' way – see *Yorta Yorta* at [47] and [87].

[114] In *Gudjala 2007*, Dowsett J's comments suggest the factual basis may need to address the following in order to satisfy the requirement at s 190B(5)(c):

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

[115] I have already addressed above at s 190B(5)(b), the reasons for which I am satisfied that the factual basis is sufficient to support an assertion of a society at settlement in the area acknowledging and observing laws and customs from which current Gumbaynggirr laws and customs are derived. I have also set out the reasons for which I am satisfied the factual basis is sufficient to support an assertion of the intergenerational transfer of knowledge about laws and customs being a key aspect of Gumbaynggirr laws and customs.

[116] A number of matters addressed in the material have allowed me to form the view that the factual basis is sufficient to support a system of laws and customs that has had a continuous existence and vitality since settlement – see *Yorta Yorta* at [47]. Firstly, I consider there is relatively detailed information before me that speaks to the generations of Gumbaynggirr People following

the apical ancestors who occupied the application area and broader Gumbaynggirr country around the time of settlement. Both the Historical Report and the Anthropological Report give information about the children, grandchildren and great grandchildren of the apical ancestors, including where they were born, where they lived, who they married and when, where they were buried, and events that they were associated with. From my consideration of this material, I consider it clear that the descendants of the Gumbaynggirr apical ancestors, since sovereignty and to the present day, have continued to occupy the area identified as Gumbaynggirr country (including the application area) and exercise laws and customs in relation to that area.

[117] For example, the Historical Report provides (at [165]):

> [Name removed] daughter of King Ben Bennelong, enforced cultural practices among her daughters in the 1930s such as not walking in front of cousins. She also talked about who could marry whom according to the rules. Her daughter [name removed] recalled in 1980 that:
>
> > For a long time we couldn't walk in front of our cousins – even at Burnt Bridge till we got in the white ways. It was very strict. Mum used to talk about who could marry in the old rules.

[118] Another example of the material that I consider supports the continuity of native title held pursuant to traditional laws and customs is the information pertaining to the pro-activity of the members of the claim group today in acknowledging and observing laws and customs. For example, one claimant (the great grand-daughter of apical ancestor King Ben Bennelong) explains how as a child she spent periods of her childhood at the second headland at Urungu (in the application area) with her father. She states that during that time, her father taught her significant sites for the area, how to gather natural resources from the area, and places she was restricted from visiting – affidavit of Margaret Boney-Witt [deceased] at [7] to [8]. Further in her affidavit, the claimant explains that she moved permanently back to a camp at that place ten years ago, and continues to gather resources from the area for food, as well as taking younger Gumbaynggirr people out into the surrounding bushland to teach them about their country and laws and customs – at [11] to [12] and [20].

[119] From this material, I consider it reasonable to infer the information to assert that laws and customs have been acknowledged and observed by the group and their predecessors, since settlement, and without substantial interruption.

[120] In light of the material described above, therefore, I am satisfied that the factual basis is sufficient to support an assertion of a system of laws and customs that has had a continuous existence and vitality since settlement. Consequently, I am satisfied that the factual basis is sufficient to support an assertion that the native title claim group have continued to hold the native title in accordance with their traditional laws and customs.

[121] The requirement at s 190B(5)(c) is met.

Conclusion

[122] The application satisfies the condition of s 190B(5) because the factual basis provided is sufficient to support each of the particularised assertions in s 190B(5).

Subsection 190B(6)
Prima facie case

> The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.

[123] The relevant standard for the test at s 190B(6) regarding whether rights and interests can be established, is 'prima facie'. In *Doepel*, Mansfield J held that there was no need to depart from the ordinary meaning of the phrase adopted by the High Court in *North Ganalanja Aboriginal Corporation v Queensland* [1996] HCA 2 – *Doepel* at [134]. That meaning is, 'at first sight; on the face of it; as appears at first sight without investigation'.

[124] In affirming this approach, Mansfield J further held that, 'if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis' – at [135].

[125] I note that there is no requirement that every single one of the rights and interests claimed satisfy the requirement at s 190B(6), and that even where only some of the native title rights and interests can be, prima facie, established, the condition will still be met – *Doepel* at [16].

[126] I do consider, however, that in order for a right or interest to be, prima facie, established, it must truly be of the nature of a 'native title right or interest'. The definition of 'native title rights and interests' appears at s 223(1) as follows:

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

[127] Consequently, I am of the view that the rights and interests must be shown to be: possessed under the traditional laws and customs of the group; rights and interests in relation to land or waters, and; rights and interests that have not been extinguished over the entirety of the application area.

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

Consideration

Right to exclusive possession

[129] 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].

[130] Since *Ward*, there have been a number of cases that have also considered the substance of such a right. From these cases, the following principles have emerged:

- 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].

[131] In my view, the material speaks to these aspects of a right to exclusive possession. For example, regarding the right to speak for country and to be 'asked permission', one claimant states:

> I have the right to speak for my country and younger Gumbaynggirr people and outsiders (including white people) ask me for permission to do certain things – affidavit of Margaret Boney-Witt [deceased] at [10].

[132] Elsewhere this claimant states:

> The Buchanans won't fish and worm on this beach which is only for the Kellys and the Boneys. They will first ask for permission because they respect that it is someone else's territory. Their area goes as far as Valla Beach and ours is this side of Valla Beach. In the same way, I won't go to their territory without permission. Aboriginal people don't go barging into other people's territory – at [19].

[133] Regarding the way in which members of the native title claim group assert to act as 'gatekeepers for the purpose of preventing harm and avoiding injury to country', one claimant states:

> When Farringdon Field was built the Gumbaynggirr people went into horrors about it, and kicked up a huge stink. That place is no good for women and children because there was a bora ring where the field is, and just up on the top of the hill opposite there is the Diamond Tree.
>
> Looking after that site and protecting the women and children by stopping them going there was the most important thing to us. That includes protecting the white women and kids, not just the Gumbaynggirr people – affidavit of Barry Phyball at [62] and [63].

[134] In light of this type of material before me, therefore, I consider the right to exclusive possession is prima facie, established.

Non-exclusive rights and interests

(a) *Right to access, to remain on, traverse and to use those areas*

[135] The following statement is an example of the material before me addressing this right:

> There was a mob of about half a dozen Gumbaynggirr families who would camp during the colder months up on the ridge overlooking the Bellingen tip and the Bellingen Valley (on the back track that runs between Bowraville and Bellingen), but would then spend the warmer months – when the fish were running – camping at certain places between Hungry Head and Oyster Creek. I remember the group who lived there included some Flanders, some Kellys and maybe some Harveys. All Gumbaynggirr families – affidavit of Barry Phyball at [18].

[136] From this statement and others within the material, it is clear that the predecessors of the Gumbaynggirr people, including at settlement, travelled across and throughout the application area, camping as they went. This travel included following old Aboriginal walking tracks. From the material, I understand claimants to consider this access to and movement through places to be their right pursuant to their traditional laws and customs, passed down to them by their elders.

[137] Therefore, I consider the right of the native title claim group to access, remain on, traverse and use the application area is, prima facie, established.

(b) *Right to access natural resources in those areas and to take, use, share and exchange those natural resources for any purpose*

[138] Again, the following statement is an example of the material before me that I consider speaks to this right:

> To get cobra [wood worms], we dive in the river and pick up logs. You bring the logs onto the bank and split it with a wagaal (axe). When you split the log you find the cobra.
>
> We usually cook them in boiling water. We'll take a billy can to cook him in, and after you boil them in the water for [how long?] you can drink the water and eat the cobra. Then you share it with your family – affidavit of Barry Phyball at [76] to [77].

[139] And also the following statement by a claimant:

> As a Gumbaynggirr man I have the right to go and catch these things and eat them with my family, I don't need anyone's permission. My kids can do this and their kids too.
>
> Not only animals and plants for food, but we also have always used the trees and rocks for our tools, and our homes weapons. We can't waste things and I don't like cutting down trees for no reason, but if you're using it for a spear or a house then we can do that in our law – affidavit of Barry Phyball at [95] to [96].

[140] There are numerous accounts in the material of the way in which the claimants and their predecessors have accessed resources within the application area for uses including food, weapons, and housing materials. From the statement above, it is also clear that claimants use and share these resources pursuant to their traditional laws and customs.

[141] Regarding a right to exchange resources from the application area, the Anthropological Report speaks of one senior Gumbaynggirr woman who gathered worms for her bait shop – at [625]. The Anthropological Report also speaks of the right of the claimants as primary landholders as being a broad one, whereby resources can be taken for any purpose – at [621].

[142] On that basis, I consider the right to access natural resources in the area and to take, use, share and exchange those natural resources for any purpose is, prima facie, established.

(c) *Associated non-exclusive rights and interests*

[143] Following the two rights set out above, paragraph [2.(c)] of Schedule E states: 'without limiting the generality of (a) and (b) above…', and then sets out a list of 12 rights and interests that can be associated with the more broader rights expressed in subsections (a) and (b). It is my view that those rights and interests listed below merely describe the types of activities that can be associated with, and that would be carried out pursuant to, the broader rights expressed in subparagraphs (a) and (b). Notwithstanding this, having considered the material before me, I am satisfied that it speaks to each of those rights and interests in subparagraph (c), such that I consider them, prima facie established. I have set out the rights and interests appearing at subparagraph (c) below and for each one provided a reference to a particular part of the material that speaks to the right or interest:

- the right to hunt on, and gather natural resources from, those areas – the Historical Report at [21];
- the right to fish in those areas – affidavit of Barry Phyball at [68];
- the right to take and use water on those areas – affidavit of Margaret Boney-Witt [deceased] at [18];
- the right to live on those areas – affidavit of Margaret Boney-Witt [deceased] at [11];
- the right to camp, and for that purpose to erect shelters and other structures, on those areas – affidavit of Barry Phyball at [10] to [14];
- the right to light fires on those areas for domestic purposes – the affidavit of Margaret Boney-Witt [deceased] at [16];

- the right to conduct and to participate in cultural and religious activities, practices and ceremonies, including the conduct of burials, on those areas – the Historical Report at [120], [174];
- the right to conduct and to participate in meetings on those areas – affidavit of Barry Phyball at [56];
- the right to teach the physical, cultural and spiritual attributes of places and areas of importance or significance under traditional laws and customs on those areas – affidavit of Margaret Boney-Witt [deceased] at [20];
- the right to maintain and to protect from physical harm or desecration, places and areas of importance or significance under traditional laws and customs on those areas – affidavit of Barry Phyball at [56];
- the right to share and exchange the natural resources of those areas – affidavit of Barry Phyball at [77];
- the right to manage the natural resources of those areas – the Anthropological Report at [626] and [633]; affidavit of Barry Phyball at [96].

[144] Consequently, it is my view that the material addresses all of the rights listed above and set out in Schedule E. Further, having considered that material, it is my view that it is sufficient to allow me to consider all of those rights and interests, prima facie, established.

(d) *Right to be accompanied onto those areas by specified persons who are not native title holders*

[145] Schedule E specifies that the non-native title holders referred to include spouses, partners or parents of the claimants, and their children and grandchildren. Such persons also include those required under traditional laws and customs for the performance of cultural activities and ceremonies, and persons requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.

[146] In my view, the material does speak to this right possessed by the claimants. For example, one claimant explains that her father 'was originally from the Clarence River', but after marrying her mother, he spent the rest of his life in Urunga – affidavit of Margaret Boney-Witt [deceased] at [4]. Elsewhere, one claimant explains how he took part in a survey on his country conducted by an anthropologist who was preparing a report for an environmental impact statement. This survey involved the claimant sharing with the anthropologist one of the Gumbaynggirr cultural stories about the area – affidavit of Barry Phyball at [56].

[147] In light of this information before me, I consider a right of the claimants to be accompanied onto the claim area by non-native title holders is, prima facie, established.

Conclusion

[148] The application satisfies the condition of s 190B(6).

Subsection 190B(7)
Traditional physical connection

> The Registrar must be satisfied that at least one member of the native title claim group:
> (a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application, or
> (b) previously had and would reasonably be expected to currently have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to the land or waters) by:
> (i) the Crown in any capacity, or
> (ii) a statutory authority of the Crown in any capacity, or
> (iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease.

[149] In *Gudjala 2007*, Dowsett J commented on the approach of the delegate at s 190B(7) in the case before him in the following way:

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

[150] Consequently, it is my understanding that the material addressing the requirement at s 190B(7) must show how the physical connection asserted is in accordance with the laws and customs of the group which have their origin in the laws and customs of a pre-sovereignty society. It flows from this, that where the factual basis is insufficient to support the assertion at s 190B(5)(b), it may be that the material is unable to show the traditional physical connection required at s 190B(7).

[151] In *Yorta Yorta* (at [184]), the High Court indicated that an actual presence on land may be required at s 190B(7). I note that this is supported by the explanatory memorandum to the Native Title Amendment Bill 1997, which provides that the connection 'must amount to more than a transitory access or intermittent non-native title access' – at [29.19].

[152] Mansfield J, in *Doepel*, gave further guidance to the task of the Registrar's delegate at 190B(7), when His Honour held that '[s]ection 190B(7) imposes a different task upon the Registrar. It does require the Registrar to be satisfied of a particular fact or particular facts. It therefore requires evidentiary material to be presented to the Registrar' – at [18]. Further, His Honour held that such material was not to be approached as evidence at a hearing, but merely that the condition requires 'some measure of substantive (as distinct from procedural) quality control upon the application if it is to be accepted for registration' – at [18].

[153] Noting that the focus of the condition is upon at least one member of the native title claim group, I have turned my focus to one member, being Mr Barry Phyball.

[154] In his affidavit sworn pursuant to s 62(1)(a), Mr Phyball states that he is a member of the claim group through his descent from Dave Ballangarry; Biddy, the mother of Lavina Duncan; Darby Kelly and; The Father of Maggie Kelly's mother Biddy. These are four of the apical ancestors named in Schedule A of the application. Consequently, I am satisfied that Mr Phyball is a member of the native title claim group.

[155] In his affidavit at Attachment F(1), Mr Phyball refers to himself as a Gumbaynggirr elder, and talks about the time he has spent on the application area, saying:

> We walked all the way to Bowraville. We followed the old Aboriginal walking track through Thumb Creek, and Point Lookout. It took a while, but those old ladies with us were in no rush. We went over the mountain range through Bellingen, which is to the north of Bowraville – at [17].

[156] Another statement Mr Phyball makes about his physical connection with the application area is where he says:

> On weekends and holidays, we used these Aboriginal walking tracks and I walked to meet with my father and we'd walk from Valla to Deep Creek and Oyster Creek and Dalhousie to fish. This would take about a day, maybe a day and a half. We would often camp there near the waterways, near Oyster Creek. I remember the Paceys used to camp at Dalhousie too – at [29].

[157] And further, he states:

> Also in the late 1990's or early 2000's, when there was a proposal to build a new housing estate right near McGrath's Creek, I took part in a survey conducted by the archaeologist John Appleton, who was preparing a report for the developer's environmental impact statement. By revealing some of the story about the Nungu (kangaroo), myself and other Gumbaynggirr men [names removed] were able to argue for a buffer zone that kept the proposed estate a respectable distance from the creek – at [56].

[158] I consider it clear, therefore, from these statements, that Mr Phyball has had a physical connection with the application area. He also talks about time he spends in the area today, visiting family at Nambucca Heads – at [42] and [43].

[159] From my consideration of this material, it is my view that this physical connection can be said to be traditional. I have discussed in my reasons above at s 190B(5)(b) the way in which the obligation of the members of the claim group to protect their country and regulate access to significant sites within that country forms a key part of Gumbaynggirr traditional law and custom, having been passed down to claimants by their elders in accordance with traditional patterns of teaching. Mr Phyball talks in his affidavit about the way his grandparents, aunties and

uncles passed on information to him as a child about his country and the need to protect it while out on country camping and fishing – for example at [52] and [68]. I understand, therefore, that Mr Phyball's connection with the area is in accordance with the traditional laws and customs of the Gumbaynggirr People.

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

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

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

> The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s 61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.
> Section 61A provides:
> (1) A native title determination application must not be made in relation to an area for which there is an approved determination of native title.
> (2) If:
> (a) a previous exclusive possession act (see s 23B) was done in relation to an area; and
> (b) either:
> (i) the act was an act attributable to the Commonwealth; or
> (ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in s 23E in relation to the act;
> a claimant application must not be made that covers any of the area.
> (3) If:
> (a) a previous non-exclusive possession act (see s 23F) was done in relation to an area; and
> (b) either:
> (i) the act was an act attributable to the Commonwealth, or
> (ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in s 23I in relation to the act;
> a claimant application must not be made in which any of the native title rights and interests claimed confer possession, occupation, use and enjoyment of any of the area to the exclusion of all others.
> (4) However, subsection (2) or (3) does not apply to an application if:
> (a) the only previous exclusive possession act or previous non-exclusive possession act concerned was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made; and
> (b) the application states that section 47, 47A or 47B, as the case may be, applies to it.

[162] In the reasons below, I look at each part of s 61A against what is contained in the application and accompanying documents and in any other information before me as to whether the application should not have been made.

Section 61A(1)

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

Section 61A(2)

[164] 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 provides that native title rights and interests are not claimed in respect of any area to which Section 23B of the Act applies. I note that section 23B sets out the definition of 'previous exclusive possession act'. I understand, therefore, that the application does not include areas subject to previous exclusive possession acts.

Section 61A(3)

[165] 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 of the application includes a claim to a right of exclusive possession. Schedule E provides further clarification, however, stating that where there are areas subject to a previous non-exclusive possession act, the native title rights and interests claimed (including both exclusive and non-exclusive) are claimed subject to the rights and interests granted under the previous non-exclusive possession act.

Conclusion

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

Subsection 190B(9)
No extinguishment etc. of claimed native title

> The application and accompanying documents must not disclose, and the Registrar/delegate must not otherwise be aware, that:
> (a) a claim is being made to the ownership of minerals, petroleum or gas wholly owned by the Crown in the right of the Commonwealth, a state or territory, or
> (b) the native title rights and interests claimed purport to exclude all other rights and interests in relation to offshore waters in the whole or part of any offshore place covered by the application, or
> (c) in any case, the native title rights and interests claimed have otherwise been extinguished, except to the extent that the extinguishment is required to be disregarded under ss 47, 47A or 47B.

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

Section 190B(9)(a)

[168] Schedule Q states that the native title claim group does not claim ownership of minerals, petroleum or gas wholly owned by the Crown, as referred to in Schedule E.

Section 190B(9)(b)

[169] Schedule P provides that the native title claim group does not claim exclusive possession of all or part of any offshore place.

Section 190B(9)(c)

[170] I do not consider that there is anything within the terms of the application or accompanying documents indicating that the native title rights and interests claimed have otherwise been extinguished.

Conclusion

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

[*End of reasons*]

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Gumbaynggirr People
NNTT file no.	NC1998/015
Federal Court of Australia file no.	NSD6104/1998

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:

3 June 1998

Date application entered on Register:

3 June 1998

Applicant:

Barry Phyball, Larry (Laurie) Kelly, Richard Pacey, Christine Witt, Marion Witt, Frances Witt

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:

[As per the Schedule – all native title rights and interests satisfy s 190B(6)]

[End of document]