

Registration Decision

Application name	Colin Freddie and Ors on behalf of the Kankawarla, Kanturrpa, Kurtinja, Patta, Pirrtangu, Purrurtu & Warupunju Landholding Groups and Northern Territory of Australia (Tennant Creek Pastoral Lease)
Name of applicant	Colin Freddie, Ian Waistcoat, Jeffrey Foster, Michael Jones, Mick Murphy, Norman Frank, Ronald Brown, Rose Graham
Federal Court of Australia No.	NTD48/2017
NNTT No.	DC2017/003
Date of Decision	24 November 2017
Date of reasons	7 December 2017

Claim accepted for registration

I have decided that the claim in the Tennant Creek Pastoral Lease application satisfies all of the conditions in ss 190B and 190C of the *Native Title Act 1993* (Cth).¹ Therefore the claim must be accepted for registration and entered on the Register of Native Title Claims.

Lisa Jowett

*Delegate of the Native Title Registrar*²

¹ All legislative sections are from the *Native Title Act 1993* (Cth) (the Act), unless stated otherwise.

² 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 23 August 2017 and made pursuant to s 99 of the Act.

Reasons for Decision

CASES CITED

Gudjala People #2 v Native Title Registrar [2007] FCA 1167 (*Gudjala 2007*)

Gudjala People # 2 v Native Title Registrar (2008) 171 FCR 317; [2008] FCAFC 157 (*Gudjala 2008*)

Gudjala People #2 v Native Title Registrar [2009] FCA 1572 (*Gudjala 2009*)

Members of the Yorta Yorta Aboriginal Community v Victoria (2002) 214 CLR 422; [2002] HCA 58 (*Yorta Yorta*).

Northern Territory of Australia v Doepel (2003) 133 FCR 112; [2003] FCA 1384 (*Doepel*)

BACKGROUND

- [1] The Tennant Creek Pastoral Lease native title determination application is filed on behalf of seven landholding groups of Warumungu and Warlmanpa territory. It covers the land and waters of Tennant Creek perpetual pastoral lease, and is comprised of two separate areas to the east and west of the township of Tennant Creek.
- [2] The Registrar of the Federal Court (the Court) gave a copy of the application and accompanying affidavits to the Native Title Registrar (Registrar) on 4 October 2017 pursuant to s 63 of the Act. This has triggered the Registrar's duty to consider the claim made in the application for registration in accordance with s 190A³.

Registration conditions

- [3] Sections 190A(1A), (6), (6A) and (6B) set out the decisions available to the Registrar under s 190A. Subsection 190A(1A) provides for exemption from the registration test for certain amended applications and s 190A(6A) provides that the Registrar must accept a claim (in an amended application) when it meets certain conditions. Section 190A(6) provides that the Registrar must accept the claim for registration if it satisfies all of the conditions of s 190B (which deals mainly with the merits of the claim) and s 190C (which deals with procedural and other matters). Section 190A(6B) provides that the Registrar must not accept the claim for registration if it does not satisfy all of the conditions of ss 190B and 190C.
- [4] The claimant application was made on 3 October 2017 and has not been amended. I am therefore satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply.
- [5] I have decided that the claim in the application must be accepted for registration and this document sets out my reasons for that decision.

Information considered

- [6] Section 190A(3) sets out the information to which the Registrar must have regard in considering a claim under s 190A and provides that the Registrar 'may have regard to such other information as he or she considers appropriate'.
- [7] I have had regard to information in the application and accompanying affidavits.⁴

³ See 190A(1).

⁴ See s 190A(3)(a).

- [8] I note there is no information before me obtained as a result of any searches conducted by the Registrar of State/Commonwealth interest registers.⁵
- [9] The Northern Territory Government has not provided any submissions in relation to the application of the registration test.⁶
- [10] I have considered information contained in a geospatial assessment and overlap analysis dated 16 October 2017 prepared by the Tribunal's Geospatial Services in relation to the area covered by the application, (the geospatial report).

Merits of the claim (s 190B) – Conditions met

Identification of area subject to native title – s 190B(2): condition met

- [11] For the application to meet the requirements of s 190B(2), the Registrar must be satisfied that the information and map contained in the application identify with reasonable certainty the 'particular land and waters' where native title rights and interests are claimed. The two questions for this condition are whether the information and map provides certainty about:
- (a) the external boundary of the area where native title rights and interests are claimed; and
 - (b) any areas within the external boundary over which no claim is made.⁷

Description of the area covered by the application

- [12] Schedule B describes the area covered by the application referring to nine (9) parcels, identified by NT Portion number. To describe those areas not covered by the application Schedule B lists a number of specific exclusions: areas within three (3) NT Portions, identified by NT Portion Numbers and three (3) sections of road identified by name and NT Portion traversed. It also includes a statement excluding any other areas in relation to which a previous exclusion possession act has been done.
- [13] Schedule C refers to Attachment A which is a colour map prepared by the Central Land Council, titled 'Tennant Creek PPL Native Title Determination Application', dated 23 June 2017. The map shows the application area depicted with bold green outline and green hatching, tenure, depicted as described in the legend, communities, roads and railway, identified by name, three (3) insets, scalebar, northpoint, and coordinate grid (MGA Zone 53), and notes relating to the source, currency and datum of data used to prepare the map.

Consideration

- [14] The information in relation to the external boundaries of the area covered by the application allows me to identify the location of those boundaries on the surface of the earth. The specific exclusions (noted above) provide added certainty as to the identification of those boundaries. The general exclusion statement used to describe other areas not covered by the application is, in my view, sufficient to offer an objective mechanism by which to identify areas that would fall within the categories listed.

⁵ See s 190A(3)(b).

⁶ See s 190A(3)(c).

⁷ *Doepel* at [122].

[15] The geospatial report makes the assessment that the description and the map are consistent such that the area covered by the application is readily identifiable. I agree with that assessment. I am therefore satisfied that the external boundary is identifiable and, along with the general and specific exclusions that set the internal boundaries, that it can be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

[16] I am satisfied the claim meets the requirements of s 190B(2). The information provided about the external boundary and internally excluded areas are sufficient to identify with reasonable certainty the particular land or waters over which native title rights and interests are claimed.

Identification of the native title claim group – s 190B(3): condition met

[17] Schedule A of the application does not name the persons in the native title claim group but contains a description of that group, being the basis for its composition. It is therefore necessary to consider whether the application satisfies the requirements of s 190B(3)(b). I note the comments of Mansfield J in *Doepel* that the focus of s 190B(3)(b) is:

- whether the application enables the reliable identification of persons in the native title claim group; and is
- not on ‘the correctness of the description . . . but upon its adequacy so that the members [sic] of any particular person in the identified native title claim group can be ascertained’⁸.

[18] Carr J in *Western Australia v Native Title Registrar* was of the view that ‘it may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described. But that does not mean that the group has not been described sufficiently’.⁹

[19] The description of the native title claim group is a long and complex one. The identification of the native title claim group is in relation to membership of landholding (estate) groups and the possession of rights and interests in land. There are essentially two grounds governing the membership of the native title claim group:

- descent (by birth relationship or adoption) from the named and unnamed ancestors (those named being the uppermost generation of the known ancestors);¹⁰ and
- for those not descended from these ancestors, membership can be recognised by senior members of the group on the basis of non-descent connection—birth in an estate; long-term residence in an estate; possession of traditional spiritual knowledge, authority status and responsibility for an estate, specifically sites and their mythology; and seniority in traditional matters concerning the claim group and/or the estate.¹¹

[20] I note that the seven estate areas (landholding groups) connected to the country covered by the application, which together comprise the native title claim group, are: Kankawarla, Kanturrpa, Kurtinja, Patta, Pirttangu, Purrurtu and Warupunju.

⁸ *Doepel* at [51] and [37].

⁹ At [67].

¹⁰ See Schedule A at [7(a)].

¹¹ See Schedule A[7(b)] and [9].

[21] Paragraphs 1 to 6 of Schedule A provide contextual information about the regional society, the areas of land and waters affiliated with each landholding group, and other such matters. The statements at paragraphs 9 to 13 relate to the basis on which members of the native title claim group possess rights and interests in land, including regulation of rights and interests in relation to the particular estate areas. These, in my view, do not go to identifying the native title claim group but go to clarifying or qualifying how rights and interests are held by the claim group. They are, in summary:

- whilst rules in relation to succession exist under the native title claim group’s traditional law and custom, there are no instances of succession in relation to the area covered by the application—at [10];
- possession of rights and interests is at its widest range for those whose connection to country is based on descent (that is, descent connection through father’s father and mother’s father)—at [11]-[12];
- more limited rights and interests in land are possessed by those members with non-descent connection to country—at [13];
- members of the claim group may be members of more than one estate (for example, through different grandparental links to multiple estates)—at [14].

[22] I note that the description provides that descent from an ancestor is ‘by birth or adoption’—at [7(a)]. The application does not provide any qualification that indicates whether adoption is according to traditional laws and customs, Australian law or otherwise. In my view, I can accept a description that provides for membership of the group by adoption without specific criteria to define the process. In this case, membership of landholding groups appears to be strictly governed and this is clearly articulated in the information about the claim group’s traditional laws and customs. In my view, it would follow that recruitment by adoption will be regulated to the same degree. I do not believe that it is for me to question the means by which adoption criteria is applied by the group in the context of a decision about registration. It is sufficient for me to understand that a person is a member of the claim group if he/she falls within the two principles outlined above, which may include adoptive descent.

[23] It may be that some factual inquiry is required to ascertain how members of the claim group are descended from the named apical ancestors or how a person is affiliated with a particular estate group or groups. However, this would not mean that the group has not been sufficiently described. In my view, the description of the group is capable of being readily understood and is sufficiently clear so that it can be ascertained whether any particular person is in that group.

[24] I am satisfied the claim meets the requirements of s 190B(3). Schedule A describes the persons in the native title claim group sufficiently clearly so that it can be ascertained whether any particular person is in that group.

Identification of claimed native title – s 190B(4): condition met

[25] Section 190B(4) requires the Registrar to be satisfied that the description of the claimed native title rights and interests contained in the application is sufficient to allow the rights and interests to be identified—*Doepel* at [92]. In *Doepel*, Mansfield J refers to the Registrar’s consideration.

The Registrar referred to s. 223(1) and to the decision in Ward. He recognised that some claimed rights and interests may not be native title rights and interests as defined. He identified the test of identifiability as being whether the claimed native title rights and interests are understandable and have meaning. There is no criticism of him in that regard— at [99].

[26] On this basis, for a description to be sufficient to allow the claimed native title rights and interests to be readily identified, it must describe what is claimed in a clear and easily understood manner. Schedule E of the application contains the description, as required by s 62(2)(d), of native title rights and interests claimed in relation to the area covered by the application:

1. The native title rights and interests of the native title holders are the non-exclusive native title rights and interests possessed under and exercisable in accordance with the traditional laws acknowledged and traditional customs observed, including the right to conduct activities necessary to give effect to them, being:
 - (a) the right to access and travel over any part of the land and waters;
 - (b) the right to live on the land, and for that purpose, to camp, erect shelters and other structures;
 - (c) the right to hunt, gather and fish on the land and waters;
 - (d) the right to take and use the natural resources of the land and waters;
 - (e) the right to access, take and use natural water on or in the land, except water captured by the holder of a pastoral lease;
 - (f) the right to light fires for domestic purposes, but not for the clearance of vegetation;
 - (g) the right to share or exchange natural resources obtained on or from the land and waters, including traditional items made from the natural resources.
 - (h) the right to access and to maintain and protect sites and places on or in the land and waters that are important under traditional laws and customs;
 - (i) the right to conduct and participate in the following activities on the land and waters:
 - i. cultural activities;
 - ii. ceremonies;
 - iii. meetings;
 - iv. cultural practices relating to birth and death including burial rites;
 - v. teaching the physical and spiritual attributes of sites and places on the land and waters that are important under traditional laws and customs;
 - (j) the right to make decisions about the use and enjoyment of the land and waters by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the native title holders provided that the right does not extend to making any decision that purports to control the access of such persons to the determination area;
 - (k) the right to be accompanied on the land and waters by persons who, though not native title holders, are:
 - i. people required by traditional law and custom for the performance of ceremonies or cultural activities on the land and waters;
 - ii. people who have rights in relation to the land and waters according to the traditional laws and customs acknowledged by the native title holders;
 - iii. people required by the native title holders to assist in, observe, or record traditional activities on the areas

[27] When read together with the description at Schedule B of the area covered by the application, I am of the view that the native title rights and interests claimed can be ‘properly understood’. There is also ‘no inherent or explicit contradiction’ in the description which prevents me from reaching the level of satisfaction required by s 190B(4).¹²

¹² Doepel at [123].

[28] 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.

Factual basis for claimed native title – s 190B(5): condition met

[29] For the application to meet this merit condition, I must be satisfied that a sufficient factual basis is provided to support the assertion that the claimed native title rights and interests exist and to support the particularised assertions in paragraphs (a) to (c) of s 190B(5). In *Doepel*, Mansfield J stated that:¹³

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].

[30] The decisions of Dowsett J in *Gudjala People # 2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*) and *Gudjala People #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala 2009*) also give specific content to each of the elements of the test at ss 190B(5)(a) to (c). The Full Court in *Gudjala FC*, did not criticise generally the approach that Dowsett J took in relation to these elements in *Gudjala 2007*, including his assessment of what was required within the factual basis to support each of the assertions at s 190B(5). His approach in *Gudjala 2009* was consistent with the approach he took in *Gudjala 2007*.

[31] Arising from these decisions are clear principles which guide the Registrar when assessing the sufficiency of a claim’s factual basis:

- the applicant is not required ‘to provide anything more than a general description of the factual basis’—*Gudjala FC* at [92];
- the nature of the material provided need not be of the type that would prove the asserted facts—*Gudjala FC* at [92]; and
- the Registrar is not to consider or deliberate upon the accuracy of the information/facts asserted—*Doepel* at [47].

Information considered

[32] Schedules A (description of the native title claim group), F (a detailed general description), G (activities undertaken) and M (traditional physical connection) contain the factual basis material on which the claim in the application relies. The seven affidavits of the persons comprising the applicant (the claimant affidavits) relate detailed information as to their connection to country, the group’s past and current occupation, activities undertaken in the claim area and members of the native claim group rights and responsibilities under its traditional laws and customs.

Section 190B(5)(a)

[33] This subsection requires that I be satisfied that the factual basis is sufficient to support the assertion that the native title claim group has, and its predecessors had, an association with the

¹³ This was approved by the Full Court in *Gudjala People #2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala FC*) at [82] to [85].

area of the application. It is not necessary for the factual basis to support an assertion that all members of the native title claim group have an association with the area all of the time. However, it is necessary that the material before the Registrar shows cumulatively an association between the whole group and the whole area of the claim—*Gudjala (2007)* at [51] and [52]. Further, Dowsett J also observed:

Similarly, there must be evidence as to such an association between the predecessors of the whole group and the area over the period since sovereignty—at [52].

[34] I note that many of the deponents have spoken of events and activities undertaken at or around Tennant Creek, Tennant Creek Station or the Tennant Creek Telegraph Station. All of these locations are situated in close proximity to the application area, and in my view, it is reasonable to infer that living there, travelling to, or carrying out activities there would likely involve the surrounding area inclusive of the application area.

Association of the native title claim group with the application area

[35] Schedule F, with reference to Schedules G and M, includes the statement that ‘members of the native title claim group have maintained their connection with the application area... notwithstanding the presence and activities of non-Aboriginal people in the region’—at [19]. It is stated that members of the native title claim group ‘have a connection with the application area based on knowledge received from ancestors, personal experience and their continuing acknowledgement and observance of traditional laws and customs’—at [18(d)].

[36] Throughout the claimant affidavits there are detailed examples of members of the native title claim group, in their landholding groups, accessing and carrying out activities within and very near to the application area. In my view, the kinds of interaction and involvement with the application area described are sufficient to support the assertion that the native title claim group currently has an association with the area covered by the application. The claimant affidavits provide the following:

- [name removed], a ‘Warlmanpa person and kurdulungu for Kankawarla and Katurrpa landholdings groups’, describes the Young Men’s Business he undertook and being taught stories, Law and songs in kurdulungurlu country on the application area. He states ‘Today I still take young men out there onto country and teach them the same way’, ‘I still go hunting out on the application area, especially when I take those young men down there after the ceremony to teach them’ and describes those experiences in detail—at [5], [13], [14].
- [name removed], a ‘Warumungu person and mangaya for Kurtinja landholding group, describes being taught about his culture on the application area by his father and others, explains ‘I still go out and look after my country and protect the sacred sites. We go and check the gravel pit at Wangkarirri just inside the application boundary on the southern side of my country’. His knowledge and association with the area is clear from his explanation that ‘when anthropologists are doing research on my country they must come and speak with the right people. I go out and show them my country and tell them the right stories...’—at [13]-[15].
- [name removed] was born at the old Telegraph Station (Tennant Creek Telegraph Station) and ‘grew up around there all the area in the eastern side of the application area’. He says he lived there until ‘we moved up to Phillip Creek Mission’ (approximately 30 kilometres

north of the application area). He explains he still goes hunting on the application area, 'sometimes we still camp out there when our cars work'. They camp mainly at a place on Gosse River (which runs through the application area)—at [12].

Association of the predecessors of the native title claim group with the application area

[37] Schedule F states that the native title rights and interests claimed are held under and exercised in accordance with the traditional laws acknowledged and customs observed by members of the native title claim group and their ancestors, since time immemorial...—at [2]. The claimants speak in their affidavits about their direct knowledge of previous generations living on and carrying out various practices within the application area. They speak about their parents and grandparents who were born, and grew up, on and around pastoral stations and other areas within the application area:

- [name removed] (Warumungu person and *mangaya* for Pirttangu for the Purrurtu landholding group) describes his grandfather's association with the claim area. He walked around everywhere; he worked on all the stations including on Tennant Creek station. He took [name removed]'s father out there and showed him and told him about his country. His grandfather passed away early but 'he gave that songline to someone to look after and to teach my father when he was old enough'—at [8].
- [name removed] also describes camping with his parents on 'my country' with mention of Tarla, and says his father showed him 'all over my country on the application area' (paragraph 10) and describes hunting, and gathering fruits and bush medicine. Regularity is suggested when he says 'we kept coming back to camp on our country and so I would know it more'—at [10].
- [name removed] (who has interests in Kurtinja landholding group, born on Kurundi station and grew up at Ngurratiji community) describes how his grandfather worked on old Utopia Station, how he 'used to go up to Tarla on the application area to check that there was no damage' when looking after country, he used to live at the old Tennant Creek Telegraph station and have 'lots of ceremonies there, not just Young Men's Business, but ceremonies for bush potato and sugarbag and all sorts of bush food to make them plenty'. He explains his father showed him where he went up to the Sugarbag sites on the application area and how we would go to the handover sites of Tarla and Wangkarirri which are 'two places on the application area'—at [9] and [10].
- [name removed] (Warumungu person and kurdungurlu for Warupunju and Patta) describes how his father worked as a police tracker in Tennant Creek and lived at the old Telegraph Station. [name removed] recalls his father would get wood to make spears, boomerangs and coolamon and shields in the application area, and his father and 'old men' took him onto 'my country on the application area' and taught him songs and stories amid camping and travelling around—at [11] and [14].

[38] Many of the claimants have provided in their affidavits the year of their birth and speak about 1-2 generations before them having been born in the vicinity of the application area. For

instance, [name removed] states he was born in 1951, and he speaks of his mother (born on Philip Creek Station and she used to visit her father's country on the application area, his father (born at Philip Creek Mission and would visit Tenant Creek station), his father's mother (a Kanturrpa woman who lived on Philip Creek Station and visited the application area), his mother's father (born around Philip Creek station and grew up around 'all that country' and 'was on the application area'). [name removed] explains he was born in 1950 at the old Telegraph Station and he describes his father (believed to be born around the old Telegraph Station and worked at Tennant Creek), his father's sisters (born around the old Telegraph Station too), his father's mother (living where Waramungu Trust is now – adjacent to the application area – and worked on the old Telegraph Station and living on the application area in the bush). Based on an estimated generation span of 25 years between each generation for [name removed] and [name removed], that could mean their grandparents were born around the late 1800's or early 1900s.

Consideration

- [39] In *Gudjala 2007* Justice Dowsett considered that in assessing the factual basis material, it was necessary for the Registrar to address 'the relationship which all the members claim to have in common in connection with the relevant land'—at [40]. Further to this, the facts alleged must 'support the claim that the identified claim group (and not some other group) held the identified rights and interests (and not some other rights and interests)'—at [39]. The factual basis material should therefore provide information that pertains to the identity of the native title claim group, the predecessors of the group and the nature of their association with the area of the application.
- [40] The seven landholding groups are closely affiliated with seven countries or estates situated in and extending beyond the area covered by the application. Members of the claim group attest to their long and continuing association with these estates, including their interconnected spiritual affiliations with the area covered by the application. The affidavits are replete with examples of the claim group's current association with the seven estates that make up the claim area, with each person attesting to how and where their parents and grandparents and were born, where they lived, worked and travelled. They document that their predecessors travelled all over their country—working on the stations, conducting Law business, camping, hunting and teaching and learning their stories and Dreamings—in exercise of those rights and responsibilities connected to their estates and held under their traditional laws and customs.
- [41] In my view, there is a clear link between the current claim group's and its predecessors' association with the application area to be found in the application and the claimant affidavits. The information in the affidavits demonstrates the claim group's connection to the land and waters of the application area through descent affiliation to one or more of the estates areas. In this way it is clear that this current association has its origins in the preceding generations' association with the area.
- [42] For these reasons I am satisfied that the native title claim group has and its predecessors had an association with the area.

Traditional laws acknowledged and traditional customs observed (s 190B(5)(b))

[43] This subsection requires that I be satisfied that the material before me provides a sufficient factual basis for the assertion that there exist traditional laws acknowledged and customs observed by the native title claim group and that these give rise to the native title rights and interests it claims.

[44] Justice Dowsett considered the requirements of s 190B(5) for a second time in *Gudjala 2009* when he addressed the adequacy of the factual basis underlying an applicant's claim. Relevant to assessing the application's assertions in relation to s 190B(5)(b), in Dowsett J's view, there is a requirement for factual details concerning the pre-sovereignty society and its laws and customs relating to land and waters—at [29]. Therefore, the factual basis for the claim is required to address whether or not the relevant traditional laws and customs that give rise to the claim to native title rights and interests have their origin in a pre-sovereignty, normative system with a substantially continuous existence and vitality since sovereignty. This is the proposition that emerged from the High Court's decision in *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58; (2002) 214 CLR 422 (*Yorta Yorta*), and was relied on by Dowsett J in his *Gudjala 2007* decision—at [26].

[45] In *Gudjala 2007*, Dowsett J considered that the factual basis materials for this assertion must demonstrate¹⁴:

- that the laws and customs currently observed by the claim group have their source in a pre-sovereignty society and have been observed since that time by a continuing society—at [63];
- the identification of a society of people living according to a system of identifiable laws and customs, having a normative content, which existed at the time of sovereignty—at [65] and see also at [66]; and
- the link between the claim group described in the application and the area covered by the application, 'identifying some link between the apical ancestors and any society existing at sovereignty'—at [66].

[46] In the context of the registration test (and explicitly the task at s 190B(5)(b)), there must be factual material capable of supporting the assertion that there are 'traditional' laws and customs acknowledged and observed by the native title claim group, and that they give rise to the claimed native title rights and interests—*Gudjala (2007)* at [62] and [63].

[47] In my view, there is sufficient factual account in the application and affidavits to support the proposition, that under the traditional laws and customs of the claim group, there exist rights and interests that relate to the land and waters of the area covered by the application.

The relevant society

[48] In terms of the relevant society, Schedule F states:

The seven landholding groups whose members comprise the native title claim group are part of a regional society which includes other Warumungu and Warlmanpa landholding groups and neighbouring groups with whom they have a close association, for example, through intermarriage, ceremonial connections and mutual estate recognition. Members of

¹⁴ This was not criticised by the Full Court in *Gudjala FC* (at [71], [72] and [96]).

this society acknowledge and observe a common body of traditional laws and customs—at [3].

[49] The foundation of the traditional laws and customs is described at Schedule F as follows:

There is a communally acknowledged belief amongst members of the society, including the native title claim group, that the physical and cultural landscape, the legal, social, kinship and religious systems and the conditions for their continuity, were established by spiritual ancestors who travelled on, above or below the land in a creative era long ago, terms Wirnkarra in Warumungu (Puwarrijpa in Warlmanpa) and glossed as “The Dreaming” or “Dreamtime”. The claimants’ system of traditional laws and customs has its foundation in the Wirnkarra and is held to be unchanged from the time of its creation and to have been transmitted unchanged to each succeeding generation by the ancestors—at [5].

[50] Schedule F describes the attributes of the Dreaming in detail, which is said to ‘provide an ongoing foundation for the current exercise of rights and interests in relation to land and waters associated with spiritual beliefs’—at [6]. Each claimant confirms in their affidavit that they acknowledge and observe the traditional laws and customs derived from the Wirnkarra/Puwarrijpa (Dreaming). For instance, [name removed]’s speaks in her affidavit:

I acknowledge and observe the traditional laws and customs of the Warumungu people. That law comes from Wirnkarra/Puwarrijpa (‘Dreaming’). According to our traditional law, I have rights and interests in Pirttangu through my father...and his father...who were mangaya for Pirttangu and I am mangaya through them. I am kurdungurlu for Purrurtu through my mother...and her father...—at [7].

[51] While not stated in the application, I understand that sustained European settlement of the region in which the application falls is not likely to have occurred until well into the latter part of the 19th century¹⁵. In my view, it is reasonable to infer that the regional society, of which the predecessors of the native title claim group were a part, acknowledged and observed traditional laws and customs in the area of the application at the time British sovereignty was asserted in Australia in 1788, and most certainly at the time of sustained European contact in the late 1800s. The application asserts, and this is illustrated in the affidavit material that accompanies it, that this is the society that has continued largely uninterrupted since that time. That is, a society existed at sovereignty in respect of the area covered by the application, comprised of land holding groups affiliated with particular tracts of country, defined by recognition of laws and customs, and from which the claim group’s current traditional laws and customs are derived—*Gudjala 2009* at [66].

Traditional laws and customs of the native title claim group

[52] Various traditional laws and customs are described in Schedule F and illustrated in the affidavit material.

[53] In Schedule F, the land tenure system, being the rights and interests in an estate or country which can either be inherited through descent or through non-descent connections, is described in detail. These descent or non-descent connections are clear in the affidavit material as each deponent describes the basis for their relationship with the relevant landholding group/s for the claim area. That is, ‘under the claimants’ system of traditional laws and customs

¹⁵ Explorer John McDouall Stuart succeeded in traversing Central Australia in 1862, and many of the pastoral stations in the area were only founded from the 1880s.

each estate is associated with a group of people whose descent can be traced to common ancestors through either patri- or matri- links or a combination of both’—at [11]-[14].

[54] [name removed] explains: ‘According to our traditional law, I have rights and interests in Kankawarla through my mother and her father who were *mangaya* for Kankawarla and so I am *kurdungurlu* for through them. I am also *kurdungurlu* for Kanturra through my father’s mother and I have interests in those countries through them’—at [7]. Similar examples are contained in each affidavit.

[55] In Schedule F it is explained that *mangaya* and *kurdungurlu* are jointly responsible for looking after country, requiring diffusion of knowledge among members of a landholding group subject to factors such as age, gender, residence and seniority. In their affidavits, claimants have explained how they look after country by protecting sites. There are numerous descriptions of this right and responsibility and also how decisions are made and how country is spoken for— at [12]. Each of the claimant affidavits include the statement:

Under Warumungu and Warlmanpa traditional laws and customs decisions about country and who has authority to speak for or act on behalf of a landholding group are made by the senior, knowledgeable *mangaya* (sometimes called *kirda*) and *kurdungurlu* of the group. In making decisions there must be agreement amongst both *mangaya* and *kurdungurlu* together. If the decision concerns more than one estate group, senior, knowledgeable *mangaya* and *kurdungurlu* of each landholding group must be present’—at [5].

[56] Deponents who have described that process state that they have the right to make decisions for their particular part of country because they are *mangaya*. The claimant affidavits describe how anthropologists speak with them, and they show them the area.

[57] Other ‘important features of the land tenure system include: fulfilment of spiritual obligations in relation to land and waters on a group and individual basis; observation of restrictions imposed by gender, age, ritual experience and other status (for example Young Men’s Business); observation of restrictions imposed by Dreamings presence and sites of significance; recognition of traditional processes of succession. The application states that succession has not had to take place in relation to the land and waters of the claim area, although succession processes exist to ensure country is looked after in the event that membership of a landholding group is so depleted that it risks maintenance of sites and survival of associated religious knowledge—at [15].

[58] The accompanying affidavits support and illustrate the factual statements and assertions found in Schedules A and F of the application. They articulate that members of the claim group possess rights and interests under their traditional laws and customs by virtue of those laws and customs being handed down to them by their ancestors. Each of the claimants attests to their knowledge of the Dreamings, songs and stories for their estate and for which they have responsibility under their Law. Each is a senior person for the country to which they are affiliated, for which they speak and hold knowledge and have been taught by their forebears and now pass on to the younger generations. Ceremony to teach the Law continues to be held today and is led by senior people—showing young men and women ceremony, hunting and collecting, teaching about country and showing and protecting special places and sites.

Consideration

- [59] The application and accompanying affidavits provide, in my view, sufficient evidence that there was a society at sovereignty in respect of the claim area, defined by recognition of laws and customs, and from which the claim group's current traditional laws and customs are derived.¹⁶ The statements made in the affidavits demonstrate how the claim group has handed down its laws and customs from generation to generation, in the sense defined in *Yorta Yorta*—showing an inter-generational transmission of traditional law and custom from the predecessors of the claim group. Together with the information in Schedule F, there are examples that illustrate aspects of the group's traditional law and custom, in respect of the area of the application, pertaining to family and ancestors, rules of affiliation to landholding groups and country, special places and stories, hunting and gathering and the passing on of traditional and cultural knowledge.
- [60] Therefore, I am satisfied that the material provides a sufficient factual basis for the assertion that there exist traditional laws acknowledged and customs observed by the native title claim group and that these give rise to the native title rights and interests it claims.

Continued holding of native title (s 190B(5)(c))

- [61] This subsection requires that I be satisfied there is sufficient material to support the assertion that the native title claim group continues to hold native title in accordance with their traditional laws and customs.
- [62] Schedule F contains many statements that assert the continuity of the native title claim group's traditional laws and customs: 'ethnographic sources confirm that at the time of contact and settlement of the region, and continuing to the present day, people affiliated with a dialect of the Warumungu or Warlmanpa languages, including members of the native title claim group and their ancestors, maintained physical, spiritual and other cultural association with their country, including occupation and use of the application area'—at [18(c)]. A list of academic and historical sources is provided.
- [63] The affidavit material demonstrates that these laws and customs have been 'passed from generation to generation by traditional modes of oral transmission, teaching and common practice', and continue to be acknowledged and observed today among the current generations of the claim group.¹⁷ All the affidavits describe walking, hunting, camping, conducting ceremonies and other activities with various persons from the claim group and previous generations. It is clear that the acknowledgement and observance of those laws and customs have been passed down through the generations and has resulted in the native title claim group continuing to exhibit activities and practices flowing from the acknowledgement and observance of laws and customs.
- [64] I am satisfied there is sufficient information before me to support the assertion that the native title claim group continues to hold native title in accordance with its traditional laws and customs.

¹⁶ *Gudjala 2009* at [66].

¹⁷ *Gudjala 2007* at [13].

Conclusion

[65] 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).

Prima facie case – s 190B(6): condition met

[66] For the application to meet this merit condition, I must be satisfied that at least one of the native title rights and interests claimed by the native title group can be established, prima facie. I refer to the comments made by Mansfield J in *Doepel* about the nature of the test at s 190B(6):

- it is a prima facie test and ‘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].
- it involves some ‘measure’ and ‘weighing’ of the factual basis and imposes ‘a more onerous test to be applied to the individual rights and interests claimed’—at [126], [127] and [132].

[67] I have examined the factual basis for the assertion that the claimed native title rights and interests exist against each individual right and interest claimed in the application to determine whether prima facie, they:

- exist under traditional law and custom in relation to any of the land or waters under claim;
- are native title rights and interests in relation to land or waters (see chapeau to s 223(1)); and
- are rights and interests that have not been extinguished over the whole of the application area.

Consideration

[68] Having found at s 190B(5) above that I am satisfied the factual basis is sufficient to support an assertion that there exist traditional laws and customs giving rise to the claimed native title rights and interests, it follows for me to consider whether those rights and interests can be prima facie established to exist under those traditional laws and customs.

[69] Schedule F includes a table itemising each right or interest and specifying corresponding parts to the affidavits. Schedule E of the application sets out a list from paragraph 1 (a)-(k) of *non-exclusive* ‘native title rights and interests possessed under and exercisable in accordance with the traditional laws acknowledged and traditional customs observed, including the right to conduct activities to give effect to them...’. The non-exclusive nature of the claimed rights and interests is made clear in the paragraph 3 statements that the claimed rights and interests do not confer possession, occupation use and enjoyment to the exclusion of all others.

[70] The rights are addressed and explained in the affidavit material, suggesting that the rights exist under the traditional laws and customs of the native title claim group, and deponents give detailed examples of practicing them, illustrating their acknowledgement and observance their traditional laws and customs. Furthermore, the rights and interests are all in relation to land or waters and are not expressed in exclusive terms (thus any extinguishment or overriding other interest is not affected by these rights and interests). My view is the rights and interests claimed are of the kind falling under s223(1) of the Act.

(a) The right to access and travel over any part of the land and waters

(b) The right to live on the land, and for that purpose, to camp, erect shelters and other structures

(f) The right to light fires for domestic purposes, but not for the clearance of vegetation

[71] Within the affidavits there are various accounts relating to members of the claim group and their predecessors accessing, living and camping on the application area. I infer that erecting shelters and other structures would likely be involved in camping and living on the land. [name removed] describes growing up on Phillip Creek Station and in town and ‘Tennant Creek on the outskirts of the town at a swamp at a camp’ and his description speaks to the rights above:

We moved around everywhere, we didn’t spend time in town, we camping out in the bush....We went all over the application area. We were camping out all over. We camped at Boundary Bore on the application area and at the old 6 Mile missions and our main place at Kalkarti. We camped all over from the western side to the eastern side. Still today I take my kids out there. ...We had fires to cook food and keep warm in winter—at [10].

[72] [name removed]’s affidavit provides examples of himself and his relatives walking, accessing and camping around the application area. He states that his father was born on Avon Downs and he grew up around there, Rockhampton Downs, everywhere. He walked around everywhere. When his father was working at 7 Mile on Tennant Creek station, he used to walk around the station with his older brother. They used to go hunting on the application area and collecting water where they were camping. He also describes camping with his family at Tarla on the application area and says ‘my father took me and showed me all over my country on the application area’—at [9]-[10].

[73] Each of the affidavits speak of living, accessing, camping and lighting fires in and proximate to the application area and access to the land and waters is clearly involved in many other activities and practices described (such as hunting, showing people country and being taught on the application area).

[74] I consider that these rights can be established, prima facie.

(c) the right to hunt, gather and fish on the land and waters

(d) the right to take and use the natural resources of the land and waters

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

(g) the right to share or exchange natural resources obtained on or from the land and waters, including traditional items made from the natural resources

[75] Natural resources is defined in the application to mean animals *ferae naturae*, birds, fish and plants, including timber, wax, resin and gum; and surface soils, clays, stone, rocks and ochre, but does not include minerals, petroleum and prescribed substances. Natural waters includes springs and rockholes—at Schedule J.

[76] Throughout the affidavits there are accounts of hunting, accessing, using and taking water and taking and using natural resources. For instance, [name removed] describes his memory of hunting on the application area with some of the older men and going along the Gosse River to get turkey and goanna ‘just about every weekend’. He also says he takes his family hunting on the application area when he has a car. He says they often go hunting around Gosse River, Alinjirri, Wurrkali and Kwarta and they ‘get water from Kwarta after rain time’—at [11]. In that example, I consider natural water is relevant to right (e) but also as a natural resource for the rights in (d) and (g) above.

[77] Many other examples of hunting, gathering and using the natural resources are provided in the claimant affidavits. [name removed] describing how he goes hunting on the application area, and his wife gets bush medicine and some people get boomerang wood. [name removed] describes how he still goes hunting on the application area for bush food almost every day and sometimes takes his kids. He says ‘we get a lot of bush medicine out there bush food and we get some spinifex wax...I get wood for boomerangs, coolamon, shields wherever the best timber is, we get it. It’s all over the application area’. He goes on to describe where ochre and water can be found on the application area—at [13].

[78] [name removed] speaks of hunting on the application area, camping at the Gosse River and that young people go out there all the time. When people get kangaroo, it is cooked and eaten but always some is taken back to town to share with other people—at [13]. [name removed] speaks of the exchange of materials (feathers, ochre for ceremony, as well as boomerangs and spears) with people ‘from all over’, practiced by both his father and his father before him—at [10].

[79] I consider that these rights can be established, prima facie.

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

[80] All of the affidavits illustrate that members of the claim group continue to maintain and protect important areas and sites of significance under their traditional laws and customs. For instance, [name removed] talks about learning about sacred sites from the old people after going through Young Men’s Business many years ago, and goes on to describe how he looks after country, still visits and looks around to make sure there is no damage. He carries out clearances with the Land Council and further explains ‘I am always going out and looking after the country and protecting sites. When we visit out [sic] sites and other places we have to talk to the country first and some places we have to brush the ground with bushes’—at [15]. Similarly, [name removed] describes accompanying the Land Council for clearances to protect places and ensuring there are no sites in the way of mining companies—at [16]. [name removed] describes showing two places to his son and states ‘We go out and check up on our country, to look after it. We look after those two sites on the application area...’—at [13].

[81] I consider the right can be established, prima facie.

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

(i) Cultural activities

(ii) Ceremonies

(iii) Meetings

(iv) Cultural practices relating to birth and death including burial rites

(v) Teaching the physical and spiritual attributes of sites and places on the land and waters that are important under traditional laws and customs

[82] In relation to ceremonies, meetings and cultural practices, [name removed] describes the approximate locations of some people buried on the application area and says ‘we did a big ceremony there’ in the ‘traditional way’, that his father led the burial of an old man whose bones were brought back from a museum. He explains other old people are buried there too—at [17]. [name removed] describes how he used to live at the old Tennant Creek Telegraph Station and have ‘lots of ceremonies there, not just Young Men’s Business, but ceremonies for bush potato and sugarbag’—at [9].

[83] Regarding the teaching of spiritual and physical attributes, many deponents speak about going through Young Men's Business and engaging in cultural activities shortly afterwards at various locations on or near the application area. The deponents provide numerous examples in the affidavits about being taught the songs, stories and law by their predecessors, and teaching it themselves to the younger generations. [name removed]'s describes moving how he learnt about his country:

I went through Young Men's Business at Rockhampton Downs when my grandfather was alive. A while after I went through that ceremony I was taken onto my country on the application area by my father and taught me the stories. He showed me the sacred sites and told the stories. That's when I really learnt about my country and the Law. [name removed] also took me out there and told me, he taught me more. Everytime I go out I learn a bit more about my country. My son was taken and there and he has learnt too—at [12].

[84] I consider the right can be established, prima facie.

(j) the right to make decisions about the use and enjoyment of the land and waters by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the native title holders provided that the right does not extend to making any decision that purports to control the access of such persons to the determination area

[85] I understand this right to be one about making decisions relating to the use and enjoyment of the land and waters by 'Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the native title holders'. It is not about having the right to make decisions about controlling the access of those persons to the area. Instead, the right is one to decide where people can and cannot go on the land and waters within the boundaries of the claim area, and is not about controlling access to the area covered by the application.

[86] Schedule A states that:

The application area is located in Warumungu and Warlmanpa territory. The common body of traditional laws acknowledged and customs observed by members of the native title claim group govern how rights and interests in land are acquired and who holds them in particular parts of this territory, including the application area. The seven landholding groups which together comprise the native title claim group constitute a community or group whose members hold the common or group rights comprising the native title over the application area as a whole.

[87] The authority to speak and act for a landholding (estate) group is held by the senior, knowledgeable *mangaya* and *kurdungurlu* of the group—Schedule F at [12]-[13]. In their affidavits, claimants clearly state the basis and source of their authority to make decisions about country. Each of the affidavits illustrate the operation of this authority in the group's decision-making process in relation to being authorised to make the native title determination application—at [5].

[88] [name removed] explains in his affidavit the operation of the group's traditional law and customs under which the right exists and how it functions in relation to use and enjoyment of the country by other Aboriginal people:

I have the right to make decisions for Purrurtu country because I am mangaya and I have the knowledge for my country. I can make decisions about where other Aboriginal people who are not from this country can go on our country and what they can do. I can tell them they can't go to certain places, or waterholes. It might look good for a place to sit down but they

aren't allowed. I can tell them they can't go. They might be the wrong skin name, they got to go to another place and I have to tell them that. There are men's sites where women, children can't go, young boys who haven't been through the Law and there would be trouble if they did. We can tell them that they can go this way about they can't go that way. We have to show respect and they also have to show respect—at [18].

[89] I consider the right can be established, prima facie.

(k) the right to be accompanied on the land and waters by persons who, though not native title holders, are:

(i) people required by traditional law and custom for the performance of ceremonies or cultural activities on the land and waters;

(ii) people who have rights in relation to the land and waters according to the traditional laws and customs acknowledged by the native title holders;

(iii) people required by the native title holders to assist in, observe, or record traditional activities on the areas.

[90] Schedule F states that *mangaya* and *kurdungurlu* are jointly responsible for looking after country. Each of the affidavits document the continued exercise of rights and obligations in relation to the accompaniment on the land and waters of persons who do not 'know' the country. [name removed] states that he has the right to make decisions for his Kanturra and Kankawarla countries, that he can make decisions about where other Aboriginal people who are not from his country can go on his country and what they can do—at [17]. [name removed] states that he shows anthropologists doing research on his country and tells them the right stories – they can speak with him because he is *mangaya* and one of the older men—[19].

[91] [name removed] speaks of the right to accompany people 'who are married in to our side':

'they can't go out on that country by themselves they must go with one of us...I have the right to take them and show them around'—at [19].

[92] [name removed] illustrates how the right operates:

We have had a meeting with other senior men from Alyawarr side at the Bush turkey site on the application area with the Kurtinji men. They taught the Kurtinji men some of those stories that my brother had heard from our father. We could take them there to that place and show them because we are *mangaya* and also the Kurtinji men because it's a handover site—at [15].

[93] [name removed] takes 'other men who come for ceremony onto my country' because it 'has to be a man with knowledge' and he is *mangaya* to take them and show them—at [20].

[94] I consider the right can be established, prima facie.

Physical connection – s 190B(7): condition met

[95] For the application to meet the requirements of s 190B(7), the Registrar 'must be satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application'—see subsection (a). Mansfield J decided that the condition of s 190B(7) imposes a different task upon the Registrar to that found in s 190B(5), saying that:

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. The focus is, however, a confined one. It is not the same focus as that of the Court when it comes to hear and determine the application for determination of native title rights and interests. The focus is upon the relationship of at least one member of the native title claim group with some part of the claim area. It can be seen, as with s 190B(6), as requiring some measure of substantive (as distinct from procedural) quality control upon the application if it is to be accepted for registration.¹⁸

- [96] Sufficient material is provided in the affidavits of the claimants to show that the native title claim group has a traditional physical connection with the land and waters of the application area. The material is referred to and quoted extensively in my consideration for both ss 190B(5) and 190B(6), above.
- [97] Schedule M provides information about the traditional physical connection of three of the claimants who have provided affidavits.
- [98] [name removed]'s father and grandfather grew up around Banka Banka (north of the application area). They regularly visited their country on the application area, his father worked on Tennant Creek Station and with his father's brother, camping, hunting and learning about the land, the sacred sites and the Law associated with his country:
- [name removed] grew up with his father moving around, mainly living and camping in the bush. They also stayed at Boundary Bore, Kalkkarti on the application area and close by at 6 Mile Mission. The family would hunt and get bush food from the application area when they were living there and get water from the soakages and rockholes. His father was well known for his wooden implements and would get wood from the application area to make boomerangs, shields etc as they travelled around. He would also collect ochre and emu feathers for use at ceremony time—at [1].
- [99] [name removed] continues to access the application area for hunting and getting bush food and medicine, spinifex wax and timber for wooden implements. He regularly camps there and takes his children and teaches them about their country. He visits sacred sites on the application area to ensure they are protected and teaches the young men about the Law and their religious responsibilities—at [1].
- [100] [name removed] was born close to the application area at the old Telegraph Station camp and he and his family lived in humpies made from spinifex. He grew up as a young child walking through the application area in the bush and going hunting. His family lived and worked on Rockhampton Downs (north east of the claim area). He was shown the application area by his father and other senior men and was taught the Law and Dreamings associated with his kurdungurlu country. [name removed] continues to access the application area to fulfil his religious responsibilities, protect sites and to teach the younger men. He regularly goes onto the application area to go hunting and for other bush food and he camps along the Gosse River—at [2].
- [101] I am satisfied that at least one member of the claim group currently has a traditional physical connection with parts of the application area.

¹⁸ Doepel at [17].

No failure to comply with s 61A – s 190B(8): condition met

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

Requirement	Information addressing requirement	Result
s 61A(1) no native title determination application if approved determination of native title	Geospatial report	Met
s 61A(2) claimant application not to be made covering previous exclusive possession over areas	Schedule B, paragraph 17	Met
s 61A(3) claimant applications not to claim certain rights and interest in previous non-exclusive possession act areas	Schedule E, paragraph 3	Met

No extinguishment etc. of claimed native title – s 190B(9): condition met

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

Requirement	Information addressing requirement	Result
(a) no claim made of ownership of minerals, petroleum or gas that are wholly owned by the Crown	Schedule Q	Met
(b) exclusive possession is not claimed over all or part of waters in an offshore place	Schedule P	Met
(c) native title rights and/or interests in the application area have not otherwise been extinguished	Schedule B, [17]	Met

Procedural and other matters (s 190C)—Conditions met

Information etc. required by sections 61 and 62 – s 190C(2): condition met

[104] To meet s 190C(2), the Registrar must be satisfied that the application contains all of the prescribed details and other information, and is accompanied by any affidavit or other document, required by ss 61 and 62. This condition does not require any merit or qualitative assessment of the material to be undertaken¹⁹.

Subsection 61

[105] The application contains the details specified in s 61.

Section	Details	Form 1	Result
s 61(1)	Native title claim group	Schedule A	Met
s 61(3)	Name and address for service	Part B	Met
s 61(4)	Native title claim group named/described	Schedule A	Met

¹⁹ *Doepel* at [16] and also at [35] to [39].

Subsection 62

[106] The application contains the details specified in s 62.

Section	Details	Form 1	Result
s 62(1)(a)	Affidavits in prescribed form	8 Affidavits	Met
s 62(2)(a)	Information about the boundaries of the area	Schedule B	Met
s 62(2)(b)	Map of external boundaries of the area	Attachment A	Met
s 62(2)(c)	Searches	Schedule D	Met
s 62(2)(d)	Description of native title rights and interests	Schedule E	Met
s 62(2)(e)	Description of factual basis:	Schedule F	Met
s 62(2)(f)	Activities	Schedule G	Met
s 62(2)(g)	Other applications	Schedule H	Met
s 62(2)(ga)	Notices under s 24MD(6B)(c)	Schedule HA	Met
s 62(2)(h)	Notices under s 29	Schedule I	Met

[107] I have examined the application and I am satisfied that it contains the prescribed information and is accompanied by the prescribed documents.

No previous overlapping claim group – s 190C(3): condition met

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

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

[109] The geospatial report confirms that no native title determination applications fall within the external boundaries of the current application. As the Tennant Creek Pastoral Lease application is not overlapped by any other applications, there is no requirement that I consider the issue of common claim group membership.

[110] I am satisfied that no person is included in the native title claim group for this application that was a member of the native title claim group for any previous overlapping application.

Identity of claimed native title holders – s 190C(4): condition met

[111] For the application to meet the requirements of s 190C(4), the Registrar must be satisfied that the requirements set out in either ss 190C(4)(a) or (b) are met. Schedule R comprises a certification made by the Central Land Council (CLC). As the application purports to be certified by the representative body for the area, the relevant consideration for me is at s 190C(4)(a). The task requires that I be ‘satisfied about the fact of certification by an appropriate representative body’ which necessarily entails:

- identifying the relevant native title representative body (or bodies) and being satisfied of its power under Part 11 to issue the certification; and

- being satisfied that the certification meets the requirements of s 203BE²⁰.

Identification of the representative body

[112] The geospatial report confirms that the CLC is the only representative body for the whole of the area covered by the application. It is therefore the only body that could certify the application under s 203BE. The certificate states that it is the representative Aboriginal and Torres Strait Islander body responsible for the land and waters covered by this application. The certificate is dated 29 September 2017 and signed by the Native Title Manager of the CLC, in accordance with Resolution No. FC98:61 of the Full Council of the CLC.

Does the certificate meet the requirements of 203BE

[113] For the purposes of s 203BE(4)(a), the certificate contains statements in relation to the requirements of paragraphs 203BE(2)(a) and (b). That is, the CLC certifies that it is of the opinion:

- that all the persons in the native title claim group have authorised the applicant to make the application and to deal with all matters arising in relation to it ; and
- that all reasonable efforts have been made to ensure the application describes or otherwise identifies all the other persons in the native title claim group²¹.

[114] For the purposes of s 203BE(4)(b), the certificate briefly sets out the reasons for the CLC being of that opinion, namely:

- a meeting, organised and facilitated by the CLC on 1 August 2017 at Tennant Creek, was attended by claimants, including all senior members of the native title claim group, as well as CLC legal and anthropological staff;
- the persons comprising the applicant were authorised in accordance with a traditional decision-making process that must be complied with, by those in attendance at the meeting who had the authority to make such decisions;
- the CLC consulted the meeting about the contents of the application and received instructions from the claimants and persons authorised to make and deal with the application;
- the CLC's anthropological and historical research indicates that the native title claim group described in the application:
 - is the only one to assert, and is entitled to assert, native title rights and interests in the area covered by the application and that this is acknowledged by the wider Aboriginal community; and
 - its description and criteria for membership accords with the traditional laws acknowledged and customs observed by the native title claim group and identifies the persons who hold the common or group rights comprising the native title claimed in the application²².

²⁰ *Doepel* at [80]-[81].

²¹ At [3].

²² At [4].

[115] In my view, the statements made in the certificate, as summarised above, are sufficient for it to be said that the certificate briefly sets out the reasons for the CLC being of the opinion that the requirements of s 203BE(2)(a) and (b) have been met.

[116] For the purposes of s 203BE(4)(c), the representative body must also briefly set out how it has met the requirements of s 203BE(3). That subsection provides for a representative body's obligations to make all reasonable efforts to reach agreements between any overlapping claimant groups and to minimise the number of overlapping applications. Paragraph 5 of the certificate states that the CLC 'is not aware of any application or proposed application that partly or wholly covers the application area'.

[117] I am satisfied that the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application, thereby complying with s 190C(4)(a).

End of reasons

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Colin Freddie and ors on behalf of the Kankawarla, Kanturrpa, Kurtinja, Patta, Pirrtangu, Purrurtu & Warupunju Landholding Groups and Northern Territory of Australia (Tennant Creek Pastoral Lease)
NNTT No.	DC2017/003
Federal Court of Australia No.	NTD48/2017

Section 186(1): Mandatory information

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.

Application filed/lodged with:

Federal Court of Australia

Date application filed/lodged:

3 October 2017

Date application entered on Register:

24 November 2017

Applicant:

As per Schedule of Native Title Applications (Schedule)

Applicant's address for service:

As per Schedule

Area covered by application:

As per Schedule

Persons claiming to hold native title:

See Attachment 1. Schedule A. Native title claim group

Registered native title rights and interests:

As per Schedule

Attachments:

As per Schedule

Lisa Jowett

24 November 2017

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 23 August 2017 and made pursuant to s 99 of the Act.