

Test for Registration

Application name	Robert Clancy & Ors on behalf of the Wulli Wulli People #2 (Wulli Wulli #2)
Name of applicant	Robert Clancy, Elizabeth Law, Erica Gyemore, Brian Clancy, Elizabeth Blucher, Ashley Saltner, Christine Bosworth, Jennifer Wragge and Julieanne Eisemann
Application made	25 July 2017
Federal Court of Australia No.	QUD311/2011
NNTT No.	QC2011/005
Date of Decision	20 September 2017

Decision: Claim passes the test

I have decided that the claim in the Wulli Wulli #2 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.²

Dr Debra Fletcher, Deputy Registrar

Delegate of the Native Title Registrar pursuant to instrument of delegation dated 23 August 2014 and made pursuant to s99 of the Act.

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

² Sections 190A(6) and 190(1) of the Act.

Cases cited:

Banjima People v State of Western Australia (No 2) [2015] FCAFC 171 ('*Banjima*')
Corunna v Native Title Registrar [2013] FCA 372 ('*Corunna*')
Daniel for the Ngaluma People & Monadee for the Injibandi People v Western Australia [1999] FCA 686 ('*Ngarluma People v Monadee*')
Griffiths v Northern Territory (2007) 243 ALR 7 ('*Griffiths FC*')
Gudjala People #2 v Native Title Registrar [2007] FCA 1167 ('*Gudjala (2007)*')
Gudjala People No 2 v Native Title Registrar (2008) 171 FCR 317; [2008] FCAFC 157; ('*Gudjala (2008)*')
Martin v Native Title Registrar (2001) FCA 16 ('*Martin*')
Members of the Yorta Yorta Aboriginal Community v Victoria (2002) 214 CLR 422; [2002] HCA 58 ('*Yorta Yorta*')
Northern Territory v Doepel (2003) 133 FCR 112; (2003) 203 ALR 385; [2003] FCA 1384 ('*Northern Territory v Doepel*')
Strickland v Native Title Registrar (1999) 168 ALR 242; [1999] FCA 1530 ('*Strickland*')
Stock v Native Title Registrar (2013) FCA 1290 ('*Stock*')
Ward v Registrar, National Native Title Tribunal (1999) 168 ALR 242; [1999] FCA 1732 ('*Ward v NNTT*')
Western Australia v Native Title Registrar (1999) 95 FCR 93; [1999] FCA 1591 ('*Western Australia v Native Title Registrar*')
Western Australia v Ward (2002) 213 CLR 1 ('*Ward HC*')

BACKGROUND

- 1) This application is the third amended application in relation to the application area. The initial application was made on 23 September 2011 by the Wulli Wulli People #2. An amended application was subsequently made on 7 August 2014 by the Wulli Wulli and Wakka Wakka Peoples pursuant to an order of the Federal Court of Australia (Court) of 4 August 2014.
- 2) This particular application and accompanying affidavits were filed in the Court on 20 June 2017 after the Court granted the applicants leave to amend the application on 16 June 2017. A further application containing minor amendments was filed on 25 July 2017 pursuant to Court orders dated 13 July 2017. This application constituted minor amendments by way of the inclusion of a more legible map at Attachment C and replacement of current s 29 notices at Schedule I.
- 3) This latest application was filed on behalf of the Wulli Wulli People #2 native title claim group by Just Us Lawyers. As with the previous applications, it covers land in southeast Queensland around the Auburn River and its tributaries.
- 4) The first decision I must make is whether the s190A(1A) or (6A) exemptions apply. 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.
- 5) I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply to the claim made in this amended application. The granting of leave by the Court to amend the application was not made pursuant to s 87A, and thus the circumstance described in s 190A(1A) does not

arise. The amendments to the application include a change to Schedule A (the description of the native title claim group) that is not of a type contemplated in s 190A(6A) and do not therefore meet the requirements of that condition. Accordingly, I have applied the registration test to the application.

- 6) I am guided by the Act which requires that if the claim in the application satisfies all the registration conditions in ss 190B and 190C, then the Registrar must accept the claim for registration.³ If it does not satisfy all the conditions, the Registrar must not accept the claim for registration.⁴
- 7) I have decided that the claim satisfies all of the registration conditions and my reasons on each condition follow below.

Information considered

- 8) I have had regard to the following information when considering the claim: the application, including its attachments as well as the geospatial assessment and overlap analysis prepared by the National Native Title Tribunal's Geospatial Services on 28 July 2017 (Geospatial Report).
- 9) I have also had regard to two previous registration test decisions by other delegates of the Registrar relating to the application area – those made on 22 December 2011 and 3 October 2014. The decision of 3 October 2014 is comprehensive and I refer to this decision in my reasons below, particularly in relation to the analysis of the supporting information provided at Attachment F of the application which is identical to that filed in this current application.
- 10) I am of the view that it is appropriate to have regard to the previous delegate's statement of reasons for decision made on 3 October 2014, and published on 27 October 2014,⁵ accepting the claim in the application for registration. In my view the reasons provided by the delegate remain relevant and applicable because the current amended application relies on the same material as the original application. The only material difference between the original application and the amended application now before me for consideration is a change to the description of the native title claim group and I deal with this below in my reasons at s 190B(5).
- 11) I have read the previous delegate's statement of reasons and formed the view that I agree with her summaries of the material and her assessment, reasoning and conclusions in respect of each of the merit and procedural conditions for registration. Therefore, I have decided to adopt the previous delegate's summaries of the material where I consider them applicable to the application because the same facts and law apply and where I reach the same conclusion and agree with the basis for her conclusions.

Procedural fairness

- 12) On 26 July 2017, the applicant's legal representative was advised that, should the applicant wish to provide any additional information for the delegate's consideration, the material should be submitted by 11 August 2017. The legal representative advised on 27 July 2017 that they would not submit additional information.

³ See s 190A(6)

⁴ See s 190A(6B)

⁵ Referred to hereafter as 'Registration decision of 3 October 2014'

- 13) On 26 July 2017, the State of Queensland was advised that should it wish to make a submission in relation to the registration of this claim, it should be provided by 11 August 2017. The State advised on 31 July 2017 that it would not make a submission.

Registration Conditions about merits of the claim (s 190B)

SECTION 190B – CONDITIONS MET

- 14) I am satisfied the application meets the requirements of ss 190B(2)-(9).

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

Decision

- 15) For the reasons I outline below, I am satisfied the claim meets the requirements of s 190B(2). The information provided about the external boundary and internally excluded areas is sufficient to identify with reasonable certainty the particular land or waters over which native title rights and interests are claimed.

What is needed to meet this condition?

- 16) To meet 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 considerations to ensure this condition is met 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.⁶

Does the information about the external boundary meet this condition?

- 17) Attachment B of the application contains a written description of the external boundary. The written description uses metes and bounds that reference cadastral boundaries, roads, watercourses, local government areas, catchment boundaries and coordinate points.
- 18) Attachment C is a colour map with the external boundary outlined with a dark blue line. The map contains a topographic background, Scalebar, coordinate grid and locality diagram. It also depicts the adjoining native title determination areas.
- 19) Both the written description and map were prepared by the NNTT's Geospatial Services who confirmed they are consistent and identify the application area with reasonable certainty.⁷ I have considered the documents and am satisfied they identify the external boundary with a reasonable degree of certainty.

Does the information about excluded areas meet this condition?

- 20) Schedule B of the application contains a written description of areas within the external boundary that are not covered by the application. Any areas within the external boundary where native title has been extinguished by 'previous exclusive possession acts' are excluded from the application area, except where provisions of the Act require that extinguishment to be

⁶ *Northern Territory v Doepel* at [122]

⁷ Geospatial Report dated 28 July 2017

disregarded (ss 47, 47A or 47B). Schedule B also excludes areas where native title rights and interests have otherwise been extinguished.

- 21) Attachment B specifically excludes the land and waters covered by two native title determination applications – QUD6006/2000 (Wulli Wulli People) and QUD6162/1998 (Iman People 2).
- 22) I am satisfied that the written description of the internally excluded areas provides reasonable certainty for the purposes of this condition. It will be possible to work out any internally excluded areas affected by a previous exclusive possession act or other extinguishment once historical and current tenure searches are completed.⁸

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

Decision

- 23) For the reasons I outline below, I am satisfied that the claim meets the requirements of s 190B(3). Schedule A contains a sufficiently clear description of the persons in the native title claim group to ascertain whether any particular person is a member of that group.

What is needed to meet this condition?

- 24) To meet s 190B(3), the Registrar must be satisfied that:
 - (a) the persons in the native title claim group are named in the application; or
 - (b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.
- 25) The only question for this condition is ‘whether the application enables the reliable identification of persons in the native title claim group’. Whether the claim has been made on behalf of the correct native title claim group is not relevant.⁹

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

- 26) Schedule A of the application does not name all the persons in the claim group. The question is therefore whether the description of the native title claim group in Schedule A is sufficiently clear.
- 27) Schedule A states that the claim group consists of persons:
 1. who are recognised by other members of the claim group as being descended (which may include adoption) from a deceased person who they recognise as having been a member of the aboriginal landholding group for the application area... (“an apical ancestor”); and
 2. who is a descendant of an apical ancestor and identifies himself or herself as being a descendant of an apical ancestor.
- 28) These words are followed by a list of apical ancestors. Additional information about the apical ancestors is provided in Attachment F of the application.

⁸ This approach is supported by the decisions in *Ngaluma People & Monadee* and *Strickland* at [51] to [52].

⁹ *Northern Territory v Doepel* at [51] and [37]; *Gudjala 2007* at [33]

- 29) I interpret the description in Schedule A to mean that a person will be identified as a member of the native title claim group if they are descended from one or more of the named apical ancestors and if they identify as Wullli Wullli and are recognised by the Wullli Wullli #2 People.
- 30) It has been accepted that descent from named apical ancestors provides a 'substantial factual element' and a clear basis for a 'factual inquiry', so that a person's status as a member of the claim group is capable of being ascertained with sufficient clarity.¹⁰ The apical ancestors are all described by name and the application provides additional details about their approximate birth dates, country associations and descendants in ensuing generations.¹¹ In addition, material is provided in the application explaining how the traditional laws and customs of the claim group operate in relation to group membership.¹²
- 31) The application also states that adoption is an acceptable mechanism by which an individual may identify as being a descendant of an apical ancestor. While the adoption rule may add an additional layer of complexity to the inquiry as to whether an individual is a member of the claim group, I refer to Carr J where he found 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 sufficiently described."¹³
- 32) In my opinion, the level of detail in the application provides sufficient clarity to ascertain whether a person is a member of the native title claim group.

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

Decision

- 33) I am satisfied the description in Schedule E is sufficient for me to clearly understand and identify the itemised rights as 'native title rights and interests.'

What is needed to meet this condition?

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

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

- 35) Paragraph 1 of Schedule E claims 'the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world...' where claimable.
- 36) For all remaining land and waters within the application area, paragraph 2 of Schedule E lists a series of non-exclusive rights and interests claimed. These are listed in subparagraphs (a) to (i) and comprise rights to live and be present on the application area, use, share and exchange traditional natural resources for personal, domestic and communal purposes, conduct burials and ceremonies, maintain places of significance, light fires for domestic purposes, be

¹⁰ *Ward v Registrar* at [27] and *WA v Registrar* at [63]

¹¹ See Attachment F; Section 7.0, referred to in these reasons as 'Att F'.

¹² Att F; Sections 9.0 and 10.0

¹³ *WA v Registrar* at [67]

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

accompanied into the claim area by non-claim group members for traditional purposes and take and use water for personal, domestic and communal purposes.

- 37) Further clarification is provided in paragraphs 3 and 4 on the meaning of ‘live’ and ‘traditional natural resources.’
- 38) The rights and interests claimed are all readily understood and are native title rights and interests as defined by the Act.

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

Decision

- 39) For the reasons I outline below, I am satisfied that the factual basis on which it is asserted that the claimed native title rights and interests exist is sufficient to support the assertion. In particular, there is a sufficient factual basis for the three assertions of subsections 190B(5)(a), (b) and (c).

What is needed to meet this condition?

- 40) To meet s 190B(5), the Registrar must be satisfied there is sufficient factual basis to support the assertion that the claimed native title rights and interests exist. 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;
 - (b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to native title rights and interests; and
 - (c) the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.
- 41) The question for this condition is whether the factual basis is sufficient to support these assertions. To answer that question, I understand I am required to assess whether the asserted facts can support the existence of the claimed native title rights and interests, rather than determine whether there is “evidence that proves directly or by inference the facts necessary to establish the claim.”¹⁵

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

- 42) To meet s 190B(5)(a), the factual basis must support the assertion that ‘the native title claim group have, and the predecessors of those persons had, an association with the area.’ Generally, to satisfy this requirement:

- [1] it is not necessary for the factual basis to support an assertion that all members of the native title claim group have an association with the area at all times;¹⁶

¹⁵ *Gudjala (2008)* at [92]; see also *Northern Territory v Doepel* at [16]-[17]

¹⁶ *Gudjala (2007)* at [52]

[2] it is necessary that the material is sufficient to support that the group as a whole presently has an association with the area and to also support an association with the area by the predecessors of the whole group over the period since sovereignty, or at least since European settlement;¹⁷ and

[3] the materials must support that the association both presently and by the group's predecessors relates to the area as a whole.¹⁸

43) I address the question of association with the area under three subheadings: (a) is there a sufficient factual basis relating to the group's predecessors' association with the area; (b) is there a sufficient factual basis relating to a present association by the claim group with the area; and (c) is there a sufficient factual basis that the association both past and present relates to the area as a whole? I again defer to the extensive summary of Dr Powell's report in the registration test decision of 3 October 2014 and do not duplicate this information in these reasons.

Is there a sufficient factual basis relating to an association by the claim group's predecessors with the area?

44) I am satisfied that the factual basis is sufficient to support an assertion that the predecessors of the native title claim group had an association with the area. There is detailed and specific information provided in the ethnographic report authored by Dr Fiona Powell to support this.¹⁹ Additionally, the registration test decision of 3 October 2014 provides extensive analysis and excerpts of relevant information from this report in regards to this requirement which I will not repeat in these reasons. I adopt the analysis of the previous delegate as I have reached the same conclusion and agree with the basis for those conclusions.

45) Effective sovereignty in the application area took place between 1849 and 1850 with the establishment of pastoral stations within the application area. Historical and ethnographic records referenced by Dr Powell place Aboriginal people in the application area at or around the time of European settlement.

46) While the historical record references language names in and around the application area as, variously, Djakunda, Gureng (or variants), Waka-Waka and Wuli-Wuli, according to the materials presented in Dr Powell's analysis, the latter language name has the greatest longevity in the region having first been referenced between 1885 and 1903.²⁰

47) Dr Powell provides an extensive analysis of the historical record pertaining to both the claim area and the Aboriginal people present in the area at the time of settlement. She concludes that the term 'Wulli Wulli' is used by the claimants to designate "the people, the language and the country of the Application area"²¹ with claimants asserting this information has been passed down to them from their ancestors.

¹⁷ *Gudjala* (2007) at [51] and [52]

¹⁸ See *Martin* at [23]–[26], affirmed in *Corunna* at [35]–[39] and [42]–[44]

¹⁹ See Att F

²⁰ See Att F Table 1, p36

²¹ Att F p44

- 48) The application contains specific and detailed information about all of the group's apical ancestors in Attachment F.²² Dr Powell provides two tables which consolidated her research undertaken in relation to the apical ancestors of the claimants. Table 2²³ records the approximate year of birth of the apical ancestors and Table 3 records the country associations of the apical ancestors and their immediate descendants. From these tables it is apparent that the apical ancestors were born between the early to mid 19th century, excepting Thomas Clancy whose estimated birth year was 1890.
- 49) An analysis of the country associations of the apical ancestors as presented in Table 3, places the predecessors of the claimant group in the application area, with the records indicating that, collectively, they had traditional associations to a broad geographical spread of the application area.²⁴ However, subsequent amendments to the construct of the claim group, which form the basis of this amended application, need to be considered in these reasons. The amended application removes apical ancestors [Name removed] and [Name removed] and adds Bessie Rawbelle. These changes were as a result of the engagement with the State in the connection assessment process and were required in order to proceed in negotiations towards a consent determination.
- 50) With the information available to Dr Powell when she authored the report provided in the application, she formed a view that, although the historical record was complex in relation to [Name removed]'s traditional territory, there was a prima facie case to support her association with the claim area and "through the marriages of several descendants, is connected to its land-holding group."²⁵
- 51) In relation to [Name removed], Dr Powell recorded in her initial report that there was a paucity of information in the historical record, however her research determined that [Name removed]'s forebears were associated with the eastern part of the application area but descendants of [Name removed] identified as Wakka Wakka.
- 52) Subsequent research conducted by Dr Powell and considered by the State of Queensland, determined that there was no evidence that [Name removed] had a customary affiliation with the claim area. Specifically, [Name removed]'s family had a long connection to the Burnett River and Gayndah with some members of the family working at Hawkwood following settlement.²⁶
- 53) Additionally, subsequent research found insufficient evidence to conclusively demonstrate [Name removed] had a customary affiliation with the claim area. Specifically, there were inconsistencies between information provided in 2010 and that provided in 2016, with the latter information taking precedence.²⁷

²² Att F pp70ff

²³ Att F p71

²⁴ Att F, p72

²⁵ Att F, para 112

²⁶ Annexure CR8 to affidavit of [name removed]

²⁷ Annexure CR8 to affidavit of [name removed]

- 54) In addition further research had satisfied that Bessie Rawbelle had a customary affiliation with the claim area.²⁸
- 55) Dr Powell also provides information about the claimants' knowledge of the claim area and their ancestors' associations with the area.²⁹
- 56) I find that the factual basis materials are sufficiently specific and detailed to demonstrate the following matters:
- [1] There are early historical and ethnographic records that record the application area as the traditional country of a pre-sovereignty group named the Wulli Wulli.
 - [2] There are known predecessors of the claim group who were born during the early years of settlement in the mid to late 19th century and are known to be associated with places that fall within the application area.
 - [3] The evidence is that the named apical ancestors were born on, or in close proximity to, the claim area and lived there in the early decades following settlement. The evidence also supports their status as Aboriginal persons with a particular affiliation and association with the places where they were born and lived. In turn, these places are identified in a number of early accounts as being the country of an Aboriginal tribe or group called the Wuli Wuli.
 - [4] There is evidence of a system of law and custom regulating these ancestors' interactions with the claimed area, including performance of ceremonies, use of traditional resources and ritual activities. There is evidence that these laws and customs continue to be known and practiced by the descendants of the apical ancestors today. I discuss this evidence in detail in my reasons for the assertion of s 190B(5)(b) below.
- 57) The information I have reviewed is sufficiently detailed as to the identity of the predecessors and their descendants, the nature of the association, the holding of knowledge about significant places and associated stories and the practice of law and custom within the area. Accordingly, on the basis of Dr Powell's analysis, in both her 2011 report and subsequent research as presented to the claimant group and provided in the amended application, I am satisfied that the information is sufficient to support the assertion that the predecessors of the native title claim group had an association with the area which has continued since European settlement to the present day.

Does the factual basis support that the claim group presently has an association with the area?

- 58) I find that the factual basis is sufficient to support an assertion that the claim group presently has an association with the area. Dr Powell provides information pertaining to the claimants' exercise of their native title rights and interests in the application area.³⁰ I refer the reader to the registration decision of 3 October 2014 for further specific detail. I adopt the analysis of the

²⁸ Annexures CR5 and CR8 to affidavit of [name removed]

²⁹ Att F pp74ff

³⁰ Att F pp85ff

previous delegate as I have reached the same conclusion and agree with the basis for those conclusions.

- 59) Analysis of this material illustrates that the claimants continue to access the application area on a regular basis to undertake traditional activities and these activities occur across a broad expanse of the application area. For instance, Dr Powell writes:

...older members of the claim group live on the properties in the Application area in extended family groups, which sustained themselves for lengthy periods by hunting, fishing and gathering bush foods in the claim area...claimants state that they continue to hunt fish, harvest and collect their traditional foods from the claim area whenever they have the chance.³¹

- 60) Claimants also state they actively participate in site clearance surveys, and access plants in the application area for medicinal purposes and to make various artefacts.³² Dr Powell states that “[m]embers of the claim group regularly visit the Application area for spiritual reasons and to commune with their ancestors”, visiting places where their ancestors were born, lived or died.³³
- 61) I am therefore satisfied, on the basis of the information provided in Dr Powell’s report, that the claimants have a contemporary association with the application area.

Is there a sufficient factual basis that the association both past and present relates to the area as a whole?

- 62) In *Gudjala People #2* (2007), Dowsett J said that “there must be evidence that there is an association between the whole group and the area. 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.”³⁴ This was cited favourably by Siopsis J in *Corunna* (2013).³⁵
- 63) In *Martin* (2001), French J, as he then was, found that the Registrar must be satisfied on the factual basis provided by the applicant in relation to “the association of the current members of the native title claim group with the area under claim.”³⁶ In this matter His Honour found that the Registrar had acted appropriately in finding that there was “simply a lack of material to support an association, physical or spiritual, with the entire area claimed.”³⁷ With this understanding of the requirements as determined by the case law, I examined the material provided to me.
- 64) As stated in paragraph [49] above, information contained in Attachment F places the apical ancestors of the group in a broad geographic spread within the claim area shortly after effective sovereignty.
- 65) The information provided in Dr Powell’s report supports the finding that the contemporary claimants continue to access the entirety of the application area, information which is

³¹ Att F p89, para 146

³² Att F p90

³³ Att F p93

³⁴ *Gudjala* (2007) at [52]

³⁵ *Corunna* at [28]

³⁶ *Martin* at [22] to [23]

³⁷ *Martin* at [26]

comprehensively analysed in the registration test decision of 3 October 2014. I adopt the analysis of the previous delegate as I have reached the same conclusion and agree with the basis for those conclusions.

66) Dr Powell states:

My research has found evidence in claimants' oral histories, the written records and claimants' genealogies that shows that successive generations of the claim group have inhabited the Application area since the time of effective sovereignty...until the mid-1950 – 1960s when they began to move to nearby towns to comply with requirements that their children attend school. Since then, they have maintained their connection to the Application area through employment and by regular visiting for cultural purposes...³⁸

67) As noted above, I understand that I am required to consider the factual basis of contemporary association to the whole of the application area.³⁹

68) Having regard to the material within Dr Powell's report, particularly at sections 12, entitled 'Continuity of connection of successive generations' and 11 entitled 'Exercise of native title rights and interests', I am satisfied that the current association of claimants consists of them accessing the entirety of the application area. As a component of my consideration, I located places mentioned by claimants in relation to their contemporary association on a map, confirming the expanse of this association.

69) The totality of the material in relation to the activities undertaken by claimants on the claim area has satisfied me that a factual basis exists to support that the claimants exercise native title rights and interests on the claim area that are informed by a normative system in relation to the entire claim area.

Summary of findings for the 'association' assertion

70) The factual basis is sufficient to demonstrate that there is a history of association by the native title claim group and their predecessors with the area over the time since European settlement. I am satisfied that the information provided in the application supports the existence of a link between the current claim group, its predecessors and the pre-sovereignty Wulli Wulli group identified in the early historical and ethnographic records. The factual basis materials also support an assertion that the claim group presently have an association with the area that has its origins in the association by their predecessors with the area.

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

71) To meet s 190B(5)(b), the factual basis must support the assertion 'that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests'. The wording of s 190B(5)(b) is almost identical to paragraph (a) of the definition of 'native title rights and interests' within s 223(1) of the Act. Dowsett J approached this in *Gudjala* (2007)⁴⁰ by considering s 190B(5)(b) in light of the

³⁸ Att F p107, para 193

³⁹ *Gudjala* (2008) at [90] to [96]; *Gudjala* (2007) at [51] to [52]; *Gudjala* (2009); *Martin* at [25] to [26]; *Corunna*

⁴⁰ *Gudjala* (2007) at [26] and [62] to [66]

case law regarding s 223(1)(a), particularly the leading decision of the High Court in *Yorta Yorta*.⁴¹

- 72) According to the High Court's decision in *Yorta Yorta*, a law or custom is 'traditional' where:
- [1] it 'is one which has been passed from generation to generation of a society, usually by word of mouth and common practice'—at [46];
 - [2] the origins of the content of the law or custom concerned can be found in the normative rules of a society⁴² which existed before the assertion of sovereignty by the Crown—at [46];
 - [3] the normative system has had a 'continuous existence and vitality since sovereignty'—at [47]; and
 - [4] the relevant society's descendants have acknowledged the laws and observed the customs since sovereignty and without substantial interruption—at [87].
- 73) Dowsett J found that a sufficient factual basis must therefore demonstrate that the laws and customs relied on by the claim group "have their source in a pre-sovereignty society and have been observed since that time by a continuing society." His Honour also held that a "starting point must be identification of an indigenous society at the time of sovereignty" and concluded that a sufficient factual basis must also establish the link between the native title claim group described in the application and the area covered by the application, which involves "identifying some link between the apical ancestors and any society identified at sovereignty."⁴³
- 74) I therefore address the question of traditional laws and customs under two subheadings:
- [1] does the factual basis address the identity of a pre-sovereignty society for the area; and
 - [2] does the factual basis address the links between the pre-sovereignty society, the claim group and their apical ancestors?
- 75) I understand that it is not appropriate that I impose too high a burden when assessing these matters, having regard to the limited nature of the enquiry when assessing the factual basis condition of s 190B(5).⁴⁴

Does the factual basis address the identity of a pre-sovereignty society for the area?

⁴¹ *Yorta Yorta*

⁴² The term 'society' in this context is 'understood as a body of persons united in and by its acknowledgment and observance of a body of law and customs'—*Yorta Yorta* at [49].

⁴³ See *Gudjala (2007)* at [63] and [66] respectively. Although the Full Court found error in Dowsett J's evaluation of the factual basis materials, the Full Court did not disagree with his Honour's assessment of what a sufficient factual basis for this assertion must address—see *Gudjala (2008)* at [71]–[72]. The Full Court also agreed with Dowsett J that one question a sufficient factual basis must address is whether 'there was, in 1850–1860, an indigenous society in the area, observing identifiable laws and customs'—*Gudjala (2008)* at [96]. (1850–1860 is the time of European settlement of the Gudjala application area.)

⁴⁴ See also *Stock* at [64] where His Honour held that 'it must be borne in mind that the provisions of the NTA dealing with registration are not, nor could they be, concerned with the proof that native title exists'.

- 76) Dr Powell's report, helpfully, provides information specific to the pre-sovereignty system of laws and customs of the Wulli Wulli people at sections 2, 3, 4 and 6. I formed my position on this requirement based on this information.
- 77) Dr Powell's report identifies a series of norms which regulated the pre-sovereignty society. Of the southeast Queensland region, more broadly, Dr Powell's analysis of the ethnographic record indicates that there was a region-wide system of laws and customs and interests in land were held by local land-holding groups. The region, or 'cultural bloc' was designated a 'Kabi type'. Dr Powell provides an extensive analysis of the specific aspects of this cultural system, concluding that a notable feature was rights to land gained through patrilineal and/or matrilineal links.⁴⁵
- 78) The normative system regulated marriage, rights to country and access to and use of resources, and specific aspects of the system of law and custom of the region were councils for men and women as well as a regional Tribal Council. These councils regulated engagement between local and regional groups and arbitrated over disputes.
- 79) The regional system was based upon a belief in a sacred Creator Being who was responsible for establishing the laws and customs of the group along with a Rainbow Serpent known as *Dhakkan* or *Gauwar*.
- 80) Burial customs within the region were also recorded. Deceased persons were wrapped in bark and placed either in cases, particularly on Mount Narayen, or in the hollow of a tree. At this time, the outer layer of the bark was removed and a tree planted to mark the burial place.
- 81) Indicative of the broader regional society, several languages were associated with the application area, with Wulli Wulli being one and the primary language affiliation of the claimant group.
- 82) The application provides references from the early historical and ethnographic records which identify the observance of traditional laws and customs in the claim area at, or shortly after, European settlement, by a tribal group identified by variations of the name Wulli Wulli. The system of law and custom, as reported, regulated the relationship between people and land.

Does the factual basis address the links between the pre-sovereignty society, the claim group and their apical ancestors?

- 83) Dr Powell's report provides links between the apical ancestors and the pre-sovereignty society. As a number of ancestors were born prior to, or just after, effective sovereignty, it is reasonable to assume that they were members of the pre-sovereignty society.
- 84) Dr Powell also links the claimants to the apical ancestors. She provides the specific example of [Name removed], born in 1949, and her relationship to the apical ancestors [Name removed], [Name removed] and [Name removed].⁴⁶ [Name removed] grew up in the application area, raised by her grandmother and aunt. Successive generations of the family lived and worked on the application area, specifically in the Hawkwood, Piggott and Auburn area.

⁴⁵ See Att F, section 2

⁴⁶ Att F pp107ff

- 85) Dr Powell also references the genealogies she prepared as part of her research into the claimant group. I note these genealogies were not provided as part of the application. Dr Powell states “[m]y consideration of these genealogies, the written records and claimants’ oral histories has found evidence that successive generations of the claimants’ predecessors have lived in the Application area and sustained themselves from its traditional resources.”⁴⁷
- 86) Further, Dr Powell’s report compares the pre-sovereignty system of law and custom of the Aboriginal people inhabiting the application area and the system of law and custom observed by the claimant group. There are sufficient similarities in these practices, allowing for adaptation, and the inter-generational transmission of law and custom is sufficiently articulated in the application, which provides specific information about the connection that claimants have to apical ancestors who were born or living around the time of European settlement within the application area, along with genealogical links to satisfy me that this condition has been met.
- 87) Most relevantly, Dr Powell states:

My research has led me to form the preliminary opinion that the claimants’ assertions of rights and interests in the area covered by the Application derive from the traditional laws and customs that prevailed in this region at the time of effective sovereignty and that there has been no change since pre-sovereignty in the basic tenets that underlie these laws and customs. The research found that the claimants hold a consubstantial identification with the Application area and that membership of the claimant group is contingent on filiation to a parent or grandparent who his/herself is recognized as holding rights in the area covered by the Application, and that this same principle underlay the membership of land-holding groups in this region at the time of effective sovereignty.⁴⁸

Summary of findings for the ‘traditional laws and customs’ assertion

- 88) The materials referred to above set out the necessary facts in a sufficiently detailed way so that I can understand both the identity of the relevant pre-sovereignty society, the area over which it is asserted to have been observed and the links between that society, the current members of the claim group, their apical ancestors and the application area.

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

- 89) To meet s 190B(5)(c), the factual basis must support the assertion ‘that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.’
- 90) As noted above, there is information that apical ancestors of the Wullli Wullli #2 People were born and lived in traditional ways on country close to, or on, the application area at the time of European settlement. The factual basis provides sufficient detail to describe the inter-generational passing on of law and custom from these persons to current claimants. The information I have reviewed supports asserted traditional laws and customs relating to country, important sites and ceremonies, stories, hunting and fishing passed down by the apical ancestors to their children and grandchildren and then from those persons to contemporary claimants. This information is contained largely in section 14.0 of Attachment F and is

⁴⁷ Att F p108, para 196

⁴⁸ Att F, para 245

considered extensively in the registration test decision of 3 October 2014, which I will not duplicate here. I adopt the analysis of the previous delegate as I have reached the same conclusion and agree with the basis for those conclusions.

- 91) In light of the information in the application I am satisfied that the factual basis is sufficient to support the assertion that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

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

Summary of findings for the ‘prima facie case’ condition

- 92) As set out below, I consider that the claimed rights and interests have been established on a prima facie basis. Therefore, the claim satisfies the condition of s 190B(6).

What is needed to meet this condition?

- 93) For the application to meet the requirements of s 190B(6), the Registrar ‘must consider that, prima facie, at least some of the native title rights and interests claimed can be established.’ I note the following comments by Mansfield J in relation to this condition:

- [1] it requires some measure of the material available in support of the claim;⁴⁹
- [2] although s 190B(5) directs attention to the factual basis on which it is asserted that the native title rights and interests are claimed, this does not itself require some weighing of that factual assertion as that is the task required by s 190B(6);⁵⁰
- [3] s 190B(6) appears to impose a more onerous test to be applied to the individual rights and interests claimed.⁵¹

- 94) Mansfield J found that the use of the words ‘prima facie’ in s 190B(6) means that “if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis.”⁵²

Can some of the claimed native title rights and interests be established on a prima facie basis?

- 95) The claimants assert exclusive possession over areas where it can be recognised.
- 96) In *Ward HC*,⁵³ the majority considered that the “expression ‘possession, occupation, use and enjoyment ... to the exclusion of all others’ is a composite expression directed to describing a particular measure of control over access to land” and conveys “the assertion of rights of control over the land.”⁵⁴
- 97) The Full Court reviewed the case law in *Griffiths FC*⁵⁵ which is authority for what is required to prima facie establish the exclusive right under the condition of s 190B(6). That is to show how, under traditional law and custom, those laws and customs derived from a pre-sovereignty

⁴⁹ *Northern Territory v Doepel* at [126]

⁵⁰ *Northern Territory v Doepel* at [127]

⁵¹ *Northern Territory v Doepel* at [132]

⁵² *Northern Territory v Doepel* at [135]

⁵³ *Ward HC*

⁵⁴ *Ward HC* at [89] and [93]

⁵⁵ *Griffiths FC*

society and with a continued vitality, the group may effectively “exclude from their country people not of their community,” including by way of “spiritual sanction visited upon unauthorised entry” and as the “gatekeepers for the purpose of preventing harm and avoiding injury to country.” The Full Court stressed at [127] that:

[It is also] important to bear in mind that traditional law and custom, so far as it bore upon relationships with persons outside the relevant community at the time of sovereignty, would have been framed by reference to relations with indigenous people.

- 98) Further, for this right to be established, evidence must be provided that other Aboriginal people seek permission to enter another group’s country and that the observance of this protocol is grounded in the system of law and custom which regulates access to country and preventing harm to the country.⁵⁶ Dr Powell addresses the right of exclusive possession at paragraph 171 of her report where she states:

Claimants state that according to their law and custom, if Aboriginal persons who are not members of the claimant group want to access the Application area, they should first seek permission from the claimants, because “we are the carers, the protectors of that land and all its resources” and that the Elders of the claimant group are the proper persons who should be approached for such permission.

- 99) Additionally, Dr Powell provides evidence that this custom is observed by other non-claimant Aboriginal people.
- 100) I have considered the information contained in the application relating to the non-exclusive claimed rights and interests and the extensive analysis of this information in the registration decision of 3 October 2014. I adopt the analysis of the previous delegate as I have reached the same conclusion and agree with the basis for those conclusions. As a result, I am satisfied that there is sufficient evidence for the following non-exclusive claimed rights and interests identified in Schedule E to be established on a prima facie basis:

- (a) live and be present on the application area;
- (b) take, use, share and exchange Traditional Natural Resources for personal, domestic and non-commercial, communal purposes;
- (c) conduct burial rites;
- (d) conduct ceremonies;
- (e) teach on the area about the physical and spiritual attributes of the area;
- (f) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
- (g) light fires for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;
- (h) be accompanied into the claim area by non-claim group members being people required;
 - 1) by traditional law and custom for the performance of ceremonies or cultural activities; and
 - 2) to assist in observing and recording traditional activities on the claim area; and
- (i) In relation to Water, take and use;
 - 1) Traditional Natural Resources from the Water for personal, domestic and non-commercial communal purposes; and

⁵⁶ See *Griffiths v NT* (2007) and *Banjima*

2) for personal, domestic and non-commercial, communal purposes.

101) I am, therefore, satisfied that material establishes all of the non-exclusive rights listed in paragraph 2 of Schedule E as well as the right of exclusive possession.

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

What is needed to meet this condition?

102) 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.’⁵⁷

103) Mansfield J held 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.⁵⁸

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

104) Dr Powell’s report, as noted above, contains many examples of claimants having a traditional physical connection with the application area. In particular, information about the contemporary association of [Name removed] and her relationship with her predecessors is provided.

105) This material provides evidence of a lifelong association and connection with the claim area and speaks of [Name removed]’s ancestors teaching her about the traditional laws and customs of the group within the claim area.

106) This information, combined with my reasons in relation to ss190B(5) and (6) above, satisfies me that this condition is met.

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

107) To meet s 190B(8), 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.’

108) I have formed the opinion that there is nothing before me to indicate that the application should not have been made because of s 61A. This section provides that applications must not be made:

⁵⁷ see subsection (a)

⁵⁸ *Northern Territory v Doepele* at [17]

- a. *over areas already covered by an approved determination of native title.*⁵⁹ The Geospatial report has revealed that none of the area is also covered by an approved native title determination;
- b. *over areas where a previous exclusive possession act attributable to the Commonwealth or a State or Territory was done.*⁶⁰ Schedule B expressly excludes any such areas from the claim;
- c. *which claim exclusive possession, occupation, use and enjoyment in relation to areas where a previous non-exclusive possession act was done and is attributable to the Commonwealth or a State or Territory.*⁶¹ Schedule B excludes any such claim.

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

109) To meet s 190B(9), ‘the application and accompanying documents must not disclose and the Registrar must not otherwise be aware, that:

- a. to the extent that the native title rights and interests claimed consist of or include ownership of minerals, petroleum or gas—the Crown in right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;
- b. to the extent that the native title rights and interests claimed relate to waters in an offshore place—those rights and interests purport to exclude all other rights and interests in relation the whole or part of the offshore place;
- c. in any case, the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under ss 47(2), 47A(2) or 47B(2)).’

110) The application satisfies the requirements of this condition because:

- a. Schedules E and Q of the application provide that there is no claim to ownership of minerals, petroleum or gas wholly owned by the Crown;
- b. as per Schedule P, the application area does not extend to any offshore places;
- c. as per Schedules B and E, there is no information before me to indicate that the native title rights and interests claimed have been otherwise extinguished.

Registration Conditions about procedural requirements of the claim (s 190C)

SECTION 190C – CONDITIONS MET

111) I am satisfied the application meets the requirements of ss 190C(2)-(4) and 190C(5).

⁵⁹ See subsection 61A(1)

⁶⁰ See subsection 61A(2)

⁶¹ See subsection 61A(3)

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

- 112) For the application to meet the requirements s 190C(2), the Registrar must be satisfied that it contains all of the details and other information, and is accompanied by any affidavit or other document, required by ss 61 and 62.

Does the claim contain the prescribed information and is it accompanied by prescribed documents?

- 113) I have examined the application and I am satisfied that it contains the prescribed information and is accompanied by the prescribed documents, as noted in the table at Appendix A and as set out in the following reasons.

Applications that may be made: s 61(1)

- 114) This section provides that a native title determination application may be made by ‘a person or persons authorised by all the persons (the native title claim group) who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed, provided the person or persons are also included in the native title claim group’.
- 115) In my view, the limited circumstances which may permit the Registrar to assess the details provided in Schedule A as to the identity of the claim group do not arise in this case as there is nothing on the face of the application to indicate that “not all the persons in the native title claim group were included, or that it was in fact a sub-group of the native title claim group.”⁶²

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

- 116) This information is provided on the first and final pages of the Form 1 application.

Applications authorised by persons: s 61(4)

- 117) Schedule A contains a clear description of the persons in the native title claim group.

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

- 118) There are affidavits from the nine persons who comprise the applicant at Attachment T of the application. The affidavits have all been signed in the presence of a witness and contain the five statements required by this section. Therefore, I am satisfied the application is accompanied by the required affidavits.

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

- 119) The required details are in Schedule B, Attachment B and a map showing the boundaries is provided at Attachment C.

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

- 120) Schedule D states that no searches were carried out.

⁶² *Northern Territory v Doepele* at [36]

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

121) Schedule E contains a description of the claimed native title rights and interests.

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

122) This description is provided in Attachment F, along with the additional information provided in relation to the justification for the changes made to the apical ancestors, and is sufficient to be a general description of the factual basis for the assertion that the claimed native title exists and for the particular assertions provided in subsections (i) to (iii) of s 62(2)(e).

Activities: s 62(2)(f)

123) Information about the activities carried out by the claim group is provided in Schedule G and Attachment F.

Other applications: s 62(2)(g)

124) Schedule H identifies that there are no overlapping applications. This is supported by the Geospatial Report.

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

125) Schedule I includes the details of three current s 29 tenement notices within the application area. Schedule HA claims there are no notices under s 24MD within the area. These outcomes are supported by the Geospatial Report.

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

Decision

126) The Geospatial Report and my search of the Register of Native Title Claims confirms there are no previously registered applications that overlap the area of the application. As the application does not overlap any other application, there is no requirement that I consider the issue of common claim group membership. It follows that the claim satisfies the condition of s 190C(3).

What is required to meet this condition?

127) For the application to meet the condition at s 190C(3), the Registrar ‘must be satisfied that no person included in the native title claim group for the application (the **current application**⁶³) 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.

⁶³ Emphasis in original.

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

Decision

128) I am satisfied that the applicant is a member of the native title claim group and authorised to make the application and to deal with matters arising in relation to it by all the other persons in the native title claim group pursuant to subsection 190C(4)(b). I am also satisfied that the application meets the requirements of s 190C(5).

What is required to meet this condition?

129) To meet s 190C(4), the Registrar must be satisfied that the application has been certified by all representative Aboriginal/Torres Strait Islander bodies that could certify the application in performing its functions.⁶⁴ If the application has not been certified, the Registrar must be 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.⁶⁵

What information must be considered?

130) In order to satisfy this condition, the application must contain sufficient information for the Registrar to be satisfied that the requirements of s 190C(4)(b) has been met.

131) The application is not certified, therefore I must be satisfied 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.

132) The relevant material in the application is contained at Schedule R, Attachment R and Schedule T, Attachment T. Below I consider the materials pertaining to the authorisation meeting followed by consideration of whether the applicant is a member of the claim group and authorised to make the application.

133) The application contains detailed information about the conduct of the authorisation meeting held on 7 May 2017 in the form of affidavits from the persons who constitute the Applicant⁶⁶ and [Name removed]⁶⁷ and [Name removed]⁶⁸ who assisted in the preparation of the meeting and attended the meeting. Further, advertisements for the meeting, the powerpoint presentation shown at the meeting, minutes of the meeting and names and signatures of those who attended were also included in the application as annexures to these affidavits.

134) Notice of the authorisation meeting was given in two ways – public notices were published in three newspapers approximately one month prior to the authorisation meeting and personal notice was provided in writing to 454 Wulli Wulli claimants as identified on the legal representatives' database on 21 April. Further, an information meeting was held two days prior to the authorisation meeting.

⁶⁴ See subsection 190C(4)(a)

⁶⁵ See subsection 190C(4)(b)

⁶⁶ At Attachment T

⁶⁷ Affidavit of [Name removed] affirmed 17 May 2017

⁶⁸ Affidavit of [Name removed] affirmed 19 May 2017

- 135) I am of the view that the content of the public and personal notices were sufficiently detailed and clear and provided sufficient notice for interested parties to attend. Limited travel and accommodation assistance was available to potential attendees upon application, if they met relevant criteria.
- 136) The information meeting held on 5 May was attended by 74 members of the claim group where a powerpoint presentation was provided which explained what the basis of the upcoming meetings would be and provided information about the history of the matter and the reason behind proposed changes to the construct of the claimant group.
- 137) Two meetings were held on 7 May – the first to amend the claim group description and the second to authorise the amended application. Attendees at the meetings were required to confirm their descent from one or more named apical ancestor, before being provided with an identifying wrist band. Genealogies were provided to assist in this process.
- 138) A powerpoint was shown at the meetings of 7 May and 125 people registered their attendance at the authorisation meeting, confirmed by the attendance sheets provided.
- 139) The claimant group determined that there was no decision making process under their group's traditional laws and customs in relation to making decisions about such matters as authorisation. The meeting, therefore, adopted an agreed decision making process for the authorisation meeting which was clearly articulated in the application. This decision making process entailed the provision of a clearly worded resolution read out to the meeting. The resolution would be moved and seconded before voting occurred. Voting was by a show of hands for those in favour, those against and those who abstained from voting. The outcome would be determined by majority vote. The motion about the decision making process was carried unanimously with two abstentions. The affidavits of [Name removed] and [Name removed] affirm that the agreed decision making process was followed in the authorisation meeting.
- 140) Affidavits provided by all the named applicants further confirmed the decision making process adopted by the group and attests that the process was followed.
- 141) For the purposes of s 190C(5)(a), the application must contain a statement to the effect that the requirement set out in paragraph (4)(b) has been met and must also briefly set out the grounds on which the Registrar should consider that the requirement has been met. My consideration is confined to information contained in the application.
- 142) The required statements are contained in the application at Schedule R. Affidavits provided by the named applicants all contained statements as per 190C(4)(b), namely – 'I am authorised by all of the persons in the claim group to make the native title claim and to deal with matters arising in relation to it.'
- 143) Having considered the materials provided in the application regarding the notification of the meetings, the conduct of the meetings and the decision making process, I am satisfied that the applicant is appropriately authorised to make and deal with the application. I am satisfied because:

- [1] the information before me is detailed and provides a record that the persons attending the meeting were descendants of the apical ancestors (of the amended native title claim group) and thus representative of the native title claim group;
- [2] sufficient notice was given of the meeting;
- [3] the information about the decision making process was clear and not contested;
- [4] the persons comprising the named applicant affirmed they were authorised to do so; and
- [5] there is nothing before me which causes me to believe that the authorisation process was compromised.

144) I am, therefore, satisfied that the application meets the requirements of ss and 190C(4)(b) 190C(5).

End of reasons

Appendix A – Summary of procedural conditions met

Requirement	Information addressing requirement	Met/ Not met
s 61A(1) no native title determination application if approved determination of native title	Schedule H and NNTT Geospatial Report	Met
s 61A(2) claimant application not to be made covering previous exclusive possession over areas	Schedule B	Met
s 61A(3) claimant applications not to claim certain rights and interest in previous non-exclusive possession act areas	Schedule B	Met
s190B(9)(a) no claim made of ownership of minerals, petroleum or gas that are wholly owned by the Crown	Schedule Q	Met
s190B(9)(b) exclusive possession is not claimed over all or part of waters in an offshore place	Schedule P	Met
s190B(9)(c) native title rights and/or interests in the application area have otherwise been extinguished	Schedule E, paragraph 1	Met
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
s 62(1)(a) Affidavits in prescribed form	Annexures at Attachment T	Met
s 62(2)(a) Information about the boundaries of the area	Schedule B, Attachment B and Attachment C	Met
s 62(2)(b) Map of external boundaries of the area	Attachment C	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 and Attachment F and Attachment R	Met
s 62(2)(f) Activities	Schedule G and Attachment F	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

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Robert Clancy & Ors on behalf of the Wullli Wullli People #2
NNTT No.	QC2011/005
Federal Court of Australia No.	QUD311/2011

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:

25 July 2017

Date application entered on Register:

16 December 2011

Applicant:

As per the Schedule

Applicant's address for service:

As per the Schedule

Area covered by application:

As per the Schedule

Persons claiming to hold native title:

As per the Schedule

Registered native title rights and interests:

1. Over areas where a claim to exclusive possession can be recognised...the claim group claims the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world, pursuant to the traditional laws and customs of the claim group.
2. Over areas where a claim to exclusive possession cannot be recognised, the claim group claims the following non-exclusive native title right to:
 - a. live and be present on the application area;
 - b. take, use, share and exchange Traditional Natural Resources for personal, domestic and non-commercial, communal purposes;

- c. conduct burial rites;
- d. conduct ceremonies;
- e. teach on the area about the physical and spiritual attributes of the area;
- f. maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
- g. light fires for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;
- h. be accompanied into the claim area by non-claim group members being people required:
 - (1) by traditional law and custom for the performance of ceremonies or cultural activities; and
 - (2) to assist in observing and recording traditional activities on the claim area; and
- i. In relation to Water, take and use:
 - (1) Traditional Natural Resources from the Water for personal, domestic and non-commercial communal purposes; and
 - (2) For personal, domestic and non-commercial, communal purposes.

Dr Debra Fletcher, Deputy Registrar

20 September 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.