Registration Decision

National Native Title Tribunal

Application name	Purnululu
Name of applicant	Pamela Alberts; Lorraine Daylight; Sophia Mung; Shirley Drill; Roberta Daylight; Timothy Mosquito; Benjamin Cross; Bernard Stretch; Coral Gore-Birch; Christine Farrer; Cherylene Nocketta; Darren Gore; Jeremy McGinty; Judith Butters; Queenie Malgil
Federal Court of Australia No.	WAD6007/1998
NNTT No.	WC1994/011
Date of Decision	7 December 2018

Claim accepted for registration

I have decided the claim in the Purnululu application satisfies all the conditions in ss 190B–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.

Katy Woods

Delegate of the Native Title Registrar[2]

[1] All legislative references are to the *Native Title Act 1993* (Cth) (the Native Title Act), unless stated otherwise.

[2] Delegate of the Native Title Registrar pursuant to ss 190–190D of the Native Title Act under an instrument of delegation dated 27 July 2018 and made pursuant to s 99 of the Native Title Act.

Reasons for Decision

CASES CITED

Aplin on behalf of the Waanyi Peoples v Queensland [2010] FCA 625 (*Aplin*)

Commonwealth v Yarmirr (2001) 208 CLR 1; [2001] HCA 56 (*Yarmirr*)

Corunna v Native Title Registrar [2013] FCA 372 (*Corunna*)

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*)

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 of Australia v Doepel [2003] FCA 1384 (*Doepel*)

Strickland v Native Title Registrar [1999] FCA 1530 (*Strickland*)

Wakaman People 2 v Native Title Registrar and Authorised Delegate [2006] FCA 1198 (*Wakaman*)

Western Australia v Native Title Registrar (1999) 95 FCR 93; [1999] FCA 1591 (*WA v NTR*)

Western Australia v Ward (2002) 213 CLR 1; [2002] HCA 28 (*Ward HC*)

BACKGROUND

[1] The claim in this application was made on behalf of the Purnululu native title claim group. It covers land and waters including the Purnululu National Park, in the shire of Halls Creek in north-east Western Australia.

[2] This claim was originally made on 21 December 1994 and entered onto the Register of Native Title Claims (Register) on 27 March 1995. At that time the registration test provisions were not in force. On 23 September 1999 an amended application was filed. The registration test was applied and on 15 October 1999 it was accepted for registration under s 190A and the Register updated accordingly.

[3] On 7 August 2018 an amended application was filed. On 8 August 2018 the Federal Court of Australia (Court) gave a copy of the amended application to the Registrar of the National Native Title Tribunal (Tribunal) pursuant s 64(4).

[4] Before a delegate was able to consider the amended application received on 8 August 2018, the Registrar received a further amended application from the Court pursuant to s 64(4) on 30 August 2018. This further amended application is the version before me. For ease of reference, I refer to this further amended application as 'the application' in my reasons below.

[5] The granting of leave by the Court to amend the application was not made pursuant to s 87A, and so the circumstance described in s 190A(1A) does not arise. The amendments to the application are greater than the changes prescribed by s 190A(6A), so that provision does not apply. Therefore, in accordance with s 190A(6), I must accept the claim for registration if it satisfies all the conditions in ss 190B–190C.

[6] As the claim in the application was originally made before 1 September 2007, I am required to consider it against the requirements of s 62 as it stood prior to the commencement of the *Native Title Amendment (Technical Amendments) Act 2007* (Cth).

Information considered

[7] I have considered the information in the application and the following additional information provided by the applicant directly to the Registrar on 20 August 2018 and 9 November 2018, specifically:

(1) Purnululu WAD6007/1998 Anthropology Report dated 15 May 2018 (anthropology report);
(2) Appendices 5.4.1 and 5.4.2 to the anthropological report (Appendix 5.4.1; Appendix 5.4.2)
(3) Statement of Facts, Issues and Contentions as filed with the Court on 4 July 2018 (SFIC);
(4) Section 62 affidavits as filed with the Court on 13 July 2018;
(5) Certification by the Kimberley Land Council dated 3 July 2018;
(6) Applicant's submissions on the Registration Test dated 9 November 2018 (submissions);
(7) Affidavit of the late [Claimant 1], affirmed 17 September 1999 ([Claimant 1] affidavit);
(8) Affidavit of [Claimant 2], affirmed 12 October 2018 ([Claimant 2] affidavit).[3]

[8] I have also considered information contained in a geospatial assessment and overlap analysis prepared by the Tribunal's Geospatial Services in relation to the area covered by the application, dated 13 August 2018 (geospatial report) and information available through Geospatial Services in relation to locations mentioned in the application.[4]

[9] There is no information before me obtained as a result of any searches conducted by the Registrar of state or Commonwealth interest registers,[5] and the state of Western Australia (state government) has not provided submissions in relation to the application of the registration test.[6]

[3] Section 190A(3)(a).
[4] Section 190A(3)(c).
[5] Section 190A(3)(b).
[6] Section 190A(3)(c).

Procedural fairness

[10] On 10 August 2018 the Tribunal's senior officer for the matter (senior officer) wrote to the relevant minister of the state government advising I would be considering the information in the application and should the state government wish to make any submissions, it should do so by 20 August 2018.

[11] On 20 August and 9 November 2018 the applicant provided additional information directly to the Registrar for consideration by the delegate in applying the registration test (additional information). On 12 November 2018 the senior officer wrote to the relevant state minister advising I would consider this additional information in my decision.

[12] On 22 November 2018 the senior officer received confirmation the state government did not wish to receive the additional information or make any submissions on the application. This concluded the procedural fairness processes.

Section 190C: conditions about procedures and other matters

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

[13] To meet s 190C(2), the Registrar must be satisfied the application contains all of the prescribed details and other information, and is accompanied by any affidavit or other document, required by ss 61–2. I am not required to undertake a merit assessment of the material at this condition.[7]

[14] The application contains the details specified in s 61:

Section	Details	Information	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

[15] The application contains the information specified in s 62:

Section	Details	Information	Result
s 62(1)(a)	Affidavits in prescribed form	Affidavits filed with application	Met
s 62(2)(a)	Information about the boundaries of the area	Schedule B / Attachment B	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	Met

[7] *Doepel* [16], [35]–[39].

Section	Details	Information	Result
s 62(2)(f)	Activities	Schedule G	Met
s 62(2)(g)	Other applications	Schedule H	Met
s 62(2)(h)	Notices under s 29	Schedule I	Met

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

[16] To meet s 190C(3), the Registrar 'must be satisfied that no person included in the native title claim group for the application (the ***current application***) was a member of a native title claim group for any previous application'.[8] To be a 'previous application':

(1) the application must overlap the current application in whole or part;

(2) there must be an entry for the claim in the previous application on the Register of Native Title Claims (the Register) when the current application was made; and

(3) the entry must have been made or not removed as a result of the previous application being considered for registration under s 190A.

[17] The geospatial report states and my own searches confirm that when this application was made on 21 December 1994, there were no overlapping applications on the Register. Therefore, there are no overlapping applications which meet the definition of a 'previous application' under s 190C(3). This means that the issue of common claimants does not arise and s 190C(3) is met.

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

[18] To meet s 190C(4), the Registrar must be satisfied:

(a) the application has been certified by all representative Aboriginal/Torres Strait Islander bodies that could certify the application in performing its functions; or

(b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.

[19] Schedule R states:

> The Application is certified by the Kimberley Land Council, under the Native Title Act 1993 (Cth) section 202(4)(d) and a copy of the certificate accompanies the further information being provided to the Registrar of the National Native Title Tribunal.

[20] There is a note in the Act following s 190C(4)(a) which states '[a]n application can be certified under s 203BE, or may have been certified under the former paragraph 202(4)(d)'. I therefore do not consider the reference to s 202(4)(d) in Schedule R has any effect on the application's ability to meet this condition.

[8] Emphasis in original.

[21] As the application purports to be certified, I must be satisfied:

(a) the certificate identifies the relevant representative body;

(b) the representative body has the power under Part 11 to issue the certification; and

(c) the certificate meets the requirements of s 203BE(4).[9]

Which representative body is identified?

[22] The certificate in Attachment R states it is provided by the Kimberley Land Council (KLC). It is dated and signed by the Acting Chief Executive Officer. I am satisfied the certificate identifies the relevant representative body.

What power under Part 11 does the representative body have to issue the certification?

[23] The certificate states the certification is made pursuant to s 203BE(1)(a) of the Native Title Act. The geospatial report confirms KLC is the only representative body for the whole of the area covered by the application. I have verified this information against current data held by the Tribunal's Geospatial Services in the national map of Representative Aboriginal and Torres Strait Island Body areas. That map shows KLC to be the recognised representative body for the area covering the application area, pursuant to s 203AD. As a recognised representative body, the KLC can perform all of the functions listed in Part 11, including, relevantly, the certification functions referred to in s 203BE. I am satisfied KLC has the power under Part 11 to issue the certification.

How does the certificate meet the requirements of s 203BE(4)?

[24] Section 203BE(4) provides that '[a] certification of an application for a determination of native title by a representative body must:

(1) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (2)(a) and (b) have been met; and
(2) briefly set out the body's reasons for being of that opinion; and
(3) where applicable, briefly set out what the representative body has done to meet the requirements of subsection (3)'.

Section 203BE(4)(a)

[25] Section 203BE(4)(a) requires a representative body to state in its certification that it is of the opinion that the requirements of ss 203BE(2)(a)–(b) have been met.

[26] Section 203BE(2)(a) prohibits a representative body from certifying an application unless it is of the opinion that all persons in the native title claim group have authorised the applicant to make the application and to deal with matters arising in relation to it.

[9] *Doepel* [80]–[81].

[27] Section 203BE(2)(b) prohibits a representative body from certifying an application unless it is of the opinion that all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the native title claim group.

[28] As the certificate contains both these required statements, I am satisfied s 203BE(4)(a) is met.

Section 203BE(4)(b)

[29] Section 203BE(4)(b) requires the representative body to briefly set out the reasons for its opinion that ss 203BE(2)(a)–(b) are met.

[30] The certificate sets out KLC's reasons for its opinion that s 203BE(2)(a) is met under the heading 'Authorisation', which outlines the process by which the members of the applicant were authorised at a claim group meeting on 27 and 28 June 2018.

[31] The certificate also sets out KLC's reasons for its opinion that s 203BE(2)(b) is met under the heading 'Identification of all persons within the native title claim group', referring to extensive anthropological and genealogical research, and community consultations conducted by KLC over a number of years for the purposes of identifying all members of the native title claim group. I am satisfied s 203BE(4)(b) is met.

Section 203BE(4)(c)

[32] Section 203BE(4)(c) requires a representative body to set out, where applicable, what it has done to meet the requirements of s 203BE(3).

[33] Section 203BE(3) states that if the land or waters covered by the application are wholly or partly covered by one or more applications (including proposed applications) of which the representative body is aware, then representative body must make all reasonable efforts to:

(1) achieve agreement, relating to native title over the land or waters, between the persons in respect of whom the applications are, or would be, made; and
(2) minimise the number of applications over the land or waters.

[34] Section 203BE(3) also states that a failure by the representative body to comply with this requirement does not invalidate the certification. The certificate does not include a statement in relation to this requirement, however as there are no overlapping applications, I am satisfied s 203BE(4)(c) is not applicable.

[35] As the certificate identifies the relevant representative body, the representative body has the power under Part 11 to issue the certification, and the certificate meets the relevant requirements of s 203BE(4), s 190C(4)(a) is met.

Section 190B: conditions about merits of the claim

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

[36] To meet s 190B(2), the Registrar must be satisfied 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 questions for this condition are whether the information and map provide certainty about:

(1) the external boundary of the area where native title rights and interests are claimed; and
(2) any areas within the external boundary over which no claim is made.[10]

How does the information about the external boundary meet this condition?

[37] Attachment B contains a written description of the external boundaries of the application area. Attachment C is a map of the application area prepared by the Land Claims Mapping Unit of the Western Australian Department of Land Administration, titled 'Purnululu Native Title Claim WAG6007/98 (WC94/11), Land Tenure as at 14/9/1999', dated 20 September 1999. It includes:

(1) the application area depicted in bold black outline with black cross-hatching;
(2) tenure as displayed in the legend, labelled with Pastoral lease number and name and reserve number as appropriate;
(3) the Great Northern Highway and the Ord River;
(4) scalebar and coordinates defining the boundaries of the mapped area (AGD84);[11] and
(5) notes relating to the source, currency and datum of data used to prepare the map.

[38] Having considered the assessment in the geospatial report, and the description and map in Attachments B and C, I am satisfied that the external boundary of the application area can be identified on the earth's surface with reasonable certainty.

How does the information about excluded areas meet this condition?

[39] Schedule B includes a description of 'internal boundaries', that is, areas within the boundaries which are excluded from the application area. This description adopts general clauses to identify the excluded areas, including areas in relation to which a previous exclusive possession act has been done, and areas where native title has been validly extinguished.

[40] I note French J's comment regarding s 190B(2): 'it is unrealistic to expect a concluded definition of the areas subject to these provisions to be given in the application. Their applicability to any area will require findings of fact and law to be made as part of the hearing

[10] *Doepel* [122].
[11] Australian Geodetic Datum 1984.

of the application'.[12] Following this reasoning, I am satisfied the description of the excluded areas will be sufficient to ascertain the excluded areas at the appropriate time.

[41] I am satisfied 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, which means s 190B(2) is met.

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

[42] 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.

[43] I am not required to do more than make 'an assessment of the sufficiency of the description of the group for the purpose of facilitating the identification of any person as part of the group' at this condition.[13]

[44] Schedule A states:

(1) The Native Title Claim Group are those Aboriginal people who:

(a) are descended from one or more of the people listed in paragraph [2] of this Schedule; or

(b) are recognised by the descendants of the people listed in paragraph [2] of this Schedule as having rights and interests in the claim area under traditional law and custom.

(2) The people referred to in paragraph [1] of this Schedule are: [list of 16 people].

[45] From this description I understand that in order to be considered part of the claim group, an individual must be a descendant of the apical ancestors listed in paragraph 2, or be recognised by those descendants as having rights and interests in the area covered by the application under traditional law and custom.

[46] I consider the description of the people in paragraph 1(a) provides a clear objective starting point, being descent from named persons. Determining all the members of the claim group from the 16 ancestors will require genealogical research, however I note Carr J's view that the need to undertake a factual enquiry to determine the members of the group does not mean that the group has not been described sufficiently.[14]

[47] I consider the description of the people in paragraph 1(b) is also sufficient, noting s 190B(3) requires only a clear description, rather than a 'cogent explanation' of the basis on which

[12] *Strickland* [55].
[13] *Wakaman* [34].
[14] *WA v NTR* [67].

individuals qualify as members of the claim group.[15] I also note the guidance from Dowsett J that it is 'necessary that such identification be possible at any future point in time' and 'membership must be based on group acceptance'.[16] I consider it will be possible to identify the relevant members of the group at a future point in time in accordance with the description provided in paragraph 1(b) by making enquiries to the claim group members described in paragraph 1(a).

[48] I am therefore satisfied the application describes the persons in the native title claim group sufficiently clearly and so s 190B(3)(b) is met.

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

[49] To meet s 190B(4), the Registrar must be satisfied the description contained in the application as required by s 62(2)(d) is sufficient to allow the claimed native title rights and interests to be identified.

[50] According to Mansfield J, it is open to the Registrar to read Schedule E 'as a whole' so there is 'no inherent or explicit contradiction'.[17] I have not considered whether the rights and interests claimed are 'native title rights and interests' in accordance with s 223(1) as I consider that is part of the task at s 190B(6), where I must decide whether each of the claimed rights and interests are established as 'native title rights and interests' on a prima facie basis.

[51] Under the heading 'Native title where traditional rights are wholly recognisable', Schedule E states:

> 1. Paragraph [2] applies to every part of the claim area where there has been no extinguishment of native title or where any extinguishment is required to be disregarded.
> 2. Where this paragraph applies, the nature and extent of the native title rights and interests is the right of possession, occupation, use and enjoyment of land and waters as against the whole world.

[52] I consider these paragraphs describe a right of exclusive possession.

[53] Under the heading 'Native title where traditional rights are partially recognisable', Schedule E states:

> 3. Paragraph [4] applies to every part of the claim area to which paragraph [2] does not apply, being land and waters where there can only be partial recognition of native title or where there has been partial extinguishment of native title (other than where such extinguishment must be disregarded).
> 4. Where this paragraph applies, the nature and extent of the native title rights and interests are the rights:
> (a) to have access to, remain in and use the land and waters;
> (b) to access and take for any purpose the resources of the land and waters; and

[15] *Gudjala 2007* [33].
[16] *Aplin* [256], [260].
[17] *Doepel* [92], [123].

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

5. The native title rights and interests referred to in paragraph 4 above do not confer:
   (a) possession, occupation, use and enjoyment of those land and waters on the native title holders to the exclusion of all others; or
   (b) a right to control the access of others to those land or waters.
6. The native title rights and interests are exercisable in accordance with and subject to the:
   (a) traditional laws and customs of the native title holders; and
   (b) laws of the State of Western Australia and the Commonwealth, including the common law.
7. Notwithstanding anything in paragraphs 1 to 6 above, there are no native title rights and interests in or in relation to:
   (a) pursuant to the *Mining Act 1904* (WA), gold, silver, other precious metals, precious stones and all other minerals; or
   (b) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and in the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

[54] I consider these paragraphs describe the non-exclusive rights claimed and the extent to which they are claimed.

[55] I am satisfied the description in Schedule E is sufficient to understand and identify all the claimed rights and interests. There is no inherent or explicit contradiction between the rights claimed, which means s 190B(4) is met.

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

[56] 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.

[57] I understand my task is 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'.[18]

[58] Through reliance on the statements contained in the affidavits sworn by the applicant persons pursuant to s 62(1)(a), that each deponent believes the statements contained in the application to be true, I have accepted the asserted facts as true.[19]

[18] *Doepel* [16]–[17]; *Gudjala 2008* [83], [92].
[19] *Gudjala 2008* [91]–[92].

What is required to meet s 190B(5)(a)?

[59] To meet s 190B(5)(a) the factual basis must be sufficient to show:

(1) the claim group presently has an association with the area, and the claim group's predecessors have had an association with the area since sovereignty or European settlement;[20]

(2) there is 'an association between the whole group and the area', although not 'all members must have such association at all times';[21] and

(3) there is an association with the entire area claimed, rather than an association with only part of it or 'very broad statements', which have no 'geographical particularity'.[22]

How does the application support an association between the predecessors of the claim group and the area at sovereignty or European settlement and since that time?

[60] Schedule F asserts:

(1) [T]he native title claim group and their ancestors have, since the assertion of British sovereignty possessed, occupied, used and enjoyed the claim area; and as far back as the combined memories of the Applicants go and the oral history known to the Applicants, the native title claim group and their predecessors have had an association with the area;

[61] The Statement of Facts and Contentions (SFIC) states:

6. Sovereignty in respect of the Claim Area occurred in 1829.
7. Effective sovereignty in respect of the Claim Area did not occur at one point in time. It commenced with the first arrival in 1881 of pastoralists with large herds of cattle in the East Kimberley and the 1886 three-month gold rush in the Halls Creek area. Effective sovereignty had extended to the whole Claim Area by about 1901, when the Turkey Creek ration station and police depot (now known as Warmun) was established by the State of Western Australia.

…

19. Under the laws and customs, each of the Apical Ancestors possessed rights and interests in part or parts of the Claim Area at or about the time of effective sovereignty.

[62] The anthropological report supports this assertion in its summary of the historical and ethnographic records of the region surrounding the application area, stating that settlement or 'effective sovereignty' occurred between approximately 1885 and 1900.[23] Appendix 5.4.2 lists the probable country locations of each of the apical ancestors of the claim group, and extensive footnotes to the Descent Charts therein describe the sources of information used, including claim group informants, historical records such as that of the Derby Leprosareum, and early ethnographic and linguistic sources such as Kaberry (1935) and Tindale (1953).

[63] The applicant's submissions include a table titled 'People and locations in photographs contained in [Anthropologist]'s Purnululu Anthropology Report' (location table).[24] The location

[20] *Gudjala 2007* [52].
[21] Ibid.
[22] *Martin* [26]; *Corunna* [39], [45].
[23] Anthropological report [17].
[24] Submissions, Attachment A.

table sets out the connections between the plates in the anthropology report (paintings and photographs), the artists and people in the photographs; those persons' apical ancestors, the location of the photograph and the associated dreaming story, and the relevant Sites Register ID. For example:

Title	**Page of report**	**People in photograph**	**Apical**	**Location of Photograph and Dreaming**	**Site Register ID**
Plate 15: [Description removed]	119	[Claim group member's name removed]	[Name of apical ancestor removed]	[Location and Dreaming removed]	[Site Register ID number and description removed]

[64] The Sites Register is provided in Appendix 5.4.1 and includes a map of the application area showing the relevant locations and sites referred to in the anthropology report and location table.

[65] The [Claimant 1] affidavit deposes:

> 9. When I was a young boy [10-11 year old] we was travelling, big mob, from Tickalara to Turner through Blue Hole, *Mernte-Mernte*, *Kapala* back to [Turner] station. We would join up with the old people [including] [Apical 1] and [Apical 2][who] used to work at Cartridge Spring [Mable Downs] [*sic*] and go back to Turner holiday time.[25]

[66] The late [Claimant 1] was a member of the applicant prior to his death and I understand he was already a Purnululu elder when he swore his affidavit in 1999. From the date references in the application I can infer [Claimant 1] was likely to have been born around 1920-1930. As [Claimant 1] refers to [Apical 1] as one of the 'old people' I can infer [Claimant 1] is likely referring to his grandparents' generation, the members of which would have been alive at or around the time of settlement in the application area. I note [Apical 1] is named as an apical ancestor in Schedule A of the application and Appendix 5.4.2 describes her local country 'Osmand Range and Texas Ngarrguruny/Ngarrgun Bungle Bungle Ranges in the north of the park'.[26] I understand references to the 'park' refer to Purnululu National Park which covers the eastern part of the application area. From the Tribunal's geospatial database I can see that Tickalara is located on the western boundary of the application area and Turner station lies to the south. Mabel Downs station lies to the north west of the application area. Texas Downs station lies directly to the north and according to the Sites Register there is also a location known as 'Old Texas' in the far east of the application area.

[25] [Claimant 1] affidavit [9].
[26] Appendix 5.4.2, 1.

[67] The [Claimant 1] affidavit also states the deponent was born 'in the McIntosh Hills on Alice Downs Station' and he moved around with his parents to Old Han Spring, Survey Creek, and then to Frog Hollow where his mother was born, which lies just outside the application area to the west.[27] The deponent states many of his siblings were born in the bush at Tickalara, which I infer would have been during the 1930s-1940s.[28] From the Tribunal's geospatial database I can see that Alice Downs station lies just outside the application area to the south west, and that Old Han Spring, Survey Creek and Frog Hollow lie just outside to the west.

[68] The [Claimant 2] affidavit states the deponent was born in 1949, and that her 'mother's mother's mother was [Apical 3]' who is named in Schedule A as one of the apical ancestors of the claim group.[29] From the deponent's date of birth I can infer [Apical 3] was likely to have been alive in the 1860s-1870s, prior to European settlement in the application area. The deponent states her 'main country' is Bungle Bungle, to which she is connected through [Apical 3].[30] She deposes that she was born at Springvale and moved to Bungle Bungle when she was about seven, and how she would travel with her grandparents and great-uncle 'back and forth' between Bungle Bungle and Turner River station.[31] From the Tribunal's geospatial database I can see that the Bungle Bungle Range runs through the centre of the application area.

[69] I consider there is sufficient factual basis to support the assertion that the predecessors of the claim group have had an association with the application area since sovereignty. I have formed this view based on the information in the anthropological report and the affidavits of senior claim group members, about the generations of their predecessors living in the application area around the time of settlement and since that time. I consider it reasonable to infer the association of the claim group's predecessors was much the same at sovereignty as it was at the time of European settlement in the application area.

How does the application support an association between the claim group and the area presently?

[70] With regards to the association of the current claim group with the application area asserted in Schedule F and extracted above, the application includes the following examples:

[71] The [Claimant 1] affidavit describes how the deponent would take the young people out on country in and around the application area to tell them stories, teach them about bush tucker

[27] [Claimant 1] affidavit [3].
[28] Ibid [4].
[29] [Claimant 2] affidavit [2], [4].
[30] Ibid [5].
[31] Ibid [17]–[18].

and about ceremonies.[32] As the affidavit was deposed in 1999 I infer those young people would now likely be current members of the claim group.

[72] The [Claimant 2] affidavit describes the association which the deponent has with parts of the application area which she can 'speak for', as well as the association of other claim group members to other parts.[33] She describes how parts of the application area are good for particular foods, and about particular Dreaming stories taught to her by her predecessors.[34]

How does the application support an association, both past and present, with the entire area claimed?

[73] From the map of the Sites Register included in Appendix 5.4.1 I can see the locations with which the claim group members are associated are spread across and around the application area, and the links between current claim group members and their ancestors to particular places and dreamings are set out for ease of reference in the location table, an example of which I have extracted above. Many locations mentioned in the claimants' affidavits and the additional materials are shown on the Site Register including Island Yard in the south, Old Texas in the east, Kawarre and Blue Hole in the centre.

[74] In my view, the claimants' affidavits and the additional materials provided by the applicant are sufficient to support the assertion in Schedule F that the claim group have, and its predecessors had, an association with the application area as a whole. This is because the material demonstrates a high level of geographical particularity to locations across the application area, as well as to surrounding areas and locations, where claim group members and their predecessors were born, lived, worked and undertook activities such as hunting animals and gathering bush foods on the land and catching fish in the waters, as well as knowledge of the associated dreaming stories. I consider there is sufficient factual basis to support an assertion of both a physical and a spiritual connection to the application area, which means s 190B(5)(a) is met.

What is required to meet s 190B(5)(b)?

[75] To meet s 190B(5)(b), the factual basis must be sufficient to support an assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests. 'Native title rights and interests' is defined in s 223(1)(a) as those rights and interests 'possessed under the traditional laws acknowledged, and traditional customs observed,' by the native title holders.

[32] [Claimant 1] affidavit [14]–[15].
[33] [Claimant 2] affidavit [36].
[34] Ibid [37]–[38].

As both provisions refer to traditional laws and customs acknowledged and observed, I consider it appropriate to interpret s 190B(5)(b) in light of the judicial consideration of 'traditional' in s 223(1).

[76] In *Yorta Yorta* the plurality held that a 'traditional' law or custom is one which has been passed from generation to generation of a society, usually by word of mouth and common practice. The High Court further held that in the context of the Native Title Act, 'traditional' also carries two other elements, namely:

(1) 'the origins of the content of the law or custom concerned are to be found in the normative rules of the Aboriginal and Torres Strait Islander societies that existed before the assertion of sovereignty by the British Crown. It is only those normative rules that are "traditional" laws and customs'; and

(2) 'the normative system under which the rights and interests are possessed (the traditional laws and customs) is a system that has had a continuous existence and vitality since sovereignty. If that normative system has not existed throughout that period, the rights and interests which owe their existence to that system will have ceased to exist'.[35]

[77] I therefore understand my assessment of the sufficiency of the factual basis under s 190B(5)(b) requires the identification of:

(1) a society which was in existence at sovereignty or European settlement in the application area, and

(2) normative rules which were observed by that society and which have continued to be observed through to the present day – these normative rules are the 'traditional laws and customs'.

How does the application support the existence of a society at settlement?

[78] The SFIC asserts:

> **Society**
>
> 8. At sovereignty, the groups of Aboriginal people [who occupied and used the Claim Area]:
>
> (a) shared many cultural, social and linguistic features, albeit that there may also have been some differences between them; and
>
> (b) included, but were not necessarily limited to, people who spoke the Kija, Jaru and Malngin languages.
>
> 9. At all material times at and since sovereignty, the members of the Claim Group and their predecessors have been:
>
> (a) a body of persons; or
>
> (b) part of a body of persons -
>
> united in and by its acknowledgement and observance of a body of laws and customs.
>
> (The relevant body of persons is hereinafter referred to as the **Society**.)[36]

[35] *Yorta Yorta* [46]–[47] (emphasis added).
[36] Emphasis in original.

[79] In support of this assertion the anthropology report describes a regional society or 'wider jural public' within which the application area sits, which can be identified through features such as 'enduring intermarriage patterns, shared ceremonial links, shared mythological tracks or Ngarranggarni, and the *wirnan* trading network'.[37]

[80] The anthropological report also states there are 'three broad Language identities in the Claim Area; Kija, Jaru and Malngin, or in some cases, a mix of these'.[38] Citing historical and linguistic sources dating back to Kaberry in 1935, the anthropology report states (broadly) the Kija language is associated with the north of the application area[39], the Jaru language with the south and south east,[40] and the Malngin language 'to the east of the Ord River' which I understand would cover a significant portion of the application area based on the location of the Ord running from a point of the western boundary to the south, and extending north through Purnululu National Park to form part of the eastern boundary.[41] I consider there is information in the anthropological report to support the assertion in the SFIC, that the society in the application area at sovereignty shared cultural, social and linguistic features and was identifiable through the use of the three languages, spoken separately or in a 'mix'. In support of this assertion is the explanation in the anthropology report that Kaberry, describing these language groups in 1935, had amongst her informants people who were born prior to settlement in the application area.[42] I consider it reasonable to infer the society in which those people lived is unlikely to have been significantly disrupted or altered between sovereignty in 1829 and settlement in the application area in the 1880s-1900s.

How does the application support the existence of traditional laws and customs?

[81] Schedule F asserts the 'possession, occupation, use and enjoyment of the [application] area has been pursuant to and in accordance with the laws and customs of the claim group'.[43]

[82] The [Claimant 1] affidavit details the deponent's parents participating in 'Law Business' on Alice Downs Station, and travelling with a 'big mob' which joined up with the 'old people' including two of the claim group's apical ancestors while travelling across the application area, which I have reproduced in full at s 190B(5)(a) above.[44] The [Claimant 1] affidavit also contains information about the trading networks in which his father and grandfather were involved, for

[37] Anthropology report [402], [405].
[38] Ibid [97].
[39] Ibid [100].
[40] Ibid [335].
[41] Ibid [227], [347].
[42] Ibid [19].
[43] Schedule F [2].
[44] [Claimant 1] affidavit [3], [9].

ochre, spinifex wax and quartzite used for spearheads.[45] The deponent explains how trade relationships operate across the region, referencing Alice Downs and Turner River stations, Tickalara and Salt Pan, describing these customs as 'that's the *winan* [trading]'.[46] The anthropological report similarly asserts the existence of trading networks or *wirnan* [*sic*] across the region including the application area, as noted above. The deponent also recalls the use of message sticks by the 'boss bloke' to organise meetings, including at Blue Hole in the application area, which he attended.[47] Noting the deponent's references to his grandparents' generation, the members of which I have inferred were alive around the time of settlement in the application area, and their participation in various indicia of a society which are also asserted in the anthropological report, this information supports the assertion that there existed normative laws and customs which were observed by the society in the application area at settlement and through the generations (or 'cohorts' as described in the anthropological report)[48] since that time.

[83] The [Claimant 2] affidavit details the observation of laws and customs by the deponent, her parents and grandparents, whom I have inferred would have been alive in the early decades of settlement in the application area. The deponent explains how, when traveling between Bungle Bungle and Turner River, she was taught to avoid particular areas associated with dangerous dreamings,[49] and about burial places on the application area which she learned how to maintain from 'the old people'.[50] The deponent asserts she identifies as Kija and speaks that language, as did her predecessors.[51]

[84] As discussed above, noting the ages of the late [Claimant 1] and of [Claimant 2], many of the people from whom they learnt the laws and customs would have been alive at or around the time of settlement, and I consider it reasonable to infer those ancestors observed the same laws and customs throughout their lifetimes. I also consider it reasonable to infer those ancestors received knowledge of the laws and customs in much the same way they taught them to their descendants, through observance, oral transmission and common practice. These inferences are easier to make where there are only a few generations separating the current claim group from the society at settlement. I therefore consider the laws and customs

[45] Ibid [18]–[22].
[46] Ibid [22].
[47] Ibid [10].
[48] Anthropological report [19].
[49] [Claimant 2] affidavit [18].
[50] Ibid [35].
[51] Ibid [2]–[4].

described in the factual basis material to be 'traditional' in accordance with the High Court's interpretation in *Yorta Yorta*.[52]

[85] I am satisfied the factual basis is sufficient to support the assertion that there was a pre-sovereignty society in the application area characterised by the use of the three languages consistently referred to throughout the material before me, as well through shared cultural and social features, as asserted in the SFIC. I am satisfied the factual basis is sufficient to support the assertion that there exist traditional laws acknowledged by, and traditional customs observed by the native title claim group, such as participation in a regional trading network and burial practices. This means s 190B(5)(b) is met.

What is required to meet s 190B(5)(c)?

[86] Meeting the requirements of this condition relies on whether there is a sufficient factual basis to support the assertion at s 190B(5)(b), that there exist traditional laws and customs which give rise to the claimed native title rights and interests.[53] It also requires a sufficient factual basis to support an assertion that there has been continuity in the observance of traditional laws and customs going back to sovereignty or at least European settlement.[54]

[87] In addition to the affidavit material summarised above about how the claimants received knowledge of their laws and customs from their predecessors, the deponents detail how they have passed on that knowledge to younger generations. For example, the [Claimant 1] affidavit deposes:

> 13. When I was a young boy running round the old people would teach me stories for the country. Like they taught me how to get fish from the waterhole, they would teach me stories. They also taught me about the bush tucker, the plants, fruits and animals. We walked around and looked after country.
>
> 14. These things we still teach to young people. We still go out fishing, sometimes we use a fishing line, and we go out hunting turkey, kangaroo and get bush tucker and sugarbag.
>
> ...
>
> 16. Young people learn the stories and ceremony. We still put'em all the boy through the Law, like in the old days. People come up for dancing, singing, for corroboree.

[88] Similarly the [Claimant 2] affidavit describes how the deponent has taught her descendants the laws pertaining to burial sites and the spiritual implications of failing to abide by those laws, which she had earlier learned from her predecessors:

> 35. The old people, my grandparents … and my uncle … told me about those burial places and how to treat [them] the right way under our traditional law. We can't disrespect the country where someone is buried. Country and old people whose spirits are in that country might get angry at us.

[52] *Yorta Yorta* [46]–[47].
[53] *Gudjala 2009* [29].
[54] *Gudjala 2007* [82].

> ... I pass that on to my children and grandchildren. I know the Kija law for those burial places and I follow it through to today.

[89] I am satisfied the factual basis is sufficient to support the assertion that the claim group have continued to hold their native title rights in accordance with traditional laws and customs. This is because the material before me demonstrates that claimants possess knowledge about how the generations since the apical ancestors acknowledged and observed their laws and customs in relation to the application area around the time of settlement. I also consider the information about how younger generations have received knowledge of the laws and customs, through observance, oral transmission and common practice, reflects the description of how senior claim group members received such knowledge from their predecessors who were alive around the time of settlement, so as to permit an inference that the claim group is a 'modern manifestation' of the pre-sovereignty society in the application area.[55] As I consider the factual basis sufficient to support an assertion of continuity in the observance of traditional laws and customs, s 190B(5)(c) is met.

[90] As I consider the factual basis on which it is asserted that the claimed native title rights and interests exist is sufficient to support the three assertions of ss 190B(5)(a)–(c), I am satisfied s 190B(5) is met.

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

[91] To meet s 190B(6), the Registrar must consider that, prima facie, at least some of the native title rights and interests claimed can be established. According to s 223(1), a 'native title right or interest' is one that is held under traditional laws acknowledged and traditional customs observed by the native title claim group.

[92] I note the comments by Mansfield J about s 190B(6):

(1) it requires some measure of the material available in support of the claim;[56]

(2) it appears to impose a more onerous test to be applied to the individual rights and interests claimed;[57] and

(3) the words 'prima facie' mean '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'.[58]

[93] It is not my role to resolve whether the asserted factual basis will be made out at trial. My task is to consider whether there is any probative factual material which supports the existence of each individual right and interest, noting that as long as some rights can be prima facie

[55] *Gudjala 2009* [31].
[56] *Doepel* [126].
[57] Ibid [132].
[58] Ibid [135].

established the requirements of s 190B(6) will be met. Only those rights and interests I consider can be established prima facie will be entered on the Register.[59]

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

Exclusive possession

[94] I note the comments of the majority in *Yarmirr*, that a claimed right of exclusive possession is not required to be supported by 'some enforceable means of excluding from its enjoyment those who are not its holders'; and that an inquiry into how a right is observed 'seems directed more to identifying practices that are regarded as socially acceptable, rather than looking to whether the practices were supported or enforced through a system for the organised imposition of sanctions by the relevant community'.[60]

[95] I also note the comments by French J in *Ward HC* in relation to claims of exclusive rights: 'the right to possess and occupy as against the whole world carries with it the right to make decisions about access to and use of the land by others. The right to speak for the land and to make decisions about its use and enjoyment by others is also subsumed in that global right of exclusive occupation'.[61]

[96] The [Claimant 1] affidavit deposes: '[n]other mob come talk got us and tell us when they going onto country. That the right way. Might be mining mob, tourist, they all gotta talk got us'.[62]

[97] The [Claimant 2] affidavit deposes: 'One time I went out to Blue Hole and I saw *gardiya* [white people] out there taking photos. I said to them: "Did you go through [my uncle] to be out here taking photos?" I said that because it is part of my uncle's country, and I know people can't go out onto that country without asking permission from the right people first. *Gardiya* should follow that rule'.[63]

[98] I consider the information in the claimants' affidavits provide a sufficient level of information about the socially acceptable practices around access to the application area to support the claimed right of exclusive possession.

To have access to, remain in and use the lands and waters

[99] There are numerous examples of access to the application area throughout the material before me to support the existence of this non-exclusive right, for example, the [Claimant 1]

[59] Section 186(1)(g).
[60] *Yarmirr* [16].
[61] *Ward HC* [88].
[62] [Claimant 1] affidavit [25].
[63] [Claimant 2] affidavit [43].

affidavit describes how the deponent would travel in and around the application area as a child with his family and 'old people', and that he later worked on Bungle Bungle and 'all over my country', stopping at Frog Hollow in his senior years, just outside the application area.[64]

To access and take for any purpose the resources of the land and waters

[100] There are also examples in the application of claim group members, past and present, taking the resources of the application area. The [Claimant 2] affidavit describes accessing and taking the resources from parts of the application area with which the deponent is associated, stating:

> [t]hat Bungle Bungle country is fat country. That means it is full of good food, rich and strong with it. There's big mob fat kangaroo, and emu too. We go fishing for black bream and rock cod, and lots of bush tucker. When I was a kid we were living out there the old people taught me about this palm tree, you cut the trunk and get food out like cabbage and cook it on the fire.[65]

To protect places, areas and things of traditional significance on the land and waters

[101] The [Claimant 2] affidavit also provides information about protecting places of significance, such as the burial sites of her predecessors which I have discussed above at s 190B(5). The affidavit also describes how the deponent is obligated to protect parts of the application area, including sacred sites, because of her descent from apical ancestor [Apical 3] and also from her uncle, both of whom held rights and interests in the same areas.[66]

[102] I am satisfied the application contains sufficient information about each of the rights claimed and that the claimed rights can be considered 'native title rights and interests'. This is because, according to the definition in s 223(1), a native title right or interest is one that is held under traditional laws and customs, and I am satisfied there is sufficient factual basis material to support the assertion of the existence of traditional laws and customs as required by s 190B(5)(b). I therefore consider the claimed rights and interests have all been established on a prima facie basis, which means s 190B(6) is met.

Traditional physical connection – s 190B(7): condition met

[103] To meet s 190B(7), the Registrar must be satisfied at least one member of the native title claim group:

(a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or

(b) previously had and would reasonably have been expected currently to have such a connection but for things done by the Crown, a statutory authority of the Crown or any holder of or person acting

[64] [Claimant 1] affidavit [9], [6]–[7].
[65] [Claimant 2] affidavit [37].
[66] Ibid [33], [38]–[43].

on behalf of the holder of a lease, other than the creation of an interest in relation to land or waters.

[104] I note this condition requires the material to satisfy the Registrar of particular facts such that evidentiary material is required, and that the physical connection must be in accordance with the traditional laws and customs of the claim group.[67]

[105] Based on the information in her affidavit and the anthropology report, I am satisfied claim group member [Claimant 2] currently has a traditional physical connection to the land and waters covered by the application. The information about her life in and around the application area, hunting animals and catching fish, and her regular visits to and protection of sacred sites, demonstrates she has a physical connection to the application area.

[106] I am also satisfied [Claimant 2]'s connection with the application area is 'traditional' in the sense required by s 190B(7). I am satisfied her knowledge of the application area has been passed to her from the predecessors of the claim group while spending time on the lands and waters of the application area. As I consider the factual basis material is sufficient to support an assertion that traditional laws and customs acknowledged and observed by the predecessors of the claim group have been passed down to the current members of the claim group, it follows that I am satisfied that [Claimant 2]'s connection with the application area is in accordance with those traditional laws and customs.

[107] I am therefore satisfied at least one member of the native title claim group currently has a traditional physical connection with a part of the claim area, and so s 190B(7)(a) is met.

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

[108] In my view the application complies with the provisions of ss 61A(1)–(3) and therefore satisfies the condition of s 190B(8):

Section	Requirement	Information	Result
s 61A(1)	No native title determination application if approved determination of native title	Geospatial report, my own searches	Met
s 61A(2)	Claimant application not to be made covering previous exclusive possession act areas	Schedule B, paragraph [2]	Met
s 61A(3)	Claimant applications not to claim certain rights and interests in previous non-exclusive possession act areas	Schedule E	Met

[67] *Doepel* [18], *Gudjala 2009* [84].

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

Section 190B(9)(a)

[109] To meet s 190B(9)(a), the application and accompanying documents must not disclose, and the Registrar must not otherwise be aware that, to the extent that the native title rights and interests claimed consist of or include ownership of minerals, petroleum or gas – the Crown in the right of the Commonwealth, a State or a Territory wholly owns the minerals, petroleum or gas. I understand my task at this condition is to consider whether the claimed native title rights and interests consist of or include ownership of any minerals, petroleum or gas wholly owned by the Crown, in either the right of the Commonwealth or the relevant state, which in relation to this application is Western Australia.

[110] Paragraph 7 of Schedule E excludes from the claim any native title rights and interests in minerals pursuant to the *Mining Act 1904* (WA) (Mining Act 1904) or petroleum pursuant to the *Petroleum and Geothermal Energy Act 1967* (WA) (Petroleum Act). I have considered the extent of this exclusion for the purposes of s 190B(9)(a) below.

Ownership by the Crown in the right of the state of Western Australia

Minerals

[111] I note the Mining Act 1904 has been repealed and replaced by the *Mining Act 1978* (WA) (Mining Act 1978). 'Minerals' was defined in the Mining Act 1904 as 'all minerals other than gold, and all precious stones'.[68] 'Minerals' has a more extensive definition in s 8 of the Mining Act 1978 which I will not reproduce here. Noting the beneficial nature of the Native Title Act, which does not provide a definition of minerals, I consider it is reasonable to infer the applicant does not claim minerals as defined in either of the Western Australian Mining Acts, and there is nothing in the application to make me aware that such a claim is made.

Petroleum and gas

[112] In the submissions provided on 9 November 2018, the applicant has helpfully drawn my attention to the definition of petroleum in the Petroleum Act, which includes any naturally occurring hydrocarbon, or mix of hydrocarbon, whether in a gaseous, liquid or solid state.[69] Having considered that provision, and noting 'gas' is not defined in the Native Title Act, I agree with the applicant's submissions and consider the exclusion in paragraph 7 of Schedule E

[68] Mining Act 1904, s 3.
[69] Submissions [87]–[88]; Petroleum Act, s 5.

means that no claim is made in the application of ownership to petroleum or gas wholly owned by the Crown in the right of the state of Western Australia.

Ownership by the Crown in the right of the Commonwealth

Minerals

[113] With regards to minerals wholly owned by the Crown in the right of the Commonwealth, the applicant draws my attention to s 9 of the Mining Act 1904 and s 9 of the Petroleum Act. Section 9 of the Mining Act 1904 provides for the Governor's powers of appointment in case of an emergency and is not relevant to this condition. As discussed above, the Mining Act 1904 was repealed by the Mining Act 1978. Section 9 of the Mining Act 1978 provides:

> **9 . Gold, silver and other precious metals property of Crown**
>
> (1) Subject to this Act —
>
> (a) all gold, silver, and any other precious metal existing in its natural condition on or below the surface of **any land** whether alienated or not alienated from the Crown and if alienated whenever alienated, is the property of the Crown;
>
> (b) all other minerals existing in their natural condition on or below the surface of **any land** that was not alienated in fee simple from the Crown before 1 January 1899 are the property of the Crown.
>
> (2) Notwithstanding anything in this Act or any previous enactment the owner, grantee, lessee or licensee of, or other person entitled to, any land to which this section or any corresponding provisions apply, that is not the subject of a mining tenement, is entitled to use any mineral existing in a natural state on or below the surface of the land for any agricultural, pastoral, household, road making, or building purpose, on that land.[70]

[114] Given the relevance of s 9 of the Mining Act 1978 to this condition, I consider the applicant intended to refer to the Mining Act 1978 in both the application and submissions. I accept the applicant's submission that according to s 9 of the Mining Act 1978 ownership of minerals in onshore locations in Western Australia is held by the Crown in the right of the state of Western Australia, and as no claim to offshore minerals made (as I have decided below), the application does not claim any offshore minerals owned by Crown in the right of the Commonwealth.

Petroleum and gas

[115] With regards to petroleum and gas wholly owned by the Crown in the right of the Commonwealth, the applicant refers to s 9 of the Petroleum Act which provides:

> **9. Petroleum, geothermal energy resources and geothermal energy declared to be property of Crown**
>
> Notwithstanding anything to the contrary contained in any Act, or in any grant, lease, or other instrument of title, whether made or issued before or after the commencement of this Act, all petroleum, geothermal energy resources and geothermal energy on or below the surface of **all land**

[70] Emphasis added.

within this State, whether alienated in fee simple or not so alienated from the Crown, are and shall be deemed always to have been the property of the Crown.[71]

[116] As offshore petroleum and gas are owned by the Commonwealth, rather than the state of Western Australia, I consider that no claim to any petroleum or gas wholly owned by the Crown in the right of the Commonwealth is made. This is because I consider the claim does not extend to any offshore place, as discussed below. There is otherwise nothing in the application to make me aware that that such a claim is made.

[117] For the reasons above, I consider the native title rights and interests claimed do not consist of or include ownership of minerals, petroleum or gas which are wholly owned by the Crown in the right of the Commonwealth or the state of Western Australia, and so s 190B(9)(a) is met.

Section 190B(9)(b)

[118] To meet s 190B(9)(b), the application and accompanying documents must not disclose, and the Registrar must not otherwise be aware that 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 to the whole or part of the offshore place.

[119] I consider it is reasonable to infer, based on the inland location of the application area, that no claim to any offshore place is made, whether to the exclusion of other rights and interests or not, and there is nothing in the application to make me aware that such a claim is made. This means s 190B(9)(b) is met.

Section 190B(9)(c)

[120] To meet s 190B(9)(c), the application and accompanying documents must not disclose, and the Registrar must not otherwise be aware that the native title rights and interests claimed have otherwise been extinguished, except the extent that the extinguishment is required to be disregarded under ss 47(2), 47A(2) or 47B(2).

[121] Paragraph 3 of Schedule B states the application excludes areas in relation to which native title rights and interests have otherwise been extinguished and Schedule L claims the benefit of ss 47–47B in regards to parts of the application area where extinguishment is required to be disregarded. There is no information in the application to disclose that native title rights and interests in the application area have otherwise been extinguished and so s 190B(9)(c) is met.

End of reasons

[71] Emphasis added.

Attachment A

Summary of registration test result

Application name	Purnululu
NNTT No.	WC1994/011
Federal Court of Australia No.	WAD6007/1998
Date of decision	7 December 2018

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:

National Native Title Tribunal

Date application filed/lodged: 21 December 1994

Date application entered on Register: 27 March 1995

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: As per the Schedule

Katy Woods

7 December 2018

Delegate of the Native Title Registrar pursuant to ss 190–190D of the Native Title Act under an instrument of delegation dated 27 July 2018 and made pursuant to s 99 of the Native Title Act.