

## Registration Decision

<b>Application name</b>	Gangalidda People (Konka Claim)
<b>Name of applicant</b>	Terrence Taylor
<b>Federal Court of Australia No.</b>	QUD659/2017
<b>NNTT No.</b>	QC2017/012
<b>Date of Decision</b>	27 February 2018

### Claim accepted for registration

I have decided that the claim in the Gangalidda People (Konka Claim) application satisfies all of the conditions in ss 190B and 190C of the *Native Title Act 1993* (Cth).<sup>1</sup> Therefore the claim must be accepted for registration and entered on the Register of Native Title Claims.

---

Heidi Evans

*Delegate of the Native Title Registrar*<sup>2</sup>

---

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

<sup>2</sup> Delegate of the Native Title Registrar pursuant to sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cth) under an instrument of delegation dated 23 August 2017 and made pursuant to s 99 of the Act.

# Reasons for Decision

## CASES CITED

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

*Griffiths v Northern Territory of Australia* [2007] FCAFC 178 (*Griffiths*)

*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*)

*Lardil Peoples v State of Queensland* [2004] FCA 298 (*Lardil Peoples*)

*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) 133 FCR 112; [2003] FCA 1384 (*Doepel*)

*Risk v National Native Title Tribunal* [2000] FCA 1589 (*Risk*)

*Sampi v Western Australia* [2005] FCA 777 (*Sampi*)

*State of Western Australia v Strickland* [2000] FCA 652 (*Strickland FC*)

*Stock v Native Title Registrar* [2013] FCA 1290 (*Stock*)

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

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

*Western Australia v Ward* [2002] HCA 28 (*Ward HC*)

## BACKGROUND

- [1] The application was filed on behalf of the Gangalidda People native title claim group. It covers land and waters in the south of the Gulf of Carpentaria, including a small portion of coastline, northwest of Burketown. The application area covers the area subject to the Konka pastoral holding.
- [2] Another application brought by the same native title claim group was filed on the same day as the current application. It covers an adjacent area, abutting the southern border of the current claim area. That application area covers the area subject to the Pendine pastoral holding.
- [3] I am also the delegate considering the Gangalidda People (Pendine Claim) for registration.
- [4] The area subject of the two applications is surrounded by a number of determinations of native title in favour of the Gangalidda People native title claim group, involving areas where the group holds native title on its own, and where it holds rights and interests jointly with other groups, including the Lardil, Kaiadilt, Yangkaal Peoples, and the Garawa People.<sup>3</sup>
- [5] I understand that the area covered by the two applications was originally included in the area subject of native title determination application QUD84/2004 (Gangalidda and Garawa Peoples), however was later excised, due to the fact the applicant was unable to obtain the

---

<sup>3</sup> See Wellesley Islands Sea Claim (QUD207/1997); Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples (QUD7/2006); Gangalidda and Garawa People (QUD84/2004 and QUD66/2005).

benefit of ss 47 and 47A in relation to the Konka and Pendine term leases. The leases have since been transferred to Walaji Pty Ltd, as trustee for the Walaji Trust, allowing the claims to be made in their current form.

- [6] The Registrar of the Federal Court (the Court) gave a copy of this application and accompanying affidavits to the Native Title Registrar (Registrar) on 29 November 2017 pursuant to s 63 of the Act.
- [7] If the claim in the application satisfies all the registration test conditions in ss 190B and 190C, then the Registrar must accept the claim for registration.<sup>4</sup> If it does not satisfy all the conditions, the Registrar must not accept the claim for registration.<sup>5</sup>
- [8] I have decided that the claim satisfies all of the registration test conditions and my reasons on each condition follow below.

### **Information considered**

- [9] Section 190A(3) sets out the information to which the Registrar must have regard in considering a claim under s 190A and provides that the Registrar ‘may have regard to such other information as he or she considers appropriate’.
- [10] I have had regard to information in the application. I have also considered documents provided by the applicant directly to the Registrar for the purposes of this claim and the Gangalidda People (Pendine Claim) on 13 December 2017:<sup>6</sup>
1. Letter of 13 December 2017 to the Tribunal Practice Officer including submissions from the applicant’s legal representative (4 pages);
  2. Applicant’s Outline of Submissions in Terrence Taylor and Anor on behalf of Gangalidda and Garawa People #2, filed 11 March 2015 (82 pages) (‘Applicant’s Outline of Submissions (QUD66/2015)’);
  3. Affidavit of [name removed], 7 December 2017 (6 pages);
  4. Affidavit of Terrence Taylor, 7 December 2017 (4 pages).
- [11] I note there is no information before me obtained as a result of any searches conducted by the Registrar of State/Commonwealth interest registers.<sup>7</sup>
- [12] The State of Queensland (the State) has not provided any submissions in relation to the application of the registration test.<sup>8</sup>
- [13] 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 14 December 2017 (the geospatial assessment).

### **Procedural fairness**

---

<sup>4</sup> See 190A(6).

<sup>5</sup> See 190A(6B).

<sup>6</sup> See s 190A(3)(a).

<sup>7</sup> See s 190A(3)(b).

<sup>8</sup> See s 190A(3)(c).

- [14] As noted above, I have considered the additional material provided by the applicant on 13 December 2017. On 21 December 2017, I wrote to the State advising that I would be relying on this information in my application of the registration test and that should they wish to make any submissions, they should do so by 25 January 2018. On 12 January 2018, the Tribunal's practice leader for the matter received confirmation that the State had no comments or submissions to make in relation to the additional material. This concluded the procedural fairness processes.

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

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

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

#### ***What is required to meet this condition?***

- [16] For the application to meet the requirements of s 190B(2), the Registrar must be satisfied that the information and map contained in the application identify with reasonable certainty the 'particular land and waters' where native title rights and interests are claimed. The two questions for this condition are whether the information and map provides certainty about:
- (a) the external boundary of the area where native title rights and interests are claimed; and
  - (b) any areas within the external boundary over which no claim is made.<sup>9</sup>

#### ***Does the information about the external boundary meet this condition?***

- [17] A written description of the external boundary of the application area appears at Attachment B. It describes the area as land and waters within the outer external boundary of Lot 4536 on SP204559, including Lots 1 and 2 on SP204599. A map showing the external boundary of the application area appears at Attachment C. The map is a colour copy of an A3 map prepared by the Tribunal's Geospatial Services, entitled 'Konka Pastoral Station', and dated 17 February 2016. The map includes the application area external boundary as a bold dark blue outline, the lots on plan labelled, topographic background, scalebar, location diagram, legend, coordinate grid and notes relating to the source, currency and datum of data used to prepare the map.
- [18] The geospatial assessment provides that the map and description are consistent and identify the application area with reasonable certainty. I have considered the information before me about the external boundary of the application area, and agree with this assessment.

#### ***Does the information about excluded areas meet this condition?***

- [19] Schedule B describes areas not covered by the application using general exclusion clauses. I consider this method of describing excluded areas sufficient for the purposes of s 190B(2), and consider that these areas could be identified with precision once historical tenure searches for

---

<sup>9</sup> *Doepel* at [122].

the area were completed.<sup>10</sup> Schedule B also specifically excludes the areas subject to six approved determinations of native title – QCD2004/001, QCD2008/001, QCD2010/001, QCD2010/002, QCD2015/002 and QCD2015/003.

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

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

#### ***What is required to meet this condition?***

- [21] For the application to meet the requirements of 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.

- [22] 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.<sup>11</sup>

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

- [23] Schedule A provides that the native title claim group on whose behalf the application is made is the Gangalidda People. Paragraph [1] of Schedule A describes those persons, explaining that they are ‘all the descendants of’ 31 apical ancestors, and persons ‘who identify and are identified by other Gangalidda People as belonging to the Gangalidda People according to Gangalidda traditional law and custom.’ ‘Descendants’ is defined to include persons who have been adopted by the Gangalidda People.
- [24] From this description, I understand that an individual must satisfy two criteria in order to qualify as a member of the Gangalidda People. Firstly, they must be a descendant, either a biological descendant or a descendant by means of adoption, of one of the named apical ancestors. Secondly, they must also be a person who identifies and is identified by other Gangalidda People as belonging to the Gangalidda People, according to Gangalidda traditional law and custom.
- [25] Paragraph [2] of Schedule A provides contextual information for the description in paragraph [1], namely that the native title claim group are the same people who comprised the Gangalidda People referred to in the six determinations of native title made in favour of the Gangalidda People (and other groups) in 2004, 2008, 2010 and 2015. It is explained that the application area is adjacent to these determined areas.
- [26] Paragraph three adds further information relevant to the process of identifying the members of the group, listing ‘some family names associated with [the] biological descendants of the named Gangalidda ancestors’. While I consider this information may assist in the process of

---

<sup>10</sup> See *Strickland* at [50] to [55].

<sup>11</sup> *Doepel* at [51] and [37]; *Gudjala 2007* at [33].

identifying the members of the group, it is my understanding that it does not create a further rule or criterion that must be satisfied in order for an individual to qualify as Gangalidda.

- [27] My view is that it is primarily the information in paragraph one which allows for the members of the group to be identified with sufficient clarity. While the application of the criteria set out in paragraph one would require some research, or ‘factual inquiry’, to determine who the biological and adopted descendants of the named ancestors are, I do not consider that this results in the description being unclear.<sup>12</sup> Similarly, regarding the second criterion, that persons must identify and be identified by other Gangalidda People as belonging to the Gangalidda People, pursuant to the traditional laws and customs of the group, I acknowledge that some research would also be required. However, by starting with one individual, and asking them whether they identify as Gangalidda, and then approaching other known members of the Gangalidda People to inquire whether they consider that person belongs to the Gangalidda People, I am satisfied the members of the group could be ascertained. Knowledge of the traditional laws and customs of the Gangalidda People would assist in understanding the basis for which a person can identify as, and be identified by others as, Gangalidda.
- [28] Through this process described of applying the description contained in Schedule A, I consider the persons in the group can be ascertained with sufficient clarity.

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

- [29] I am satisfied the description in Attachment E is sufficient for me to clearly understand and identify the itemised rights as ‘native title rights and interests.’

#### ***What is required to meet this condition?***

- [30] For the application to meet the requirements of 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.<sup>13</sup>

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

- [31] The description of the rights and interests claimed is at Attachment E to the Form 1. Paragraph one of the description is a claim to a right of possession, occupation, use and enjoyment of the application area to the exclusion of all others. Paragraph two sets out eight non-exclusive rights claimed in relation to the application area. Paragraph three sets out three non-exclusive rights claimed specifically in relation to the use and enjoyment of water within the application area, where that use and enjoyment is for personal, domestic and non-commercial communal purposes. Following the list of rights and interests claimed, Attachment E provides definitions for terms appearing in those rights and interests as described, for ‘Natural Resources’, ‘Water’ and ‘watercourse’.

---

<sup>12</sup> *WA v NTR* at [67].

<sup>13</sup> *Doepel* at [99] and [123].

- [32] I have read the contents of the description in Attachment E together, including the definitions provided, and am satisfied there is no contradiction within the description. In its entirety, the description is clear. Further, I consider that the rights and interests described are understandable, and have meaning, as native title rights and interests.

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

- [33] 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?***

- [34] For the application to meet the requirements of 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 law 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.

- [35] The question for this condition is whether the factual basis is sufficient to support these assertions. To answer that question, I must 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'.<sup>14</sup>

- [36] Section 62(2)(e) requires only a 'general description' of the factual basis. However, where the facts provided are not at a sufficient level of detail to enable a genuine assessment of the application by the Registrar, the application may not be able to satisfy the condition. The material must comprise 'more than assertions at a high level of generality'<sup>15</sup> and address the particular native title, claimed by the particular native title claim group, over the particular land and waters of the application area.<sup>16</sup>

- [37] Through reliance on the statements contained in the affidavits sworn by the applicant persons pursuant to s 62(1)(a) that accompany the application, that each deponent believes the statements contained in the application to be true, I have accepted the asserted facts as true.<sup>17</sup>

- [38] The factual basis material appears in Schedules G, M, Attachments F, and F1 to F4, and in the additional material supplied by the applicant on 13 December 2018, set out above.

---

<sup>14</sup> *Doepel* at [16]-[17]; *Gudjala 2008* at [83] and [92].

<sup>15</sup> *Gudjala 2008* at [92].

<sup>16</sup> *Gudjala 2007* at [39].

<sup>17</sup> *Gudjala 2008* at [91] to [92].

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

[39] 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:

- 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;<sup>18</sup>
- 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;<sup>19</sup> and
- the materials must support that the association both presently and by the group’s predecessors relates to the area as a whole.<sup>20</sup>

***Is there a sufficient factual basis for the requirement at s 190B(5)(a)?***

[40] Attachment F provides that the application area is part of a much broader area, which forms the traditional country of the Gangalidda People. Having considered the information available in the Tribunal’s Native Title Vision Plus database, I have verified the statements in Attachment F that the surrounding areas have been the subject of a number of determinations of native title in favour of the Gangalidda People, along with other groups. As above, the application area covers the Konka pastoral lease, and was initially included in the area of the Gangalidda and Garawa Peoples application, now determined.

[41] There is a considerable amount of material before me, primarily comprising affidavits sworn by claim group members, but also extracts from Federal Court proceedings about the Gangalidda People, and extracts from anthropological reports about the Gangalidda and their traditional country.

[42] Attachment F provides an excerpt from *Lardil Peoples*, where Cooper J found he ‘was satisfied there was a communal group at the time of sovereignty which was an ethnographically and culturally separate group of indigenous peoples (the original Gangalidda peoples) who inhabited the coastal land stretching along the mainland coast of the Gulf of Carpentaria from Massacre Inlet to the eastern bank of the Leichardt River, where it enters the Gulf of Carpentaria, which is claimed as the traditional country of the Gangalidda Peoples.’<sup>21</sup> The application area falls within this region, primarily situated adjacent to the Gulf of Carpentaria coastline, between Arthurs Creek and Rocky or Moonlight Creek. The area includes Point Parker, immediately west of Allen Island.

[43] From the affidavit information, provided by members of the claim group, it is clear that presently and across at least two previous generations, Gangalidda People were born on and have lived on, their traditional country. For example, one claimant states:

[name removed] also told me that my mother’s and my grandmother’s and my grandfather’s country was from Allen Island where my father’s mother, Kitty, was born, right to Old Dumaji where the Rock

---

<sup>18</sup> *Gudjala 2007* at [52].

<sup>19</sup> *Gudjala 2007* at [51] and [52].

<sup>20</sup> See *Martin* at [23]–[26], affirmed in *Corunna* at [35]–[39] and [42]–[44].

<sup>21</sup> At [67] to [68].



Cod story is. Allen Island is part of that Point Parker country. [name removed] and [name removed] are from there too.<sup>22</sup>

- [44] There are also extensive examples of the present association of members of the group with the application area. For example, one claimant explains:

The place which we spend a lot of time at is my husbands country at Point Parker. That is [name removed]'s country too. We would camp right at the point for weeks on end. We kept going back there whenever we could. That country starts at Syrell Creek and goes to Brown's Creek. In that Point Parker country is the place where the Goanna fought the Dugong. There are rocks there which mark the place where the Goanna did his toilet there in the fight. It is also the place where the Dingo Dreaming is.<sup>23</sup>

- [45] Another claimant states:

When I was working on cattle stations near Burketown, I used to ride out with [name removed]. He was the head stockman there. He was a Gangalidda man. His mother and my mother's mother were sisters. We used to go all the way through Gangalidda country. We would go through Moonlight Creek, Point Parker, Bayley Point, Gaynors Lagoon, Rocky Creek, Jilgera, Gin Arm Creek, and the Nicholson River. [name removed] told me that was all his mother's country. [name removed] was not his real name. He had been given that name by the station owner who was also called [name removed]. He told me that his mother and my mother's mother were sisters. He told me it was my country too.<sup>24</sup>

- [46] In my view, this information is sufficient to support an assertion that the claim group presently, and since settlement in the area have, and have had, an association with the area.

- [47] The material before me also addresses an association of the predecessors of the group with the area at the time of, and prior to, settlement. As above, Attachment F refers to the findings of the Court based on ethnographic and anthropological evidence that the application area is situated within the traditional country of the Gangalidda. The material provides that exploration of the region took place in the 1840s to 1860s.<sup>25</sup> From my own research, I understand that Burketown, the main regional centre within the area encompassing the application area, was established in 1865.<sup>26</sup> It is clear from the material that settlement primarily involved the establishment of various pastoral stations in the Gulf of Carpentaria.<sup>27</sup>

- [48] The affidavits of elderly claimants reveal that the apical ancestors named in Schedule A are generally two or three generations prior to these persons, that is, they were their grandparents or great grandparents. The material includes information about the birth dates of these apical ancestors. They primarily fall within the 1870s and 1880s, however also include dates in the period from 1830 to 1860.<sup>28</sup> I understand, therefore, that the apical ancestors were persons born prior to and during the period of settlement, or in the decades immediately following.

---

<sup>22</sup> Affidavit of [name removed] at [10].

<sup>23</sup> Affidavit of [name removed] at [41].

<sup>24</sup> Affidavit of [name removed] at [8].

<sup>25</sup> Applicant's Outline of Submissions (QUD66/2015) at [130].

<sup>26</sup> See <http://www.burke.qld.gov.au/a-brief-history-of-the-gulf-of-carpentaria>

<sup>27</sup> See for example Applicant's Outline of Submissions (QUD66/2015) at [130].

<sup>28</sup> Applicant's Outline of Submissions (QUD66/2015) at [156] to [177].

- [49] Addressing an association of those apical ancestors with the area around the time of settlement, one claimant shares his knowledge of the places two of the apical ancestors (his grandparents on his mother's side) were associated with:

My mother's mother was Limil Limil. Limil Limil was a Gangalidda woman from Bayley Point country. She was also Yangkaal. My mother's father was Johnny Balawayinda he was from Old Dumaji country as well.<sup>29</sup>

- [50] Elsewhere in their affidavits, claimants talk about the knowledge they have of their grandparents and great grandparents, the country of those persons, and/or places where they were born or lived.<sup>30</sup> In my view, this material is sufficient to support an association of the predecessors of the group with the area at settlement.
- [51] It is clear from the material that a spiritual as well as a physical association with the application area is asserted. For example, Attachment F states that the Dingo Dreaming travels through Point Parker on Konka Station, and that the Rainbow Dreaming travels through Point Parker and Syrell Creek on Konka Station. In their affidavits, claimants give further detail of these dreaming stories.
- [52] The requirement is that the factual basis speak to an association of the group with the whole of the application area. The material names many places with which the group and their predecessors are and were associated. This includes places where they were born, lived, hunted, fished, gathered resources, places they avoided due to spiritual beliefs and places where ceremony was conducted. Using the Tribunal's mapping database, I have considered the location of these places referred to in the material in relation to the boundary of the application area. In my view, these places are spread across the extent of the application area such that I can consider the factual basis sufficient to support an association with the entirety of the area.

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

- [53] 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*<sup>31</sup> by considering s 190B(5)(b) in light of the case law regarding s 223(1)(a), particularly the leading decision of the High Court in *Yorta Yorta*.<sup>32</sup>
- [54] According to the High Court's decision in *Yorta Yorta*, a law or custom is 'traditional' where:
- (a) it 'is one which has been passed from generation to generation of a society, usually by word of mouth and common practice';<sup>33</sup>
  - (b) the origins of the content of the law or custom concerned can be found in the normative rules of a society<sup>34</sup> which existed before the assertion of sovereignty by the Crown;<sup>35</sup>

---

<sup>29</sup> Affidavit of [name removed] at [5].

<sup>30</sup> See for example the affidavit of [name removed] at [10].

<sup>31</sup> *Gudjala 2007* at [26] and [62] to [66].

<sup>32</sup> *Yorta Yorta*.

<sup>33</sup> *Yorta Yorta* at [46].

- (c) the normative system has had a ‘continuous existence and vitality since sovereignty’;<sup>36</sup> and
- (d) the relevant society’s descendants have acknowledged the laws and observed the customs since sovereignty and without substantial interruption.<sup>37</sup>

- [55] 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 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 a 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.’<sup>38</sup>
- [56] 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).<sup>39</sup>

***Is there a sufficient factual basis for the requirement at s 190B(5)(b)?***

- [57] There is a considerable amount of information before me that speaks to the existence of a system of traditional law and custom, derived from the laws and customs of a society in the area at sovereignty or settlement, and passed down through the generations to the members of the claim group today. This includes information in affidavits sworn by members of the claim group, excerpts from findings of the Court in relation to the Gangalidda People and their traditional country, and information in a document titled ‘Applicant’s Outline of Submissions’, filed in the Court on 11 March 2015 in relation to the proceedings QUD66/2005, another adjacent Gangalidda claim now determined.
- [58] In particular, Attachment F provides the following excerpt from the decision in *Lardil Peoples*, where Cooper J held:

I am satisfied that there was a communal group at the time of sovereignty which was an ethnographically and culturally separate group of indigenous peoples (the original Gangalidda peoples) who inhabited the coastal land stretching along the mainland coast of the Gulf of Carpentaria from Massacre Inlet to the eastern bank of the Leichardt River, where it enters the Gulf of Carpentaria, which is claimed as the traditional territory of the Gangalidda peoples.

I am satisfied that the present applicant group which identifies itself as the Gangalidda peoples being the people named in the genealogy prepared by Dr Trigger, are the direct descendants of the original

---

<sup>34</sup> 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].

<sup>35</sup> *Yorta Yorta* at [46].

<sup>36</sup> *Yorta Yorta* at [47].

<sup>37</sup> *Yorta Yorta* at [87].

<sup>38</sup> 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.)

<sup>39</sup> 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’.

inhabitants of the territory described in these proceedings as the traditional territory of the Gangalidda peoples.<sup>40</sup>

[59] I note that the description of the native title claim group for the current application is the same description that appeared in the previous Gangalidda claims, including *Lardil Peoples*.<sup>41</sup> I also note that His Honour identifies the wider area considered to be Gangalidda 'traditional territory', which encompasses the application area, such that I am satisfied His Honour's findings apply to the area subject of my consideration. Notwithstanding this, I have considered the material before me and find that it gives strong support for the findings expressed by Cooper J above.

[60] In particular, it supports a society of Gangalidda People in the area, at sovereignty or European settlement, acknowledging and observing normative laws and customs.<sup>42</sup> It explains the link between the society at settlement and the apical ancestors named in Schedule A.<sup>43</sup> It supports a practice of laws and customs having been handed down through the generations to the claim group today, by word of mouth and observance.<sup>44</sup> Members of the claim group share their knowledge of the ways in which previous generations, including the apical ancestors of the group, acknowledged and observed particular laws and customs in relation to the claim area.<sup>45</sup> They also explain the way those laws and customs are acknowledged and observed by the group presently.<sup>46</sup> In light of this information before me, I am satisfied the factual basis is sufficient to support an assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group giving rise to the claim to native title.

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

[61] 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.' In order for a delegate to be satisfied that there is a factual basis for s 190B(5)(c) there must be some material which addresses the following matters outlined by Dowsett J in *Gudjala 2007*:

- that there was a society at settlement that observed traditional laws and customs from which the identified existing laws and customs were derived and were traditionally passed to the claim group;
- that there has been a continuity in the observance of traditional law and custom going back to sovereignty or at least European settlement.<sup>47</sup>

***Is there a sufficient factual basis for the requirement at s 190B(5)(c)***

[62] As I have explained above, I am satisfied the factual basis is sufficient to support an assertion of a society in the area at settlement, acknowledging and observing normative laws and

---

<sup>40</sup> At [67] to [68].

<sup>41</sup> See Schedule A.

<sup>42</sup> See 'Applicant's Outline of Submissions' for QUD66/2015 at [113], [130] to [132], [144] to [155].

<sup>43</sup> See 'Applicant's Outline of Submissions' for QUD66/2015 at [156] to [177].

<sup>44</sup> See for example affidavit of [name removed] at [37]; affidavit of [name removed] at [13] to [17].

<sup>45</sup> See for example affidavit of [name removed] at [32] and [46]; affidavit of [name removed] at [21].

<sup>46</sup> See for example affidavit of [name removed] at [18]; affidavit of [name removed] at [21].

<sup>47</sup> *Gudjala 2007* at [82].

customs, from which the present day laws and customs are derived. I am also satisfied that the factual basis supports an assertion that these laws and customs have been acknowledged and observed by the Gangalidda People, without substantial interruption, since settlement. My reasons for reaching this view follow.

- [63] Firstly, it is clear from the material that since settlement, the claim group and their predecessors have continued to be born on, and continued to live on, the application area.<sup>48</sup> It is also clear that the predecessors of the group, over the period since sovereignty, while living on their traditional country, maintained and upheld the system of laws and customs handed down to them by their ancestors. Information provided by claimants in their affidavits gives specific examples about how particular individuals, and/or the 'old people' practiced certain laws and customs in relation to their country.<sup>49</sup>
- [64] Secondly, there is considerable information before me about the impacts of settlement on the area encompassing the application area, particularly about the establishment of missions in the region. Missions were established at Old Dumaji (in the immediate vicinity of the application area at Bayley Point) and at Nicholson River (in the vicinity of the application area to the south), both locations which fall within the traditional country of the Gangalidda People. In addition to this, the material explains that many of the Gangalidda People secured employment in the pastoral industry, working as stockmen and station hands at stations including Konka.<sup>50</sup> As a result, the Gangalidda People were able to continue practicing their laws and customs in relation to their lands and waters.<sup>51</sup> In my view, this information is sufficient to support an assertion that there was in fact no interruption to the on-going acknowledgment and observance of the traditional laws and customs by the Gangalidda people in the area.

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

- [65] I consider that some of 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 required to meet this condition?***

- [66] 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;<sup>52</sup>
  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);<sup>53</sup>
  3. s 190B(6) appears to impose a more onerous test to be applied to the individual rights and interests claimed.<sup>54</sup>

---

<sup>48</sup> See for example Attachment F at [6.7]; affidavit of [name removed] at [1] to [5].

<sup>49</sup> See for example affidavit of [name removed] at [43] and [45]; affidavit of [name removed] at [21].

<sup>50</sup> See Attachment F at [6.8]; affidavit of [name removed] at [8].

<sup>51</sup> See for example affidavit of [name removed] at [39] and [41].

<sup>52</sup> *Doepel* at [126]

<sup>53</sup> *Doepel* at [127].

[67] 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.’<sup>55</sup>

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

*Right of exclusive possession*

[68] The nature of a native title right to exclusive possession was discussed in *Ward HC*, where the High Court held that:

A core concept of traditional law and custom [is] the right to be asked permission and to ‘speak for country’. It is the rights under traditional law and custom to be asked permission and to ‘speak for country’ that are expressed in common law terms as a right to possess, occupy, use and enjoy land to the exclusion of all others.<sup>56</sup>

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

- a native title right to exclusive possession includes the right to make decisions about access to and use of the land by others;<sup>57</sup>
- the right cannot be formally classified as proprietary - its existence depends on what the evidence discloses about its content under traditional law and custom;<sup>58</sup>
- the material must speak to how, pursuant to their laws and customs, the group is able to ‘exclude from their country people not of their community’, acting as ‘gatekeepers for the purpose of preventing harm and avoiding injury to country’.<sup>59</sup>

[70] There is a considerable amount of material before me that addresses an exclusive native title right held by the members of the claim group. In the affidavits, claimants talk about how they and their predecessors have exercised this right, and the laws and customs and practices that surround the exercise of the right. In addition to this, Attachment F provides that ‘the traditional laws and customs of the Gangalidda people require a person who wishes to have access to the country of an estate group or to its resources to ask a member of the estate group (preferably a senior person) for permission to do so. Attachment F also refers to the findings of Cooper J in *Lardil Peoples*, where His Honour held that:

The right to be asked is the touchstone of the applicant’s concept of ‘ownership’ and underlines that the identifiable right with respect to the land and waters in the area claimed under the traditional laws acknowledged and customs observed was the right to control access and conduct.<sup>60</sup>

[71] While the statement in Attachment F may suggest that the right to be asked permission only operates as between members of the group of various estates, in my view Cooper J’s findings and the statements given by claimants in their affidavits make clear that this right to be asked

---

<sup>54</sup> *Doepel* at [132].

<sup>55</sup> *Doepel* at [135].

<sup>56</sup> *Ward HC* at [88].

<sup>57</sup> *Sampi* at [1072].

<sup>58</sup> *Griffiths* at [71].

<sup>59</sup> *Griffiths* at [127].

<sup>60</sup> *At* [152].

permission and to control access to the traditional country of the Gangalidda people extends beyond the members of the group.

[72] For example one claimant states:

One time, in around 1994, I took [name removed] my son to Jurrmanki. We were going along the sand bank there looking for dugong. We were going to Moonlight Creek. Near Horse Creek we saw a boat with a deep sea net off Allen Island. I saw a buoy and nets in the deep sea off Moonlight Creek. I cut those nets. It was in my sea. In my mother's country. Those two fellas who had those nets were camping and hunting there. They had no right in our law to be there without asking. They were taking all the fish. I cut that net because it was in my country. Those nets will make us starve. We have to have free food in our own country like we have always done. White fellas have got to ask permission too. The law goes for them the same.<sup>61</sup>

[73] And another claimant states:

My mother was from Dumbara. It is in Gangalidda country. Her mother was from Dumbara as well. I do not know where her father Barney was from but he is buried out at Old Dumaji. I know that my mother was also connected to Horse Island and Gunamulla and Giwagara and Wambilbayi as well. She has that country through her father. Gangalidda people have large families intermarried with other Gangalidda people. We have connections in many places through our families. Gangalidda people have also married people from Mornington Island and with Garawa people and Waanyi people. Some people can go both ways. They go through their mother and their father. We always had those relations with those people. My mother told me how people used to go to the islands in rafts for ceremonies and arranging marriages. You have to ask to go to another person's country. My mother told me they had to use message sticks. They were used right across the Gulf. They would come to the boundaries of Gangalidda country and ask for permission to cross.<sup>62</sup>

[74] In my view this information supports the right as being one handed down through the generations to the members of the claim group, and one held pursuant to their traditional laws and customs. I consider the right established on a prima facie basis.

*Non-exclusive right to access, be present on and traverse the area*

[75] There is sufficient information before me to allow me to consider a right of the claim group to access, be present on and traverse the application area, established on a prima facie basis.

[76] The following statement by a claim group member is an example of this type of information:

When I was working on cattle stations near Burketown, I used to ride out with [name removed]. He was the head stockman there. He was a Gangalidda man. His mother and my mother's mother were sisters. We used to go all the way through Gangalidda country. We would go through Moonlight Creek, Point Parker, Bayley Point, Gaynors Lagoon, Rocky Creek, Jilgera, Gin Arm Creek, and the Nicholson River. [name removed] told me that was all his mother's country. [name removed] was not his real name. He had been given that name by the station owner who was also called [name removed]. He told me that his mother and my mother's mother were sisters. He told me it was my country too.<sup>63</sup>

---

<sup>61</sup> Affidavit of [name removed] at [36].

<sup>62</sup> Affidavit of [name removed] at [13].

<sup>63</sup> Affidavit of [name removed] at [8].

*Non-exclusive right to hunt, fish, and gather natural resources*

[77] There is sufficient information before me to allow me to consider a right of the claim group to hunt, fish and gather natural resources from the application area for personal, domestic and non-commercial communal purposes, established on a prima facie basis.

[78] The following statement by a claim group member is an example of this type of information:

When I was at Point Parker with my husband, we used to go fishing all the time. I also went fishing on my husband's country on Mornington Island when we went back to visit his Lardil family. People used to go way out fishing there. They would see feeding frenzies by fish churning up the water. They would go way out chasing those fish in canoes. My old father in law had one of those canoes. It was like an outrigger canoe. They made the paddle out of currajong trees or floating trees along the shore.<sup>64</sup>

*Non-exclusive right to take, use, share and exchange natural resources from the area*

[79] There is sufficient information before me to allow me to consider a right of the claim group to take, use, share and exchange natural resources from the area for personal, domestic, and non-commercial communal purposes, established on a prima facie basis.

[80] The following statement by a claim group member is an example of this type of information:

When you catch fish you should share with the owner of the country in which they are caught. With dugong it is divided up in a traditional way. One part goes to the hunter, another part goes to the person who owns that sea, the person who owns the boat gets some as well as does the man with the wap and the man on the motor. In old times, the men with the paddle would get some. As well as the bloke at the end steering.<sup>65</sup>

*Non-exclusive right to camp on the area*

[81] There is sufficient information before me to allow me to consider a right of the claim group to camp on the area but not to reside permanently or to erect permanent structures or fixtures, established on a prima facie basis.

[82] The following statement by a claim group member is an example of this type of information:

When I was 18 or 19 [name removed] took me around that Point Parker country. We had a packhorse. He showed me the big camp at Escott Station. We went along the old buggy road through to Moonlight Creek and Point Parker.<sup>66</sup>

*Non-exclusive right to light fires on the area for domestic purposes*

[83] There is sufficient information before me to allow me to consider a right of the claim group to light fires on the area for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation, established on a prima facie basis.

[84] The following statement by a claim group member is an example of this type of information:

I was taught how to cook shark and sword fish. My mother showed me how to do that. The way we do that is that we strip the skin off and put it aside. We get the flesh and squeeze it. It should be cooked with special grass from the coast but can also be cooked with tea tree. It is squeezed until it

---

<sup>64</sup> Affidavit of [name removed] at [50].

<sup>65</sup> Affidavit of [name removed] (20 August 1999) at [44].

<sup>66</sup> Affidavit of [name removed] at [14].



gets real fluffy. You soak in the fat and roll it up. It is then tied up with wattle bark. It is the [sic] covered with charcoal from a fire. I have seen my family do that. If it is not squeezed properly it can be poisonous.<sup>67</sup>

*Non-exclusive right to conduct religious and spiritual activities and ceremonies*

[85] There is sufficient information before me to allow me to consider a right of the claim group to conduct religious and spiritual activities and ceremonies on the area, established on a prima facie basis.

[86] The following statement by a claim group member is an example of this type of information:

When a girl has her first baby she is not allowed to touch her parents things until she has had her arms rubbed with red ochre. After that she can touch her parents things.

The old people used to take us out to the bush. When we were near the water the women rubbed themselves with mud if they were breast feeding. We did this when we were dragging nets. If they didn't that mother would get sick. Also, snakes like the smell of breast when a baby is suckling. It is the same with saltwater and fresh water.<sup>68</sup>

*Non-exclusive right to be buried on, and bury native title holders on the area*

[87] There is sufficient information before me to allow me to consider a right of the claim group to be buried on, and bury native title holders on the area, established on a prima facie basis.

[88] The following statement by a claim group member is an example of this type of information:

When my brother died in 1973 I went back to Doomadgee for his funeral. I went to the funeral and I was met by the superintendent. I was told to go to the church and to the cemetery and was told to leave immediately afterwards. In Gangalidda culture we have a period of grieving when a person dies. The whole community comes to grieve with family and we cry and sometimes it takes weeks to get through the traditional grieving. When I was told to leave my mother was distraught. My mother begged me to stay and begged me to go to see the missionary but he would not allow me to stay. I was made to leave straight away.<sup>69</sup>

*Non-exclusive right to maintain places and areas of importance or significance and protect those areas from physical harm*

[89] There is sufficient information before me to allow me to consider a right of the claim group to maintain places and areas of importance or significance to the claim group under their traditional laws and customs and protect those places and areas from physical harm, established on a prima facie basis.

[90] The following statement by a claim group member is an example of this type of information:

One time my mother and my sister and my aunties went on the Nicholson River fishing. There is a sacred tree there. It had raw fruit on it. They got fish and everything was alright. Some people did the wrong thing. They pulled the raw fruit which was wrong and they left that fruit around the fire where they were cooking fish. That was also wrong. A wild storm come up. My mother said "somebody do something wrong today". There was rain and hail. My mother called out to the storm to tell them they were sorry and they would not let it happen again. These things happen when people do the

---

<sup>67</sup> Affidavit of [name removed] at [35].

<sup>68</sup> Affidavit of [name removed] at [27] to [28].

<sup>69</sup> Affidavit of [name removed] at [61].

wrong thing. We are answerable to the spirits of the country as well as the people who are from that country. We will be punished by them and we will be punished by their ancestors. We have to respect our ancestors. That is why we call them mudinyi – we do not call their name. They are there in that country that they are from making sure it is looked after.<sup>70</sup>

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

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

#### ***What is required to meet this condition?***

[92] 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.’<sup>71</sup>

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

- the material must satisfy the delegate of particular facts;
- evidentiary material is, therefore, required; and
- the focus is confined to the relationship of at least one member of the native title claim group with some part of the claim area;<sup>72</sup>
- the physical connection must be shown to be in accordance with the traditional laws and customs of the claim group;<sup>73</sup>
- the material may need to address an actual presence on the area.<sup>74</sup>

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

[94] The focus of this condition is upon one member of the claim group. From the information before me, I am satisfied that [name removed] has a traditional physical connection with some part of the application area.

[95] The material provides the following information about Mr Booth:

- he lives on Gangalidda country, at an outstation north of Doomadgee (just south of the application area)
- he was raised by his Aboriginal stepfather after his Gangalidda mother passed away when he was four years old;
- his stepfather taught him about his mother’s country, which is the Point Parker area, including Dreaming stories for that area;
- his stepfather took him through his country, showing him places of significance, when he was 18-19 years old;

---

<sup>70</sup> Affidavit of [name removed] at [33].

<sup>71</sup> See s 190B(7)(a).

<sup>72</sup> *Doepel* at [17].

<sup>73</sup> *Gudjala 2007* at [89].

<sup>74</sup> *Yorta Yorta* at [184].

- he fishes and collects mussels around Point Parker, and takes young boys with him, to teach them about law and culture and country;
- he has walked out on the reefs around Point Parker, and knows of fish traps built by his predecessors out there.

[96] It is clear from the information contained in [name removed]'s affidavit that he is a member of the claim group, and that he has spent a considerable amount of time within the application area, particularly the Point Parker area which is his country through his mother. [name removed] consequently has a physical connection with the area.

[97] In my view, the material also demonstrates that [name removed]'s physical connection is in accordance with the traditional laws and customs of the claim group. This is because the material explains the way [name removed] has been passed down knowledge of his country by older Gangalidda people through traditional patterns of teaching. It also explains the way he has spent time on the area, using methods of gathering resources taught to him by his elders. Finally, it explains his relationship with, and understanding of, his country, namely that he is entitled to access and be present on the area, and to take any resources he needs from it. The material describes the way he has exercised that right throughout his life.

[98] I am satisfied [name removed] has a traditional physical connection with some part of the application area.

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

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

Requirement	Information addressing requirement	Result
s 61A(1) no native title determination application if approved determination of native title	Geospatial assessment	Met
s 61A(2) claimant application not to be made covering previous exclusive possession over areas	Schedule B, paragraphs [7] and [8]	Met
s 61A(3) claimant applications not to claim certain rights and interest in previous non-exclusive possession act areas	Schedule E and Schedule L	Met

#### Section 61A(3)

[100] Section 61A(3) provides that an application must not claim native title rights and interests that confer possession, occupation, use and enjoyment to the exclusion of all others in an area where a previous non-exclusive possession act was done, unless the circumstances described in s 61A(4) apply.

[101] Paragraph [1] of Schedule E states that the Gangalidda People assert a right of exclusive possession in relation to the land and waters covered by Lot 4536 on SP204559. From my

consideration of the written description and map of the application area at Attachments B and C, the area of Lot 4536 on SP204599 is, in effect, the application area.

[102] Section 61A(3) does not apply where the circumstances in s 61(4) apply. Section 61(4) applies where the only previous non-exclusive possession act covering the area is one whose extinguishment of native title is to be disregarded due to the operation of ss 47, 47A or 47B, and where the applicant states that that section applies.

[103] Section 47 applies where, at the time a native title determination application is made, a pastoral lease is held over the area by any of the persons who made the application, or by a trustee on trust for any of those persons. If s 47 applies, any extinguishment of native title by the grant of the lease or the creation of any other interest in relation to the area must be disregarded.

[104] Schedule L explains that the applicant asserts ss 47 and/or 47A to apply. In particular, it is explained that the Konka Pastoral holding is held by or on behalf of the members of the claim group, by Walaji Pty Ltd as trustee for the Walaji Trust. I understand, therefore, that any extinguishment of native title resulting from the previous non-exclusive possession act of the granting of the pastoral lease, is to be disregarded. It follows that s 61A(3) does not apply to the claim to exclusive possession made in paragraph [1] of Schedule E.

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

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

Requirement	Information addressing requirement	Result
(a) no claim made of ownership of minerals, petroleum or gas that are wholly owned by the Crown	Schedule Q	Met
(b) exclusive possession is not claimed over all or part of waters in an offshore place	Schedule P	Met
(c) native title rights and/or interests in the application area have otherwise been extinguished	Schedule B, paragraph [9]	Met

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

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

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

#### ***What is required to meet this condition?***

[107] To meet s 190C(2), the Registrar must be satisfied that the application contains all of the prescribed details and other information, and is accompanied by any affidavit or other

document, required by ss 61 and 62. This condition does not require any merit or qualitative assessment of the material to be undertaken.<sup>75</sup>

### Section 61

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

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

### Section 62

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

Section	Details	Form 1	Result
s 62(1)(a)	Affidavits in prescribed form	Annexed	Met
s 62(2)(a)	Information about the boundaries of the area	Schedule B and 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	Attachment E	Met
s 62(2)(e)	Description of factual basis:	Attachments F & F1, F2, F3, F4	Met
s 62(2)(f)	Activities	Schedule G	Met
s 62(2)(g)	Other applications	Schedule H	Met
s 62(2)(ga)	Notices under s 24MD(6B)(c)	Schedule HA	Met
s 62(2)(h)	Notices under s 29	Attachment I	Met

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

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

### What is required to meet this condition?

[111] 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**<sup>76</sup>) was a member of a native title claim group for any previous application’. 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 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.

<sup>75</sup> *Doepel* at [16] and also at [35] to [39].

<sup>76</sup> Emphasis in original.

[112] It is only where there is an application meeting all three of the criteria above, that is, a 'previous application', that the requirement for me to consider the possibility of common claimants is triggered.<sup>77</sup>

***What does the geospatial assessment say?***

[113] The geospatial assessment states that there are no applications as per the Register of Native Title Claims and Schedule of Native Title Determination Applications covering any part of the application area. As the first criterion is not satisfied, I have not considered this condition any further. The requirement is met.

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

[114] I am satisfied that the requirements set out in s 190C(4)(a) are met because the application has been certified by each representative Aboriginal/Torres Strait Islander body that could certify the application.

***What is required to meet this condition?***

[115] For the application to meet the requirements of 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.<sup>78</sup> 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.<sup>79</sup>

[116] Schedule R states that the application is certified by the Carpentaria Land Council Aboriginal Corporation (CLCAC). A copy of the certification appears at Attachment R.

[117] Where an application is certified, my consideration is restricted to two issues. Firstly, whether there is an appropriate body that can certify the application, and secondly, whether the certification contains the information required by ss 203BE(4)(a) to (c).

***Is there an appropriate representative body that can certify the application?***

[118] The CLCAC is a representative body with the appropriate authority to certify the application.

[119] Section 190C(4)(a) requires that I am satisfied the application has been certified by each representative body that could certify the application. The geospatial assessment provides that there is only one representative body in relation to the area of the application, namely, the Carpentaria Land Council Aboriginal Corporation (CLCAC).

[120] As above, the certification at Attachment R has been provided by the CLCAC, and is signed by the Chairperson of the CLCAC on the body's behalf. It is dated 11 October 2017.

[121] Paragraph [1] of the certificate states that CLCAC is 'a body funded pursuant to section 203FE(1) ... to perform all functions of a representative body in relation to the Gulf of Carpentaria region'. Paragraph [2] goes on to explain that s 203FEA(1) 'provides that the

---

<sup>77</sup> See *Strickland FC* at [9].

<sup>78</sup> See subsection 190C(4)(a).

<sup>79</sup> See subsection 190C(4)(b).

CLCAC has the same obligations and powers in relation to the performance of those functions as a representative body.'

- [122] With reference to the Tribunal's National 'Representative Aboriginal and Torres Strait Islander Body areas' map, I have confirmed that the CLCAC is a body funded pursuant to s 203FE(1) to perform the functions of a representative body. From the information set out in the certificate, I am satisfied that CLCAC is funded to perform all of those functions, including the function of certifying native title determination applications, pursuant to s 203BE.

***Does the certification comply with s 203BE(4)?***

- [123] The certification contains the information required by s 203BE(4).
- [124] Section 203BE(4)(a) requires that the certification include a statement to the effect that the representative body is of the opinion that the requirements of ss 203BE(2)(a) and (b) have been met. This statement appears at paragraph [3](a) of the certification.
- [125] Section 203BE(4)(b) requires the certification to 'briefly set out' the body's reasons for being of the opinion stated in relation to s 203BE(4)(a). This information is contained in paragraph [4] of the certification. Matters described include the background research (including anthropological research) to the claim undertaken, the assistance provided to the native title claim group by CLCAC throughout the conduct of previous native title determination application proceedings, and the notification and conduct of a meeting of the claim group where the applicant was authorised using an agreed to and adopted decision-making process. I consider this information sufficient for the purposes of s 203BE(4)(b).
- [126] Section 203BE(4)(c) requires that the certification, 'where applicable', set out what the representative body has done to meet the requirements of s 203BE(3). Section 203BE(3) requires a representative body to make all reasonable efforts to achieve agreement between native title holders for overlapping applications, and/or reduce the number of overlapping applications.
- [127] Paragraph [3](b) of the certification states that the CLCAC is not aware of any other application or proposed application that wholly or partly covers the area covered by this application. The geospatial assessment confirms there are no overlapping applications. It follows that the circumstances addressed by s 203BE(4)(c), ie, where there are overlapping applications, are not applicable in this instance. I accept that there is no requirement for the certificate to speak to what the representative body has done to meet the requirements of s 203BE(3).

*End of reasons*

## Attachment A

### Information to be included on the Register of Native Title Claims

Application name	Gangalidda People (Konka Claim)
NNTT No.	QC2017/012
Federal Court of Australia No.	QUD659/2017

### Section 186(1): Mandatory information

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

#### Application filed/lodged with:

Federal Court of Australia

#### Date application filed/lodged:

24 November 2017

#### Date application entered on Register:

27 February 2018

#### 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]

---

Heidi Evans

27 February 2018

*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.*