National Native Title Tribunal

Registration Decision

Application name	Warrabal People
Name of applicant	Katrina Anderson, Royce Douglass, Greg Alden, Faylyn Lamb, Clive Martin-Adams, Trevor Lamb, Dennis Ware, Anthony McArthur, Shirley Anderson
Federal Court of Australia No.	QUD580/2017
NNTT No.	QC2017/009
Date of Decision	9 May 2018

Claim not accepted for registration

I have decided that the claim in the Warrabal People application does not satisfy all of the conditions in ss 190B and 190C of the *Native Title Act* 1993 (Cth).[1] Therefore the claim must not be accepted for registration.

For the purposes of s 190D(3), my opinion is that the claim does satisfy all of the conditions in s 190B. Nevertheless I cannot accept the claim for registration because the claim does not satisfy all of the conditions in s 190C.

Heidi Evans

Delegate of the Native Title Registrar[2]

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

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

Reasons for Decision

CASES CITED

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

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

Edward Landers v State of South Australia [2003] FCA 264 (*Landers*)

Evans v Native Title Registrar [2004] FCA 1070 *(Evans)*

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*)

Hazelbane v Doepel [2008] FCA 290 (*Hazelbane*)

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 State of 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)*

Ward v Registrar, National Native Title Tribunal [1999] FCA 1732 (*Ward v Registrar*)

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

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

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

Wiri People v Native Title Registrar [2008] FCA 574 *(Wiri People)*

BACKGROUND

[1] The application was filed on behalf of the Warrabal People native title claim group. It covers approximately 7732 square kilometres of land and waters in central Queensland, south west of Rockhampton.

[2] The Registrar of the Federal Court (the Court) gave a copy of the amended application and accompanying affidavits to the Native Title Registrar (Registrar) on 21 March 2018 pursuant to s 64(4) of the Act.

[3] The application was first made on 25 October 2017. Before it was considered by the Registrar pursuant to s 190A, it was amended. This amended application is the application before me, filed in the Court on 16 March 2018.

[4] I note that the application was only amended due to an error with the description of the application area. The application is, in all other respects, identical in its terms to the previous application filed on 25 October 2017.

[5] I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply to the claim made in this amended application. This is because those provisions can only apply where the previous application was accepted for registration. As above, the application was first made on 25 October 2017, however it was not considered for registration before it was amended on 16 March 2018 (the current application). It has, therefore, never appeared on the Register of Native Title Claims (the Register).

[6] 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.[3] If it does not satisfy all the conditions, the Registrar must not accept the claim for registration.[4]

[7] I have decided that the claim does not satisfy all of the registration test conditions and my reasons on each condition follow below.

Information considered

[8] 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'.

[9] I have had regard to information in the application. I have also considered documents provided by the applicant directly to the Registrar on 8 November 2017, in relation to the previous application. By email of 22 March 2018, the applicant requested that the delegate have regard to the additional material provided in relation to the previous application when applying the registration test to the current application.[5]

(a) Anthropologist report by [anthropologist's name deleted], dated 16 October 2017;

(b) Affidavit of [name deleted], sworn 22 April 2017;

(c) Affidavit of [name deleted], sworn 22 April 2017;

(d) Affidavit of [name deleted], sworn 22 April 2017;

(e) Affidavit of [name deleted], sworn 24 April 2017;

(f) Affidavit of [name deleted], sworn 28 November 2013;

(g) Affidavit of [name deleted], sworn 16 June 2017; and

(h) Affidavit of [name deleted], sworn 15 June 2017.

[10] I have also had regard to the letter of 23 February 2018 provided by the applicant in response to the submissions received by the Registrar from various third parties outlined below (the applicant's response). Again, by email of 22 March 2018, the applicant confirmed its request that the delegate have regard to the letter.

[3] See s 190A(6).
[4] See s 190A(6B).
[5] See s 190A(3)(a).

[11] Further, attached to the email of 22 March 2018, the applicant provided the following additional material for the delegate to consider (the March material):

- Further advice by [anthropologist's name deleted] regarding '[name deleted] and Harry Williams', dated 15 December 2017;
- Email from [name deleted] and [name deleted] (Warrabal claimants) dated 7 February 2018; and
- Email from [name deleted] and [name deleted] (Warrabal claimants) dated 7 February 2018.

[12] I note there is no information before me obtained as a result of any searches conducted by the Registrar of State/Commonwealth interest registers.[6]

[13] The State has not provided any submissions in relation to the application of the registration test.[7]

[14] I may also have regard to such other information as I consider appropriate.[8] I have therefore, had regard to the following submissions provided in relation to the application of the registration test conditions to the previous application, filed 25 October 2017.

- Submission and accompanying affidavit (sworn by [name deleted] in the GNP proceedings on 13 December 2013) from [name deleted] of [law firm deleted], on behalf of the Gaangalu Nation People (GNP) Applicant, dated 18 December 2017 (the GNP submission);
- Submission and accompanying ten attachments from [name deleted] of [law firm deleted], on behalf of [name deleted], [name deleted], [name deleted] and [name deleted] (descendants of Mary Ann Crooke), dated 21 December 2017 (the Lamb descendants submission); and
- Submission from [name deleted], dated 7 March 2018 (the [name deleted] submission).

[15] As explained above, it was only due to an error in the description of the application area that the application was amended. It is otherwise identical to the previous application in terms and substance. Therefore, it was my view that the issues raised in the submissions remained relevant to the application of the registration test to the current application.

[16] 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 26 March 2018 (the geospatial report).

Procedural fairness

[17] As noted above, I have considered the additional material provided by the applicant on 8 November 2017, 23 February 2018 and 22 March 2018.

[18] In response to the letter from the Practice Leader regarding receipt of the application, the State confirmed by email of 22 March 2018 that it did not wish to make submissions in relation to the application.

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[6] See s 190A(3)(b).
[7] See s 190A(3)(c).
[8] See s 190A(3).

[19] I have received additional information from the applicant, and information from third parties which I have considered appropriate to have regard to in applying the conditions of the registration test.

[20] On 18 December 2017 I received an unsolicited submission from [name deleted] ([law firm deleted]) on behalf of the applicant for the overlapping Gaangalu Nation People claim. [Name deleted] confirmed by correspondence of 19 December 2017 that her client consented to that information being providing to the applicant for the Warrabal People application. On 20 December 2017, I provided the applicant with a copy of [name deleted]'s submission, including an opportunity to comment by 17 January 2018.

[21] On 21 December 2017 I received an unsolicited submission from [name deleted] ([law firm deleted]) on behalf of [name deleted], [name deleted], [name deleted] and [name deleted], who are descendants of Mary Ann Lamb (nee Crooke). [Name deleted] confirmed that his clients did not assert confidentiality over the submissions, and understand the material will be provided to the applicant. On 5 January 2018, I provided the applicant with a copy of [name deleted]'s submission, including an opportunity to comment by 7 February 2018.

[22] The applicant sought extensions of time in order to respond to these submissions, on 21 December 2017 and again on 7 February 2018. The delegate granted an extension of time to the applicant, requiring a response by 23 February 2018. On this date I received a response from the applicant.

[23] On 7 March 2018 I received an unsolicited submission from [name deleted], who is a Gaangulu woman and a descendant of Mary Ann Lamb. This submission was brief and did not raise any issues additional to those raised in the submissions from [name deleted] and [name deleted]. On that basis, I did not consider procedural fairness required that I provide it to the applicant for comment.

[24] I did not provide [name deleted] and [name deleted] with an opportunity to respond to the applicant's reply to their submissions, or the further material submitted by the applicant on 22 March 2018, as in my view, their clients are not persons or parties to whom procedural fairness is owed.[9]

[25] I note that all three unsolicited submissions, and the applicant's response of 23 February 2018 to the first two unsolicited submissions, were made in relation to the previous application. However, as noted above, the only change to the application resulting from the amendment, was to rectify an issue with the map and description of the agreement area. I understand that the area of the application itself did not change, but that the error related to an inconsistency between the map and description. The previous application, made 25 October 2017, is otherwise identical in terms to the application before me, and was not considered by a delegate of the Registrar before it was amended. For this reason, my view is that the submissions are directly relevant to my consideration of the application, and it is appropriate for me to have regard to them in making a decision whether to register the claim.

[26] As it was my view that the application would not satisfy all of the conditions of the registration test, I did not consider the State a party to be aggrieved by my decision, and consequently, the State were not provided with a copy of the applicant's additional material, the submissions

[9] See *Hazelbane* at [26]; *Stock* at [40].

from [name deleted], [name deleted] or [name deleted], or the applicant's response to that material of 23 February 2018.

[27] 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

[28] 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?

[29] 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.[10]

Does the information about the external boundary meet this condition?

[30] A written description of the external boundary of the application area appears at Attachment B. It is a metes and bounds description referring to Lots on Plan, centrelines of waterways, current and former Local Government boundaries, road reserve boundaries, catchment boundaries and coordinate points.

[31] A map showing the external boundary of the area is contained in Attachment C. It has been prepared by the Tribunal's Geospatial Services (dated 10 March 2017) and includes the external boundary marked in bold dark-blue outline, Queensland topographic mapping showing various features, scalebar and coordinate grid and notes relating to the source, currency and datum of data used to prepare the map.

[32] The geospatial report concludes that the map and description are consistent and identify the application area with reasonable certainty. Having considered the information before me about the area, I agree with that assessment.

Does the information about excluded areas meet this condition?

[33] Schedule B lists general exclusion clauses. In my view, there is nothing problematic in the application adopting this method of describing those areas within the external boundary that are excluded from the application area, for the purposes of s 190B(2). I am satisfied that with searches of historical tenure, those excluded areas could be identified with reasonable certainty.

[10] *Doepel* at [122].

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

[34] I am satisfied the claim meets the requirements of s 190B(3). Schedule A provides a description of the persons comprising the native title claim group that is sufficiently clear to identify those persons.

What is required to meet this condition?

[35] 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.

[36] 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.[11]

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

[37] My understanding of the description in Schedule A is that the claim group is made up of persons who meet two criteria. The first is that they are 'recognised by other members of the claim group as being descended (which may include by adoption) from a deceased person who they recognise as having been a member of the Aboriginal landholding group for the application area'. The second is that they 'identif[y] himself or herself as being a Warrabal person by descent from an apical ancestor.' I take it that the use of the word 'and' between these criteria set out in the Schedule means that a person must satisfy both conditions to be a member of the group.

[38] The description clarifies that persons may be adopted by members of the group and that this confers on those individuals the right to identify as members of the group. The description then names four individuals who are 'deceased persons […] recognised as having been apical ancestors from whom claim group members are descended.'

[39] The naming of apical ancestors, in my view, provides an objective starting point for a factual inquiry into the persons comprising the group. It is my understanding that if someone is descended from one of these persons, including by adoption, then, so long as they personally identify as a Warrabal person, they are a member of the native title group. If a person is descended biologically or through adoption from one of the named ancestors, it follows that the other members of the group would recognise them as being such a descendant, and the first criterion is met. Then, the second criterion is met where the individual chooses to identify as a Warrabal person, in addition to their eligibility under the first criterion.

[40] I accept that ascertaining the persons comprising the group would require some factual inquiry or research, however, in my view, this does not prevent the description from being sufficiently clear.[12] I do not consider that there is a need for all the persons comprising the group to be identified at the time of this decision, or that they be identified in the application,

[11] *Doepel* at [51] and [37]; *Gudjala 2007* at [33].
[12] *WA v NTR* at [67].

however such identification must be possible at any future point in time.[13] I am satisfied that by obtaining genealogical records for a person, and then approaching known members of the claim group to seek confirmation of that persons' descent from one of the named apical ancestors, it could be ascertained whether the person met the first criterion of the description. By approaching the person, and inquiring as to whether they self-identify as a Warrabal person, it could be ascertained whether the second criterion is met. It follows that persons who meet both criteria will satisfy the requirements of group membership.

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

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

What is required to meet this condition?

[42] 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.[14]

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

[43] Paragraph one of Schedule E is a claim to a right of exclusive possession. Paragraph two of Schedule E sets out a list of nine non-exclusive rights and interests claimed by the group. Paragraph three of Schedule E sets out some clarifications and definitions that assist the understanding of those rights and interests claimed, and paragraph four provides some limitations on the scope of the rights, namely that they are subject to the laws of the State and the Commonwealth.

[44] I have read the contents of Schedule E together and am satisfied there are no contradictions within the description. Further, with regard to s 223(1), I consider the rights are understandable and have meaning as native title rights and interests.

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

[45] 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?

[46] 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:

[13] *Aplin* at [256]; *Ward v Registrar* at [25].
[14] *Doepel* at [99] and [123].

(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.

[47] 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'.[15]

[48] Section 62(2)(e) requires only a 'general description' of the factual basis. However, where the facts provided are not of 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'.[16]

[49] To satisfy the condition, the material must contain sufficient details addressing the particular native title, claimed by the particular native title claim group, over the particular land and waters of the application area.[17]

[50] 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.[18]

[51] The factual basis material is contained in Schedule F, in a report by [anthropologist's name deleted] dated 16 October 2017 (the [anthropologist's name deleted] report), and in affidavits sworn by seven members of the claim group. Schedules G and M also contain relevant information.

[52] As above, my role is restricted to a consideration of whether the asserted facts support the claim to native title by the Warrabal People. It is not to supplant the role of the Court, nor to approach the material as if it is evidence at a hearing.[19] It is with this principle of the case law in mind that I have undertaken a consideration of the material at s 190B(5).

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

[53] 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:

[15] *Doepel* at [16]-[17]; *Gudjala (2008)* at [83] and [92].
[16] *Gudjala 2008* at [92].
[17] *Gudjala 2007* at [39].
[18] *Gudjala 2008* at [91] to [92].
[19] *Doepel* at [16].

- 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;[20]
- 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;[21] and
- the materials must support that the association both presently and by the group's predecessors relates to the area as a whole.[22]

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

[54] The factual basis is sufficient to support an assertion of an association of the claim group and its predecessors with the land and waters of the application area. The material is detailed and many places are named within the material, being places where claimants and their predecessors were born, lived, spent time visiting and carrying out particular activities, and where they were buried. The material specifically addresses the association of the apical ancestors of the claim group with the claim area, and contains numerous examples of claimants today spending time at places within the area. The material speaks to both a spiritual and physical association of the Warrabal People with the area.

[55] As explained above, the application area covers an area southwest of Rockhampton in Queensland, covering an area bordered by Mount Morgan and Westwood in the north, Banana, Baralaba and Duaringa in the west, Thangool in the south, and the Ulam Range in the east. The Don and Dee Rivers run through the centre of the application area, and other regional centres within the area include Biloela, Gogango, Jambin, Wowan, Rannes and Dululu.

[56] At s 190B(5)(a), the factual basis must address an association of the predecessors of the group over the period since sovereignty, or European settlement. In addressing an association of the Warrabal predecessors prior to settlement, Schedule F explains that archaeological analysis of rock shelters at Cania Gorge, just south of the application area, indicate occupation and use of the region by Aboriginal people for the last 20,000 years. It goes onto explain that settlement of the region where the application area is situated was in 1854, with the establishment at Rannes of the first pastoral station, native police camp, headquarters of the Crown Lands Commissioner and a Court of Petty Sessions. Rannes is within the application area, in the mid-western part of the area.

[57] Various historical sources are referred to in Schedule F, which record the observations of early settlers in the area of the occupation and use of the area by Aboriginal people. For example, it talks about Donald Gordon, the first settler in the Mount Morgan region, who observed a large gathering of Aboriginal people camped at the junction of Dairy Creek and Dee River. This is where the Mount Morgan township is now located, and within the application area.

[58] According to the material, the first map of tribal territorial divisions in the region was prepared by local pastoralist William Flowers in 1881, and shows the 'Warrabul Tribe' as being

[20] *Gudjala 2007* at [52].
[21] *Gudjala 2007* at [51] and [52].
[22] See *Martin* at [23]–[26], affirmed in *Corunna* at [35]–[39] and [42]–[44].

associated with the area stretching from the upper Fitzroy River southwards to include Mount Morgan. Flowers recorded the Warrabul as comprising four local groups or sub-divisions, including the Wol-le-a-bura, whose territory went out towards the Biloela area. This area generally accords with the application area. The material also refers to later ethnographic and anthropological sources (of 1898, 1934 and 1938) which identify a group in the area referred to as Warrabul or Wara-bal. Walter Roth (1898) noted Warrabal territory as extending towards Banana and Prairie (Biloela), including Mount Morgan and the area drained by the Dee and Don rivers.

[59] The [anthropologist's name deleted] report contains information about the places with which each of the four Warrabal apical ancestors were associated. For example, Mary Ann Lamb (nee Crooke) is said to have been born between 1860 and 1870, at Moonmerra or Gracemere (in the north of the application area). She died in 1948 at Mount Morgan. The [anthropologist's name deleted] report sets out historical sources which refer to Mary Ann, saying that she lived around Horse Creek and Box Flat. Horse Creek is within the application area, also in the northern section, and one claimant explains that Box Flat is on the edge of the Dee River about 8 km out of Mount Morgan.[23]

[60] Similar information is given about the remaining three ancestors, including their approximate dates of birth, and places of birth, and places with which they were associated. For instance, the [anthropologist's name deleted] report provides that Big Tommy was born around 1825 to 1835, and was recorded in a historical source of 1885 as being a member of the local Gracemere Aboriginal people. In light of this information, having considered the locations referred to in relation to each apical ancestor, and the birth dates of those persons, I am satisfied the factual basis addresses an association of the predecessors of the group with the area around the time of settlement.

[61] Regarding an association of the descendants of those persons with the area since that time, the affidavits sworn by claimants give much detail about the places their parents and grandparents spent time, and considered as their traditional country. It is my understanding of the information contained in these affidavits that there are only two or three generations separating the claimants today from the apical ancestors named in Schedule A.

[62] One elderly claimant states:

> I knew Granny [Mary Ann] Lamb. She used to call me [name deleted] I remember going to the hospital when she died. Granny is buried in the Mount Morgan cemetery and members of my extended family pulled together to put a plaque on her tombstone to pay tribute to her. I was told by my older brother [name deleted] that she lived with my family at Mount Morgan before I was born when he was about eight or nine years old. Later on, she lived with us at Jambin, which is about 15 miles North/East of Biloela. I was about five or six years old, I remember that because I had just started school. Later still, she lived with my family when we were at Wowan.[24]

[63] Another claimant states:

> When my brothers and sisters and I were growing up, Pop would take us into the bush and show us the traditional way to hunt and fish. He would also show us how to set up snares to catch possums and wallabies, how to catch porkies, how to gather witchetty grubs and how to fish without a fishing

[23] Affidavit of [name deleted] sworn 22 April 2017, at [7].
[24] Affidavit of [name deleted], sworn 22 April 2017 at [2].

line or net. He used a three-pronged spear to fish and longer, single pointed spears for wallabies and kangaroos. We were taught by him how to make the spears he used for hunting. He also showed us how to collect wild strawberries and other fruits like yams, roots and from the bottle tree and bush cucumbers. We went to different places on our country to hunt and fish. Sometimes this was for food and other times to practice what he had taught us. We would go to places like the upper Dawson River, Piebald Mountain, Wura and Gelobra which is on Fern Hills Station. Pop told me on these trips that we were on our traditional country. Pop also took us to another place for fishing on our country named Lake Victoria. It is fed by Callide Creek. He would not stay there overnight. He would say: "There are ungees here". From what he told me, and from what I was told by his sisters, that place was a massacre site. We also went to the McKenzie River to fish and hunt kangaroos. Pop told me that the McKenzie River area was at the western edge of our country.[25]

[64] From the information before me addressing the association assertion, I consider it clear that the members of the claim group and their predecessors have spent the most parts of their lives within the application area. The material also provides that many of the elderly claimants and their parents worked on pastoral properties throughout the area, such as Playfields (southeast of Mount Morgan) and Fern Hills (in the vicinity of Mount Hopeful), and at the Mount Morgan mine.[26] Claimants also talk about how they continue to attend gatherings, and go camping and fishing on their traditional country, taking their children along to teach them about those lands and waters.[27] It follows that I consider the factual basis sufficient to support an assertion that the claim group presently have, and their predecessors had, an association with the area over the period since settlement.

[65] In my view, the material also speaks about this past and present association as a spiritual one, as well as a physical one. For example, one claimant explains that *Mundaguttah*, the rainbow serpent, 'made many of the geographical features in the landscape of [his] country.' He says that evidence of how the serpent's body carved out the rivers and major waterways can be seen around Mt Morgan and 'on either side of the highway as you drive towards Banana.'[28]

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

[66] 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*[29] 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*.

[67] 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';[30]

[25] Affidavit of [name deleted], sworn 22 April 2017 at [20].
[26] See affidavit of [name deleted], sworn 28 November 2013 at [10]; affidavit of [name deleted], sworn 22 April 2017 at [24] and [25].
[27] See for example affidavit of [name deleted], sworn 16 June 2017 at [21]; affidavit of [name deleted], sworn 22 April 2017 at [26]; affidavit of [name deleted], sworn 15 June 2017 at [6].
[28] Affidavit of [name deleted], sworn 16 June 2017 at [28].
[29] *Gudjala 2007* at [26] and [62] to [66].
[30] *Yorta Yorta* at [46].

(b) the origins of the content of the law or custom concerned can be found in the normative rules of a society[31] which existed before the assertion of sovereignty by the Crown;[32]
(c) the normative system has had a 'continuous existence and vitality since sovereignty';[33] and
(d) the relevant society's descendants have acknowledged the laws and observed the customs since sovereignty and without substantial interruption.[34]

[68] 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.'[35] His Honour held that a 'starting point must be identification of an indigenous society at the time of sovereignty',[36] 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.'[37]

[69] 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).[38]

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

[70] The starting point at s 190B(5)(b) is the identification of a society at sovereignty, or European settlement, in the area acknowledging and observing normative laws and customs. As above, the material provides that settlement in the area took place in the mid-1850s. Regarding the society present in the application area at that time, the material provides that:

- there are early historical and anthropological sources that record the Warrabal, or Warrabul, as being the tribal group in occupation of the application area;[39]
- the Warrabal were understood to be part of a regional society, which also comprised the Darumbal and the Gaangalu, who shared laws and customs surrounding social organisation, authority and decision-making, spiritual beliefs, regulating access by outsiders and the transmission of traditional knowledge;[40]

[31] 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].
[32] *Yorta Yorta* at [46].
[33] *Yorta Yorta* at [47].
[34] *Yorta Yorta* at [87].
[35] At [63].
[36] At [66].
[37] 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.)
[38] 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'.
[39] Schedule F at [5].
[40] Schedule F at [14]; Applicant's submission of 23 February 2018 at [15].

- according to the laws and customs of the regional society, the Warrabal were the discreet landholding group for the application area;[41]
- early sources indicate the Warrabal were comprised of four local groups or subdivisions, all of who shared the same language;[42]
- early historical sources from the claim area include observations by early settlers that the Aboriginal persons in the area:
    - actively defended their territory against the settlers;[43]
    - camped in large gatherings by the waterways within the area, accessing and enjoying the resources from those waters;[44]
    - participated in ceremony, at important sites within the area;[45]
    - maintained authority structures where elders had certain decision-making responsibilities.[46]

[71] In my view, this information within the factual basis is sufficient to support an assertion of a society within the area, around the time of settlement, acknowledging and observing normative laws and customs.

[72] In my view, the factual basis material also establishes a link between the apical ancestors of the group and the society at sovereignty. As explained in my reasons at s 190B(5)(a) above, the material sets out historical and anthropological sources that place the four apical ancestors within the claim area around the time of settlement. I consider it reasonable to infer, therefore, that they were members of the landholding group occupying that area at that time.

[73] I note that there is information before me that contests the Warrabal identity of some of the apical ancestors named in Schedule A.[47] I do not, however, consider it my role in applying the conditions of the registration test, to determine the correct identity of those ancestors, or whether the description of the Warrabal native title claim group before me is correct. As above, I consider there is sufficient information before me to support the assertion of a Warrabal society, at settlement in the area, acknowledging and observing normative laws and customs, of which the apical ancestors were members.

[74] Traditional laws and customs are those that have been passed down through the generations, by word of mouth and common observance. As I have explained above at s 190B(5)(a), it is my understanding of the material that there are only two or three generations separating the Warrabal apical ancestors from members of the claim today. In my view, the material speaks to the way in which this transmission of knowledge has occurred. In their affidavits, members of the claim group give numerous examples of being taught things by their elders about their

[41] Schedule F at [15].
[42] Schedule F at [5] to [6].
[43] Schedule F at [5].
[44] Schedule F at [5].
[45] [Anthropologist's name deleted] report at [99] to [100].
[46] [Anthropologist's name deleted] report at [88] to [89].
[47] Lamb descendants submission of 21 December 2018, at [14] to [16]; [name deleted] submission of 7 March 2018 at [4].

laws and customs. They also speak about how they pass this knowledge on to younger generations today.

[75] For example, one claimant states:

> My brothers and I went to Pop if we wanted to know anything about hunting, family, traditional practices like making spears, and where things were on our country. He made sure that we knew what was safe and good to eat, what was poisonous (like the little black berries that grow in the Mount Morgan area) and what we were not allowed to eat (such as emu). Pop told us: "*Don't eat emu because it belongs to our land*." I remember him telling me this when we were out chasing brumbies thirty or more years ago. Because of what Pop told me, I have never eaten emu and neither have my children as far as I know. Pop also told me other do's and don't's, like: not to remove things from country unless you are going to use them, to look but not touch, only get enough for a feed and leave some for next time.[48]

[76] Traditional laws and customs are also those that are rooted in the laws and customs of the relevant society at settlement. In my view, there is information before me that supports an assertion that aspects of the system of laws and customs acknowledged and observed by the claim group today are derived from the system of their predecessors at settlement. As set out above, the laws and customs acknowledged and observed by the society at settlement included those around authority structures and the role of elders within the group. One claimant explains the operation of these laws and customs today in the following way:

> Pop [name deleted] died on the 25th May 1992 at Mount Morgan. During my lifetime, the Mount Morgan Aboriginal community acknowledged him and respected him as an Elder for the Mount Morgan region. I know this because I grew up in Mount Morgan and the surrounding region and in my experience he was treated by the other Aboriginal people in the town as a respected Elder. He was one of the real Aboriginal bushmen of this area, he lived and worked on his land all his life. He had a vast knowledge of all things in this region, which he told me and his other children was our traditional country. He talked about this area as being his traditional country, and told us he was proud to have been born and lived here most of his life. [49]

[77] Participation by members of the Warrabal society at settlement in ceremonial life is noted as an aspect of the system of laws and customs acknowledged and observed at that time. One claimant explains how he performs special ceremonies today in welcoming people to his country:

> On another special occasion, I welcomed people with these words: *"Good afternoon everybody. My name is [name deleted], a Murri man of the Wura group, and grandson of Granny Lamb. Before I go any further I would like to have a minute silence for Granny and past elders, and to our ancestors who were massacred on this country. The traditional welcome to people is a cultural practice that was handed down by our people from the beginning of time. The reason for this is to respect the people of the country you are entering and also to protect your spirit while you are in this country […] My grandmother, my ancestors, their spirit – may the* [sic] *look over you and protect you while you are on this Country. On behalf of my ancestors the traditional owners of this Country, welcome."*[50]

[48] Affidavit of [name deleted] sworn 22 April 2017 at [26].
[49] Affidavit of [name deleted] sworn 22 April 2017 at [3].
[50] Affidavit of [name deleted] sworn 28 November 2013 at [35].

[78] I consider, therefore, that the factual basis speaks to laws and customs acknowledged and observed by the claim group today that are rooted in those of the society at settlement, and that have been passed down to them through the generations since that time.

[79] It follows that 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)?

[80] 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; and
- that there has been a continuity in the observance of traditional law and custom going back to sovereignty or at least European settlement.[51]

[81] I have already explained above at s 190B(5)(b), the reasons for which 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 customs, from which the present laws and customs of the group are derived.

[82] It is also my view that the material speaks to the way in which those laws and customs have been acknowledged and observed in a continuous way, and without substantial interruption over the period since settlement. Firstly, it is clear from the material that members of the claim group and their predecessors have had a continuous presence in the area, and lived considerable parts of their lives at places within the application area. In their affidavits, claimants describe the places where their predecessors lived and worked, and hunted and fished.[52] They also describe the places they were taken as children, growing up with other families in the application area, and where they went to school and obtained work in the area.[53] I consider this information sufficient to allow me to reasonably infer that there has been no interruption to the acknowledgment and observance of Warrabal laws and customs as they relate to the land and waters of the application area.

[83] Further, in my view, the material speaks to the way claimants today possess a detailed knowledge of how their predecessors, including the apical ancestors, acknowledged and observed laws and customs relating to country. I consider it clear from the material that this knowledge has been passed down through each generation since the time of the apical ancestors. For example, one claimant explains that:

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[51] *Gudjala 2007* at [82].
[52] See for example affidavit of [name deleted] sworn 15 June 2017 at [9] to [11]; affidavit of [name deleted] sworn 22 April 2017 at [15].
[53] See for example affidavit of [name deleted] sworn 22 April 2017 at [12]; affidavit of [name deleted] sworn 22 April 2017 at [30] to [31].

> I do not recall all the details of what my mother told us children about Granny Lamb's early years. I do know from what she told me and from my own experience that Granny Lamb could talk Aboriginal as well as English. She also knew how to corroboree and knew all about the bush foods in the region and hunting. She was respected by all the Aboriginal people and non-Aboriginal people who lived in the region. I know this because I heard her talking Aboriginal with my older relations, I saw her corroboree with them, and I learnt from her, as well as my mother and my mum's brother and sisters, about bush foods and special places in our land and I saw myself how she was well respected by the Mount Morgan residents. [Name deleted] who owned the Leichardt Hotel would always serve my Granny, even though Aboriginals were not allowed in Mount Morgan's hotels.[54]

[84] From this information, I understand that members of the claim group today possess knowledge of the way in which Warrabal laws and customs have been acknowledged and observed in the application area across the generations, without interruption, since settlement. It follows that I am satisfied the factual basis is sufficient to support an assertion that the native title claim group have continued to hold their native title in accordance with the traditional laws and customs addressed at s 190B(5)(b) above.

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

[85] 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?

[86] 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 clamed can be established.' I note the following comments by Mansfield J in relation to this condition:

(a) it requires some measure of the material available in support of the claim;[55]
(b) 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);[56] and
(c) section 190B(6) appears to impose a more onerous test to be applied to the individual rights and interests claimed.[57]

[87] 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'.

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

Exclusive possession

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

[54] Affidavit of [name deleted] sworn 28 November 2013 at [19].
[55] *Doepel* at [126].
[56] *Doepel* at [127].
[57] *Doepel* at [132].

> 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.[58]

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

- a native title right to exclusive possession includes the right to make decisions about access to and use of the land by others;[59]
- the right cannot be formally classified as proprietary - its existence depends on what the evidence discloses about its content under traditional law and custom;[60] and
- 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.'[61]

[90] I consider the material before me does speak to a right of this nature. Schedule F states: 'At a regional level, strangers and outsiders are expected to seek permission. A failure to do so is considered by the claim group to be a significant breach of the traditional laws and customs.'[62] Claimants give more detail of these protocols in their affidavits. One states that:

> Pop taught me that we should not go onto other people's land without their permission and that other people who are not from our country should seek the permission of one of our Elders to enter onto our land. Pop taught me our Elders are the right people to make these kinds of decisions, and like all things that our Elders tell us, we must accept and abide by whatever decision they make.[63]

[91] And another says:

> From our bloodline we get rights and obligations over our ancestors' country. We have the right to use and occupy their country and the things in it. We also have obligations to protect the land from harm and ensure the safety of people who are not from our country. That means we need to control who goes onto our land and what they do. Otherwise, they might get sick our [sic] hurt and we can too if people have not been given permission or have done the wrong thing.[64]

[92] In my view, these statements express the elements of a traditional right of exclusive possession established by the case law and set out above. It is clear that claimants believe they have a right or obligation to control entry to their country to protect the land and waters, but also to avoid harm being imposed upon trespassers by ancestral spirits who inhabit the area. Further, in addition to the statements above, I consider the material addresses the way members of the claim group 'speak' for the application area, and describes how they do so by performing 'Welcome to Country' ceremonies at significant events where members of the public are gathered.[65] It is also clear that the right has been passed down to the members of the group by their predecessors, pursuant to traditional methods of teaching.

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[58] At [88].
[59] *Sampi* at [1072].
[60] *Griffiths* at [71].
[61] *Griffiths* at [127].
[62] Schedule F at [31].
[63] Affidavit of [name deleted] sworn 22 April 2017 at [36].
[64] Affidavit of [name deleted] sworn 16 June 2017 at [3].
[65] See affidavit of [name deleted] sworn 28 November 2013 at [33] to [35].

[93] I consider, therefore, that the right to exclusive possession is established on a prima facie basis.

Non-exclusive right to live and be present on the area

[94] The following statement by a claimant is an example of the type of material before me that speaks to this right: [66]

> After Grandfather [name deleted] died, we stayed a while at Wura, where Uncle [name deleted] had a little block of land and then when I was about six years old, we move to Mount Morgan. We lived with Granny Lamb for a while on Racecourse Road and then moved to Hamilton Creek where my Aunty [name deleted] was living. My father bought a humpy and put it up on a vacant five-acre lot on Horse Creek near the Mount Morgan Showgrounds and we shifted there. Our place was not far from where Granny Lamb was living on Racecourse Road, and not far from my Uncle [name deleted] who was camping with his family along Horse Creek. Granny Lamb would regularly spend time at our place and then go to Aunty [name deleted]'s place.[67]

[95] In my view, the material speaks to the right as being one handed down to the claim group in accordance with patterns of teaching under their traditional laws and customs.

[96] I consider the non-exclusive right to live and be present on the area established on a prima facie basis.

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

[97] This right is expressed in Schedule E as being only for personal, domestic and non-commercial, communal purposes. The following statement by a claimant is an example of the type of material before me that speaks to this right: [68]

> Mum and her siblings passed their bush skills onto us children. They taught us what we could eat and what we had to avoid. They taught us how to hunt animals by doing things like: following their tracks; looking out for their droppings and putting snares and traps in places they used. For example, we would snare possums by finding a tree which had lots of claw marks on it. Then we'd rest a log onto it so the possum would use that as his step up to the trunk. That's where we'd put the snare. Nothing went to waste. We would eat the meat and either sell or use the skins ourselves. Mum and dad showed me how to skin the animals and we made money by selling them when we could.[69]

[98] In my view, the material speaks to the right as being one handed down to the claim group in accordance with patterns of teaching under their traditional laws and customs.

[99] I consider the non-exclusive right to take, use, share and exchange natural resources of the area established on a prima facie basis.

Non-exclusive right to conduct burial rites

[100] The following statement by a claimant is an example of the type of material before me that speaks to this right:

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[66] See also affidavit of [name deleted] sworn 22 April 2017 at [11] and [21]; affidavit of [name deleted] sworn 28 November 2013 at [9].
[67] Affidavit of [name deleted] sworn 28 November 2013 at [13].
[68] See also affidavit of [name deleted] sworn 22 April 2017 at [22]; affidavit of [name deleted] sworn 22 April 2017 at [25]; affidavit of [name deleted] sworn 16 June 2017 at [11].
[69] Affidavit of [name deleted] sworn 22 April 2017 at [19].

> Some years ago Uncle [name deleted] helped with the burial of some Aboriginal bones that were taken from this area to Scotland. He went over to Scotland and brought them back to Mount Morgan, where they were re-buried in the Mount Morgan cemetery. There is a plaque at the burial site saying that these are Bayeelee bones. Pop was not involved in the re-burial, as far as I know. I do not know why Uncle [name deleted] thought that these were Bayeelee bones. I never heard anyone mention Bayeelee when I was growing up or when I became a man, and I certainly never heard anyone say that Mt Morgan belonged to the Bayeelee tribe. It's a word that I have only seen in maps and documents people have shown me in the last ten years, since native title became an issue.[70]

[101] In my view, the material speaks to the right as being one handed down to the claim group in accordance with patterns of teaching under their traditional laws and customs.

[102] I consider the non-exclusive right to conduct burial rites on the area established on a prima facie basis.

Non-exclusive right to conduct ceremonies

[103] The following statement by a claimant is an example of the type of material before me that speaks to this right:[71]

> From the things I was taught as a young boy, I believe that when we die our spirit returns to the land where it belongs, joining our ancestors there. Sometimes spirits are troubled or torment people. For example, the spirit of a person may linger at a house where they perished, especially if that happened under tragic circumstances. If that is the case, a smoking ceremony needs to be held to cleanse the house and assist the spirit back to its country. Smoking ceremonies are used in a number of different circumstances, including welcoming people to country, at funerals and to cleanse a person or place. As a boy I was required by Elders to gather things for and help them with smoking ceremonies. For example, I gathered sandalwood leaves for them to burn in the ceremony. Nowadays, I do them.[72]

[104] In my view, the material speaks to the right as being one handed down to the claim group in accordance with patterns of teaching under their traditional laws and customs.

[105] I consider the non-exclusive right to conduct ceremonies on the area established on a prima facie basis.

Non-exclusive right to teach on the area about its physical and spiritual attributes

[106] The following statement by a claimant is an example of the type of material before me that speaks to this right:[73]

> Pop [name deleted] also taught us that Piebald Mountain is a significant place for our mob. It is not far from Wura where my family would go a lot and where Pop [name deleted] and his family lived. He told us that a great snake that used to climb up and over the mountain made the patches over the mountain in the scrub that led to it being called Piebald Mountain. There is a bit of scrub then an open patch of ground and then more scrub showing where the snake, which Pop called Mundaguddah, had made on his travel through the land…[74]

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[70] Affidavit of [name deleted] sworn 22 April 2017 at [40].
[71] See also affidavit of [name deleted] sworn 22 April 2017 at [37]; affidavit of [name deleted] sworn 28 November 2013 at [23]; affidavit of [name deleted] sworn 16 June 2017 at [21].
[72] Affidavit of [name deleted] sworn 16 June 2017 at [23].
[73] See also affidavit of [name deleted] sworn 22 April 2017 at [33]; affidavit of [name deleted] sworn 22 April 2017 at [28].
[74] Affidavit of [name deleted] sworn 22 April 2017 at [29].

[107] In my view, the material speaks to the right as being one handed down to the claim group in accordance with patterns of teaching under their traditional laws and customs.

[108] I consider the non-exclusive right to teach on the area about its physical and spiritual attributes established on a prima facie basis.

Non-exclusive right to maintain places of importance and areas of significance and protect them from harm

[109] This right is expressed in Schedule E as a right to 'maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm.' The following statement by a claimant is an example of the type of material before me that speaks to this right: [75]

> I was taught to perform a brief ceremony, a bit like saying grace, thanking the country for providing us with what we need to survive. I was also told not to take too much or be too greedy otherwise the country will not be productive and I could get sick for not behaving responsibly. The same goes for littering or damaging things. It all goes back to respect – respect our ancestors' country and the things in it. That is particularly important for sacred places such as burial sites, art sites, scarred trees, ceremonial sites such as bora sites, traditional campsites and middens. I know the location of such places within my country and ensure they are protected from harm. These places can be dangerous if not visited and approached correctly. Having the permission of or being the presence of an Elder is important, and one should never touch or take anything from these places. If you do that, you will become sick and even die unless you make amends.[76]

[110] In my view, the material speaks to the right as being one handed down to the claim group in accordance with patterns of teaching under their traditional laws and customs.

[111] I consider the non-exclusive right to maintain places of importance and areas of significance and protect them from harm established on a prima facie basis.

Non-exclusive right to light fires for domestic purposes

[112] This right is expressed in Schedule E as the right to 'light fires for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation'. The following statement by a claimant is an example of the type of material before me that speaks to this right: [77]

> As well as animals, my parents taught me how to catch fish, crawchies (yabbies) and eels from the creeks and rivers that flow into, and from the Don and Dee Rivers themselves. We would use cotton string and a hook, baited with some old meat, freshwater mussel or grubs and worms we'd dig up. There was no fishing line in those days and sometimes we would use vines if we had no string. Meat was often cooked in a camp oven or on the ashes of a fire. The other thing we would get is witchetty grubs from wattle trees. Mum showed us how to locate the grub from sawdust left on the ground under the hole they bore into the tree. Once you find the hole, you have to poke or pull him out with a stick or cut him out with a tomahawk. The grubs are cooked in the ashes of a fire and are very rich.[78]

[113] In my view, the material speaks to the right as being one handed down to the claim group in accordance with patterns of teaching under their traditional laws and customs.

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[75] See also affidavit of [name deleted] sworn 22 April 2017 at [42]; affidavit of [name deleted] sworn 15 June 2017 at [20].
[76] Affidavit of [name deleted] sworn 16 June 2017 at [26].
[77] See also affidavit of [name deleted] sworn 16 June 2017 at [11].
[78] Affidavit of [name deleted] sworn 22 April 2017 at [20].

[114] I consider the non-exclusive right to light fires for domestic purposes established on a prima facie basis.

Non-exclusive right to be accompanied onto the claim area by non-claim group members

[115] Schedule E describes the non-claim group members as people required either 'by traditional law and custom for the performance of ceremonies or cultural activities', or 'to assist in observing and recording traditional activities on the claim area.' The following statement by a claimant is an example of the type of material before me that speaks to this right:

> My sister, [name deleted] (nee [name deleted]), who was born in 1935 would often tell us about when she went to big corroborees when tribes from all around would come to a big lagoon where the showgrounds in Mount Morgan are located today. I was the caretaker there a few years before I retired and was very upset when that lagoon was filled. My sister has passed on, but she had a lot of knowledge of our traditional ways and some of the language of our people…[79]

[116] In my view, the material speaks to the right as being one handed down to the claim group in accordance with patterns of teaching under their traditional laws and customs.

[117] I consider the non-exclusive right to be accompanied onto the claim area by non-claim group members established on a prima facie basis.

Non-exclusive right to take and use waters, and resources from the waters

[118] Schedule E describes this right as taking traditional natural resources from the waters of the area, and taking water, both for personal, domestic and non-commercial, communal purposes. The following statement by a claimant is an example of the type of material before me that speaks to this right: [80]

> Mum said that when they were living at Mt Morgan, her family would also go down to Dixielea, which was a district near the Don River in between Dululu and Biloela. She said they would fish and camp there overnight. Other place [sic] she said they went fishing and camping were waterholes on Rannes and Alma Creek.[81]

[119] In my view, the material speaks to the right as being one handed down to the claim group in accordance with patterns of teaching under their traditional laws and customs.

[120] I consider the non-exclusive right to take and use waters, and resources from the waters, established on a prima facie basis.

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

[121] 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?

[122] 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

[79] Affidavit of [name deleted] sworn 22 April 2017 at [37].
[80] See also affidavit of [name deleted] sworn 22 April 2017 at [12]; affidavit of [name deleted] sworn 16 June 2017 at [10].
[81] Affidavit of [name deleted] sworn 22 April 2017 at [16].

traditional physical connection with any part of the land or waters covered by the application'.[82]

[123] 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, therefore evidentiary material is required;
- 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;[83]
- the physical connection must be shown to be in accordance with the traditional laws and customs of the claim group;[84] and
- the material may need to address an actual presence on the area.[85]

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

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

[125] His affidavit sworn 22 April 2017 provides the following information about [name deleted]:

- he is the grandson of apical ancestor Mary Ann Lamb;[86]
- he was born in 1945 at Mount Morgan and lives there today;[87]
- he grew up at Horse Creek, but later in life lived or worked at places including Walmul, Wowan, Dululu, Jambin, Goovigen, Rannes, Bajool, Westwood, Banana and Bileola;[88]
- he worked at many of the properties located in and in the vicinity of the application area;[89]
- he was taught the boundaries of his country by his father, and travelled to places within that area with his father as a child, hunting and fishing;[90]
- he spent a lot of time at Wura, between Mount Morgan and Dululu, camping with his family;[91]
- his father taught him bush medicine and which plants to use for various ailments;[92]
- his father taught him about significant places within the application area, and the creation stories for those places;[93]

[82] Section 190B(7)(a).
[83] *Doepel* at [17].
[84] *Gudjala 2007* at [89].
[85] *Yorta Yorta* at [184].
[86] At [4].
[87] At [2] and [41].
[88] At [5] and [11].
[89] At [11].
[90] At [11].
[91] At [11].
[92] At [23].
[93] At [32] to [33].

- his father also taught him about bad or dangerous spirits that inhabit particular places within the application area that should be avoided;[94] and
- he was taught that he has a duty to care for and protect the country of his ancestors.[95]

[126] On the basis of this information, I am satisfied that [name deleted] is a member of the claim group and that he has a physical association with the application area. I am also satisfied that the material describes this connection as one that is pursuant to the traditional laws and customs of the Warrabal People. This is because I consider that the information about [name deleted] engaging with the application area displays aspects of the system of laws and customs that the factual basis addresses at s 190B(5)(b).

[127] In particular, the material explains that [name deleted] spent time on the area with his father, being taught about his country, including knowledge of creation stories for that country, and significant places within it. This knowledge passed onto [name deleted] by his father included protocols for avoiding certain places, and for certain uses of resources found within the area. As explained above at s 190B(5)(b), I consider the factual basis supports a system of traditional laws and customs where the passing on of knowledge about country is a key aspect of that system.

[128] It follows that I am satisfied at least one member of the claim group has a traditional physical connection with some part of the application area.

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

[129] 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 report	Met
s 61A(2) claimant application not to be made covering previous exclusive possession over areas	Schedule B, paragraph [1] and [2]	Met
s 61A(3) claimant applications not to claim certain rights and interest in previous non-exclusive possession act areas	Schedule B, paragraph [3]	Met

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

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

[94] At [33].
[95] At [42].

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 [6]	Met

Procedural and other matters (s 190C)—Conditions not met

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

[131] 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?

[132] 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.[96]

Section 61

[133] 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

[134] 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, 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

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

Section	Details	Form 1	Result
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 not met

[135] Having considered all of the information before me addressing this issue, I am not 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?

[136] 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***[97]) was a member of a native title claim group for any previous application'. To be a 'previous application':

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

[137] 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.[98]

[138] The geospatial report provides that there is one application as per the Register of Native Title Claims and Schedule of Native Title Determination Applications that overlaps the current application. The overlapping application is Gaangalu Nation People (QUD400/2012). The first criterion is met.

[139] The geospatial report provides that the Gaangalu Nation People (GNP) application was accepted for registration on 15 November 2012. From my search of the Tribunal's databases, I am aware that the application has not been removed since that time. It was, therefore, on the Register at the time the current application was made. As explained above, this application was first made on 25 October 2017. The second criterion is, therefore, met.

[140] From my search of the Tribunal's databases, I am aware that the entry was made as a result of the application being considered pursuant to s 190A. The third criterion is, therefore, met.

[141] As all three criteria are met, and the GNP application is a 'previous application' for the purposes of s 190C(3), I must consider whether there are common claimants between the claim group for the previous application and the claim group for the current application.

[142] Schedule O states that there are no members of the claim group included in any other native title determination application that covers the area.

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[97] *Emphasis in original.*
[98] See *Strickland FC* at [9].

[143] As set out at above, in making this decision, I have had regard to submissions provided by the applicant for the GNP claim, and by individuals who identify as Gaangalu. Those parties submit that the application cannot satisfy this condition of the registration test, as members of the Warrabal People native title claim group are also members of the GNP claim group.

[144] I have accessed the extract from the Register of Native Title Claims for the GNP application, which sets out the description of the claim group for that application. It provides:

> The Gaangalu Nation native title claim group comprises all persons who are biologically descended from the following deceased ancestors, all of whom are recognised by the living Gaangalu claim group members as having been Gaangalu:
>
> Maggie of Dingo
> Biddy of Wooroona
> Sandy of Wooroona
> Henry Williams of Duaringa
> Jack (of Coomooboolaroo)
> Billy Mickelo
> Claude and Anne Anderson
> Rose Ann Tyson
> Biddy (wife of Jumbo)
> Lizzy Tiger (Blackwater)
> Blanche of Duaringa
> Annie French
> Polly Doctor
> Annie of Orion Downs
> Annie and Ned Duggan
> Peter Tyson
> Lily of the McKenzie River Bend
> John 'Jack' Bradley
> Violet Thompson
> Jenny Doctor (not the daughter of Polly Doctor)
> Polly McEvoy/Brown
> Queenie (Hart) of Duaringa
> (Brothers) Charlie, Willie and George Riley
> Lily/Lilla Livingstone
> William Toby
> Nellie of Planet Downs
> Myra Freeman, and
> Sarah Dodd

[145] The GNP applicant submits that '[a]t least two of the persons comprising the Applicant to the Warrabal Claim are members of the GNP Claim, being Katrina Anderson and her mother Shirley Anderson by virtue of their descent from Claude Anderson and William Toby 1st'. The submission also names another person who attended the Warrabal authorisation meeting, but who had also attended an authorisation meeting for the GNP claim in December 2016, as a descendant of 'Mary Ann Lamb/Lizzie Blackwater'.

[146] The submissions made by four descendants of Mary Ann Crooke provide that '[a] large number of people within the Gaangalu Nation claim group are also descendants of Mary Ann Lamb (nee Crooke), who is one of the ancestors identified in the … Warrabal claim group

description. These include the descendants of Claude and Anne Anderson, Lizzy Tiger (Blackwater), Peter Tyson, Sandy of Wooroona and the descendants of William Toby'.

[147] Both the GNP applicant and the descendants of Mary Ann Crooke submit that the GNP claim group description is 'not premised on an individual member identifying as a Gaangalu person'. They say it is instead 'premised on descent from at least one of a number of ancestors who are recognised as being Gaangalu people'.

[148] In reply, the Warrabal People applicant submits that 'the descriptions of both groups [the GNP claim group and the Warrabal claim group] rely upon both descent and, crucially, self-identification and group recognition.' The applicant submits that the GNP applicant and descendants of Mary Ann Crooke have misconstrued the description of the GNP claim group, and that 'recognition and acceptance' are, in fact, criteria for membership of the group. The applicant further submits that there is no overlap between the two claim groups as, in applying their respective claim group descriptions:

- 'neither William Toby, Claude Anderson nor any other apical ancestor for the GNP claim is recognised by the Warrabal People as being an apical ancestor for the area covered by the Warrabal claim';
- 'none of the Warrabal apical ancestors are "recognised by the living Gaangalu claim group members as having been Gaangalu"';
- 'no members of the Warrabal native title claim group identify as Warrabal by descent from GNP apical ancestors'; and
- 'no members of the GNP native title claim group identify as Gaangalu by descent from Warrabal ancestors'.

[149] I have considered the submissions by all parties, and the respective claim group descriptions for the GNP claim and the application before me. Regarding the criteria for group membership of the GNP claim, it is my understanding that biological descent from one of the named Gaangalu apical ancestors is the only criterion that needs to be satisfied in order for an individual to qualify as a member of that claim group. The words in the preface to the list of apical ancestors, 'all of whom are recognised by the living Gaangalu claim group members as having been Gaangalu', in my view, operates as a descriptor only. That is, it describes the persons who are named in the list that follows. They are persons who the claim group recognise as having been Gaangalu. It does not provide any further criteria that an individual must satisfy in order to be considered a member of the group.

[150] On that basis, I consider that any person who is biologically descended from one of the named apical ancestors for the GNP claim is a member of the GNP claim group. It is my understanding that it is not relevant to an application of the description whether that person self-identifies as Gaangalu, or whether they renounce their Gaangalu identity. They are, by way of being biologically descended from a GNP apical, a member of the GNP claim group.

[151] The applicant does not refute the submissions made by the GNP applicant and the descendants of Mary Ann Crooke that persons who are members of the Warrabal claim group are also descendants of certain apical ancestors for the GNP claim. It follows that I cannot be

satisfied that no person in the claim group for the current Warrabal People application was a member of the claim group for the previous Gaangalu Nation People claim group description.

Identity of claimed native title holders – s 190C(4): condition not met

[152] I am not satisfied that the requirements set out in s 190C(4)(b) are met.

What is required to meet this condition?

[153] 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.[99] 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.[100]

[154] Schedule R provides that the application is not certified. It follows that it is the requirement at s 190C(4)(b) which I must apply. I must also consider the requirements at s 190C(5). That is, whether the application itself includes a statement to the effect that the requirement of paragraph 4(b) has been met and briefly sets out the grounds on which the Registrar should consider that it has been met.

[155] In *Doepel*, Mansfield J discusses the interaction between s 190C(4)(b) and s 190C(5) and how the Registrar is to be satisfied as to these conditions of the registration test:

> In the case of subs (4)(b), the Registrar is required to be satisfied of the fact of authorisation by all members of the native title claim group. Section 190C(5) then imposes further specific requirements before the Registrar can attain the necessary satisfaction for the purposes of s. 190C(4)(b). The interactions of s. 190C(4)(b) and s. 190C(5) may inform how the Registrar is to be satisfied of the condition imposed by s. 190C(4)(b), but clearly it involves some inquiry through the material available to the Registrar to see if the necessary authorisation has been given.[101]

[156] Section 251B defines the term 'authorise' and provides that an applicant's authority from the rest of the native title claim group to make an application must be given in one of two ways:

(a) in accordance with any traditional process mandated for authorising 'things of this kind' (i.e. authorising an applicant to make a native title determination application), where one exists;[102] or

(b) in any other case, by an agreed and adopted process in relation to authorising things of that kind.[103]

[157] The Court has made clear that the requirement of authorisation is 'a matter of considerable importance and fundamental to the legitimacy of native title determination applications.'[104] Consistent with the findings of the Court, I note that it is open to me to have regard to

[99] See subsection 190C(4)(a).
[100] See subsection 190C(4)(b).
[101] *Doepel* at [78].
[102] Section 251B(a).
[103] Section 251B(b).
[104] *Strickland* at [57].

information beyond the application in reaching a view as to whether the requirement at s 190C(4)(b) is satisfied.[105]

[158] As explained at the beginning of these reasons, submissions were received from [name deleted] of [law firm deleted], on behalf of the applicant for the overlapping Gaangalu Nation People application (the GNP submission), from [name deleted] of [law firm deleted] on behalf of four descendants of Mary Anne Lamb (nee Crooke) (the Lamb descendants submission), and from [name deleted] (both a Gaangalu woman and a descendant of Mary Ann Lamb) (the [name deleted] submission).

[159] All three submissions contained information specifically addressing the requirement of authorisation. It was my view that the information contained in the submissions was relevant, and that it was appropriate for me to have regard to it in my consideration of the application at this condition. I have also had regard to the applicant's response to the submissions of 23 February 2018 (the applicant's response), and further material supplied by the applicant on 22 March 2018 (the March material).

Does the application satisfy the requirements of s 190C(5)?

[160] The statement required by s 190C(5)(a) appears at Schedule R. Schedule R also sets out some very brief information about the process by which authorisation of the applicant occurred, and refers to an affidavit sworn by [name deleted] on 23 October 2017 at Attachment R. In my view, having considered that further information, I am satisfied it 'briefly' sets out the grounds upon which the Registrar can consider the requirement at s 190C(4)(b) met.

Does the application satisfy the requirements of s 190C(4)(b)?

[161] In applying the test at s 190C(4)(b), the Registrar must consider the composition of the claim group. That is, the Registrar must be satisfied that authorisation has been given by a 'properly constituted native title claim group', as defined in s 61(1).[106] Section 61(1) provides that the persons entitled to make a native title determination application are:

> A person or persons authorised by all the persons (the native title claim group) who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed...

[162] The GNP submission, the Lamb descendants submission and the [name deleted] submission, in summary, provide that:

- Warrabal was accepted as a sub-group of the Darumbal People in the Darumbal determination, who's traditional country was around Yaamba, north of the application area;[107]
- the land associations of Warrabal are in connection with Darumbal, and to the north of the application area;[108]
- Mary Ann Lamb was born within the Darumbal determination area, at Gracemere Station;[109]

[105] See *Strickland* at [57]; *Strickland FC* at [52].
[106] *Wiri People* at [26] to [29]; *Risk* at [60].
[107] Lamb descendants submission at [14].
[108] [name deleted] submission at [3].

- the representative body for the area, Queensland South Native Title Services (QSNTS), provided advice in November 2011 that, 'based on the evidence and research currently available', it is likely that Mary Ann Lamb was a member of the Darumbal society, and Warrabal are one of the sub-groups of Darumbal;[110]
- Mary Jones (also Mary, mother of Cissie Jones) is an apical ancestor for the Darumbal native title claim group;[111]
- in the Darumbal determination, Collier J found that Mary Jones was associated with Mt Morgan, Rockhampton and Gracemere;[112]
- in an affidavit sworn by Shirley Anderson in Gaangalu proceedings, she explains that her elders told her that Mary Ann Lamb belonged to the tribe that lived in the Rockhampton and Mount Morgan region;[113]
- Ms Anderson also states that Darumbal claim the area where Mary Ann Lamb was born which was part of Gracemere Station, however she considers Darumbal a neighbouring tribe to the north of Warrabal.[114]

[163] In response, the applicant provides that:

- Mary, mother of Cissie Jones, the Warrabal apical ancestor, is also Mary Jones, the apical ancestor in the Darumbal determination, however this is not problematic, as her descendants who consider her a Warrabal woman believe her country to be around Mount Morgan, to the south of the Darumbal determination area;[115]
- the Warrabal claim proceeds on the basis that the native title claim group are a distinct landholding group, separate from Darumbal, who alone hold the native title rights and interests in the application area;[116]
- Warrabal and Darumbal are, however, part of the same regional society, sharing laws and customs.[117]

[164] In addition to the applicant's response, there is also information contained in the application itself which relates to the composition of the claim group. In particular, the [anthropologist's name deleted] report provides that:

- a review of linguistic records for the application area found that dialects of Maric and Dharumbal L2 languages were spoken in the region where the application area is situated;[118]
- both Mary, mother of Cissie Jones, and Mundabel, son of Warrabal apical ancestor Big Tommy, are also ancestors in the Darumbal determination;[119]

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[109] Lamb descendants submission at [14].
[110] Lamb descendants submission, Attachment 6.
[111] Lamb descendants submission at [16].
[112] Lamb descendants submission at [16].
[113] GNP submission, annexing affidavit of [name deleted] sworn 13 December 2013 at [2].
[114] GNP submission, annexing affidavit of [name deleted] sworn 13 December 2013 at [23].
[115] Applicant's response at [11] to [12].
[116] Applicant's response at [13].
[117] Applicant's response at [15].
[118] [Anthropologist's name deleted] report at [109].

- various Warrabal claimants regard their traditional country as including the area between Mount Morgan and the Fitzroy River that is north of the application area, and includes the area of the former Gracemere pastoral run.[120]

[165] As I've already explained in my reasons at s 190B(5) above, it is not for me, as the Registrar's delegate, to supplant the role of the Court, or to make findings regarding any of the issues in dispute before me. That is, it is not for me to assess the evidence before me and determine who the correct native title claim group is, or which group is traditionally associated with the area subject of the application.

[166] However, as above, my consideration of the application at s 190C(4)(b) requires me to consider the composition of the claim group, and whether the applicant's authority has come from all of the persons who hold the common or group rights comprising the native title, as described in s 61(1). With reference to the information set out above, I consider it clear that there exists research and anthropological evidence indicating that Warrabal are a sub-group of the Darumbal native title claim group. I note that the Court has made findings of fact on this matter, including that the area with which the Warrabal subgroup is associated is in the southern part of the Darumbal determination area, immediately north of the application area.

[167] It is not clear from the information why Mary Ann Lamb has not been included as an apical ancestor for the Darumbal native title claim group, however, in my view, the information before me suggests her traditional country is in the northern part of the application area and further north, including country within the southern part of the Darumbal determination area. Further, another two of the four apical ancestors for the Warrabal native title claim group are recognised as Darumbal ancestors by the Darumbal native title claim group. I have inferred this is on the basis of an association of those ancestors with the Darumbal determination area.

[168] While the applicant submits that Warrabal are a distinct landholding group, in the face of the material presented to me by third parties, I cannot reach the required level of 'satisfaction' about the composition of the group. There are clearly common members between the Warrabal claim group and the Darumbal claim group, and the material indicates that there is also common country. This puts doubt in my mind as to whether a broader group than the one described are the persons who hold the common or group rights comprising the native title in the application area, and who were required to participate in the decision to authorise the applicant. I note that the Act does not permit the making of a claim by a subgroup of the native title claim group.[121]

[169] On the basis of this information before me, I cannot be satisfied that authorisation has been given by a properly constituted native title claim group. It follows that I cannot be satisfied that the applicant has been 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.

End of reasons

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[119] [Anthropologist's name deleted] report at [116].
[120] [Anthropologist's name deleted] report at [116].
[121] *Landers* at [33].

Attachment A

Summary of registration test result

Application name	Warrabal People
NNTT No.	QC2017/009
Federal Court of Australia No.	QUD580/2017
Date of decision	9 May 2018

Section 190B conditions

Test condition	***Subcondition/requirement***	***Result***
s 190B(2)		Met
s 190B(3)		Overall result: Met
	s 190B(3)(a)	NA
	s 190B(3)(b)	Met
s 190B(4)		Met
s 190B(5)		Aggregate result: Met
	re s 190B(5)(a)	Met
	re s 190B(5)(b)	Met
	re s 190B(5)(c)	Met
s 190B(6)		Met
s 190B(7)(a) or (b)		Met
s 190B(8)		Aggregate result: Met
	re s 61A(1)	Met
	re ss 61A(2) and (4)	Met
	re ss 61A(3) and (4)	Met
s 190B(9)		Aggregate result: Met
	re s 190B(9)(a)	Met
	re s 190B(9)(b)	Met
	re s 190B(9)(c)	Met

Section 190C conditions

Test condition	***Subcondition/requirement***	***Result***
s 190C(2)		Aggregate result: Met
	re s 61(1)	Met
	re s 61(3)	Met
	re s 61(4)	Met
	re s 62(1)(a)	Met
	re s 62(1)(b)	Aggregate result: Met
	s 62(2)(a)	Met

Test condition	*Subcondition/requirement*		*Result*
		s 62(2)(b)	Met
		s 62(2)(c)	Met
		s 62(2)(d)	Met
		s 62(2)(e)	Met
		s 62(2)(f)	Met
		s 62(2)(g)	Met
		s 62(2)(ga)	Met
		s 62(2)(h)	Met
s 190C(3)			Not met
s 190C(4)			Overall result: Not met
	s 190C(4)(a)		NA
	s 190C(4)(b)		Not met