

NATIONAL NATIVE TITLE TRIBUNAL  
RECONSIDERATION OF CLAIM

Section 190E *Native Title Act 1993* (Cth)

<b>Application name:</b>	Marlinyu Ghoorlie
<b>Name of applicant:</b>	Brian Champion Snr, Henry Richard Dimer (Kunjilli), Maxine Patricia Dimer (Nyunyi), Raylene Peel, James Champion, Darren Indich, Simon Champion
<b>State/territory/region:</b>	Western Australia
<b>NNTT file no.:</b>	WC2017/007
<b>Federal Court of Australia file no.:</b>	WAD647/2017
<b>Date application made:</b>	9 May 2018
<b>Date of Registrar's registration decision:</b>	3 August 2018
<b>Date reconsideration application made:</b>	6 September 2018
<b>Name of Member:</b>	Helen Shurven

I have conducted a reconsideration of the claim made in this application against each of the conditions contained in ss 190B–190C, in accordance with s 190E of the *Native Title Act 1993* (Cth) ('the Act'). All sections of legislation referred to in this decision are from the Act.

I have decided the claim in the Marlinyu Ghoorlie application does not satisfy s 190B(5) and s 190B(6) of the Act. Therefore, the claim must not be accepted for registration.

**Date of decision:** 16 October 2018

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**Helen Shurven**

Member of the National Native Title Tribunal pursuant to section 190E of the Act.

## **CORRIGENDUM**

Paragraph [26] on page 10 of the reconsideration is amended to provide clarification of the eastern and northern association boundaries, as follows:

I conclude there is a factual basis sufficient to support the assertion that the claim group have, and their predecessors had, an association with part of the claimed area, namely as far north as the Mt Jackson area, Callion and Davyhurst, as far south as Widgiemooltha and Southern Cross, as far west as Mukinbudin and as far east as the Mt Burges area, Broad Arrow and Goongarrie. However, the material provided does not disclose a factual basis which is sufficient to support the assertion that the claim group have, and their predecessors had, an association *with the remainder of the claim area*.

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**Helen Shurven**  
**Member**

**12 November 2018**

**Legislation** *Native Title Act 1993* (Cth) ss 29, 61–63, 190A–190E

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

*Dann v Yamera* [2017] FCA 513 (*Dann*)

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

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

## INTRODUCTION

- [1] I have been asked to reconsider a decision, made on 3 August 2018 by a delegate of the Native Title Registrar ('the Registrar'), that the Marlinyu Ghoorlie native title claim application did not meet the requirements to be included on the Register of Native Title Claims ('the Register') (see s 108 and s 190E of the *Native Title Act 1993* (Cth) ('the Act')). If a claim application complies with the conditions prescribed in ss 190B and 190C of the Act, the Registrar must place the claim on the Register. If the claim does not satisfy all the conditions, the Registrar must not accept the claim for registration. The delegate found the Marlinyu Ghoorlie application did not meet the registration conditions at ss 190B(5), (6) and (7) of the Act (at [39]-[78]) and the claim was not accepted for registration.
- [2] The request for reconsideration was made on 6 September 2018 by the claim's applicant. Having considered the delegate's original decision, the papers the delegate had regard to, as well as additional documentation provided by the applicant and the State's responses, this decision sets out my reasons why the Marlinyu Ghoorlie claim application should not be accepted for registration.
- [3] My reconsideration of the claim is done 'de novo', that is, as if the claim had not been previously decided. I am not evaluating the decision of the delegate. While I must reconsider the claim de novo, it is open to me to adopt, where appropriate, the reasons and conclusions reached by the delegate.
- [4] The steps taken in the application process are set out in the delegate's decision (at [2]-[4]). The dimension of the claim covers 98,000 square kilometres of land and waters in the vicinity of Southern Cross and Kalgoorlie-Boulder, in the western part of the Goldfields region of Western Australia. From mapping it appears the claim stretches some 450 kilometres at its widest point (east-west), and approximately 300 kilometres at its longest point (north-south).

## Basis for reconsideration

- [5] The basis of the Marlinyu Ghoorlie request for reconsideration was:

that the delegate was not satisfied on the basis of the information provided that the Predecessors of the native title claim group had possessed the necessary association with the whole of the claim area as at 1829/the point of effective European contact. The applicant contends that the required inference was supported by the material provided at first instance, and considers that undue weight was placed on submissions made for the [name removed] family. In any event, the applicant seeks the opportunity to provide further anthropological material to the Tribunal addressing this issue.

[6] The applicant appears to focus the reconsideration request on s 190B(5). This is likely because the delegate concluded that as she was not satisfied the conditions of s 190B(5) had been met, she could not be satisfied of the factual basis for the existence of: native title rights and interests (s 190B(6)); or traditional physical connection to the claim area (s 190B(7)).

[7] The applicant considers undue weight was placed on a submission provided to the delegate from [name removed] (who states her submission is made on behalf of various members of her family). The delegate describes the submission from [name removed] as follows:

the [name removed] are members of the native title claim group by way of descent from Nellie, one of the apical ancestors for the application. I considered that the views expressed in the submission regarding the content and substance of the claim and its ability to satisfy the conditions of the registration test, had direct relevance to my task, and that it was, therefore, appropriate that I have regard to the submission (at [13]).

[8] I also had regard to the submission from [name removed] for the same reasons, and that submission did not sway my decision one way or the other. My conclusion is that the facts on which the applicant relies are not sufficient to support the assertions made by the applicant about the whole of the claim area as it is currently described, particularly in relation to s 190B(5), as outlined in more detail below.

#### **Future Act affected**

[9] Various notices which cover parts of the claim area have been issued by the State of Western Australia, under s 29 of the Act. I must use my best endeavours to reconsider the application for registration within four months after the notification day specified in the s 29 notices (see s 190E(8) of the Act). The applicant was advised of all the s 29 notices on foot when the application for reconsideration was made.

[10] The applicant was advised that time taken to provide any additional material would mean additional time for me to consider the material, and would possibly also require additional time to provide that material to other parties for comment, as needed.

#### **Procedural fairness steps undertaken by the delegate and in the reconsideration**

[11] The procedural fairness steps undertaken in the original consideration of the application are outlined in the delegate's decision (at [14]-[17]). The applicant was advised on 10 September 2018 that the reconsideration process had commenced. The Tribunal noted that on reconsideration, a Member could consider not only the information before the delegate but any other information the Member considers relevant. The Tribunal invited the applicant to provide any further information, noting the s 29 notices which affected the claim area, and noting also I would use best endeavours to consider any additional information, and responses to that information, as soon as possible.

[12] Further information was provided by the applicant on 18 September 2018, which was an affidavit of [name removed], Consultant Anthropologist. There were also two documents which the delegate did not send to the State as part of the original decision-making process (because the State's interests were not adversely affected). Those documents are both dated 11 July 2018 and comprise the applicant's comments on [name removed]'s submission and

the submissions provided by the State. Following receipt of confidentiality undertakings from the State in relation to those three documents, they were sent to the State for comment.

[13] On 11 October 2018 the State advised the Tribunal it did not propose to make any further submissions.

### **Information considered when undertaking the reconsideration**

[14] In accordance with s 190E(7)(a), the information to which I must have regard is that which the delegate was required to have regard. This information is listed at paragraphs [8] and [9] of the delegate's decision. I can also consider any other information I regard as appropriate. That information was: the affidavit of [name removed], Consultant Anthropologist provided by the applicant.

### **NON-CONTESTED FINDINGS OF THE DELEGATE**

[15] I have independently considered each of the non-contested limbs of s 190B, and formed my own opinion. I adopt the reasons and conclusions reached by the delegate for each of those sections of the Act (as at the stated paragraphs of the delegate's decision):

- s 190B(2) – identification of area subject to native title (at [18]–[23]);
- s 190B(3) – identification of the native title claim group (at [24]–[30]);
- s 190B(4) – identification of claimed native title (at [31]–[38]);
- s 190B(8) – application complies with s 61A (at [79]–[82]); and
- s 190B(9) – no extinguishment etc. of claimed native title (at [83]).

[16] In respect of consideration of s 190B(4), the delegate received a submission from the State which outlined (at [12]) that this condition is not satisfied, on the basis that 'some of the...claimed rights are unclear as to their content'. The delegate stated 'I consider that all of the rights and interests listed can be understood as native title rights and interests, however I have not undertaken an assessment of each individual right against the definition in s 223(1). I consider this a more appropriate task at the corresponding merit condition of s 190B(6) as to whether each right is established on a prima facie basis' (at [37]). I also adopt that reasoning.

[17] The delegate was satisfied the application met all of the procedural and other conditions listed in s 190C. Having considered the material afresh and formed my own opinion, I adopt the reasons and conclusions reached by the delegate relating to the following sections of the Act (as at the stated paragraphs of the delegate's decision):

- s 190C(2) – information etc. required by ss 61–62 (at [84]–[88])
- s 190C(3) – no common claimants in previous overlapping applications (at [89] – [96])
- s 190C(4)– authorisation (at [97]–[117])

## CONTESTED FINDINGS OF THE DELEGATE

[18] Having formed my opinion about all of the other conditions, as outlined at paragraphs [15] to [17] above, the remainder of these reasons outline my conclusions regarding whether or not I am satisfied in relation to ss 190B(5), (6) and (7) of the Act. As Barker J outlined in *Dann*, the Tribunal's task is 'not one of finding in all respects the real facts on the balance of probabilities, or on some other basis, and...should not supplant the role of the Court when adjudicating upon [such] matters' (at [21] citing *Doepel*). I will deal with each section in turn.

### ***Section 190B(5) – factual basis for claimed native title***

[19] To meet s 190B(5):

the Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:

- (a) that the native title claim group have, and the predecessors of those persons had, an association with the area; and
- (b) 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; and
- (c) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

[20] I am required to examine the materials and decide 'whether the asserted facts can support the claimed conclusions' (*Doepel* at [17]).

[21] My focus on this section then, is to ascertain the factual basis on which the claim is asserted (for example, in relation to the claim group's association with the area), and whether it is sufficient to support the assertions in s 190B(5). This requires an assessment of the quality of the factual basis for those assertions, but only in the sense of ensuring that, if they are true, they can support the existence of the claimed rights and interests (see *Doepel* at [17]). Facts must support the identification of an indigenous society at the time of European contact, and a link be made between the members of that society, the current ancestors of those predecessors, and the area of the claim. The delegate outlined that in her view, the material was 'not sufficient to support an assertion of an association of the predecessors of the group with the [whole] area at settlement' (at [60]).

[22] The table below sets out information relevant to my consideration of s 190B(5). Three apical ancestors have been identified: Nellie Champion; Warada; and Kadee. I focus on specific affidavit evidence, statements and factual material, rather than on general assertions.

	<b>Applicant's assertions</b>	<b>States assertions</b>	<b>[name removed]'s assertions</b>
Nellie Champion	* Likely born between 1860s-1885, died Moore River 1929 * Lived with son [name removed] in Southern Cross * Has a connection to Mt Burges <sup>1</sup> area (in the east of the claim area,		* [name removed] lodged adverse material – Nellie Champion was [name removed]'s 'mother's father's mother'. * Argues that neither she nor her family have authorised the claim – this goes to s 190C(4) and I address this at [17] above –

<sup>1</sup> I note that Mt Burges is variously spelled 'Mt Burgess' and 'Mt Burges' throughout submissions and materials. Unless I am quoting from those materials, I have used the geographical spelling Mt Burges.

	<b>Applicant's assertions</b>	<b>States assertions</b>	<b>[name removed]'s assertions</b>
	<p>approximately 50 km from Kalgoorlie) and to Southern Cross (in the west of the claim area)</p> <p>* Anthropologist [name removed] affidavit (at 40) states [name removed] (Nellie Champion's grandson) remembered how his father, [name removed], had high status in the law and regularly travelled on law business beyond Kalgoorlie, Laverton, Leonora and Wiluna<sup>2</sup>.</p>		<p>I have accepted the claim has been properly authorised.</p> <p>* Argues the claim 'grossly overstates the lands and waters that Nellie Champion held, jointly with others, under the traditional laws and customs of our family group'</p> <p>* Argues the claim area 'intrudes into lands traditionally associated with persons who spoke Badimaia language...the Federal Court has rejected a native title claim bought on behalf of the Badimaia people<sup>3</sup></p> <p>* Argues 'The people who call themselves Marlinyu Ghoorlie people are a small family group or sub-group of the Gubrun people<sup>4</sup>...The Gubrun group originally lodged an application for the determination of native title over lands and waters in the Goldfields Region. That application described reasonably accurately the area over which the native title rights and interests of our families extended...the persons who now refer to themselves as the Marlinyu Ghoorlie group were never recognised as a separate and distinct group by the wider Gubrun people...'</p>
Warada	<p>* Lived within the 'claim area' from the mid to late 1800s</p> <p>* Has a connection to Mt Burges area (in the claim area, approximately 50 km from Kalgoorlie)</p> <p>* Anthropologist [name removed] states '...[name removed] (born 1860 around Coolgardie, which is in the claim area). His mother and father are the apical ancestors Kaddee (f) and Warada...(m), documented by Bates (1907) in her genealogy of Mount Burges as "one of the owners of Koolgardie [Coolgardie]"'</p> <p>* Grandson [name removed] (born approx. 1889) connected to Southern Cross (in the claim area) and Bullabulling Station (south of Mt Burges, in the claim area)</p> <p>* Granddaughter [name removed] born near Coolgardie 1899 and has connection to Widgiemooltha (in the claim area)</p>		
Kadee	<p>* Likely born between 1820-1845</p> <p>* Lived within the 'claim area' from the mid to late 1800's</p> <p>* Has a connection to Mt Burges area</p>		

<sup>2</sup> I note that apart from Kalgoorlie, all of the areas mentioned are between approx. 100 to 550 km north of the claim area.

<sup>3</sup> I take this reference to be to the Badimia People claim (WCD2015/001) where it was determined in 2015 that native title does not exist – the Marlinyu Ghoorlie claim is adjacent to the southern border of the Badimia People claim, but does not overlap that claim.

<sup>4</sup> I take this reference to be to the Gubrun claim application (WC1995/027), which was not accepted for registration in 1999 and not accepted again in 2007.

	<b>Applicant's assertions</b>	<b>States assertions</b>	<b>[name removed]'s assertions</b>
	<p>* Anthropologist [name removed] states '...[name removed] (born 1860 around Coolgardie). His mother and father are the apical ancestors Kaddee (f) and Warada...(m), documented by Bates (1907) in her genealogy of Mount Burges as "one of the owners of Koolgardee [Coolgardie]"'</p> <p>* Grandson [name removed] (born approx. 1889) connected to Southern Cross (in the claim area) and Bullabulling Station (south of Mt Burges, in the claim area)</p> <p>*Granddaughter [name removed] born near Coolgardie 1899 and connection to Widgiemooltha (in south east portion of the claim area)</p> <p>* [name removed] affidavit (at 29) states that in Tindale's 1966 interview with [name removed] [[name removed] was his father's father] he stated that Kalgoorlie, Broad Arrow, Ora Banda, Callion and Davyhurst are his father's country. (I note all of these places are within the east portion of the claim area). The affidavit also states his father's country consisted of Goongarrie (which is on or very close to the easterly claim border), as well as Kanowna, Norseman and Fraser Range (which are outside the claim area, to the south east). He explains that 'he gained his tribal identity from [name removed], showing the passing down of custodial rights to land'.</p>		
Other information	<p><b>Schedule F</b> to the application contains broad statements about connection of the group to the 'claim area', including by descent.</p> <p><b>Schedule G</b> to the application contains broad statements about activities done in the area, including some currently done by members of the applicant, but nothing specific about ancestor activities or where in the claim area such ancestor activities were conducted.</p> <p><b>Schedule M</b> largely focuses on the connection of a current applicant to the area, rather than the apical ancestor connection.</p> <p><b>[Name removed], applicant</b>, in further information, stated 'Payne's Find...was a border area between the Kalamaia, Kalarku, Kapurn (Gubrun) people and the Badimia. The relevant portion of the boundary for this claim is contiguous with the boundary of the area which was subject to the Badimia claim, on the basis that the whole of the claim area</p>	<p>The State's June 2018 comments indicated that: At their highest, the materials only indicate an association between the predecessors of the claim group, Southern Cross and perhaps Mount Burges.</p>	

	Applicant's assertions	States assertions	[name removed]'s assertions
	<p>subject to this application is exclusively Kapurn (Gubrun) country<sup>5</sup>.</p> <p>* He also states '...it is not asserted by the applicant that the three apical ancestors identified in this application and their descendants constituted the only members of the relevant society at the time of European contact. Rather, it is asserted that the other claim group families did not survive the intense disruption which followed European settlement of the Goldfields, and who are now deceased.'</p> <p><b>[name removed], anthropologist</b> affidavit, states she is satisfied that the three apical ancestors, and [name removed] and other family members were raised in a traditional manner, observing Kalamaia Kalaako Kapurn customs.</p> <p>*She also states (at 3): 'At the point of European contact and, by necessary inference, prior to 1829, an indigenous people which may be described as the Kalamaia Kalaako Kapurn people shared a system of law and custom under which they held rights in an area which included all of the land and waters within the external boundary [of the claimed area]'</p> <p>*[name removed] goes through the various research on moieties and language groups, and concludes (at 29) that 'although there were small variations, a traditional group of people with a very similar language occupied the areas at least around Southern Cross, Coolgardie, Mount Jackson, and stretched towards Norseman. This is consistent with the current claim boundary<sup>6</sup>.'</p> <p>*She states there is a lack of information in relation to the northern boundary of the claim</p> <p>* She states (at 44) 'There are many descendants of the apical ancestors documented as living and working at' places including Mount Burges, Credo, Black Flag, Mount Carnage, Mt Jackson stations and in the towns of Coolgardie, Southern Cross, Mukinbudin, Kalgoorlie and Kambalda. All of these places are within the claim area (to the centre east)</p>		

<sup>5</sup> I note Paynes Find is outside the claim area, approximately 300km north of Southern Cross, and Southern Cross is in the approximate centre of the claim area.

<sup>6</sup> I note it is consistent with the west and east boundary points for the claim – Mt Jackson is in the approximate centre portion of the claim, and Norseman is approximately 100 km to the south of the claim boundary.

	Applicant's assertions	States assertions	[name removed]'s assertions
	* (At 49) There is argument that all portions of the claim area have been used and occupied by 'aboriginal people'		

[23] In summary, in relation to s 190B(5), the applicant argues:

- the claim area covers the traditional area occupied by the Kalamaia Kalaku<sup>7</sup> Kapurn people as at European contact;
- Kalamaia Kalaku Kapurn have a unique set of laws and customs which apply to the claim area;
- Gubrun is the traditional language of the Kalamaia Kalaku Kapurn people;
- the whole of the claim area is exclusively Kapurn (Gubrun) country;
- the apical ancestors Nellie Champion, Warada and Kadee are Kalamaia Kalaku Kapurn (Gubrun) people;
- those apical ancestors have an association with the claim area, which has continued on since European contact, including traditional law and custom which gives rise to native title rights and interests;
- the claim group have continued to hold the native title in accordance with the Kalamaia Kalaku Kapurn traditional laws and customs.

[24] I address each limb of s 190B(5) below, in the context of those assertions.

### Section 190B(5)(a)

[25] I accept that Aboriginal people, including Gubrun people, were located in and around the claim area at the time of European contact.

[26] I conclude there is a factual basis sufficient to support the assertion that the claim group have, and their predecessors had, an association with part of the claimed area, namely as far north as Mt Jackson, Callion and Davyhurst, as far south as Widgiemooltha and Southern Cross, as far west as Mukinbudin and as far east as Mt Burges. However, the material provided does not disclose a factual basis which is sufficient to support the assertion that the claim group have, and their predecessors had, an association *with the remainder of the claim area*.

[27] As Siopis J noted in *Corunna* 'the appropriate test [is] whether the material provided demonstrated a factual basis sufficient to support the assertion that the native title claim group have, and their predecessors had, an association over the whole area of the claim' (at [31]). Members of the Marlinyu Ghoorlie claim group outline stories of country, and travel within country, which correspond to areas where the apical ancestors are shown to have association. However, these stories and travel extend to other areas within the claim, and

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<sup>7</sup> Also referred to in some materials as Kalaako.

beyond, for which there is no material as to the association of the apical ancestors of the claim. Based on an assessment of the material provided, I am not satisfied the factual basis supports the assertion that the apical ancestors had an association with the whole of the area claimed by the applicant.

#### **Section 190B(5)(b)**

[28] Having drawn my conclusions in relation to s 190B(5)(a), I adopt the conclusion of the delegate in relation to s 190B(5)(b), namely that as ‘the factual basis is not sufficient to support an association of the society at settlement with the whole of the application area, I note that there cannot be traditional laws and customs that relate to all of the land and waters subject of the application that give rise to the claim to native title rights and interests over the area’ (at [67]).

#### **Section 190B(5)(c)**

[29] Having drawn my conclusions in s 190B(5)(a) and (b), I adopt the delegate’s conclusions in relation to s 190B(c), namely ‘...that where the factual basis is not sufficient to support the assertion regarding the existence of traditional laws and customs, it cannot be found sufficient to support the assertion at this condition, regarding the group continuing to hold their native title pursuant to those traditional laws and customs’ (at [69]).

#### ***Section 190B(6) – prima facie case***

[30] As described in s 190B(6) of the Act, I must be satisfied that ‘...prima facie, at least some of the native title rights and interests claimed in the application can be established’. If the claim is accepted for registration, only those claimed native title rights and interests that can, prima facie, be established must be entered on the Register. Only those registered rights and interests are taken into account for the purposes of: negotiation in good faith in a ‘right to negotiate’ process (see s 31(2)); and when dealing with criteria for making arbitral body determinations in a ‘right to negotiate’ process (see s 39(1)).

[31] The State’s view, in their June 2018 submission, is that if each of the elements of s 190B(5) had been satisfied, ‘then at least some of the native title rights and interests claimed in the application can be established’. I agree with that view. Having concluded that I am not satisfied the factual basis is sufficient to support the assertions at s 190B(5), I cannot be satisfied the factual basis is sufficient for me to consider the rights and interests claimed have been established, prima facie, as native title rights and interests, held according to traditional laws and customs of the claim group.

#### ***Section 190B(7) – physical connection***

[32] To meet the requirements of s 190B(7), the Registrar must be satisfied that:

at least one member of the native title claim group:

- (a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or
- (b) previously had and would reasonably have been expected currently to have a traditional physical connection with any part of the land or waters...

[33] The State outlined in submissions that due to the deficiencies in relation to s 190B(5), the traditional physical connection could not be made out for s 190B(7). They also stated, notwithstanding those deficiencies, 'at least [name removed] may have a contemporary or historical connection to some parts of the claim area', and specifically refer to a contemporary association 'with parts of the claim area between Mukinbudin and Kalgoorlie'. This area runs through the approximate centre of the claim area, in an east-west direction, and is associated with areas where the apical ancestors are said to have traditional connection, for example, Southern Cross, Bullabulling and Mt Burges.

[34] *Yorta Yorta* at [185] described 'tradition' as follows:

Meanings relevant to customs and practices given by the Oxford English Dictionary...of "tradition" are: "a long established and generally accepted custom or method of procedure having almost the force of law; an immemorial usage; the body (or any one) of the experiences and usages of any branch or school of art or literature, handed down by predecessors and generally followed ... an embodiment of old established custom or institution". Tradition, myth and legend are often indistinguishable, but the mere existence of either of the latter...however venerated by repetition, will not suffice of itself to establish native title rights and interests possessed under traditional laws or customs by people claiming a relevant connection with the land.

[35] For the purposes of s 190B(7), and particularly given the additional information provided by [name removed], I conclude there is a factual basis sufficient to support the assertion that the applicant has, and their predecessors had, an association with *parts* of the claimed area. There is also evidence that members of the applicant have a traditional physical connection with *parts* of the claimed area, particularly around Mt Burges and Southern Cross. The documents which show the family tree and descendants from Nellie, Kaddee and Warada show the pathway to the members of the present day claim group. Witness statements indicate members of the claim group traverse those areas for the purposes of traditional activities such as passing on intergenerational knowledge, hunting, and camping, as well as visiting and caring for sites of significance.

[36] There is nothing in [name removed]'s submission which suggests the contrary. [name removed] argues (at paragraph two of her submission) the claim 'grossly overstates the lands and waters that Nellie Champion held, jointly with others, under the traditional laws and customs of our family group'. [Name removed] also argues (at paragraph five) that any 'laws and customs which they [Marlinyu Ghoorlie] have are held only as part of the wider Gubrun system of laws and customs'. However, while I agree that the asserted factual basis is insufficient to support their predecessors' association with the whole of the claim area, 'is not my role to determine the correctness of the native title claim group described' (as the delegate also outlined, at[114]).

[37] I consider the requirements of s 190B(7) are met.

## CONCLUSION

[38] I reaffirm this is a fresh and original decision as to whether or not, in my view, the claim meets all the conditions for registration specified in ss 190B–190C. I concluded a reconsideration of the claim made in this application against each of the conditions contained in s 190B and s 190C, in accordance with s 190E.

[39] For the reasons outlined above, I give notice that the Registrar should not accept the claim for registration. For the purposes of s 190E(11), my opinion is the claim does not satisfy the conditions outlined in ss 190B(5) and (6) of the Act.

[40] A summary of the result for each condition is provided at Attachment A to these reasons.

End of reasons.

## Attachment A

### Summary of registration test result

<b>Application name</b>	Marlinyu Ghoorlie
<b>NNTT No.</b>	WC2017/007
<b>Federal Court of Australia No.</b>	WAD647/2017
<b>Date of decision</b>	16 October 2018

### Section 190B conditions

<b>Test condition</b>	<b>Subcondition/requirement</b>	<b>Result</b>
s 190B(2)		Met
s 190B(3)		Overall result: Met
s 190B(4)		Met
s 190B(5)		Aggregate result: Not met
	re s 190B(5)(a)	Not met
	re s 190B(5)(b)	Not met
	re s 190B(5)(c)	Not met
s 190B(6)		Not met
s 190B(7)(a) or (b)		Met
s 190B(8)		Aggregate result: Met
s 190B(9)		Aggregate result: Met

### Section 190C conditions

<b>Test condition</b>	<b>Subcondition/requirement</b>	<b>Result</b>
s 190C(2)		Aggregate result: Met
s 190C(3)		Met
s 190C(4)		Overall result: Met