

# Registration Decision

<b>Application name</b>	Purnululu #2
<b>Name of applicant</b>	Shirley Drill, Bernard Stretch, Cherylene Nocketta, Jeremy McGinty, Pamela Alberts, Roberta Daylight, Lorraine Daylight, Christine Farrer, Queenie Malgil
<b>Federal Court of Australia No.</b>	WAD401/2018
<b>NNTT No.</b>	WC2018/017
<b>Date of Decision</b>	28 September 2018

## Claim not accepted for registration

I have decided that the claim in the Purnululu #2 application does not satisfy all of the conditions in ss 190B–190C of the *Native Title Act 1993* (Cth).<sup>1</sup> Therefore the claim must not be accepted for registration.

For the purposes of s 190D(3), my opinion is that the claim does not satisfy s 190C(3). It also does not satisfy ss 190B(5)–(7).

Katy Woods

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

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

<sup>2</sup> Delegate of the Native Title Registrar pursuant to ss 190–190D of the Act under an instrument of delegation dated 27 July 2018 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*)

*Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*)

*Gudjala People # 2 v Native Title Registrar* (2008) 171 FCR 317; [2008] FCAFC 157 (*Gudjala 2008*)

*Gudjala People #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala 2009*)

*Martin v Native Title Registrar* [2001] FCA 16 (*Martin*)

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

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

*Strickland v Native Title Registrar* (1999) 168 ALR 242; [1999] FCA 1530 (*Strickland*)

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

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

## Background

- [1] This application covers land and waters in the Purnululu National Park in north-east Western Australia. The Registrar of the Federal Court gave a copy of the application and accompanying affidavits to the Native Title Registrar (Registrar) on 6 September 2018 pursuant to s 63.
- [2] If the claim in the application satisfies all the registration test conditions in ss 190B–190C, then the Registrar must accept the claim for registration.<sup>3</sup> If it does not satisfy all the conditions, it must not be accepted for registration.<sup>4</sup> I have decided that the application does not satisfy all of the registration test conditions and my reasons on each condition follow below.

## Information considered

- [3] I have considered the information in the application and note the applicant has not provided any further material.<sup>5</sup> There is no information before me obtained as a result of any searches conducted by the Registrar of state or Commonwealth interest registers,<sup>6</sup> and the state of

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<sup>3</sup> Section 190A(6).

<sup>4</sup> Section 190A(6B).

<sup>5</sup> Section 190A(3)(a).

<sup>6</sup> Section 190A(3)(b).

Western Australia (state government) has not provided submissions in relation to the application of the registration test.<sup>7</sup> I consider it appropriate to have regard to information contained in a geospatial assessment and overlap analysis prepared by the Tribunal's Geospatial Services, dated 10 September 2018 (geospatial report) and information available through the Tribunal's geospatial database and Register of Native Title Claims.<sup>8</sup>

**Procedural fairness**

[4] On 6 September 2018 the senior officer for the matter wrote to the state government advising that I would be relying on the information in the application for my decision, and to make any submissions by 14 September 2018. No comments or submissions were received from the state government. This concluded the procedural fairness process.

Section 190C: conditions about procedures and other matters

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

[5] 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 61–2. I am not required to undertake a merit assessment of the material at this condition.<sup>9</sup>

**Section 61**

[6] I am satisfied the application contains the details required by s 61:

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

**Section 62**

[7] I am satisfied the application contains the information required by s 62:

Section	Details	Information	Result
s 62(1)(a)	Affidavits in prescribed form	Affidavits filed with application	Met
s 62(2)(a)	Information about the boundaries of the area	Schedule B	Met
s 62(2)(b)	Map of external boundaries of the area	Attachment C	Met
s 62(2)(c)	Searches	Attachment D	Met

<sup>7</sup> Section 190A(3)(c).

<sup>8</sup> Ibid.

<sup>9</sup> *Doepel* [16], [35]–[39].

Section	Details	Information	Result
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
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	Schedule I	Met

### No previous overlapping claim group – s 190C(3): condition not met

[8] To meet s 190C(3), the Registrar ‘must be satisfied that no person included in the native title claim group for the application (the **current application**) was a member of a native title claim group for any previous application’.<sup>10</sup> 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 (the Register) 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.

[9] The geospatial report states and my own searches confirm the Purnululu application WAD6007/1998 (‘Purnululu’) overlaps the current application. According to the Register, the claim in Purnululu was entered on the Register on 27 March 1995 as a result of consideration under s 190A and has not been removed. It was on the Register when the current application was made on 6 September 2018. I therefore consider it to be a ‘previous application’ as it meets the three conditions in s 190C(3). This means I must consider whether there are common claimants between the two applications.

[10] Schedule O states ‘[t]he members of the Purnululu (WAD6007/1998) application are the same members in this application’. In addition to this information from the applicant, I have also compared the names of the applicants and the descriptions of the two native title claim groups and am satisfied that there are common claimants between the two applications. I am therefore not satisfied that no person in the native title claim group for the current application was a member of native title claim group in the Purnululu application, so s 190C(3) is not met.

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

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

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<sup>10</sup> Emphasis in original.

- (a) the application has been certified by all representative Aboriginal/Torres Strait Islander bodies that could certify the application in performing its functions;<sup>11</sup> or
- (b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.<sup>12</sup>

[12] As the application purports to be certified, I must be satisfied that the certificate:

- (a) identifies the relevant representative body;
- (b) identifies the representative body's power under Part 11 to issue the certification; and
- (c) meets the requirements of s 203BE(4).<sup>13</sup>

[13] The certificate at Attachment R states that it is provided by the Kimberley Land Council (KLC). It is dated 5 September 2018 and signed by the Acting Chief Executive Officer.

[14] The certificate states the certification is made in accordance with s 203BE. The geospatial report confirms that the KLC is the only representative body for the whole of the area covered by the application. I have verified this information against current data held by the Tribunal's Geospatial Services in the national map of Representative Aboriginal and Torres Strait Island Body areas. That map shows the KLC to be the recognised representative Aboriginal/Torres Strait Island Body for the area covering the application area, pursuant to s 203AD. As a recognised representative body, the KLC can perform all of the functions listed in s 203B, including, relevantly, the certification functions referred to in s 203BE.<sup>14</sup>

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

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

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

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

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<sup>11</sup> Section 190C(4)(a).

<sup>12</sup> Section 190C(4)(b).

<sup>13</sup> *Doepel* [80]–[81].

<sup>14</sup> Section 203B(1)(b).

consider that the certificate also contains a statement that meets this requirement. As the certificate contains the statements required by ss 203BE(2)(a)–(b), I consider s 203BE(4)(a) is met.

[18] Regarding s 203BE(4)(b), the certificate sets out KLC’s reasons as to both the authorisation of the applicant, by way of an authorisation meeting held on 27 and 28 June 2018, and the identification of all persons in the native title claim group, based on its extensive anthropological and genealogical research and community consultations. I consider the reasons provided meet the requirements of s 203BE(4)(b).

[19] Section 203BE(4)(c) requires a representative body to set out, where applicable, what it has done to meet the requirements of s 203BE(3). Despite this application being wholly overlapped by the Purnululu application (WAD6007/1998), the certificate does not contain a statement that addresses the KLC’s efforts to resolve that overlap, as required by s 203BE(3). However as s 203BE(3) also states that a failure to provide such a statement does not invalidate the certification, I do not consider this failure affects the certificate’s ability to meet the requirements of s 203BE(4).

[20] As the certificate meets the requirements of s 203BE(4), I consider the application has been certified by all representative Aboriginal/Torres Strait Islander bodies that could certify the application in performing its functions; which means s 190C(4)(a) is met.

## Section 190B: conditions about merits of the claim

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

[21] To meet s 190B(2), the Registrar must be satisfied that the information and map contained in the application identify with reasonable certainty the ‘particular land and waters’ where native title rights and interests are claimed. The two questions for this condition are whether the information and map provides certainty about:

(a) the external boundary of the area where native title rights and interests are claimed;  
and

(b) any areas within the external boundary over which no claim is made.<sup>15</sup>

[22] Schedule B describes the area covered by the application as three discrete areas. Areas 1 and 2 are defined by Lots on Plan and by portions of Lots on Plan falling south of lines described by prolongations of parcel boundaries and coordinate points identified by longitude and latitude

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<sup>15</sup> *Doepel* [122].

to six decimal points. Area 3 consists of a single Lot on Plan. All three areas are described as Unallocated Crown Land parcels (UCLs) or portions thereof.

[23] Attachment C is a scanned colour A3 map prepared by the Tribunal's Geospatial Services, titled 'Purnululu 2', dated 9 August 2018 which includes:

1. The application area depicted with bold dark-blue boundary, labelled with area identifier;
2. Tenure as described in the legend, identified by lease number and name and by reserve number as appropriate;
3. General topographic background;
4. Scalebar and coordinate grid (GDA94); and
5. Notes relating to the source, currency and datum of data used to prepare the map.

[24] The assessment in the geospatial report is that the description and map are consistent and identify the application area with reasonable certainty. Having considered the conclusions of the geospatial report, the description in Schedule B and the map in Attachment C, I agree with the assessment and am satisfied that the external boundary of the application area can be identified on the earth's surface with reasonable certainty.

[25] Schedule B lists no general exclusions and states that the application area covers 'all the land and waters' within the relevant UCLs and portions of UCLs that make up the application area. Schedule L states the benefits of ss 47–47B are claimed so that any prior extinguishment of native title rights and interests in the application area, as described in those provisions, be disregarded. I understand a description of areas not covered by the application does not require identification of the actual land or waters to be excluded, and that a general exclusion clause, including one that relies on the provisions of those sections of the Act where extinguishment of native title may ultimately be disregarded (such as ss 47–47B), is sufficient to achieve the 'reasonable certainty' required by s 190B(2).<sup>16</sup>

[26] As I am therefore satisfied that both the external boundary and the internally excluded areas are described with reasonable certainty, s 190B(2) is met.

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

[27] To meet s 190B(3), the Registrar must be satisfied that:

- (a) the persons in the native title claim group are named in the application; or

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<sup>16</sup> *Strickland* [50]–[55].

(b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

[28] I note that I am not required to do more than make ‘an assessment of the sufficiency of the description of the group for the purpose of facilitating the identification of any person as part of the group’.<sup>17</sup>

[29] Schedule A describes the native title claim group as comprising two groups of people. The first group is described as those Aboriginal people who are descended from one or more of the 16 apical ancestors listed in paragraph 2. The second group is described as those Aboriginal people who ‘are recognized by the descendants of the people listed in paragraph [2] of this Schedule as having rights and interests in the claim area under traditional law and custom’.

[30] I consider the description of the first group provides a clear objective starting point, being descent from named persons. Determining all the members of the first group from the 16 ancestors will require genealogical research, however I note Carr J’s view that the need to undertake a factual enquiry to determine the members of the group does not mean that the group has not been described sufficiently.<sup>18</sup> I consider the description of the second group is also sufficient, noting that s 190B(3) requires only a clear description, rather than a ‘cogent explanation’ of the basis on which individuals qualify as members of the claim group.<sup>19</sup> I also note the guidance from Dowsett J that it is ‘necessary that such identification be possible at any future point in time’ and ‘membership must be based on group acceptance’.<sup>20</sup> I consider it will be possible to identify the members of the second group at a future point in time in accordance with the description provided.

[31] As I am satisfied the persons in the claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group, s 190B(3)(b) is met.

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

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

[33] Paragraphs 1 and 2 of Schedule E state that where there has been no extinguishment or where extinguishment is required to be disregarded, the right of ‘possession, occupation, use

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<sup>17</sup> *Wakaman* [34].

<sup>18</sup> *WA v NTR* [67].

<sup>19</sup> *Gudjala 2007* [33].

<sup>20</sup> *Aplin* [256], [260].

and enjoyment of land and waters as against the whole world' is claimed. I therefore understand this claimed right is one of exclusive possession.

[34] Three non-exclusive rights are claimed in paragraph 4, which are described in paragraph 3 as applying to every part of the claim area where there has been partial extinguishment of native title. Paragraph 5 confirms that these rights are not to the exclusion of all others.

[35] I am satisfied the description in Schedule E is sufficient to clearly understand and identify the itemised rights and interests. I have not considered whether the rights and interests claimed can be considered 'native title rights and interests' in accordance with s 223 at this condition as I consider that is part of my task at s 190B(6).

### Factual basis for claimed native title – s 190B(5) condition not met

[36] To meet s 190B(5), the Registrar must be satisfied there is sufficient factual basis to support the assertion that the claimed native title rights and interests exist. In particular, the factual basis must support the following assertions:

- (a) that the native title claim group have, and the predecessors of those persons had, an association with the area;
- (b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to native title rights and interests; and
- (c) the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

[37] I understand my task is to assess whether the asserted facts can support the existence of the claimed native title rights and interests, rather than determine whether there is 'evidence that proves directly or by inference the facts necessary to establish the claim'.<sup>21</sup> I note French J's view that '[t]he provision of material disclosing a factual basis for the claimed native title rights and interests, for the purposes of registration, is ultimately the responsibility of the applicant. It is not a requirement that the Registrar or his delegate undertake a search for such material.'<sup>22</sup> I have therefore limited my consideration to the information described at the beginning of these reasons.

[38] Schedule F states:

The native title rights and interests are those of, and flowing from, the exclusive right to possession, occupation, use and enjoyment of the land and waters pursuant to the traditional laws and customs of the claim group based upon the following facts:

- a) the native title claim group and their ancestors have, prior to and since the assertion of British sovereignty possessed, occupied, used and enjoyed the claim area;

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<sup>21</sup> *Doepel* [16]–[17]; *Gudjala 2008* [83], [92].

<sup>22</sup> *Martin* [23].

- b) such possession, occupation, use and enjoyment has been pursuant to and under the laws and customs of the claim group, comprising rights and interests in land and waters which the traditional laws and customs vest in members of the native title claim group on the basis of descent from ancestors connected to the area, including descent through adoption in accordance with traditional law and custom;
- c) such traditional laws and customs have been passed down from older generations to younger generations by traditional teaching, through the generations of persons comprising the native title claim group preceding the present generations to the present generations of persons comprising the native title claim group;
- d) the native title claim group continues to acknowledge and observe those traditional laws and customs;
- e) the native title claim group by those laws and customs have continuing connection with the land and waters in respect of which the claim is made; and
- f) the rights and interests are capable of being recognised by the common law of Australia.

[39] I note that Schedule G broadly restates the non-exclusive rights claimed in Schedule E. It states:

The native title claim group have continuously carried out on the land and waters all such activities as are contemplated by their rights and interests as and when they choose, informed by their rights and obligations under traditional law and custom including:

- a) accessing and using the land and waters;
- b) controlling the access and use of the claim area by others;
- c) accessing and taking the resources of the land and waters; and
- d) protecting places, areas and things of traditional significance on the land and waters.

[40] I have examined the application and am satisfied that there is no other information to consider in relation to s 190B(5).

[41] I consider that the material does not provide a sufficient factual basis to support an assertion that the predecessors of the claim group were associated with the area over the period since sovereignty. There are no references to any locations inside the application area and no information about any association between the predecessors and the application area. In my view, there is also insufficient factual basis to demonstrate an association between the current members of the claim group and the application area. I consider that the information provided is of a very general nature and has no 'geographical particularity',<sup>23</sup> which means s 190B(5)(a) is not met.

[42] Relevant to my assessment of the assertion at s 190B(5)(b) is the identification of a pre-sovereignty society or a society that existed prior to European settlement, acknowledging and observing normative laws and customs.<sup>24</sup> I consider that there is insufficient factual basis to

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<sup>23</sup> *Martin* [26]; *Corunna* [39], [45].

<sup>24</sup> *Gudjala 2009* [37], [52].

support an assertion that there existed a pre-sovereignty society in the application area. I consider that there is also insufficient factual basis to demonstrate any relationship between the ancestors of the claim group and a pre-sovereignty society.<sup>25</sup>

[43] Also relevant to my assessment of the assertion at s 190B(5)(b) is the identification of the laws and customs of the claim group and how they are ‘traditional’, that is, how the current laws and customs of the claim group are rooted in the laws and customs of a pre-sovereignty society.<sup>26</sup> I am not satisfied that the information in the application supports an assertion that laws and customs exist, either in relation to a pre-sovereign society in the application area or since that time. This means I cannot be satisfied that any such laws or customs could be considered ‘traditional’, and so s 190B(5)(b) is not met.

[44] Meeting the requirements of s 190B(5)(c) relies on whether there is a factual basis supporting the assertion at s 190B(5)(b) that there exist traditional laws and customs which give rise to the claimed native title rights and interests.<sup>27</sup> Because I consider the factual basis is not sufficient to support the assertion of the existence of traditional laws and customs at s 190B(5)(b), I cannot be satisfied that the factual basis is sufficient to support the assertion of the continuity of traditional laws and customs, which means s 190B(5)(c) is not met.

[45] I am therefore not satisfied that the factual basis on which it is asserted that the claimed native title rights and interests exist is sufficient to support any of the assertions of s 190B(5).

#### Prima facie case – s 190B(6): condition not met

[46] To meet s 190B(6), the Registrar must consider that, prima facie, at least some of the native title rights and interests claimed can be established. According to s 223(1), a ‘native title right or interest’ is one that is held under traditional laws acknowledged and traditional customs observed. As discussed above at s 190B(5)(b) I am not satisfied that there is information to support the assertion that such traditional laws and customs exist. This means that I cannot find that any of the claimed rights or interests are held under traditional laws and customs so as to meet the definition of native title rights and interests in s 223(1).

[47] In addition, there must be information within the application that talks about each of the individual rights claimed. I am not satisfied that the application contains sufficient information of this type. I therefore consider that none of the claimed rights and interests have been established on a prima facie basis, which means s 190B(6) is not met.

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<sup>25</sup> Ibid [40].

<sup>26</sup> *Yorta Yorta* [46], [49].

<sup>27</sup> *Gudjala 2009* [29].

## Traditional physical connection – s 190B(7): condition not met

[48] To meet 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 such a connection but for things done by the Crown, a statutory authority of the Crown or any holder of or person acting on behalf of the holder of a lease, other than the creation of an interest in relation to land or waters.

[49] I note this condition requires the material to satisfy the Registrar of particular facts and evidentiary material is therefore required, and that the physical connection must be in accordance with the traditional laws and customs of the claim group.<sup>28</sup>

[50] Schedule M, which asks the applicant for information about this requirement, has not been provided. I have examined the contents of the application and am satisfied there is no information addressing s 190B(7). In addition, given my finding that there is insufficient information to demonstrate the existence of traditional laws and customs for the purposes of s 190B(5)(b), I cannot be satisfied that any member of the claim group holds the requisite physical connection with the application area in accordance with traditional laws and customs, which means s 190B(7) is not met.

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

[51] I am satisfied the application complies with ss 61A(1)–(3) and so s 190B(8) is met:

Section	Requirement	Information	Result
s 61A(1)	No native title determination application if approved determination of native title	Geospatial report; my own searches	Met
s 61A(2)	Claimant application not to be made covering previous exclusive possession over areas	Schedule B; Schedule L.	Met
s 61A(3)	Claimant applications not to claim certain rights and interests in previous non-exclusive possession act areas	Schedule E, paragraph 5(a); Schedule L.	Met

[52] I understand that a statement in an application that ss 47–47B applies, such that any extinguishment of native title is to be disregarded, can be relied upon to reach the necessary satisfaction under s 190B(8) in relation to previous exclusive possession acts (s 61A(2)) and

<sup>28</sup> *Doepel* [18], *Gudjala 2009* [84].

previous non-exclusive possession acts (s 61A(3)).<sup>29</sup> I therefore rely on the statement in Schedule L, which states that the native title claim group claims the benefits of ss 47–47B, to be satisfied that the application complies with ss 61A(2)–(3).

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

[53] I am satisfied s 190B(9) is met:

Section	Requirement	Information	Result
s 190B(9)(a)	No claim made of ownership of minerals, petroleum or gas that are wholly owned by the Crown	Schedule Q	Met
s 190B(9)(b)	Exclusive possession is not claimed over all or part of waters in an offshore place	Schedule P	Met
s 190B(9)(c)	Native title rights and/or interests in the application area have otherwise been extinguished	There is no information in the application which discloses to me that native title rights and interests in the application area have otherwise been extinguished	Met

*End of reasons*

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<sup>29</sup> *Doepel* [111], [138]–[139].

## Attachment A

### Summary of registration test result

<b>Application name</b>	Purnululu #2
<b>NNTT No.</b>	WC2018/017
<b>Federal Court of Australia No.</b>	WAD401/2018
<b>Date of decision</b>	28 September 2018

### Section 190B conditions

<b><i>Test condition</i></b>	<b><i>Subcondition/requirement</i></b>	<b><i>Result</i></b>
s 190B(2)		Met
s 190B(3)	s 190B(3)(b)	Met
s 190B(4)		Met
s 190B(5)		Not met
s 190B(6)		Not met
s 190B(7)		Not met
s 190B(8)	s 61A	Met
s 190B(9)		Met

### Section 190C conditions

<b><i>Test condition</i></b>	<b><i>Subcondition/requirement</i></b>	<b><i>Result</i></b>
s 190C(2)	ss 61–2	Met
S 190C(3)		Not met
s 190C(4)	s 190C(4)(a)	Met