Registration Decision

National Native Title Tribunal

Application name	Lynette Gail Blucher & Ors on behalf of the Gaangalu Nation People and State of Queensland & Ors (Gaangalu Nation People)
Name of applicant	Lynette Gail Blucher, Lynette Ann Anderson, Lillian May Harrison, Rodney John Jarro, Margaret Jennifer Kemp, Kevina Fay Suey
Federal Court of Australia No.	QUD33/2019
NNTT No.	QC2012/009
Date of Decision	18 December 2019

Claim accepted for registration

I have decided the claim in the Gaangalu Nation People amended application satisfies all the conditions in ss 190B–190C of the *Native Title Act 1993* (Cth).[1] Therefore the claim must be accepted for registration and will remain on the Register of Native Title Claims.

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Katy Woods[2]

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

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

Reasons for Decision

Cases Cited

Corunna v Native Title Registrar [2013] FCA 372 (*Corunna*)
Griffiths v Northern Territory of Australia [2007] FCAFC 178 (*Griffiths FC*)
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*)
Harrington-Smith on behalf of the Wongatha People v Western Australia (No 9) [2007] FCA 31 (*Harrington-Smith*)
Kanak v National Native Title Tribunal (1995) 61 FCR 103; [1995] FCA 1624 (*Kanak*)
Lawson on behalf of the `Pooncarie' Barkandji (Paakantyi) People v Minister for Land & Water Conservation for the State of New South Wales [2002] FCA 1517 *(Lawson)*
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*)
Noble v Mundraby [2005] FCAFC 212 (*Noble*)
Northern Territory of Australia v Doepel [2003] FCA 1384 (*Doepel*)
Strickland v Native Title Registrar [1999] FCA 1530 (*Strickland*)
Wakaman People 2 v Native Title Registrar and Authorised Delegate [2006] FCA 1198 (*Wakaman*)
Ward v Northern Territory [2002] FCA 171 (*Ward v Northern Territory*)
Western Australia v Native Title Registrar (1999) 95 FCR 93; [1999] FCA 1591 (*WA v NTR*)
Western Australia v Ward (2002) 213 CLR 1; [2002] HCA 28 (*Ward HC*)
Wiri People v Native Title Registrar [2008] FCA 574 (*Wiri People*)

Background

[1] The claim in this application is made on behalf of the Gaangalu Nation People native title claim group (**claim group**). The claim was first made on 20 August 2012. It was first accepted for registration and entered onto the Register of Native Title Claims (**Register**) on 15 November 2012. It has remained on the Register since that time and has been amended on several occasions, most recently on 24 September 2019 when the application area was reduced to its current boundaries. The amended application before me was filed on 30 October 2019 and on 31 October 2019 the Registrar of the Federal Court (**Court**) gave a copy to the Native Title Registrar (**Registrar**), pursuant to s 64(4).

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

Procedural fairness

[3] On 4 November 2019, a senior officer of the National Native Title Tribunal (**Tribunal**) wrote to the relevant minister of the state of Queensland (**state**) advising that a delegate of the Registrar would be considering the information in the application in making the registration test decision, and that any submissions on the amended application's ability to pass the registration test should be made by 8 November 2019.

[4] On 4 November 2019, a representative of the state wrote to the senior officer and advised that the state would not be making submissions.

[5] Also on 4 November 2019, the senior officer wrote to the representative of the applicant and advised that any additional material which the applicant wished the delegate to consider should be provided by 8 November 2019.

[6] On 8 November 2019, the representative of the applicant wrote to the senior officer and requested an extension of time until close of business, 11 November 2019, to provide additional material for the delegate's consideration.

[7] Also on 8 November 2019, a delegate of Registrar considered the applicant's request and granted the extension of time until close of business, 11 November 2019.

[8] On 11 November 2019, the applicant provided the following documents for the delegate's consideration (**additional material**):

(a) Covering letter from the applicant's representative dated 11 November 2019 (**authorisation letter**);

(b) Copies of the authorisation meeting notices which also appear at pages 58–59 of the application.

[9] Also on 11 November 2019, the senior officer wrote to the representative of the state to advise that the delegate would be considering the additional material in making the registration test decision, and any comment on the additional material that the state may wish to make should be provided by 18 November 2019. No response was received from the state.

[10] On 4 December 2019, I was given carriage of the application for the purposes of applying the registration test. I considered it was appropriate for me to have regard to additional material provided by the applicant when the registration test was first applied to the claim, specifically:

(a) Extracts from 'Gaangalu Nation Native Title Claim – Application Report – Final Report, 5 April 2012' stamped 'received on 3 September 2012' (**anthropologist's report**).

[11] On 5 December 2019, the senior officer wrote to the representative of the state to advise that I would be considering the anthropologist's report in making the registration test decision, and any submissions or comments that the state wished to make should be received by 9 December 2019.

[12] Also on 5 December 2019, the representative of the state advised the senior officer that the state had no comment on the anthropologist's report. This concluded the procedural fairness process.

Information considered

[13] I have considered the information in the application and the additional information provided by the applicant for this amended application and for the original application, as outlined above.[3]

[3] Section 190A(3)(a).

[14] I have considered information contained in geospatial assessment and overlap analysis of the application area prepared by the Tribunal's Geospatial Services dated 1 November 2019 (**geospatial report**) and information available in the Tribunal's geospatial database in relation to locations mentioned in the application.[4]

[15] There is no information before me from any searches of state or Commonwealth interest registers,[5] and as noted above, the state has not supplied any information as to whether the registration test conditions are satisfied in relation to this claim.[6]

Section 190C: conditions about procedures and other matters

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

[16] To meet s 190C(2), the Registrar must be satisfied the application contains all of the prescribed details and other information, and is accompanied by any affidavit or other document, required by ss 61–2. I am not required to undertake a merit assessment of the material at this condition.[7] I have not addressed s 61(5) as I consider the matters covered by that condition are matters for the Court.

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

Section	Details	Information	Result
s 61(1)	Native title claim group have authorised the applicant	Part A, Schedule A, s 62 affidavits filed with application	Met
s 61(3)	Name and address for service	Part B	Met
s 61(4)	Native title claim group named/described	Schedule A	Met

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

Section	Details	Information	Result
s 62(1)(a)	Affidavits in prescribed form	Section 62 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	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, Attachment 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

[4] Section 190A(3)(c).
[5] Section 190A(3)(b).
[6] Section 190A(3)(c).
[7] *Doepel* [16], [35]–[39].

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

[19] To meet s 190C(3), the Registrar must be satisfied that no person included in the claim group for the current application 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 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.

[20] The geospatial report states and my own searches confirm there are no applications which overlap the current application, as required by s 190C(3)(a). Therefore, there are no applications which meet the definition of a 'previous application' under s 190C(3). This means that the issue of common claimants does not arise and s 190C(3) is met.

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

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

(a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; 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.

[22] Schedule R states that the application is not certified and refers to Attachment R, which is a document containing information about the authorisation of the applicant. I therefore understand I must assess the application against the requirements of s 190C(4)(b).

What is required to meet s 190C(4)(b)?

[23] Section 190C(4)(b) contains two limbs, both of which must be satisfied:

(a) that the applicant is a member of the claim group; and

(b) that the applicant is authorised to make the application, by all the other members of the claim group.

[24] Following s 190C(4)(b) there is a note in the Native Title Act referring to the definition of 'authorising the making of applications' in s 251B. That provision stipulates that all the persons in a claim group authorise a person to make an application and to deal with matters arising in relation to it, where one of the following processes of decision-making is utilised:

(a) a process which, under the traditional laws and customs of the persons in the claim group, must be complied with, or

(b) where there is no traditional process, a process agreed to and adopted by the claim group.

[25] The case law also confirms that s 190C(4)(b) requires consideration of whether the identified native title holders have authorised the applicant to make the application in accordance with s 251B.[8]

[26] Section 190C(5) states that if the application has not been certified under s 190C(4)(a), the Registrar cannot be satisfied that the condition in s 190C(4) is met unless the application:

(a) includes a statement to the effect that the requirement in s 190C(4)(b) has been met; and
(b) briefly sets out the grounds on which the Registrar should consider that the requirement in s 190C(4)(b) has been met.

[27] I therefore understand that in order to be satisfied that s 190C(4)(b) is met, one of the decision- making processes outlined in s 251B must be identified and complied with, and the requirements of s 190C(5) must also be met.

[28] The information before me which is relevant to this condition is found in:

(a) Attachment R to the application;

(b) The s 62 affidavits; and

(c) The authorisation letter.

Does the application satisfy s 190C(5)?

[29] The first paragraph of Attachment R states that the persons who comprise the applicant are members of the claim group and are authorised to make the application and to deal with matters arising in relation to it, by all other members of the claim group. I consider this statement is sufficient for the purposes of s 190C(5)(a).

[30] The s 62 affidavits each state that the deponent is a member of the claim group, and outlines the process by which the members of the applicant were authorised at a meeting on 28 September 2019, in accordance with a decision-making process agreed to and adopted by the claim group.

[31] Justice French commented that the insertion of the word 'briefly' in s 190C(5)(b) 'suggests that the legislature was not concerned to require any detailed explanation of the process by which authorisation is obtained.'[9] In light of this guidance, I consider that the information contained in the s 62 affidavits is sufficient for the purposes of s 190C(5)(b). The application therefore satisfies s 190C(5).

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

[32] Firstly, I must be satisfied the persons comprising the applicant are members of the claim group. As the s 62 affidavits and Attachment R contain such a statement, I am satisfied this requirement is met.

[33] Secondly, I must be satisfied that the applicant is authorised to make the application, by all the other members of the claim group. The identification of the appropriate decision-making

[8] *Wiri People* [26]–[36].
[9] *Strickland* [57].

process and whether it was complied with is a primary consideration for my task at s 190C(4)(b).[10]

Which decision-making process under s 251B has been identified?

[34] The s 62 affidavits and Attachment R state that the claim group agreed to and adopted a process for decision-making.[11] I am therefore satisfied the application identifies the type of decision-making process described in s 251B(b).

How was the decision-making process applied in the decision to authorise the applicant?

[35] In order to be satisfied that the necessary authorisation has been given by the claim group in accordance with the identified decision-making process, I must inquire through the material available to the Registrar.[12] The material before me provides information about the notice and conduct of the authorisation meeting at which the applicant was authorised to make the application, which I have summarised below.

Notice of authorisation meeting

[36] According to Attachment R, notice of the authorisation meeting was given in the following ways:

(a) Public notice in *The Koori Mail* on 11 September 2019 and in Rockhampton local paper *The Morning Bulletin* on 14 September 2019;

(b) Personal notice on the 'Ghangalou Mob' private Facebook page; and

(c) Personal notice by each of the applicant members to their respective family members and other members of the claim group by word of mouth, telephone and email.[13]

[37] Copies of the public notice were also sent to Cherbourg Aboriginal Shire Council, Woorabinda Aboriginal Shire Council and to the legal representatives of 'the Western Kangoulu Applicant', which I understand relates to a neighbouring claim group.[14]

[38] Copies of the public notice as they appeared in the two newspapers are included in Attachment R (collectively, the **notice**). Clearer copies of the notice were provided by the applicant with the authorisation letter.

[39] The notice includes the date, time and venue for two meetings scheduled to be held on 28 September 2019 in Rockhampton. The first meeting (**Meeting #1**) invites the members of the claim group as it was described at that time, and explains that the purpose of the meeting is to consider making changes to the claim group description. The proposed changes are set out clearly and the notice includes the 'Important Note' that only members of the claim group as it was (then) currently described were entitled to attend and participate in Meeting #1. The notice explains that if the proposed changes to the claim group are authorised at Meeting #1, a second meeting will be held for all members of the newly described claim group (**Meeting #2**). The purpose of Meeting #2 includes 'considering the progress of the GNP [Gaangalu Nation People] claim, and to consider and determine any matters arising in relation to it'.

[10] *Noble* [16].
[11] Section 62 affidavits, [5]; Attachment R, 3–5.
[12] *Doepel* [78].
[13] Attachment R, 1.
[14] Ibid.

[40] The notice provides a contact number and an email address for registration and further information.

Conduct of authorisation meeting

[41] Attachment R provides the following information about the conduct of the authorisation meetings:

(a) Ninety (90) members of the claim group attended Meeting #1 and a copy of the Attendance Register is included in Attachment R. The attendees passed a resolution confirming there is no particular process of decision-making under their traditional laws and customs which must be used, and agreed to and adopted a decision-making process of majority vote of the persons present and entitled to vote at the meeting. The claim group then used this decision-making process in resolutions to make the changes to the claim group description which were proposed in the notice.[15]

(b) The same 90 members of the claim group attended Meeting #2. The authorisation letter identifies the descendants of the apical ancestor added to the claim group description and explains that these people attended Meeting #1 by virtue of their descent from other named ancestors in the claim group description.[16] Therefore, no additional people joined Meeting #2. At Meeting #2 the same decision-making process used in Meeting #1 was agreed to and adopted, which was then used in the decision to authorise the members of the applicant.[17]

Consideration

[42] I consider the notice of the meeting was sufficiently clear as to enable the details and purpose of the meeting to be understood. I also consider the notice of the meeting to be broad and comprehensive in its reach, using various media and a mix of personal and public notices in the weeks leading up to the authorisation meeting.

[43] I consider Attachment R provides sufficient detail of the conduct of the authorisation meeting, including the relevant resolutions passed. The resolution to authorise the applicant was made using a process agreed to and adopted by the claim group which was used throughout both Meeting #1 and Meeting #2.

[44] I note O'Loughlin J's theoretical questions about the meeting at which the applicant was authorised in the circumstances of the case of *Ward v Northern Territory*, the substance of which His Honour held must be addressed:

> Who convened it and why was it convened? To whom was notice given and how was it given? What was the agenda for the meeting? Who attended the meeting? What was the authority of those who attended? Who chaired the meeting or otherwise controlled the proceedings of the meeting? By what right did that person have control of the meeting? Was there a list of attendees compiled, and if so by whom and when? Was the list verified by a second person? What resolutions were passed or decisions made? Were they unanimous, and if not, what was the voting for and against a particular resolution? Were there any apologies recorded? [18]

[15] Ibid 3–4.
[16] Authorisation letter, 1
[17] Attachment R, 5.
[18] *Ward v Northern Territory* [25]–[26], followed in *Lawson* [27]–[28].

[45] In my view, there is sufficient information to address the substance of those questions, such that I can be satisfied of the 'fact of authorisation'.[19] It follows that I am satisfied that the applicant is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the claim group.

Conclusion

[46] As I consider the requirements of s 190C(5) and s 190C(4) are met, including that the material addresses s 251B(b), I am satisfied s 190C(4) is met.

Section 190B: conditions about merits of the claim

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

[47] To meet s 190B(2), the Registrar must be satisfied the information and map contained in the application are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

[48] I understand the questions for this condition are whether the information and map provide 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.[20]

Does the information about the external boundary meet this condition?

[49] Schedule B refers to Attachment B, which describes the application area with reference to the banks and centrelines of waterways, the boundaries of local government authorities, land parcels, road reserves, the Malakoff Range, and coordinate points identified by longitude and latitude expressed to six (6) decimal places referencing GDA94.[21]

[50] Schedule C refers to Attachment C, which contains a map titled 'QUD33/2019 Gaangalu People (QC2012/009)', prepared by Geospatial Services and dated 26 June 2019. It includes:

(a) The external boundary depicted by a bold blue outline;
(b) The non-claimant determinations of QUD250/2010 and QUD188/2012 labelled;
(c) Topographic background image;
(d) Scalebar, northpoint and coordinate grid; and
(e) Notes relating to the source, currency and datum of data used to prepare the map.

[51] The assessment in the geospatial report is that the map and description are consistent and identify the application area with reasonable certainty. I have considered the map and description and I agree with that assessment.

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[19] *Doepel* [78].
[20] *Doepel* [122].
[21] Geocentric Datum of Australia 1994.

Does the information about excluded areas meet this condition?

[52] Schedule B states that the application does not cover areas where previous exclusive possession acts were done, such as the granting of freehold leases, where previous non-exclusive possession acts have been done, or any other area where native title has been extinguished, except where any extinguishment is required to be disregarded by force of ss 47–47B.

[53] I note French J's comment with regard to general exclusion clauses of this nature, that 'it is unrealistic to expect a concluded definition of the areas subject to these provisions to be given in the application. Their applicability to any area will require findings of fact and law to be made as part of the hearing of the application'.[22] Following this reasoning, I am satisfied the areas affected by the general exclusion clauses in Schedule B can be ascertained at the appropriate time.

[54] Schedule B and Attachment B specifically exclude any land or waters covered by:

(a) QUD250/2010 – Blackwater Accommodation Village Pty Ltd (QND2011/001), being that area subject to Lot 1 on Plan SP235822.
(b) QUD188/2012 – Qantac Pty Ltd (QND2013/001), being that area subject to Lot 1 on Plan SP246036.

[55] In my view, the specific exclusions are clear from the description in Schedule B and Attachment B.

Conclusion

[56] As I consider that both the external boundary and the excluded areas of the application can be identified with reasonable certainty, I am satisfied that s 190B(2) is met.

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

[57] To meet s 190B(3), the Registrar must be satisfied that the persons in the claim group are named in the application or are described sufficiently clearly so that it can be ascertained whether any particular person is in the claim group.

[58] I understand I am not required to do more than make 'an assessment of the sufficiency of the description of the group for the purpose of facilitating the identification of any person as part of the group' at this condition.[23]

[59] Schedule A states:

> The Gaangalu Nation native title claim group comprises all the 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: [list of 29 people].

[60] It follows from this description that s 190B(3)(b) is applicable. I am therefore required to be satisfied that the persons in the claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

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[22] *Strickland* [55].
[23] *Wakaman* [34].

Is the description sufficient to ascertain the members of the claim group?

[61] From the above description, I understand an individual is a member the claim group by virtue of being a descendant of one of the named ancestors. The Court has previously held that describing a claim group with reference to descent from named ancestors satisfies the requirements of s 190B(3)(b).[24] I consider that requiring a person to show descent from an identified ancestor provides a clear starting point to commence an inquiry about whether a person is a member of the claim group. I consider that factual enquiries and genealogical research would lead to the identification of the people who are members of the claim group.

Conclusion

[62] I am satisfied the application describes the persons in the claim group sufficiently clearly such that it can be ascertained whether any particular person is a member of the group as required by s 190B(3)(b). This means s 190B(3) is met.

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

[63] To meet s 190B(4), the Registrar must be satisfied the description contained in the application is sufficient to allow the claimed native title rights and interests to be identified. I have not considered whether the rights and interests claimed can be considered 'native title rights and interests' in accordance with s 223 as I consider that is part of the task at s 190B(6), where I must decide whether each of the claimed rights is established as a native title right on a prima facie basis. I note that my consideration of this condition is confined to information found in the application.[25]

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

Exclusive Possession

[64] From the description in the first paragraph of Schedule E, I understand that exclusive possession is claimed in any areas covered by the application where there has been no prior extinguishment. I understand that a broad claim to exclusive possession such as this one does not offend s 190B(4).[26]

Non-exclusive rights

[65] I understand that the listed non-exclusive rights are claimed in any areas where exclusive possession cannot be claimed. The non-exclusive rights form an exhaustive list, and in my view there is no inherent or explicit contradiction within the description.[27]

Conclusion

[66] I am satisfied the description is sufficient to understand and identify all the claimed rights and interests, which means s 190B(4) is met.

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[24] *WA v NTR* [67].
[25] *Doepel* [16].
[26] *Strickland* [60].
[27] *Doepel* [123].

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

[67] 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; and

(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) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

[68] 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'.[28]

What information has been provided in support of the assertions at s 190B(5)?

[69] Schedule F refers to Attachment F, which is a document titled 'General Description of Native Title Rights and Interests Claimed'. This document summarises the conclusions of the anthropologist's report. Schedule G lists the activities currently carried out by the claim group in the application area. Schedule M briefly describes the physical connection which members have with the application area. I consider this is the extent of the information in the application which supports the assertions at s 190B(5).

[70] The anthropologist's report more specifically addresses the assertions of s 190B(5) and so my reasoning will focus primarily on the information in that report.

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

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

(a) the claim group presently has an association with the application area, and the claim group's predecessors have had an association with the application area since sovereignty or European settlement;[29]

(b) there is 'an association between the whole group and the area', although not 'all members must have such association at all times';[30] and

(c) there is an association with the entire area claimed, rather than an association with only part of it or 'very broad statements', which have no 'geographical particularity'.[31]

What information has been provided in support of the assertion at s 190B(5)(a)?

Association of the predecessors of the claim group with the application area

[72] Attachment F provides:

(a) European contact occurred in the 1850s–1860s;

[28] *Doepel* [16]–[17]; *Gudjala 2008* [83], [92].
[29] *Gudjala 2007* [52].
[30] Ibid.
[31] *Martin* [26]; *Corunna* [39], [45].

(b) Ethnographic records from the late 1880s to 1970 consistently place the Gaangalu language in the area defined by the Comet, Dawson, Mackenzie and Fitzroy Rivers;

(c) Tennant-Kelly in the 1930s recorded senior Gaangalu speakers born around the time of European contact who were 'fresh from living outback, mostly from living on the river banks, where they had lived, for the most part, according to the "old way"'.[32]

[73] The anthropologist's report provides:

(a) Many of the predecessors of the claim group were born in the application area and worked on the pastoral stations which were established over the application area after colonisation;[33]

(b) Many predecessors are buried on or near to the application area, reflecting the practice of returning to country upon passing;[34]

(c) Apical ancestor Jack of Coomooboolaroo was recorded at Coomooboolaroo Station in the northern part of application area in 1871; and Jack's children, apical ancestor Claude Anderson and members of subsequent generations of the claim group were also born on that station;[35]

(d) Apical ancestor Lizzy King was born in Baralaba in southern part of the application area around 1862, was married there in 1910 and was still living there in the 1930s; her daughter was also born in the application area around 1884;[36]

(e) The son of apical ancestor Annie of Orion Downs was born around 1896 and lived at Orion Downs Station, in the western part of the application area;[37]

(f) Apical ancestor Biddy (wife of Jumbo) was recorded living at Comet Downs Station, near the western boundary of the application area in 1898; her sister, apical ancestor Annie French, was born in the north west part of the application area around 1865;[38]

(g) Apical ancestor Maggie of Dingo and her husband both died in the central part of the application area in 1889; her son and daughter were born in the application area and her son worked on the pastoral stations which cover the application area between 1898 and 1925;[39]

(h) Apical ancestor William Toby was born at Banana, in the south east of the application area and many of his descendants lived and were buried in this part of the application area, as well as around Mt Morgan in the north east of the application area, including his son, who died there in 1947.[40]

[32] Attachment F, 2.
[33] Anthropologist's report [121].
[34] Ibid.
[35] Appendix E to the anthropologist's report [4], [15].
[36] Ibid [16], [21].
[37] Ibid [22].
[38] Ibid [21].
[39] Ibid [13]–[15].
[40] Ibid [24], [27].

Association of the current claim group with the claim area

[74] With regard to the association of the current claim group, the anthropologist's report provides the following information:

(a) A senior claimant's father was born in the central part of the application area and described that area as 'his country'; the claimant lived at Baralaba in the application area until she was 11 and remembers places where her father told her she was not to play due to the presence of spirits;[41]

(b) A claimant describes his association with the north east part of the application area around Mt Morgan as giving him a feeling of 'coming home'; he has knowledge of art sites in the application area as well as dreaming stories and beings which are associated with places across the application area including at Mt Morgan, Blackdown Tablelands and Biloela;[42]

(c) A claimant whose parents were born in a stockyard in the central part of the application area recalls a hail storm there in 1928, which was believed to be the spiritual consequence of some boys swimming in a particular waterhole; he also recalls his father showing him and his sisters art sites in the application area and teaching them how to make a fire, find water and identify bush tucker, as well as the location of an ochre mine;[43]

(d) Claimants recall fishing in the application area and how their father would approach the Dawson River and introduce himself to the resident spirits; and the claimants continue to observe the practice of 'singing out' to the spirits when crossing the river with new grandchildren;[44]

(e) A claimant stated that her grandfather and father lived on the application area and that she has lived, worked, gone fishing and hunting in the west and central parts of the application area; she takes her children out to Blackdown Tablelands and identified a particular type of bush tucker growing near Banana;[45]

(f) Claimants, their parents and grandparents have lived and worked at various locations in and around the application area, including Wooroonah, Goomally, Woorabinda, Mt Morgan, Don River, Banana, Dululu and Eulogie; [46]

(g) One claimant recalls her uncle telling her that her feet had swelled because she had crossed a burial ground; another claimant recalls his father and uncle instructing him to avoid a certain location in the application area because it should only be accessed by initiated men.[47]

[41] Appendix F; Figure 16 to the anthropologist's report; [1]–[5].
[42] Ibid [6]–[11].
[43] Ibid [12]–[14].
[44] Ibid [16].
[45] Appendix F; Figure 17 to the anthropologist's report [1]–[9].
[46] Ibid [10]–[40].
[47] Ibid [21], [38].

Is the factual basis sufficient to support the assertion at s 190B(5)(a)?

[75] I understand that in assessing the factual basis for the purposes of s 190B(5)(a), I am not obliged to accept very broad statements which have no geographical particularity.[48] I do not consider this application is of that nature. In my view, the information before me addresses the relationship the claim group claims to have with the relevant land and waters, in a sufficient level of detail, both at the time of settlement and since that time.[49] I have considered whether there is information sufficient to support the requirements of s 190B(5)(a) below.

Is the factual basis sufficient to support an association between the claim group at sovereignty and since that time?

[76] The anthropologist's report contains three maps of the application area illustrating the association of claim group members and their predecessors as recorded in the historical record and in information from claim group members. Those maps depict the application area as it existed prior to its reduction in the amended application of 29 September 2019. I have cross-referenced these maps and the information that accompanies them, with information in the Tribunal's geospatial database. This has enabled me to be satisfied that the factual basis is sufficient to support an assertion of an association of the ancestors of the claim group with the current application area. I note the references to claimants living and working on Coomooboolaroo, Orion Downs and Comet Downs stations, which cover much of the application area. There are also references to the locations of Baralaba, Mt Morgan and Banana, and information about early and subsequent generations of the claim group living at these locations and others in the application area.

[77] I understand that settlement in the application area occurred in the 1850s-1860s, much later than the acquisition of British sovereignty in 1788. Many of the apical ancestors are asserted to have been born before or in the very early years of settlement. For example, apical ancestor Lizzy King was born around 1862, right around the time of settlement. In my view, Lizzy King and the other apical ancestors who were born around settlement likely had the same association with the application area as their parents and grandparents, who would have been alive around the time of sovereignty. In making this retrospective inference I have considered the judicial guidance of Lindgren J on making such inferences in *Harrington-Smith*, and of French J in *Kanak* on construing the Native Title Act beneficially.[50]

Is the factual basis sufficient to support an association between the claim group and the area currently?

[78] In my view, the factual basis is sufficient to support the assertion that the claim group currently has an association with the application area. In forming this view I have considered the information about the physical and spiritual connection to the application area which current claim group members describe. There are descriptions of art sites, gender-restricted sites and locations where claimants were taken by their predecessors to hunt and fish. There is also information about the claimants maintaining a spiritual association with the application

[48] *Martin* [25].
[49] *Gudjala 2007* [40].
[50] *Harrington-Smith* [294]–[296], *Kanak* [73].

area by calling out whilst on country and introducing new family members to the resident spirits. There are references to a number of named locations which I can see from the maps provided with the anthropologist's report, and from the geospatial database, are spread across the application area. I note in particular the various references to a physical and spiritual association with Blackdown Tablelands, which stretches north to south across the western half of the application area. There are a similar number of references to the Mt Morgan area in the east of the application area, and to the spirits and special sites in that area.

Is the factual basis sufficient to support an association, both past and present, with the <u>whole</u> area claimed?

[79] I understand the task of the Registrar at s 190B(5)(a) is limited to assessing whether the factual basis is sufficient to support the assertion that the claim group have, and their predecessors had, an association over the whole area of the claim.[51] It is not a requirement that the every member of the claim group have an association at all times with the entire application area.

[80] In my view, there is sufficient information in the application to support an association by the claim group, past and present, with the application area as a whole. I note the references, both historical and recent, to the communities and townships that are spread across the application area in all directions, as well as to the overlying pastoral stations and to the waterways which traverse the application area, including the Dawson River.

Conclusion - s 190B(5)(a)

[81] In my view, the information before me is sufficient to support the assertion that the claim group have, and its predecessors had, an association with the application area. This is because the material demonstrates sufficient geographical particularity to locations where claim group members and their predecessors were born, lived, worked and were buried. I am satisfied there is sufficient factual basis to support an assertion of a physical association of the claim group to the whole application area. I am also satisfied there is a sufficient factual basis to support an assertion of a spiritual association. This means s 190B(5)(a) is met.

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

[82] To meet s 190B(5)(b), the factual basis must be sufficient to support an assertion that there exist *traditional laws acknowledged* by, and *traditional customs observed* by, the native title claim group that give rise to the claim to native title rights and interests. 'Native title rights and interests' is defined in s 223(1)(a) as those rights and interests 'possessed under the *traditional laws acknowledged*, and *traditional customs observed*,' by the native title holders.[52] Applying the approach of Dowsett J in *Gudjala 2007*, I have interpreted s 190B(5)(b) in light of the judicial consideration of the meaning of those same words in s 223(1)(a).[53]

[83] In *Yorta Yorta*, the plurality of the High Court held that a 'traditional' law or custom is one which has been passed from generation to generation of a society, usually by word of mouth

[51] *Corunna* [31].
[52] Emphasis added.
[53] *Gudjala 2007* [26], [62]–[66], which was not criticised by Full Court on appeal in *Gudjala 2008*.

and common practice. The High Court further held that in the context of the Native Title Act, 'traditional' also carries two other elements, namely:

> …it conveys an understanding of the *age of the traditions*: the origins of the content of the law or custom concerned are to be found in the *normative rules* of the Aboriginal and Torres Strait Islander *societies* that existed before the assertion of sovereignty by the British Crown. *It is only those normative rules that are "traditional" laws and customs*;
>
> …the normative system under which the rights and interests are possessed (the traditional laws and customs) is a system that has had a *continuous existence and vitality since sovereignty*. If that normative system has not existed throughout that period, the rights and interests which owe their existence to that system will have ceased to exist.[54]

[84] In *Gudjala 2009*, Dowsett J provided further guidance to the Registrar in assessing the asserted factual basis, including that if descent from named ancestors is the basis of membership of the group, the factual basis must demonstrate some relationship between those ancestors and the pre-sovereignty society from which the laws and customs of the claim group are derived.[55]

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

(a) a society which existed at sovereignty in the application area, the members of which were united through their observance of normative rules;

(b) a link between the pre-sovereignty society, the apical ancestors and the claim group; and

(c) the continued observance of normative rules through the generations down to the current claim group, such that the normative rules can be described as 'traditional laws and customs'.

What information has been provided in support of the assertion of a society at settlement?

[86] The anthropologist's report provides:

(a) The relevant society covers the region of the entire Fitzroy Basin, in which there exists sociolinguistic interaction and shared laws and customs in relation to marriage, kin relationships and totemism, among other things;[56]

(b) The ethnographic records from the 1880s onwards consistently place the Gaangalu language in the area defined by the Comet, Dawson, Mackenzie and Fitzroy Rivers;[57]

(c) Within the regional society, the Gaangalu Nation is made up of a number of descent groups which are genealogically related to the apical ancestors who held rights in the application area at sovereignty.[58]

[54] *Yorta Yorta* [46]–[47], emphasis added.
[55] *Gudjala 2009* [40].
[56] Anthropologist's report, Executive Summary, 3, [189]–[190].
[57] Ibid [52].
[58] Ibid [172].

What information has been provided in support of the assertion of traditional laws and customs?

[87] The anthropologist's report provides the following information about the laws and customs of the claim group:

(a) Relationship between Gaangalu Nation People identity and rights and interests in land:

1. The author opines that historical and recent research demonstrates that the claim group share a common identity and mutually recognise that certain descent groups have particular associations with particular parts of the application area, evidenced through agreed-upon practices for localised responsibilities for land.[59]

(b) Kinship rules:

1. Tennant-Kelly recorded detailed information about the laws of social organisation observed by the claim group's predecessors, including a four section system, totemic affiliations and marriage rules;[60]
2. Claimants today continue to observe many aspects of the same laws of social organisation, including the marriage rules, a classificatory relationship system, demand sharing and reciprocity.[61]

(c) Totem affiliation:

1. Totemism is described by the author as a way of linking descent groups, ancestors and claimants with each other and with the land, via affiliation with particular species found in the application area;[62]
2. Historically, totemism was described by contemporary observers as 'the most important and the most living part [sic]' of the lives of the claim group's predecessors;[63]
3. A senior claimant explained, 'Scrub turkeys are relations to me', and the author opines that contemporary totemic affiliations remain an important aspect of identity, social relationships and connection to the land for current claim group members.[64]

(d) Spiritual beliefs connected to country:

1. Gaangalu informants provided mythological information to the early ethnographers, including ancestral narratives linked to Gaangalu country. These beliefs are mirrored by claimants today, who believe their country is a sentient landscape inhabited by their ancestors and spirit beings;[65]
2. Claimants continue to observe behavioural protocols with regard to country and in similar ways as their predecessors, such as 'calling out' to the relevant

[59] Ibid.
[60] Ibid [176].
[61] Ibid [179].
[62] Ibid [184]–[185].
[63] Ibid [183]
[64] Ibid [180], [185].
[65] Ibid [122], [125], [191].

spirits when entering a particular area, an example of which I have extracted at s 190B(5)(a) above;[66]

3. Spiritual beliefs as they relate to the application area, including rules about avoiding particular places, were taught to the claim group members by their predecessors.[67]

(e) Traditional practices:

1. Claimants have learned skills from their predecessors on the application area, including traditional methods of making fires, finding water and bush tucker, examples of which I have extracted at s 190B(5)(a) above.

Is the factual basis sufficient to support the assertion of s 190B(5)(b)?

Does the factual basis address the identity of a pre-sovereignty society for the area?

[88] The Court has previously held that '[i]t is conceivable that the traditional laws and customs under which the rights and interests claimed are held might, in whole or in part, be also traditional laws and customs of a wider population, without the wider population being part of the claim group'.[68] In my view, the anthropologist's report describes such a society existing in the Fitzroy Basin at the time of settlement, which included the application area. The factual basis asserts that this society was identifiable through common observance of laws and customs, and was further identifiable in the application area through use of the Gaangalu language, and with particular land holding groups having rights in relation to particular areas. The factual basis supports the assertion that those particular land holding groups were the predecessors of the claim group. In my view, both the general features of the wider society and the particulars of its operation in relation to the application area by the claim group are sufficiently addressed.

[89] I also consider it reasonable to infer this society existed at sovereignty and was not substantially changed between sovereignty and settlement in the 1850s, in the absence of any information before me to the contrary.

Does the factual basis address the link between the pre-sovereignty society, the apical ancestors and the claim group?

[90] As discussed above at s 190B(5)(a), I consider the factual basis shows that many of the apical ancestors were born in or around the application area around the time of settlement and lived in the area in the early decades of settlement. As the apical ancestors were born around settlement, I consider I can infer their parents and grandparents were part of the society in the application area at that time. It follows that it is reasonable to infer there is a link between the pre-sovereignty society and the apical ancestors. I understand from the application that the current claim group members are descendants of the apical ancestors, thus demonstrating the requisite link between them.

[66] Ibid [191].
[67] Ibid, Appendix F.
[68] *Harrington-Smith No 5* [53].

Is the factual basis sufficient to support the assertion of the existence of 'traditional laws and customs'?

[91] I consider the material before me demonstrates how the laws and customs have been observed by successive generations of the claim group in the application area. For example, the kinship and totemic systems described in the early decades of settlement, continue to be observed by claimants today. Similarly, beliefs in a sentient landscape, as described to the early ethnographers, are reflected in the beliefs of the current claimants. Overall, I consider the information about the claim group's social organisation, including totemic associations, rules relating to marriage, kinship and acquisition of rights to land, reflect those ascribed to the claim group at the time of settlement.

[92] In my view, there is also sufficient information to show the laws and customs of the claim group are 'traditional' in the *Yorta Yorta* sense.[69] This is because there are examples provided about the predecessors of the claim group handing down the laws and customs to members of the current claim group, and those claimants passing them on to their children and grandchildren. The prohibition on entering initiation and burial sites and the requirement to 'call out' when entering particular sites are salient examples. There are also many examples provided, some of which I have extracted at s 190B(5)(a) above, of claimants learning to hunt, fish and make fire from their predecessors, and taking their children onto the application area and teaching them these practices.

[93] I also consider it is reasonable to infer that the predecessors of the current claim group acquired their knowledge of the laws and customs in much the same way as they passed it on to their descendants, through teaching, oral transmission and common practice, thus supporting the assertion that the laws and customs are 'traditional'.

Conclusion – s 190B(5)(b)

[94] I am satisfied the factual basis is sufficient to support the assertion that there was a pre-sovereignty society in the application area. I am satisfied there is a link between the pre-sovereignty society in the application area, the apical ancestors and the current members of the claim group. I am also satisfied the factual basis is sufficient to support the assertion that there exist traditional laws acknowledged and traditional customs observed by the claim group. This means s 190B(5)(b) is met.

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

[95] Meeting the requirements of this condition relies on whether there is a sufficient factual basis to support the assertion at s 190B(5)(b), that there exist traditional laws and customs which give rise to the claimed native title rights and interests.[70] It also requires a sufficient factual basis to support an assertion that there has been continuity in the observance of traditional laws and customs going back to sovereignty or at least to European settlement.[71]

[69] *Yorta Yorta* [46]–[47].
[70] *Gudjala 2009* [29].
[71] *Gudjala 2007* [82].

Is the factual basis sufficient to support the assertion of the continuity of traditional laws and customs?

[96] As summarised above in relation to ss 190B(5)(a)–(b), the factual basis demonstrates an ongoing association with the application area, identifies the relevant pre-sovereignty society and supports the existence of traditional laws and customs. The anthropologist's report provides examples of how the laws and customs have been passed down to current members of the claim group by their predecessors through oral transmission and common practice. The continuing observance of the rules relating to kinship and totemic affiliations are examples which I consider are relevant to s 190B(5)(c). The knowledge that claimants hold about protocols for entering particular sites and the mythological stories about such sites, both of which they have learned from their predecessors, also supports the continued observance of the traditional laws and customs. In my view, there are sufficient examples in the information before me of how laws and customs have been observed by the claim group, substantially uninterrupted, since at least settlement in the application area.

Conclusion – s 190B(5)(c)

[97] I am satisfied the factual basis is sufficient to support the assertion that the claim group have continued to hold their native title rights in accordance with traditional laws and customs since settlement in the application area. This is because the material before me demonstrates that claimants possess knowledge about how the generations since the apical ancestors acknowledged and observed their laws and customs in relation to the application area, so as to permit an inference that the claim group is a 'modern manifestation' of the pre-sovereignty society in the application area.[72] I consider the factual basis sufficient to support an assertion of continuity in the observance of traditional laws and customs, which means s 190B(5)(c) is met.

Conclusion

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

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

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

[100] I note the following judicial guidance about s 190B(6):

(a) it requires some measure of the material available in support of the claim;[73]

(b) it appears to impose a more onerous test to be applied to the individual rights and interests claimed;[74] and

[72] *Gudjala 2009* [31].
[73] *Doepel* [126].
[74] Ibid [132].

(c) the words 'prima facie' mean 'if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis'.[75]

[101] It is not my role to resolve whether the asserted factual basis will be made out at trial. My task is to consider whether there is any probative factual material which supports the existence of each individual right and interest, noting that as long as some rights can be prima facie established, the requirements of s 190B(6) will be met. Only those rights and interests I consider can be established prima facie will be entered on the Register.[76] I have grouped rights together in my consideration below where it is convenient to do so.

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

In non-exclusive areas, to:

(a) access, be present on, move about on and travel over the area;

(b) to occupy, use and camp on the area, but not to reside permanently, and for that purpose to construct non-permanent structures;

(c) hunt, fish and gather on the land and waters of the area for personal, domestic, and non-commercial communal purposes;

(d) take, use, share and exchange natural resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;

(e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;

(i) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation;

[102] There are many examples in the anthropologist's report, some which I have extracted at ss 190B(5)(a)–(b) above, of claimants past and present living on and accessing various parts of the application area and using its resources.[77] The claimants describe their use of the application area, including hunting, fishing and gathering bush tucker, and the operation of demand sharing of these resources amongst the group.[78] Making fires while camping and collecting water are also described.[79] I therefore consider these rights are prima facie established.

[75] Ibid [135].
[76] Section 186(1)(g).
[77] Anthropologist's report, Appendices E and F.
[78] Ibid, Appendix F.
[79] Ibid.

(f) conduct ceremonies on the area;

(g) 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;

(h) teach on the area the physical and spiritual attributes of the area;

(j) be buried and bury native title holders within the area.

[103] As discussed above at s 190B(5), the factual basis demonstrates that claimants observe protocols when entering particular parts of the application area, based on their beliefs about resident spirits. Also discussed above is the practice of being buried on the application area, observed by successive generations of the claim group. Claimants also observe the right to protect their country from harm, and to teach their children and strangers about the application area.[80] I therefore consider these rights are prima facie established.

Which of the claimed native title rights and interests are <u>not</u> established on a prima facie basis?

The nature and extent of the native title rights and interests in relation to the land and waters are the rights, in exclusive areas, to:

(a) other than in relation to Water, the rights to possession, occupation, use and enjoyment of the area to the exclusion of all others; and

(b) in relation to Water, the non-exclusive rights to:

(i) hunt, fish and gather from the Water of the area for personal, domestic and non-commercial communal purposes; and

(ii) take and use the Water of the area for personal, domestic and non-commercial communal purposes.

[104] I note the majority's comment in *Ward HC* that '[t]he expression "possession, occupation, use and enjoyment … to the exclusion of all others" is a composite expression directed to describing a particular measure of *control over access to land*'.[81]

[105] I also note the Full Court's observations in *Griffiths FC* that:

> [i]f control of access to country flows from spiritual necessity because of the harm that "the country" will inflict upon unauthorised entry, that control can nevertheless support a characterisation of the native title rights and interests as exclusive. The relationship to country is essentially a "spiritual affair". It is also important to bear in mind that traditional law and custom, so far as it bore upon relationships with persons outside the relevant community at the time of sovereignty, would have been framed by reference to relations with indigenous people. The question of exclusivity depends upon the ability of the [native title holders] effectively to exclude from their country people not of their community. If, according to their traditional law and custom, spiritual sanctions are visited upon unauthorised entry and if they are the gatekeepers for the purpose of preventing such harm and avoiding injury to the country, then they have … an exclusive right of possession, use and occupation.[82]

[106] The Full Court held in *Griffiths FC* that demonstrating the existence of exclusive rights depends on the consideration of what the evidence discloses about the rights' content under

[80] Ibid [173].
[81] *Ward HC* [93], emphasis added.
[82] *Griffiths FC* [127].

traditional laws and customs.[83] I therefore understand that I must consider whether the material demonstrates that the traditional laws and customs of the claim group permit them to exercise control over others' access to the land and waters of the application area.

[107] As discussed above at s 190B(5)(a), the factual basis is sufficient to support an association between the claim group and the application area, both at the time of settlement and since that time. There is also information in the anthropologist's report about the division of rights to country, explaining that some rights are 'generic' such as the right of access and to carry out activities like camping and fishing.[84] Other rights are described as 'locality-specific' and are distributed among the descent groups associated with different parts of the application area, such as right to protect the country from harm and to represent that particular area in interactions with outsiders.[85] However I do not consider that the information before me demonstrates how the traditional laws and customs permit the claimants to exclude outsiders from the application area, or provides examples of the operation of such a right, either historically or in recent times. I therefore consider this right is not prima facie established.

Conclusion

[108] I am satisfied the application contains sufficient information about all but one of the rights claimed, such that they can be said to be established on a prima facie basis. I am also satisfied those claimed rights which are established prima facie can be considered 'native title rights and interests'. This is because there is information in the application to show how those rights were observed in the early years of settlement as well as in recent times. Additionally, according to the definition in s 223(1), a native title right or interest is one held under traditional laws and customs, and I am satisfied there is sufficient factual basis to support the assertion of the existence of traditional laws and customs, as discussed above at s 190B(5)(b). This means s 190B(6) is met.

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

[109] To meet s 190B(7), the Registrar must be satisfied at least one member of the 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.

[110] I note this condition requires the material to satisfy the Registrar of particular facts such that evidentiary material is required, and that the physical connection must be in accordance with the traditional laws and customs of the claim group.[86]

[83] Ibid [71].
[84] Ibid [173].
[85] Ibid.
[86] *Doepel* [18], *Gudjala 2009* [84].

Is there evidence that at least one member of the claim group has or had a traditional physical connection?

[111] Based on the information before me, I consider at least one claim group member currently has or had a traditional physical connection to the land and waters covered by the application. The information in the anthropologist's report about claimants spending time on the application area with their predecessors, hunting, fishing and finding bush tucker, demonstrates there is a physical connection to the application area.

[112] I also consider the claim group members' connection with the application area is 'traditional' in the sense required by s 190B(7). As I am satisfied the factual basis is sufficient to support an assertion that the laws and customs have been passed down to the current members of the claim group by their predecessors, it follows that I am satisfied the current claim group members' connection with the application area is in accordance with those traditional laws and customs.

Conclusion

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

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

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

Section	Requirement	Information	Result
s 61A(1)	No native title determination application is approved determination of native title	The geospatial report states and my own searches confirm that the application does not cover an area where there has been an approved determination of native title.	Met
s 61A(2)	Claimant application not to be made covering previous exclusive possession act areas	Schedule B, paragraph 1 states that the application does not cover any area covered by previous exclusive possession acts, such as Scheduled Interests and freehold estates.	Met
s 61A(3)	Claimant application not to claim possession to the exclusion of all others in previous non-exclusive possession act areas	Schedule B paragraph 3 states that exclusive possession is not claimed over areas that are subject to valid previous non-exclusive possession acts	Met

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

[115] In my view the application meets the requirements of s 190B(9):

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 states that the applicant does not claim any minerals, petroleum or gas wholly owned by the Crown.	Met
s 190B(9)(b)	Exclusive possession is not claimed over all or part of waters in an offshore place	Schedule P states that no claim of exclusive possession is made in relation to any offshore place.	Met
s 190B(9)(c)	Native title rights and/or interests in the claim area have otherwise been extinguished	Schedule B paragraph 6 states that the application does not cover areas where native title has been extinguished. There is no information in the application that discloses to me that native title rights and interests in the claim area have otherwise been extinguished.	Met

End of reasons

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Gaangalu Nation People
NNTT No.	QC2012/009
Federal Court of Australia No.	QUD33/2019
Date of Registration Decision	18 December 2019

Section 186(1): Mandatory information

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

Application filed/lodged with:

Federal Court of Australia

Date application filed/lodged:

20 August 2012

Date application entered on Register:

15 November 2012

Applicant:

As per Schedule

Applicant's address for service:

As per Schedule

Area covered by application:

As per Schedule

Persons claiming to hold native title:

As per Schedule

Registered native title rights and interests:

As per Register

_____

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