Registration Decision

National Native Title Tribunal

Application name	Robert Mumu and Ors v Northern Territory of Australia (**Karinga Lakes**)
Name of applicant	Robert Mumu, David Wongaway, Malya Teamay, Johnny Tjingo, David Miller, Tony Paddy, Margaret Smith, Kathleen Luckey, Tanya Luckey, Alison Carroll, Vivian Thompson and Yaritiji Miller
Federal Court of Australia No.	NTD3/2020
NNTT No.	DC2020/001
Date of Decision	27 March 2020

Claim accepted for registration

I have decided the claim in the Karinga Lakes 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 entered 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

Attorney-General of the Northern Territory v Ward [2003] FCAFC 283 *(**Ward FC No 2**)*
Corunna v Native Title Registrar [2013] FCA 372 (***Corunna***)
De Rose v State of South Australia (No 2) [2005] FCAFC 110 (***De Rose FC No 2***)
Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People [2019] FCAFC 177 (***Warrie***)
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***)
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] FCA 1530 (***Strickland***)
The Alyawarr, Kaytetye, Warumungu, Wakay Native Title Claim Group v Northern Territory [2004] FCA 472 (***Alyawarr***)
Wakaman People 2 v Native Title Registrar and Authorised Delegate [2006] FCA 1198 (***Wakaman***)
Ward v Registrar, National Native Title Tribunal (1999) 168 ALR 242; [1999] FCA 1732 (***Ward v Registrar***)
Western Australia and Northern Territory v Lane (1995) 59 FCR 332: [1995] FCA 1484 (***Lane***)
Western Australia v Ward (2002) 213 CLR 1; [2002] HCA 28 (***Ward HC***)
Wikilyiri on behalf of the persons who are ngurraritja for Antanta (Umbeara), Kalka (Kulgera), Watju (Mount Cavenagh, Wapirrka (Victory Downs) and Warnukula (Mulga Park) v Northern Territory of Australia [2017] FCA 446 (***Wikilyiri***)

Background

[1] The claim in this application is made on behalf of the persons who are *ngurraritja* for the country – Walrtunta (Erldunda), Maratjura (Lyndavale) and Tjulu (Curtin Springs) – covered by the application (**claim group**). It covers an area of approximately 10,842 square kilometres in the southern part of the Northern Territory, approximately 50 kilometres north of the border with South Australia (**application area**).

[2] The application was filed on 13 February 2020 and the Registrar of the Federal Court (**Court**) gave a copy of the application to the Native Title Registrar (**Registrar**) on 17 February 2020, pursuant to s 63. This referral has triggered the Registrar's duty to consider the claim made in the application in accordance with s 190A.[3] In accordance with s 190A(6), I must accept the claim for registration if it satisfies all the conditions in ss 190B–190C (**registration test**).

[3] The application area is affected by a s 29 future act notice (**notice**). This means that, in accordance with s 190A(2)(f), I must finish considering the claim before the end of four months of the date of that notice, that is, before 4 April 2020.

[3] Section 190A(1).

[4] As discussed in my reasons below, I consider that the claim in the application satisfies all of the conditions in ss 190B–190C and therefore it must be accepted for registration.[4] Attachment A contains information that will be included on the Register of Native Title Claims (**Register**).

Procedural fairness

[5] On 14 February 2020, the representative for the applicant provided the following information directly to the Registrar (**additional material**):

(a) 'Applicant's Additional Material provided to the Native Title Registrar for the purpose of deciding whether to place the application on the Register of Native Title Claims', 14 February 2020 (**Submissions**); and

(b) 'Karinga Lakes Native Title Application Summary Anthropology Report', Michael Cawthorn and Sandra Jarvis, 30 January 2020 (**Anthropology Report**).

[6] On 19 February 2020, a senior officer of the National Native Title Tribunal (**Tribunal**) wrote to the relevant minister of the Northern Territory government (**NTG**) advising that any submissions on the application's ability to pass the registration test should be made by 28 February 2020. The letter advised that the applicant had provided the additional material listed above, and that the NTG would be required to sign a confidentiality undertaking prior to receiving a copy of the additional material, as I had formed the view that the documents contained sensitive and personal information. As the signed confidentiality undertaking was not returned by the NTG, the additional material was not provided.

[7] Also on 19 February 2020, the senior officer wrote to the representative of the applicant and confirmed receipt of the additional material. No further information or material was received from the applicant.

[8] On 28 February 2020, a representative of the NTG wrote to the senior officer and advised that the NTG would not be making submissions on whether the claim in the application satisfies the conditions of the registration test.

[9] This concluded the procedural fairness process.

Information considered

[10] I have considered the information in the application and the additional material provided by the applicant, as outlined above.[5] I have considered information contained in the geospatial assessment and overlap analysis of the application area prepared by the Tribunal's Geospatial Services, dated 20 February 2020 (**geospatial report**) and information available in the Tribunal's geospatial database in relation to locations mentioned in the application.[6]

[11] There is no information before me from searches of State or Commonwealth interest registers,[7] and as noted above, the NTG has not supplied any information as to whether the registration test conditions are satisfied in relation to this claim.[8]

[4] Section 190A(6).
[5] Section 190A(3)(a).
[6] Section 190A(3)(c).
[7] Section 190A(3)(b).

Section 190C: conditions about procedures and other matters

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

[12] 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.[9] I have not addressed s 61(5) as I consider the matters covered by that condition are matters for the Court.

[13] 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

[14] 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 A	Met
s 62(2)(c)	Searches	Schedule D	Met
s 62(2)(d)	Description of native title rights and interests	Schedule E	Met
s 62(2)(e)	Description of factual basis	Schedule F	Met
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 met

[15] 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

[8] Section 190A(3)(c).
[9] *Doepel* [16], [35]–[39].

(c) the entry must have been made or not removed as a result of the previous application being considered for registration under s 190A.

[16] 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 so s 190C(3) is met.

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

[17] 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.

[18] Schedule R contains a copy of a certificate. I therefore understand I must assess the application against the requirements of s 190C(4)(a), and in particular that:

(a) the certificate identifies the relevant representative body;

(b) the representative body has the power under Part 11 to issue the certification; and

(c) the certificate meets the requirements of s 203BE(4).[10]

Is the relevant representative body identified?

[19] The Central Land Council (**CLC**) has provided the certificate, which is dated 6 December 2019 and signed by the Chairman and an Executive Member, pursuant to 'Resolution CM2019.03.16 of the Full Council of the Central Land Council'. The geospatial report states, and I have verified, that the CLC is the only representative body for the whole of the application area. I am therefore satisfied the certificate identifies the relevant representative body.

Does the representative body have the power to issue the certification?

[20] As a recognised representative body, the CLC can perform all the functions listed in Part 11 of the Native Title Act, including the certification functions in s 203BE. I am satisfied the CLC has the power under Part 11 to issue the certification.

Does the certificate meet the requirements of s 203BE(4)?

[21] I have considered each of the requirements of s 203BE(4) in turn below.

Section 203BE(4)(a) – statements

[22] Section 203BE(4)(a) requires a representative body to state that it is of the opinion that the requirements of ss 203BE(2)(a)–(b) have been met.

[23] Section 203BE(2)(a) prohibits a representative body from certifying an application unless it is of the opinion that all persons in the claim group have authorised the applicant to make the application and to deal with matters arising in relation to it.

[10] *Doepel* [80]–[81].

[24] 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 claim group.

[25] As the certificate contains these required statements, I am satisfied s 203BE(4)(a) is met.

Section 203BE(4)(b) – reasons

[26] Section 203BE(4)(b) requires a representative body to briefly set out its reasons for being of the opinion that the requirements of ss 203BE(2)(a)–(b) have been met.

[27] Under the heading 'Reasons', the certificate sets out the CLC's reasons for its opinion that ss 203BE(2)(a)–(b) are met, which includes the following information:

(a) Authorisation of the applicant:

1. A meeting was held on 11 and 12 September 2019 at Imanpa to obtain instructions from the claim group in relation to the application, and was attended by essential senior members of the claim group;
2. Using the claim group's traditional decision-making process, which must be used in relation to authorising things of this kind, the relevant members of the claim group authorised the members of the applicant to make the application.

(b) Identification of the claim group:

1. The CLC has conducted anthropological and historical research to ascertain the persons who hold native title rights and interests in the application area, which indicates that the members of the claim group, as described in Schedule A, are the only persons who assert native title rights in the application area, and this is also acknowledged by 'the wider Aboriginal community'.

[28] As the certificate sets out the reasons for the CLC's opinion that ss 203BE(2)(a)–(b) are met, I am satisfied s 203BE(4)(b) is met.

Section 203BE(4)(c) – overlapping applications

[29] 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).

[30] Section 203BE(3) states that if the land or waters covered by the application are wholly or partly covered by one or more applications (including proposed applications) of which the representative body is aware, the representative body must make all reasonable efforts to:

(a) achieve agreement, relating to native title over the land or waters, between the persons in respect of whom the applications are, or would be, made; and

(b) minimise the number of applications covering the land or waters.

However, a failure by the representative body to comply with this subsection does not invalidate any certification of the application by the representative body.

[31] Under the heading 'No overlapping application [s 203BE(4)(c)]', the certificate states that the CLC is not aware of any other application or proposed application that partly or wholly covers the application area. I am satisfied that this statement is sufficient to meet the requirements of s 203BE(4)(c).

Conclusion

[32] As the certificate identifies the relevant representative body, the representative body has the power under Part 11 to issue the certification, and the certificate meets the requirements of s 203BE(4), the requirements of s 190C(4)(a) are satisfied. This means 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

[33] 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.

[34] 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.[11]

Does the information about the external boundary meet this condition?

[35] Schedule B describes the application area as the area within the boundaries of a list of eight parcels, comprising three pastoral leases and five freehold parcels.

[36] Schedule C refers to Attachment A, which is a map titled 'Karinga Lakes Native Title Determination Application' dated 7 February 2020. The map includes:

(a) the application area depicted with bold green outline and green hatching;
(b) parcels depicted with black outline, pastoral leases identified by name, pastoral lease number and NT portion number and freehold by NT portion;
(c) tenure depicted as displayed in the legend;
(d) roads depicted as displayed in the legend, identified by road name;
(e) lakes and waterways, identified by name;
(f) four insets displaying detailed views of road reserves, parcels and tenure;
(g) scalebar, northpoint, coordinate grid (GDA94);[12] and
(h) notes relating to the source, currency and datum of data used to prepare the map

[37] 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.

[11] *Doepel* [122].
[12] Geocentric Datum of Australia 1994.

Does the information about excluded areas meet this condition?

[38] Paragraph 17 of Schedule B states that any area to which a previous exclusive possession act has been done under s 23 is excluded from the application.

[39] With regard to general exclusion clauses of this nature, French J commented 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'.[13] Following this reasoning, I am satisfied the areas affected by the general exclusion clauses in Schedule B can be ascertained at the appropriate time.

[40] Schedule B specifically excludes any areas within the boundaries of two Northern Territory Portions and five sections of road. In my view, the specific exclusions are clear from the description in Schedule B.

Conclusion

[41] 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

[42] 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.

[43] 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.[14]

[44] Schedule A states:

> 1. The native title claim group comprises the Aboriginal persons who are *ngurraritja* for the country—Warltunta (Erldunda), Maratjura (Lyndavale) and Tjulu (Curtin Springs)—covered by the application. Ngurraritja for the area described in Schedule B (the 'application area'), are the persons, according to the traditional laws acknowledged and customs observed by them, who have a spiritual connection to the area and to the Tjukurpa [sic] associated with it by virtue of one or more of:
>
> (a) birth on or near the area or a Dreaming track that crosses the area;
>
> (b) close kin or an ancestor having a connection to the area (including through birth or long-term association);
>
> (c) adoption by a claimant or a claimant's ancestor;
>
> (d) knowledge of the physical landscape of the area and its sites and Dreamings;
>
> (e) caring for the physical and spiritual attributes of the area;
>
> (f) long-term association with the area;
>
> (g) burial of close kin on or near the area,

[13] *Strickland* [55].
[14] *Wakaman* [34].

> and they are recognised by other *ngurraritja* as having rights and interests in the area under the traditional laws and customs of the Western Desert.

[45] Paragraph 2 of Schedule A explains that the bases for recognition as *ngurraritja* are cumulative, with individuals 'possessing multiple heads of connection having stronger grounds for recognition as *ngurraritja*'.

[46] Paragraphs 3 and 4 describe the location of the application area as 'in the eastern Western Desert region', associated primarily with the Yankunytjatjara dialect.

[47] Paragraphs 5 and 6 explain that members of the claim group are *ngurraritja* for more than one area within the application area, and that under the group's traditional laws and customs, 'the rights and interests in land possessed by *ngurraritja* are differentially distributed amongst members … according to their local associations to particular country and associated mythical traditions consistent with customary factors such as age, knowledge, gender and initiatory status'.

[48] Paragraph 7 provides information about claim group members' recognition as traditional owners of other land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and under the Native Title Act in relation to the neighbouring stations of Victory Downs, Mount Cavenagh, Umbeara and Mulga Park following the determination in *Wikilyiri*.

[49] Paragraph 8 states that members of the claim group have obtained freehold title to Erldunda station, which lies within the application area.

[50] Under the heading 'Membership of the native title claim group', paragraph 9 identifies a number of senior members of the claim group, 'to illustrate the operation of the claimants' system of traditional laws and customs, and the multiple avenues of connection for *ngurraritja*'.

[51] Under the heading 'Other *Ngurraritja*', paragraph 9 names and describes two individuals as 'an illustration of *ngurraritja* who are not members of a family/kin group but hold native title rights and interests in the application area by virtue of their connections under the claimants' system of traditional laws and customs'.

[52] 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.

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

[53] As summarised above, Schedule A states that members of the claim group have had their native title recognised in relation to neighbouring areas in *Wikilyiri*. In that determination, Reeves J accepted a similar claim group description which limited membership to the *ngurraritja* for the particular determination area, based on their connection to the area and recognition by other *ngurraritja* as having rights and interests in the determination area under the traditional laws and customs of the Western Desert. His Honour explained the claim group description as follows:

> The common body of traditional laws acknowledged, and customs observed, by the native title claim group govern how rights and interests in land are acquired and who holds them in particular parts of the claim area. The group rights comprising the native title are held by *ngurraritja* in those parts of

> the claim area with which they have a connection in accordance with the traditional laws and customs of the Western Desert Society. The expression "*ngurraritja*" is used by the native title claim group to refer to the owners of country. Thus, the native title claim group is comprised of people who are *ngurraritja* for the country of Warnukula (Mulga Park), Wapirrka (Victory Downs), Watju (Mount Cavenagh), Ananta (Umbeara) and Kalka (Kulgera). [15]

[54] In my view, the information in paragraph 1 clearly sets out the grounds on which a person can obtain the status of *ngurraritja* in the application area, in accordance with the traditional laws and customs of the claim group. Those laws and customs are summarised within Schedule A itself, and explain that the *ngurraritja* are the people who have a spiritual connection to the application area and to the associated *tjukurrpa*, and it is this connection which gives rise to the rights and interests in the application area.[16]

[55] From the description in Schedule A, I am satisfied that the claim group's traditional laws and customs provide a 'set of rules or principles' which will enable the identification of the people who are *ngurraritja* for the application area at the appropriate time.[17]

Conclusion

[56] 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

[57] 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.[18]

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

[58] From the description in paragraph 1 of Schedule E, I understand that 10 non-exclusive rights are claimed. In my view, the non-exclusive rights form an exhaustive list, and there is no inherent or explicit contradiction within the description.[19]

[59] There is also information in Schedule E which qualifies that the claimed rights and interests are subject to the laws of the Northern Territory and the Commonwealth, and confirms that the rights claimed do not confer possession, occupation, use and enjoyment of the application area to the exclusion of all others.

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[15] *Wikilyiri* [7].
[16] Schedule A [1], [6].
[17] *Ward v Registrar* [25].
[18] *Doepel* [16].
[19] Ibid [123].

Conclusion

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

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

[61] 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 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 claim group that give rise to the claim to native title rights and interests; and

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

[62] 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'.[20]

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

[63] Schedule F provides a general description of the claim group's laws and customs, Schedule G and Schedule M provide examples of activities undertaken by claim group members in relation to the application area. A number of the s 62 affidavits contain information relevant to s 190B(5), specifically:

(a) Affidavit of [name removed], 5 February 2020 (**Claimant 1 affidavit**);

(b) Affidavit of [name removed], 29 January 2020 (**Claimant 2 affidavit**);

(c) Affidavit of [name removed], 30 January 2020 (**Claimant 3 affidavit**);

(d) Affidavit of [name removed], 13 February 2020 (**Claimant 4 affidavit**); and

(e) Affidavit of [name removed], 31 January 2020 (**Claimant 5 affidavit**).

[64] The additional material provided by the applicant, being the Submissions and the Anthropology Report, also contain material relevant to s 190B(5).

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

[65] 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;[21]

(b) there is 'an association between the whole group and the area', although not 'all members must have such association at all times';[22] and

[20] *Doepel* [16]–[17]; *Gudjala 2008* [83], [92].
[21] *Gudjala 2007* [52].

(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'.[23]

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

[66] The Anthropology Report states that in 1873 Ernest Giles observed evidence of occupation approximately 50 kilometres south of the application area, including 'native huts' and 'native wells'.[24] Erldunda station was established in 1881-2 and was the first permanent European presence in the application area.[25] In 1889, the explorer Tietkins observed evidence of occupation near Mount Conner in the application area, including 'several native encampments', a well and a gathering of a large number of Aboriginal people.[26]

[67] The claimants' affidavits provide that their parents and 'old people' moved around the application area and worked on Erldunda and Curtin Springs stations. Lyndavale Station, which lies in the centre of the application area, was previously part of Erldunda.[27]

[68] The claimants' affidavits describe the location of cemeteries on the application area where their predecessors are buried.[28]

[69] The Submissions annex a chapter from the book 'Brown Men and Red Sand: Journeying in Wild Australia' by Charles P. Mountford, first published in 1950 (***Brown Men and Red Sand***). That chapter describes the author's journey across the application area and a particular dreaming story attached to Mount Conner and to the salt lakes in the south west of the application area, as told to him by his local guides, including a man from Lyndavale.[29]

[70] *Brown Men and Red Sand* also describes how the man from Lyndavale located a soak in the application area which he cleaned out to obtain drinking water.[30]

Association of the current claim group with the application area

[71] The claimants' affidavits describe their association with the application area as one based on their connection to the relevant *tjukurrpa* dreaming stories, as well as other means of connection such as their own birth and/or the birth of an ancestor.[31] For example, one claimant states that, despite being born in Alice Springs, she has an association with the application area by virtue of her father's birth at Mount Conner and his recognition as *ngurraritja* for that area.[32]

[72] The claimants' affidavits also describe how they take their children camping on the application area to show them the country and teach them the *tjukurrpa*.[33]

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[22] Ibid.
[23] *Martin* [26]; *Corunna* [39], [45].
[24] Anthropology Report [49].
[25] Ibid [9].
[26] Ibid [50].
[27] Claimant 1 affidavit [14], [17], [30]; Claimant 2 affidavit [10]; Claimant 3 affidavit [10]; Claimant 5 affidavit [11].
[28] Claimant 4 affidavit [16], [29]; Claimant affidavit 2 [31].
[29] *Brown Men and Red Sand* [76]–[78].
[30] Ibid [76].
[31] Claimant affidavit 5 [11]–[12]; Claimant 4 affidavit [10]; Claimant 3 affidavit [8].
[32] Claimant affidavit 5 [11]–[12].
[33] Claimant 2 affidavit [14]; Claimant 1 affidavit [45].

[73] The Anthropology Report lists a number of *tjukurrpa* dreaming stories associated with particular locations in the application area and known to the current claimants, including the *tjukurrpa* dreaming story previously recorded by Mountford in *Brown Men and Red Sand*.

[74] The Anthropology Report also provides biographies of claim members, many of whom grew up and worked on the stations which cover the application area.[34]

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

[75] In considering the factual basis of this application I have observed that within this desert region, the application area appears to be particularly marginal. I understand that demonstrating an ongoing association to an area of desert can be challenging. One claimant describes the nature of the group's association thus:

> In the past our ancestors used to walk long distances across country. I remember walking with my family, travelling from rockhole to rockhole, just like my ancestors did before us. Where the water was, that's where we would go. When the water ran out we go from there and when it rained we would stop.[35]

[76] I note the comments in *Strickland*, that '[t]he requirements of the registration test are stringent. It is not necessary to elevate them to the impossible'.[36] I also note the comments in *Lane*, that the Registrar's statutory obligations should be performed with a degree of flexibility consistent with the beneficial nature of the legislation.[37] I have therefore assessed the sufficiency of the factual basis by taking into account the particular features of this application, and applying this judicial guidance.

[77] The material before me describes locations which lie in and around the application area. I have identified many of these locations in the Tribunal's geospatial database to enable me to be satisfied that the factual basis is sufficient to support the assertion of s 190B(5)(a). I note the references to the pastoral stations which cover the application area (Curtin Springs, Lyndavale and Erldunda), and the association which claim group members, past and present, have had with these stations. There are a number of locations described in the claimants' affidavits using their Aboriginal place name, and the Submissions helpfully provide a table showing the nearest feature or landmark to these places using the relevant European name, as well as a description of the location. For example, [place name removed] refers to a place near to the [location removed], in the central part of Curtin Springs station.[38] The map in Attachment A labels the pastoral stations which cover and surround the application area, which has also assisted me in assessing the claim group's association with the application area. I have considered whether the information is 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 with the area?

[78] Settlement in the application area is asserted to have occurred in 1881-2, much later than the acquisition of British sovereignty in 1788 and the establishment of sovereignty in the region in

[34] Ibid [100].
[35] Claimant 2 affidavit [10].
[36] *Strickland* [55].
[37] *Lane* [9].
[38] Claimant affidavit 5 [9]–[14]; Submissions [1].

1825.[39] There is information before me about previous *ngurraritja* who traversed the application area to access water sources, and who worked on the pastoral stations in the early decades of settlement. I infer that these *ngurraritja* had much the same association with the application area as their predecessors, who would have been alive at 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.[40]

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

[79] In my view, the factual basis is sufficient to support the assertion that the claim group currently has an association with the application area. I understand that the claim group has maintained its physical association with the application area through regular visits with their children and grandchildren. The claimants hold knowledge about the burial sites of their predecessors on the application area. The claimants also hold knowledge of the *tjukurrpa* dreaming tracks and stories related to the application area, which were also known to their predecessors, thus demonstrating an ongoing spiritual association.

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

[80] 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 application area as a whole.[41] It is not a requirement that every member of the claim group have an association with the entire application area at all times.

[81] 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 pastoral stations which cover the entire application area, as well as to significant landmarks such as Mount Conner. I am satisfied the factual basis is sufficient to support an association with the whole area claimed.

Conclusion - s 190B(5)(a)

[82] 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, had children, 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.

[39] Anthropology Report [9], citing *Alyawarr* [63].
[40] *Harrington-Smith* [294]–[296], *Kanak* [73].
[41] *Corunna* [31].

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

[83] To meet s 190B(5)(b), the factual basis must be sufficient to support an assertion that there exist traditional laws acknowledged and traditional customs observed by the claim group that gives 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.

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

> [I]t 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*;
>
> [T]he 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.[42]

[85] In *Warrie*, the Full Court held that:

> Where a rule, or practice or behaviour in relation to the identified land and waters arises from traditional law, and has normative content, then it can be capable of satisfying para (a) of s 223(1);
>
> *[A] claim group must establish that the traditional law and custom which gives rise to their rights and interests in that land and waters stems from rules that have a normative character*, there is no further gloss or overarching requirement, and no further rigidity. The Native Title Act in terms does not require establishment of some overarching "society" that can only be described in one way and with which members of a claim group are forever fixed in relation to any other land and waters over which they assert native title.[43]

[86] I therefore understand my assessment of the sufficiency of the factual basis under s 190B(5)(b) requires the identification of the continued observance of normative rules by the successive generations of the claim group since at least the time of settlement in the application area, such that the normative rules can be described as 'traditional laws and customs'.

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

[87] The material before me provides the following information about the laws and customs of the claim group:

(a) Social organisation

1. The claimants belong to the regional society known as the Western Desert Cultural Bloc (**WDCB**).[44]

[42] *Yorta Yorta* [46]–[47], emphasis added.
[43] *Warrie* [105], [107], emphasis added.
[44] Anthropology Report [11]–[14].

2. The claimants observe a moiety system, which is instituted in the *tjukkurpa* and orders social relations including strict marriage rules.[45]

3. The claimants also observe a classificatory system of relationships which incorporates people who are not biologically related but are otherwise connected under the laws and customs, for example by virtue of being from the 'same country'.[46]

4. The claimants observe social rules which include avoiding the names of deceased persons.[47]

(b) Land tenure

1. *Ngurraritja* assert connection to land and derive their authority to speak for tracts of country from their unique relationship with ancestral beings who reside in that country. For example, birth on the *tjukurrpa* dreaming site is a basis of a relationship with the spiritual being associated with that site, and from that relationship, rights and interests in that particular area are derived.[48]

2. *Ngurraritja* rights are activated and recognised by the wider community through visitation or occupation of country and in ceremony, acquiring ritual knowledge and caring for country. The WDCB land tenure system thus differs from the patrilineal landholding descent groups and formal principles of succession found in other parts of Australia.[49]

3. The observation of the land tenure principles by the claim group are documented in the historical and anthropological records, including by Elkin in 1931, Tindale in 1935 and Strehlow in 1965. These principles continue to be observed by the claimants today.[50]

(c) Dreamings and sacred sites

1. There are a number of major *tjukurrpa* dreaming tracks and sites in the application area, which have been recorded historically and continue to be known and recounted by claimants today. These include the dreaming described in *Brown Men and Red Sand*, summarised above, and a long-distance dreaming which traverses the application area from east to west, following the [location removed].[51]

2. Claimants describe learning about the dreamings within the application area from the 'old people', including spiritually dangerous places to be avoided.[52]

[45] Ibid [17].
[46] Ibid [18]–[21].
[47] Ibid [22].
[48] Ibid [23].
[49] Ibid [25]–[26], [31].
[50] Ibid [29].
[51] Ibid [32]–[42].
[52] Ibid [68]; [86]; [99].

Claimants also describe their knowledge of, and responsibility for, the graves of their predecessors on the application area.[53]

(d) Traditional practices

1. Rules pertaining to the preparation of food have been recorded historically and are observed by the current claimants, for example, particular protocols are observed regarding the hunting and preparation of kangaroo meat.[54]

2. Ceremonies in the application area have been recorded historically, and claimants recall large gatherings at initiation camps and other ceremonies on the application area when they were children.[55] Claimants continue to gather on the application area for ceremonial purposes today and use these occasions to pass on knowledge to the younger generations.[56]

3. Claimants continue to hunt on, and obtain water and other resources from, the application area in the manner which they were taught by their predecessors, and regularly camp on the application area with their children and grandchildren.[57]

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

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

[88] 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. As discussed above at s 190B(5)(a), settlement of the application area occurred in the 1880s. Therefore only a few generations separate the current claim group members from those who were alive at the time of settlement. The claimants describe how they were taught the laws and customs from their predecessors, including how rights to land are acquired by *ngurraritja*, the moiety system, and the other rules of normative conduct based on the group's spiritual beliefs in the *tjukurrpa*.

[89] 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.[58] 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 knowledge claimants hold about the *tjukurrpa* dreaming tracks and about areas which are designated spiritually dangerous and must therefore be avoided, are salient examples. There are also many examples provided of claimants learning the rules of hunting and preparing food in particular ways from their predecessors, and taking their children onto the application area and teaching them these practices. I 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,

[53] Claimant 4 affidavit [29].
[54] Anthropology Report [55].
[55] Ibid [58].
[56] Ibid [108].
[57] Ibid [69], [78], [86], [102].
[58] *Yorta Yorta* [46]–[47].

oral transmission and common practice, thus supporting the assertion that the laws and customs are 'traditional'.

Conclusion – s 190B(5)(b)

[90] I am satisfied the factual basis supports 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)?

[91] 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.[59] 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.[60]

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

[92] As summarised above in relation to ss 190B(5)(a)–(b), the factual basis demonstrates an ongoing association with the application area and supports the existence of traditional laws and customs. As noted above, only a few generations separate the current claim group from those who were alive at the time of settlement. In my view, these circumstances allow for an inference of continuity to be more easily made.

[93] The Anthropology 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 systems of social organisation and the land tenure system are particular examples which I consider are relevant to s 190B(5)(c). The knowledge that claimants hold about the location of *tjukurrpa* dreaming sites on the application area and the associated stories which can activate and reinforce their status as *ngurraritja*, learned from their predecessors and passed onto their descendants, also supports the continued observance of the traditional laws and customs.

[94] 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)

[95] 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 at least the time of European settlement in the application area. The application demonstrates that claimants possess knowledge about how the previous generations acknowledged and observed their laws and customs in relation to the application area. 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.

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[59] *Gudjala 2009* [29].
[60] *Gudjala 2007* [82].

Conclusion

[96] 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), s 190B(5) is met.

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

[97] 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.

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

(a) it requires some measure of the material available in support of the claim;[61]

(b) it appears to impose a more onerous test to be applied to the individual rights and interests claimed;[62] and

(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'.[63]

[99] 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.[64]

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

1. The native title rights and interests of the native title holders are the non-exclusive rights possessed under and exercisable in accordance with their traditional laws and customs, being:

(a) the right to access and travel over any part of the land and waters;

(b) the right to live on the land, and for that purpose, to camp, erect shelters and other structures;

(c) the right to access, take and use for any purpose the natural resources of the land and waters, and natural water on or in the land and waters;

(d) the right to light fires for domestic purposes, but not for the clearance of vegetation;

(e) the right to share or exchange natural resources obtained on or from the land and waters, including traditional items made from the natural resources;

(f) the right to access and to maintain and protect sites and places on or in the land and waters that are important under traditional laws and customs;

(g) the right to conduct and participate in the following activities on the land and waters:

[61] *Doepel* [126].
[62] Ibid [132].
[63] Ibid [135].
[64] Section 186(1)(g).

(i) cultural activities;

(ii) ceremonies;

(iii) meetings;

(iv) cultural practices relating to birth and death including burial rites; and

(v) teaching the physical and spiritual attributes of sites and places on the land and waters that are important under traditional laws and customs;

[100] I have grouped the above rights together because they all require access to the application area, which is demonstrated throughout the material before me.[65] There are examples of claimants living and camping on the application area, including observations by the early explorers of 'native huts' and 'native encampments', information about claimants' parents and grandparents living on the application area, and information about current claimants and their children visiting the area for camping.[66]

[101] The Submissions specifically address the right to take for any purpose, the resources of the application area, which I consider is supported in the material in the descriptions of claimants hunting animals for food and trade (or 'swap') with neighbouring people, and taking water for various purposes, in accordance with the laws and customs taught to them by their predecessors.[67] The existence of this right is further supported by the historical account in *Brown Men and Red Sand* of claimants sharing water and taking dingo scalps.[68] In my view, this same information supports the existence of the right to share or exchange the natural resources of the application area.

[102] Claimants also describe how they light fires on the application area, including for cooking purposes, and that they have taught their children the rules about the circumstances in which fires can be lit.[69] Claimants describe their responsibilities as *ngurraritja* to protect particular sites, including limiting access by outsiders including tourists and teaching the CLC rangers about how to care for country.[70]

[103] With regard to accessing the application area to conduct and participate in the particular listed activities, I have summarised above at s 190B(5)(b) the information about ceremonies conducted on the application area in previous times as well as recently. In addition, the claimants' affidavits describe attending meetings on the application area,[71] and teaching the younger generations and also the CLC rangers on the application area, which I have also noted above.

[104] I consider these rights are prima facie established.

(h) the right to make decisions about the use and enjoyment of the land and waters by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged

[65] See for example, *Brown Men and Red Sand*, 76; Claimant affidavit 5, [36].
[66] Anthropology Report [49]–[50]; Claimant affidavit 1 [14].
[67] Claimant 4 affidavit [28], Claimant 2 affidavit [[36]
[68] *Brown Men and Red Sand* 76, 79–81.
[69] Claimant 1 affidavit [40]; Claimant 2 affidavit [28].
[70] Claimant 2 affidavit [26]–[27].
[71] Ibid [30].

by the native title holders provided that the right does not extend to making any decision that purports to control the access of such persons to the determination area;

[105] This right could appear to express a non-exclusive right using the terms of exclusive possession, which the High Court has held 'will seldom be appropriate'.[72] However the Full Court has since recognised the existence of such rights where control is only directed at other Aboriginal people who are governed by the claim group's traditional laws and customs, as is the case here.[73]

[106] The claimants' affidavits provide examples of the operation of this right on the application area, including information about the role of *ngurraritja* in ensuring that people do not get lost while visiting their country, and that it is the *tjukurrpa* that the claimants observe which provides the rules about who can go onto country and how they have to behave.[74]

[107] I consider this right is prima facie established.

(i) the right to be accompanied on the land and waters by persons who, though not native title holders, are:

(i) people required by traditional law and custom for the performance of ceremonies or cultural activities on the land and waters;

(ii) people who have rights in relation to the land and waters according to the traditional laws and customs acknowledged by the native title holders;

(iii) people required by the native title holders to assist in, observe, or record traditional activities on the areas.

[108] The claimants' affidavits provide examples of the exercise of this right in the application area, including accompanying anthropologists to conduct interviews and research, and accompanying particular people 'asking to do something on that country'.[75]

[109] I consider this right is prima facie established.

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

(j) the right to conduct activities necessary to give effect to the rights referred to in (a) to (i) hereof. I consider these rights are prima facie established.

[110] In my view, it is not clear how this right operates under the traditional laws and customs of the claim group. Having reviewed the material before me, I can find no explanation to show how a right to conduct activities necessary to give effect to the other rights operates, separate from the actual exercise of those rights. I can also find no information about how this right operates in relation to the particular lands and waters of the application area.

[111] I consider this right is not prima facie established.

[72] *Ward HC* [51].
[73] *Ward FC No 2* [11]; *De Rose FC No 2* [169]–[170].
[74] Claimant 1 affidavit [36]; Claimant 2 affidavit [22].
[75] Claimant 1 affidavit [46]; Claimant 2 affidavit [24]; Claimant 5 affidavit [34].

Conclusion

[112] 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 pursuant to traditional laws and customs of the claim group. I am also satisfied those 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

[113] 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.

[114] 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.[76]

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

[115] Schedule M, which asks applicants to outline the traditional physical connection between claim group members and the application area, refers to the affidavits filed with the application. Based on the information in those affidavits, along with the additional material, I consider at least one claim group member has, or had, a traditional physical connection to the land and waters covered by the application. As summarised above at s 190B(5) and s 190B(6), there is information in the application and additional material which describes current claimants visiting and camping on the application area, accessing and using its natural resources.

[116] I also consider the claimants' 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 their connection with the application area is in accordance with those traditional laws and customs.

[76] *Doepel* [18], *Gudjala 2009* [84].

Conclusion

[117] 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

[118] 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)	Claimant application not to be made covering areas of 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 17 states that, subject to Schedule L, the application does not cover any area covered by previous exclusive possession acts.	Met
s 61A(3)	Claimant application not to claim possession to the exclusion of all others in previous non-exclusive possession act areas	Schedule E indicates that no claim to possession to the exclusion of all others is made.	Met

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

[119] 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 'Not Applicable', and based on the inland location of the application area, I am satisfied 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	There is nothing in the application which makes me aware that native title rights and interests in the application area have otherwise been extinguished.	Met

End of reasons

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Karinga Lakes
NNTT No.	NTD3/2020
Federal Court of Australia No.	DC2020/001
Date of Registration Decision	27 March 2020

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:

13 February 2020

Date application entered on Register:

27 March 2020

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:

1. The native title rights and interests of the native title holders are the non-exclusive rights possessed under and exercisable in accordance with their traditional laws and customs, being:

(a) the right to access and travel over any part of the land and waters;

(b) the right to live on the land, and for that purpose, to camp, erect shelters and other structures;

(c) the right to access, take and use for any purpose the natural resources of the land and waters, and natural water on or in the land and waters;

(d) the right to light fires for domestic purposes, but not for the clearance of vegetation;

(e) the right to share or exchange natural resources obtained on or from the land and waters, including traditional items made from the natural resources;

(f) the right to access and to maintain and protect sites and places on or in the land and waters that are important under traditional laws and customs;

(g) the right to conduct and participate in the following activities on the land and waters:

(i) cultural activities;

(ii) ceremonies;

(iii) meetings;

(iv) cultural practices relating to birth and death including burial rites; and

(v) teaching the physical and spiritual attributes of sites and places on the land and waters that are important under traditional laws and customs;

(h) the right to make decisions about the use and enjoyment of the land and waters by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the native title holders provided that the right does not extend to making any decision that purports to control the access of such persons to the determination area;

(i) the right to be accompanied on the land and waters by persons who, though not native title holders, are:

(i) people required by traditional law and custom for the performance of ceremonies or cultural activities on the land and waters;

(ii) people who have rights in relation to the land and waters according to the traditional laws and customs acknowledged by the native title holders;

(iii) people required by the native title holders to assist in, observe, or record traditional activities on the areas.

_____

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.