National Native Title Tribunal

Registration Decision

Application name	Frank Button & Ors on behalf of the Koa People and State of Queensland & Ors (**Koa People**)
Name of applicant	Frank Button; Natasha Duncan; William Gorham; Pamela Hegarty; Michael Mace
Federal Court of Australia No.	QUD592/2015
NNTT No.	QC2015/007
Date of Decision	27 August 2021

Claim accepted for registration

I have decided the claim in the amended Koa People 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 19 May 2021 and made pursuant to s 99 of the Native Title Act.

Reasons for Decision

Cases Cited

Aplin on behalf of the Waanyi Peoples v State of Queensland [2010] FCA 625 (***Aplin***)
Bell v Native Title Registrar [2021] FCA 229 (***Bell***)
Corunna v Native Title Registrar [2013] FCA 372 (***Corunna***)
Drury v Western Australia (2000) 97 FCR 169; [2000] FCA 132 (***Drury***)
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] 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 No 9***)
Kanak v National Native Title Tribunal [1995] FCA 1624 (***Kanak***)
Martin v Native Title Registrar [2001] FCA 16 (***Martin***)
McLennan v State of Queensland [2019] FCA 1969 (***McLennan***)
Members of the Yorta Yorta Aboriginal Community v Victoria [2002] HCA 58 (***Yorta Yorta***)
Northern Land Council v Quall [2020] HCA 33 (***Quall HCA***)
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 Registrar, National Native Title Tribunal [1999] FCA 1732 (***Ward v Registrar***)
Western Australia v Native Title Registrar [1999] FCA 1591 (***WA v NTR***)

Background

[1] The claim in this application is made on behalf of the Koa People native title claim group (**claim group**). It covers an area of approximately 9,168 square kilometres around Winton in central Queensland (**application area**).

[2] This claim was first made on 16 July 2015 and was accepted for registration by a delegate of the Native Title Registrar (**Registrar**) pursuant to s 190A(6) on 28 September 2015. An amended application was filed on 16 October 2019 and was accepted for registration pursuant to s 190A(6A) on 13 November 2019. A second further amended application was filed on 27 March 2020. On 7 August 2020, in my capacity as delegate of the Registrar, I accepted the claim for registration pursuant to s 190A(6).

[3] A third further amended application was filed on 28 June 2021 and the Federal Court of Australia (**Federal Court**) gave a copy of the application to the Registrar the same day, pursuant to s 64(4). This referral triggered the Registrar's duty to consider the claim in the third further amended application, which I will refer to as **the application** in my reasons below.[3]

[3] Section 190A(1).

The statutory scheme

[4] Section 190A(1) of the Native Title Act stipulates that if the Registrar is given a copy of a claimant application pursuant to s 63 or s 64(4), the Registrar must consider the claim made in the application.

[5] Section 190A(1A) provides an exception whereby the Registrar need not consider an amended application, if the application was amended because an order was made under s 87A by the Federal Court. As the granting of leave by the Federal Court to amend the application was not made pursuant to s 87A, the circumstance described in s 190A(1A) does not arise.

[6] Section 190A(6A) mandates that the Registrar must accept an amended application if the effects of the amendments are limited to:

(a) reducing the application area;

(b) removing a claimed right or interest;

(c) giving effect to the operation of s 47C (which provides for the non-extinguishment of native title in certain areas);

(d) changing the name of the representative Aboriginal and Torres Strait Islander body (**representative body**), or organisation funded to perform the functions of the representative body, for the application area; or

(e) altering the address for service for the applicant.

[7] I have compared the application before me with the amended application filed on 27 March 2020 (**earlier application**). I note the Authorisation Statement in Attachment R to the earlier application has been removed and this application is instead accompanied by a certificate from representative body Queensland South Native Title Services Ltd (**QSNTS**). This amendment is recorded in Schedule S to the application.

[8] The Authorisation Statement which accompanied the earlier application stated the authorisation of the applicant occurred at meetings held on 4 July 2015, and as no certificate accompanied the earlier application, it was considered against the requirements of s 190C(4)(b). The certificate which accompanies this application refers to authorisation meetings held on 30 January 2021 and states that QSNTS is satisfied that all members of the claim group have authorised the applicant.

[9] With regard to the Registrar's task at s 190C(4), *Doepel* provides:

> The contrast between the requirements of subs (4)(a) and (4)(b) is dramatic. In the case of subs (4)(a), the Registrar is to be satisfied about the fact of certification by an appropriate representative body. In the case of subs (4)(b), the Registrar is required to be satisfied of the fact of authorisation by all members of the native title claim group.[4]

[10] The provision of the certificate means this application must be considered against the requirements of s 190C(4)(a), not s 190C(4)(b). In my view, s 190C(4)(b) would only be enlivened should there be deficiencies in the certificate such that s 190C(4)(a) would not be met. In that circumstance, given there have been authorisation meetings since the earlier application was considered, the Registrar would be required to consider the 2021

[4] *Doepel* [78].

authorisation meetings at s 190C(4)(b), not the 2015 authorisation meetings which had been previously considered. Noting the guidance in *Doepel* as to the 'dramatic' difference between s 190C(4)(a) and s 190C(4)(b), I am of the view that amendments replacing an authorisation statement with a certificate from a representative body cannot be considered minor or insubstantial. I also do not consider that amendments relating to the authorisation of the applicant fall within any of the types of amendments specified in s 190A(6A). I am therefore satisfied that s 190A(6A) does not apply.

[11] As neither s 190A(1A) nor s 190A(6A) apply, then in accordance with s 190A(6), the claim must be accepted for registration if it satisfies all the conditions in ss 190B–190C (**the registration test**). As discussed in my reasons below, I consider that the claim in the application satisfies all of the conditions of the registration test and therefore it must be accepted for registration pursuant to s 190A(6). Attachment A contains the information that will be included in the Register of Native Title Claims (**Register**).

Procedural fairness

[12] On 6 July 2021, a senior officer of the National Native Title Tribunal (**Tribunal**) wrote to the representative of the State of Queensland (**State**) advising that any submissions on the application's ability to pass the registration test should be made by 13 July 2021. No submissions were received from the State.

[13] Also on 6 July 2021, the senior officer wrote to the applicant's representative advising that if the applicant wished me to consider any additional material when making the registration decision, it should be provided by 13 July 2021.

[14] On 9 July 2021, the applicant's representative wrote to the senior officer outlining the applicant's position 'on the nature of the amendments in the amended application' (**applicant's submission**). The applicant's submission stated that the amendments which are outlined in Schedule S 'involved corrections to syntax and grammar' and otherwise 'do not substantially change the nature or effect of the application'.

[15] I considered the applicant's submission and, although not specifically stated, I understood the submission to be that because the amendments to the claim were insubstantial, the registration test was not triggered. As discussed above, in my view the nature of the amendments do trigger the registration test. I did not otherwise consider that the applicant's submissions affected the State's interests and so I did not provide a copy to the State for comment.

[16] In considering the application, I formed the view it was appropriate to take into account the **additional material** provided to the Registrar by the applicant in support of the earlier application, specifically:

(a) Witness Statement of [name removed], 24 March 2017 (**Claimant 1 Witness Statement**);
(b) Unrestricted Amended Witness Statement of [name removed], 14 May 2018 (**Claimant 1 Witness Statement #2**);
(c) Further Witness Statement of [name removed], 27 April 2018 (**Claimant 2 Witness Statement**);

(d) Addendum to Attachment F/M – Koa People Native Title Determination Application, 21 August 2015 (**Addendum**); and
(e) 'Koa People QUD592/2015 / QC2015/007 Rights and Interests Table', 3 July 2020 (**Rights Table**).

[17] Therefore, on 16 August 2021, an officer of the Tribunal wrote to the State's representative and advised I would be taking the additional material into account, and any submissions or further information should be received by 20 August 2021.

[18] No submissions or further information were received from the State and so this concluded the procedural fairness process.

Information considered

[19] In accordance with s 190A(3)(a), I have considered the information in the application, the applicant's submission and the additional material, as set out above. There is no information before me from searches of State, Territory or Commonwealth interest registers obtained by the Registrar under s 190A(3)(b). There is no information before me from the State which I must consider in accordance with s 190A(3)(c).

[20] Section 190A(3) also provides that the Registrar may have regard to such other information considered appropriate. Pursuant to that provision, I have considered:

(a) information in the geospatial assessment and overlap analysis of the application area prepared by the Tribunal's Geospatial Services dated 6 July 2021 (**geospatial report**);

(b) information in the Tribunal's geospatial database; and

(c) information in the Register.

Section 190C: conditions about procedures and other matters

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

What is required to meet s 190C(2)?

[21] 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.[5] I have not addressed s 61(5) as I consider the matters covered by that condition are matters for the Federal Court.

Consideration

[22] In my view, 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

[5] *Doepel* [16], [35]–[39].

		(**s 62 affidavits**)	
s 61(3)	Name and address for service	Part B	Met
s 61(4)	Native title claim group named/described	Schedule A	Met

[23] I also consider the application contains the information specified in s 62:

Section	**Details**	**Information**	**Result**
s 62(1)(a)	Affidavits in prescribed form	s 62 affidavits	Met – see reasons below
s 62(1)(d)	Section 47 agreements	Schedule L(2)	Met
s 62(2)(a)	Information about the boundaries of the area	Schedule B, Attachment B	Met
s 62(2)(b)	Map of external boundaries of the area	Attachment C	Met
s 62(2)(c)	Searches	Schedule D	Met
s 62(2)(d)	Description of native title rights and interests	Schedule E	Met
s 62(2)(e)	Description of factual basis	Schedule F, Attachment F/M	Met
s 62(2)(f)	Activities	Schedule G, Attachment F/M	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
s 62(2)(i)	Conditions on authority	Schedule IA, Attachment IA	Met

Section 62(1)(a)

[24] I note that the s 62 affidavits which accompany this application were made in relation to the original application filed in 2015. *Drury* held that there are circumstances in which requiring fresh affidavits from the same applicant members in relation to an amended application would be a 'pointless bureaucratic imposition'.[6] Noting that there has not been any new applicant members authorised, and that the Federal Court has accepted the filing of the original affidavits with this application, I do not consider that fresh affidavits are required in order for this condition to be met.

Conclusion

[25] As the application contains the details and information specified in ss 61–2, I am satisfied s 190C(2) is met.

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

What is required to meet s 190C(3)?

[26] 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;

[6] *Drury* [13].

(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.

Consideration

[27] The geospatial report states and my own searches confirm there are no applications which overlap this application, as required by s 190C(3)(a). This means that there are no 'previous applications' which I must consider and so the issue of common claimants does not arise.

Conclusion

[28] I am satisfied that no member of the claim group was a member of the native title claim group for any previous application, and so s 190C(3) is met.

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

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

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

(a) the application has been certified under Part 11 by each representative body that could certify the application in performing its functions under that Part; or

(b) the requirements of s 190C(4AA) are met.

[30] Schedule R refers to Attachment R, which contains a certificate signed by the Chief Executive Officer of QSNTS dated 19 May 2021 (**certificate**). This means that s 190C(4)(a) applies.

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

[31] Where an application is accompanied by a certificate, I understand I must be satisfied 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).[7]

Consideration

Is the relevant representative body identified?

[32] The geospatial report states and my own searches of the Tribunal's geospatial database confirm that QSNTS is the representative body for 100% of the application area. I am therefore satisfied that the certificate identifies the relevant representative body.

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

[33] As a representative body, QSNTS can perform all the functions listed in Part 11 of the Native Title Act, including the certification functions in s 203BE. I am therefore satisfied QSNTS has the power under Part 11 to issue the certification. I also understand there is no impediment to

[7] *Doepel* [80]–[81].

the delegation of the certification function to particular individuals, such as the Chief Executive Officer, acting either as a delegate or agent of the representative body.[8]

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

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

Section 203BE(4)(a) – statements

[35] 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. Amendments to s 203BE(2) came into force on 25 March 2021, however those amendments only apply to applicants authorised after that date.[9] As the certificate provides that the authorisation of the applicant to make this application occurred on 30 January 2021, I must consider the requirements of s 203BE(2) as it then stood.

[36] Section 203BE(2)(a)–(b), prior to 25 March 2021, prohibited a representative body from certifying an application unless it is of the opinion that:

(a) all persons in the claim group have authorised the applicant to make the application; and

(b) all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the claim group.

[37] As the certificate contains these required statements in paragraphs 2–4, I am satisfied s 203BE(4)(a) is met.

Section 203BE(4)(b) – reasons

[38] 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. Paragraph 5 sets out QSNTS's reasons, providing:

(a) An authorisation meeting was held on 30 January 2021, simultaneously at Brisbane and Cairns and linked by video conference, for the purpose of authorising the applicant to make this application (**authorisation meeting**);

(b) The authorisation meeting was publicly advertised in The Koori Mail on 16 December 2020 and personal notification was given to members of the claim group by mail and telephone;

(c) An information session was held on 29 January 2021, (the day before the authorisation meeting) which was also video linked between Brisbane and Cairns, and attendees at the information session were made aware of the authorisation meeting;

(d) At the authorisation meeting, the attendees authorised the applicant to make the application using an agreed to and adopted decision making process.

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

[8] *Quall HCA* [48], [63].
[9] *Native Title Amendment Act 2021* (Cth), s 24(2).

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

[40] 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). Section 203BE(3) states that if the application area is wholly or partly covered by other applications, including proposed applications, of which the representative body is aware, the representative body must make all reasonable efforts to:

(a) achieve agreement between the persons in respect of whom the applications are made; and

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

[41] Section 203BE(3) also provides that a failure to comply with this provision does not invalidate the certification. The certificate does not provide any information about any efforts undertaken in this regard, however I consider this omission does not invalidate the certification.

Conclusion

[42] 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 applicable 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

What is required to meet s 190B(2)?

[43] 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. I understand the questions for this condition are whether:

(a) the information and map provide certainty about the external boundary of the application area; and

(b) the information enables identification of any areas within the external boundary over which no claim is made.[10]

Consideration

Does the information and map of the external boundary meet this condition?

[44] Schedule B refers to Attachment B, which contains a written description of the external boundary, dated February 2021. The external boundary is described with reference to

[10] Section 62(2)(a)–(b); *Doepel* [122].

representative body areas, the Diamantina River watershed, land parcels and roads, and coordinate points shown to six decimal places referencing GDA94.[11]

[45] Schedule C refers to Attachment C, which contains a map titled 'QUD592/2015 KOA PEOPLE – Native Title Determination Application', also dated February 2021. The map shows the external boundary of the application area depicted by a bold dashed blue outline, the representative body areas by a dashed magenta outline, a scalebar, northpoint, coordinate grid and location diagram. The Notes to the map provide that the source of the map data is GDA94.

[46] 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 written description and in my view they provide certainty about the external boundary of the application area.

Does the information about excluded areas meet this condition?

[47] Schedule B states that the application excludes areas subject to previous exclusive possession acts and public works, except where ss 23B(9)–(10) or ss 47–47C apply. Schedule B also provides that the application area excludes any areas where native title rights have been extinguished.

[48] With regard to general exclusion clauses of this nature, *Strickland* provides that is unrealistic to expect a concluded definition of the areas subject to these provisions to be given in the application, as their applicability will require findings of fact and law to be made as part of the hearing of the application.[12] Following this guidance, I am satisfied the areas affected by the general exclusion clauses in Schedule B can be ascertained at the appropriate time.

Conclusion

[49] 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

What is required to meet s 190B(3)?

[50] 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.

[51] Schedule A states:

> The Koa People are the descendants of one or more of the following apical ancestors: [list of six apical ancestors, some with reference to their immediate descendants].
>
> Recruitment by "cultural adoption" is an aspect of the traditional laws and customs acknowledged and observed by the Koa People with respect to claim group membership. It refers to the situation where a child is grown up by a relative or someone without a biological relationship, either because

[11] Geocentric Datum of Australia 1994.
[12] *Strickland* [55].

> they have been gifted to them, or left in their care, as the biological parents are not in a position to care for them. Membership into the group is ultimately subject to general community acceptance by the Koa People. This applies regardless of whether or not the child has been formally adopted under the non-Aboriginal legal system. Accordingly, the term "descendants" above is not limited to biological descendants.

[52] It follows from this description that s 190B(3)(b) is applicable. *Wakaman* provides that where a description is used, the task is limited to making an assessment of the sufficiency of the description for the purpose of facilitating the identification of any person as part of the group.[13]

Consideration

[53] *WA v NTR* held that describing a claim group with reference to descent from named ancestors, including by adoption, satisfies the requirements of s 190B(3)(b).[14] I consider that factual enquiries and genealogical research would enable members of the claim group to be ascertained using the description in Schedule A.

[54] From the second paragraph of Schedule A, I understand that it is under their traditional laws and customs that the claim group would decide whether to recognise and accept a 'culturally adopted' person as a member of the claim group. This part of the claim group description therefore includes a subjective element. *Aplin* provides that '[a]s to substantive matters concerning membership, the claim group must act in accordance with traditional laws and customs' and that membership must be based on group acceptance.[15] In my view, Schedule A indicates that the claim group's traditional laws and customs will provide the appropriate 'set of rules or principles' for determining whether a culturally adopted person is a member of the claim group.[16]

Conclusion

[55] 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

What is required to meet s 190B(4)?

[56] 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.[17]

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[13] *Wakaman* [34].
[14] *WA v NTR* [67].
[15] *Aplin* [256], [259].
[16] *Ward v Registrar* [25].
[17] *Doepel* [16].

Consideration

[57] From the description in Schedule E, I understand that 11 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.[18]

Conclusion

[58] 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

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

[59] 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 their predecessors 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.

[60] I understand my task is limited to assessing whether the asserted facts can support the existence of the claimed native title rights and interests, rather than determining whether there is evidence that proves directly or by inference the facts necessary to establish the claim.[19] I am not required by s 190B(5) to determine whether the asserted facts will or may be proved at a hearing, nor to assess the strength of the evidence which the applicant may ultimately adduce in the Court.[20]

Consideration

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

[61] As discussed above, Schedule E describes the native title rights and interests which are claimed in the application area. Schedules F, G and M all refer to Attachment F/M, which I will refer to as **Attachment F** in my reasons below. Attachment F includes two affidavits from claim group members:

(a) Affidavit of [name removed], 15 July 2015 (**Claimant 3 affidavit**); and

(b) Affidavit of [name removed], 15 July 2015 (**Claimant 4 affidavit**).

[62] The additional material provides further information about the factual basis of the claim, in particular the Addendum and the various witness statements of Claimant 1 and Claimant 2.

[18] Ibid [123].
[19] Ibid [16]–[17]; *Gudjala 2008* [83], [92].
[20] *Bell* [98].

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

[63] As confirmed in *McLennan*, in order to satisfy the condition in s 190B(5)(a), it will be sufficient if the applicant demonstrates that:[21]

(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 at least since European settlement;[22]

(b) 'there is an association between the whole group and the area, although not all members must have such association at all times';[23] and

(c) there is an association with the whole area claimed, rather than an association with only part of it or 'very broad statements', which have no 'geographical particularity'.[24]

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

[64] Attachment F provides:

(a) European settlement in the application area occurred during the 1860s–1880s;[25]

(b) The presence of people in the application area, their regular contact with their eastern neighbours, and their use of quartz, greenstone and pituri plant, was documented in the 1860s and 1870s;[26]

(c) The Koa language was first documented by Curr in 1886 in the region of the application area and was observed by ethnographers throughout the late 19th and early 20th centuries.[27]

[65] The Addendum outlines the spiritual beliefs of the claim group which were observed and recorded in the application area in the early decades of settlement, including belief in a resident water snake who exacted punishments for transgressions of the law.[28]

[66] Attachment F outlines the association that each of the claim group's apical ancestors and their immediate descendants had with the application area, for example:

(a) MaryAnn Watson was born around 1862 at Hamilton Downs in the application area, and she and her children were recorded by Tindale as Koa, including her daughter who was born in 1883 at Elderslie Station in the application area;[29]

(b) Lois Tighe/Tye was born around 1864 near Winton in the application area her daughter was born at Brighton Downs Station, just south of the application area, in 1879;[30] and

[21] *McLennan* [28].
[22] *Gudjala 2007* [52].
[23] Ibid.
[24] *Martin* [26]; *Corunna* [39], [45].
[25] Attachment F [1]–[7].
[26] Ibid [9]–[11].
[27] Ibid [14]–[15].
[28] Addendum [1].
[29] Ibid [21].
[30] Ibid.

(c) Jack Chermside was born around 1870 at Vindex Station in the application area, where his son was also born in 1895.[31]

[67] With regard to the intervening generations, Attachment F provides that some claim group members were able to continue living on the application area through their work in the pastoral industry.[32] A now deceased senior claimant recalled working as a drover in the 1950s–1960s along with other Koa People, on stations which surround and cover the application area including Kynuna, Nuken, Dagworth, Castle Hill, Mt Landsborough, Elderslie, Bladensburg and Vindex.[33]

Association of the current claim group with the application area

[68] Attachment F provides:

(a) Current claimants regularly visit the application area for activities including the collection of ochre for ceremony, to conduct Aboriginal cultural heritage protection work and to work as rangers in Bladensburg National Park in the south of the application area;[34]

(b) Claimants continue to follow the spiritual beliefs of their predecessors, which mandate that they must continue to look after sacred places in the application area in order to avoid spiritual consequences.[35]

[69] The claimants' affidavits provide further information about the association between the current claim group and the application area, for example:

(a) Claimant 3's grandparents and parents were all Koa people from the application area, and growing up on Woorabinda Aboriginal Reserve he was taught the extent of his country from the Koa elders living there;[36]

(b) Claimant 3 travels to the application area approximately nine times a year, including to collect ochre for ceremonial purposes, which he does after speaking to the resident spirits;[37]

(c) Claimant 4 is the great-great grandson of apical ancestor Lois Tighe/Tye, and some of his predecessors and siblings were born at Winton and Old Cork station in the application area;[38]

(d) Claimant 4 describes how his family have continued their association with the application area despite periods of removal to Cherbourg Aboriginal Reserve, during which time they maintained a close connection with other Koa families living there and continued to observe the Koa laws and customs;[39]

[31] Ibid.
[32] Ibid [39].
[33] Attachment F [40].
[34] Ibid [18], [25], [43], Claimant 4 affidavit [21].
[35] Attachment F [51].
[36] Claimant 3 affidavit [3]–[5], [14].
[37] Ibid [17], [21], [23].
[38] Claimant 4 affidavit [3], [8], [11].
[39] Ibid [10], [12].

(e) Claimant 4 recalls learning about Koa laws and customs from his cousin who lived with his aunties and grandmother on Koa country, and who worked on the pastoral stations and on the railways at Winton in the application area.[40]

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

[70] In my view, the information before me addresses the relationship the claim group asserts to have with the application area, both at the time of settlement and since that time.[41] 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 and the application area, at sovereignty and since that time?

[71] I understand from the material that European settlement in the application area occurred in the period 1860–1880. Attachment F provides that the apical ancestors of the claim group were alive and in the application area around the time of settlement. In my view, the apical ancestors would have had a similar association with the application area as their forebears who were alive at the time of British sovereignty. In making this retrospective inference I have considered the judicial guidance on making such inferences and that it is appropriate to construe the Native Title Act beneficially.[42]

[72] From Attachment F and the claimants' affidavits, I consider there is sufficient information to show that the intervening generations of the claim group maintained an association with the application area, despite the period of forced removals. The information shows that those who were removed managed to maintain their association with the application area by returning when they could, and that some members of the claim group who avoided removal were able to maintain their association by working on the pastoral stations which cover the application area. In my view, it appears that the forced removal of people did not permanently diminish the claim group's association with the application area.

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

[73] The material describes the current claimants' belief that there are spirits resident in the landscape that can mete out punishments and which must be spoken to appropriately by the claimants. In my view this demonstrates the claim group currently have a spiritual association with the application area. I also note the information about current claimants visiting the application area for work as rangers, in cultural heritage and to collect ochre, thus demonstrating a current physical association. I therefore consider the factual basis is sufficient to support the assertion that the claim group currently has an association with the application area.

[40] Ibid [14]–[16].
[41] *Gudjala 2007* [40].
[42] *Harrington-Smith No 9* [294]–[296]; *Kanak* [73].

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

[74] 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 with the application area as a whole.[43] It is not a requirement that every member of the claim group have an association with the entire application area at all times.

[75] According to the Tribunal's geospatial database, much of the application area remains covered by pastoral stations. The information before me demonstrates that the claim group are associated with the relevant pastoral stations, including Kynuna in the north west, Dagwood and Elderslie in the centre, and Mt Landsborough, Bladensburg and Vindex in the south and south east. I understand that Bladensburg station is now Bladensburg National Park, where some claimants in the past worked as station hands and current members now work as rangers. I also note the references to Winton which is the major town in the application area. Noting the references to locations spread across the application area, I consider there is sufficient information before me to support an association between the claim group and the entire area claimed.

Conclusion - s 190B(5)(a)

[76] I consider that 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 and worked. 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)?

[77] 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.

[78] In *Yorta Yorta*, the High Court of Australia (**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

[43] *Corunna* [31].

> normative system has not existed throughout that period, the rights and interests which owe their existence to that system will have ceased to exist.[44]

[79] In *Warrie*, the Full Court of the Federal 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.[45]

[80] In *Gudjala 2009*, Dowsett J held 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.[46]

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

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

(b) the continued observance of normative rules by the successive generations of the 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 at s 190B(5)(b)

[82] Attachment F and the additional material provides the following information:

(a) Pre-sovereignty society

1. Prior to British sovereignty, there existed a 'tribal society' of people in the region of the Upper Diamantina who were united in their observance of laws and customs and were identifiable and known by the name of their language – 'Koa'.[47]

2. The members of the claim group are the descendants of the Koa ancestors described in Schedule A, who, along with their forebears, possessed rights and interests in the application area.[48]

(b) Rights and interests in land

1. Under a law of patrilineal descent observed across the region since before settlement, which arises from a belief that the spirits of predecessors reside in

[44] *Yorta Yorta* [46]–[47], emphasis added.
[45] *Warrie* [105], [107], emphasis added.
[46] *Gudjala 2009* [40].
[47] Addendum [5].
[48] Ibid [11]–[12].

the land, only the Koa people enjoy rights and interests in the application area.[49]

2. These laws were recorded in the early years of settlement by Roth and Palmer, and Claimant 4 describes how his mother taught him that '[t]o be a Koa person and have traditional rights in Koa country, you must be descended from a Koa ancestor'.[50]

(c) Kinship rules

1. Roth, Palmer and Tennant-Kelly recorded the existence of a moiety system which prescribed exogamous marriage, a system of totemic affiliation within each moiety and a four-section system which were observed across the region both in the early years of settlement and in the 20th century.[51]

2. Claimant 3 describes how his father and grandmother taught him about the kinship rules, his dreaming and his Koa 'skin name', and that he married a woman from the correct dreaming in accordance with these laws.[52] Claimant 1 states that he was taught the exogamous marriage rules of the Koa people from his elder brother.[53]

(d) Spiritual beliefs

1. As discussed above at s 190B(5)(a), the claimants believe that failure to uphold their obligation to look after sacred places can result in spiritual harm.[54] Claimant 3 states that he 'always' speaks to the spirits before taking ochre.[55] Claimant 4 explains '[i]t comes down to us as Koa People to look after our sacred places because spiritually and culturally it will get back to us if we don't look after those places. People in our family will get sick and possibly die if we did the wrong thing'.[56]

2. Knowledge of the spiritual forces which inhabit the land, the rules which mandate the avoidance of particular places, the obligation to speak to spirits in certain ways, and protecting sacred places from harm have been passed down from the predecessors to the senior members of the claim group who in turn have taught the younger generations.[57]

(e) Traditional practices

1. A now deceased senior claimant recalled his mother telling him about how his ancestors would use gidgee wood from the application area to make spears

[49] Attachment F [23], [27]–[28].
[50] Addendum [1]; Claimant 4 affidavit [4].
[51] Addendum [1].
[52] Claimant 3 affidavit [7]–[10].
[53] Claimant 1 witness statement [57].
[54] Attachment F [51].
[55] Claimant 3 affidavit [23].
[56] Claimant 4 affidavit [25].
[57] Attachment F [28], [30]; Claimant 3 affidavit [6], [23]–[24].

and boomerangs, and he would hunt and gather resources for food and medicines in the methods taught to him by his mother.[58]

2. Claimant 2 describes how he was taught to use the resources of the application area by his father, including the correct methods for collecting and cooking mussels, and the obligation to provide food to his elders.[59] He explains that he has taught these practices to younger members of the claim group.[60]

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

Does the factual basis support a link between the pre-sovereignty society, the predecessors and the claim group?

[83] The material describes a regional society which included the application area that existed prior to British sovereignty. The material also explains the claim group's predecessors' place in that society as an identifiable group of Koa people. The material provides that the apical ancestors were alive are the time of settlement and I consider it is appropriate to infer they would have lived with predecessors who were alive when British sovereignty occurred. I understand the current claim group members are descended from the apical ancestors and as such, have inherited rights and interests in the application area.

[84] From the information before me, I am satisfied that the factual basis addresses the link between the current claim group, the apical ancestors and the society which existed in the application area prior to sovereignty.

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

[85] The material provides that European settlement in the application area occurred relatively recently and the great-great grandchildren of some of the apical ancestors are now senior claim group members. These claimants describe how they were taught the laws and customs from their predecessors, including how rights to land are acquired, the kinship system, and the rules of normative conduct in relation to particular sites in the application area. I consider the material demonstrates how the laws and customs have been observed by successive generations of the claim group in the application area.

[86] 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.[61] This is because there are examples provided about the predecessors handing down the laws and customs to members of the current claim group through oral transmission and common practice. These examples include rules about appropriate conduct on country and the obligation to protect sacred sites and speak to the resident spirits. There are also examples provided of claimants learning skills from their predecessors, such as collecting ochre, and taking their children onto the application area and teaching them these same skills. 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

[58] Attachment F [46]–[47].
[59] Claimant 2 witness statement [100]–[102].
[60] Ibid.
[61] *Yorta Yorta* [46]–[47].

way as they passed it on to their descendants, thus supporting the assertion that the laws and customs are 'traditional'.

Conclusion – s 190B(5)(b)

[87] I am satisfied that the factual basis supports 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 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)?

[88] 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.[62] 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.[63]

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

[89] As set out above at ss 190B(5)(a)–(b), I am satisfied the factual basis demonstrates an ongoing association with the application area, identifies a link between the pre-sovereignty society in the application area, the apical ancestors and the claim group, and supports the existence of traditional laws and customs.

[90] In support of the assertion at s 190B(5)(c), Claimant 3 describes how he was taught the different aspects of the kinship system from his father and grandmother.[64] He further provides that he has taught his children and grandchildren these same rules 'about the skin names and dreaming names and the marriage rules'.[65] Claimant 3 has also shown his descendants how to announce themselves to the spirits when on country, as he does when collecting ochre.[66] Claimant 4 describes taking his son, grandson and another Koa person with him on a two-week trip to the application area, which was undertaken in order to fulfil his obligation to protect sacred places.[67] In my view, there are sufficient examples to show that claimants possess knowledge about how the previous generations acknowledged and observed their laws and customs in relation to the application area, and that they continue to observe and teach the younger generations these same laws and customs. I therefore consider the material shows how laws and customs have been continuously observed by the claim group, since at least the time of European settlement in the application area.

Conclusion – s 190B(5)(c)

[91] I am satisfied the factual basis is 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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[62] *Gudjala 2009* [29].
[63] *Gudjala 2007* [82].
[64] Claimant 3 affidavit [7]–[10].
[65] Ibid [11].
[66] Ibid [23]–[24].
[67] Claimant 4 affidavit [21]–[25].

Conclusion

[92] 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

What is required to meet s 190B(6)?

[93] 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 claim group.

[94] I understand the condition of s 190B(6) requires some measure of the material available in support of the claim and imposes a more onerous test to be applied to the individual rights and interests claimed.[68] I also understand that the words 'prima facie' mean that if a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis.[69] It is therefore my task to consider whether there is 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.[70] In my consideration below I have grouped rights together where it is appropriate and convenient to do so.

Consideration

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

The Koa People claim the following non-exclusive and non-commercial rights and interests:

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

[95] As discussed above at ss 190B(5)(a)–(b), Attachment F and the additional material provides that past and present members of the claim group have accessed and travelled over the application area for various purposes, including for work on the pastoral stations and in cultural heritage.[71]

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

(b) Camp, and for that purpose, build temporary shelters, on the area;

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

(d) Take, use and share Natural Resources from the land and waters of the area for personal, domestic and non-communal purposes;

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[68] *Doepel* [126].
[69] Ibid [135].
[70] Section 186(1)(g).
[71] See for example Attachment F [39], Claimant 3 affidavit [17].

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

(i) Teach on the area the physical and spiritual attributes of the area;

(k) Light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.

[97] Claimant 1 describes camping on the application area with other claim group members and the places on the application area where his predecessors camped.[72] Attachment F provides that a now deceased senior claimant would 'hunt and gather traditional bush foods such as possum, porcupine, yellowbelly (fish) and witchetty grubs' as well as collect coolibah leaves and river mud for bush medicines, as was taught to him by his mother.[73] As discussed above, Claimant 3 collects ochre from the application area and has taught the traditional method of ochre collection, including the rules of speaking to the resident spirits, to his descendants.[74] Claimant 2 describes how his 'old people' taught him about the Diamantina River and how to look for signs on country for water and food.[75] Claimant 2 also describes lighting fires on the application area in order to cook mussels, catfish and goannas, and that he learned these methods from his father.[76]

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

(f) Conduct ceremonies on the area;

(g) Be buried and bury native title holders within the area;

(h) Maintain places of importance and areas of significant [sic] to the native title holders under their traditional laws and customs and to protect those places and areas from physical harm;

(j) Hold meetings on the area.

[99] Claimant 2 explains that he was taught the traditional Koa burial practices by his father.[77] Claimant 1 also describes the Koa burial practices and states that he wishes to be buried in accordance with these practices.[78] The Addendum provides that the predecessors of the claim group participated in various ceremonies across the region.[79] Claimant 3 states that he has been involved in traditional dance his 'whole life' and conducts different types of ceremonies, including funerals.[80] Claimant 1 describes meetings held on the application area for various purposes.[81]

[100] As discussed above, the material provides that the spiritual beliefs of the claim group give rise to an obligation to protect and maintain significant places in the application area.[82] According

[72] Claimant 1 witness statement [75]–[78].
[73] Attachment F [47].
[74] Claimant 3 affidavit [23]–[24].
[75] Claimant 2 witness statement [48], [105].
[76] Ibid [101]–[104].
[77] Claimant 2 witness statement [80]–[83].
[78] Claimant 1 witness statement #2 [13]–[15].
[79] Addendum [1].
[80] Claimant 3 affidavit [19], [26].
[81] Claimant 1 witness statement #2 [19], [33]–[34].
[82] Attachment F [50].

to Attachment F, this obligation is today manifested in the claimants' participation in cultural heritage protection work.[83]

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

Conclusion

[102] I am satisfied the application contains sufficient information about all of the rights claimed, such that they can be said to be established on a prima facie basis. I am also satisfied the claimed rights can be considered 'native title rights and interests'. This is because, 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

What is required to meet s 190B(7)?

[103] 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 application area; or

(b) previously had and would reasonably have been expected currently to have such a connection, but for certain things done.

[104] 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.[84]

Consideration

[105] As noted above, Schedule M, which asks applicants to outline the traditional physical connection between claim group members and the application area, refers to Attachment F. As summarised above at ss 190B(5)–(6), there is information before me which describes current claimants visiting the application area and its significant sites, and using its natural resources such as wood, water and ochre. From this information, I am satisfied at least one claim group member has or had a physical connection to the land and waters covered by the application.

[106] 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.

[83] Ibid [51].
[84] *Doepel* [18]; *Gudjala 2009* [84].

Conclusion

[107] I am 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

What is required to meet s 190B(8)?

[108] Section 190B(8) requires the application comply with ss 61A(1)–(3).

Consideration

[109] In my view, the application complies with each of the requirements of ss 61A(1)–(3):

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 1 indicates that areas covered by valid previous exclusive possession acts are excluded from the application	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 the application does not make any claim to possession to the exclusion of all others	Met

Conclusion

[110] I am satisfied the requirements of s 190B(8) are met.

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

What is required to meet s 190B(9)?

[111] Section 190B(9) states that the application must not disclose, and the Registrar must not otherwise be aware that the claimed native title extends to cover the situations described in ss 190B(9)(a)–(c).

Consideration

[112] In my view, the application does not contravene any of the restrictions found in 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 the application does not make any claim to ownership of 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 the application does not make any claim to an offshore place	Met
s 190B(9)(c)	Native title rights and/or interests in the claim area have otherwise been extinguished	Schedule B paragraph 5 states that the application excludes areas where native title has been otherwise extinguished	Met

Conclusion

[113] I am satisfied the requirements of s 190B(9) are met.

End of reasons

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Koa People
NNTT No.	QC2015/007
Federal Court of Australia No.	QUD592/2015
Date of Registration Decision	27 August 2021

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:

16 July 2015

Date application entered on Register:

28 September 2015

Applicant:

As per Schedule

Applicant's address for service:

As per Schedule

Area covered by application:

As per Schedule, but delete the first three lines as they do not form part of the description, i.e.:

> Information identifying the boundaries of:
> a) the area covered by the application; and
> b) any areas within those boundaries that are not covered by the application

Persons claiming to hold native title:

As per Schedule

Registered native title rights and interests:

As per Schedule

_____

Katy Woods

Delegate of the Native Title Registrar pursuant to ss 190–190D of the Native Title Act under an instrument of delegation dated 19 May 2021 and made pursuant to s 99 of the Native Title Act.