

# Registration Decision

<b>Application name</b>	Timothy Knox and Ors on behalf of the Yuwaalaraay/Euahlayi People and State of Queensland & Ors ( <b>Yuwaalaraay/Euahlayi People</b> )
<b>Name of applicant</b>	Timothy Knox, William Taylor, Jason Dreise, Jason Wilson, Michael Anderson, Jamie-Lee Taylor, Mayrah Dreise
<b>Federal Court of Australia No.</b>	QUD32/2017
<b>NNTT No.</b>	QC2017/001
<b>Date of Decision</b>	15 October 2021

## Claim accepted for registration

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

---

Katy Woods<sup>2</sup>

---

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

<sup>2</sup> 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

*Bell v Native Title Registrar* [2021] FCA 229 (**Bell**)  
*Burragubba on behalf of the Wangan and Jagalingou People v State of Queensland* [2017] FCA 373 (**Burragubba**)  
*Corunna v Native Title Registrar* [2013] FCA 372 (**Corunna**)  
*Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People* [2019] FCAFC 177 (**Warrie**)  
*Griffiths v Northern Territory* [2007] FCAFC 178 (**Griffiths FC**)  
*Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (**Gudjala 2007**)  
*Gudjala People #2 v Native Title Registrar* [2008] 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**)  
*Lawson on behalf of the 'Pooncarie' Barkandji (Paakantyi) People v Minister for Land & Water Conservation for the State of New South Wales* [2002] FCA 1517 (**Lawson**)  
*Martin v Native Title Registrar* [2001] FCA 16 (**Martin**)  
*McLennan v State of Queensland* [2019] FCA 1969 (**McLennan**)  
*Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58 (**Yorta Yorta**)  
*Noble v Mundraby* [2005] FCAFC 212 (**Noble**)  
*Northern Territory of Australia v Doepel* [2003] FCA 1384 (**Doepel**)  
*Strickland v Native Title Registrar* [1999] FCA 1530 (**Strickland**)  
*Wakaman People 2 v Native Title Registrar and Authorised Delegate* [2006] FCA 1198 (**Wakaman**)  
*Ward v Northern Territory* [2002] FCA 171 (**Ward v Northern Territory**)  
*Weribone on behalf of the Mandandanji People v State of Queensland* [2013] FCA 255 (**Weribone**)  
*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 Yuwaalaraay/Euahlayi People native title claim group (**claim group**). It covers an area of approximately 125 square kilometres in southern Queensland, extending from the border with New South Wales to approximately 15 kilometres south of St George (**application area**).
- [2] This claim was first made on 23 January 2017 and was accepted for registration by a delegate of the Native Title Registrar (**Registrar**) pursuant to s 190A(6) on 5 May 2017. An amended application was filed on 29 July 2021, which I will generally refer to as **the application** in my reasons below. On 30 July 2021, the Federal Court of Australia (**Federal Court**) gave a copy of the application to the Registrar, pursuant to s 64(4).

### The statutory scheme

- [3] 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. Section 190A(1A) provides an exception whereby the Registrar need not

consider an amended application if it was amended because of an order made by the Federal Court under s 87A. 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.

- [4] Section 190A(6A) stipulates 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, or organisation funded to perform the functions of the representative body, for the application area (**representative body**); or
  - (e) altering the address for service for the applicant.
- [5] I have compared the application before me with the original application filed on 23 January 2017. The amendments to the application include changes to the claim group description, the removal of the certification by the representative body Queensland South Native Title Services Ltd (**QSNTS**), the addition of details of the authorisation of the applicant to make the amended application and the conditions placed on that authority. In my view, these amendments are greater than those permitted by s 190A(6A) and as such, that provision does not apply.
- [6] 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 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

- [7] On 4 August 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 18 August 2021.
- [8] Also on 4 August 2021, the senior officer wrote to the applicant's representative advising that if the applicant wished me to consider any further information when making the registration decision, it should be provided by 18 August 2021.
- [9] I considered the application and noted that a copy of the notice for the meeting at which the applicant was authorised (**meeting notice**) had not been included, but the material stated that the notice was publicly available on QSNTS's website.<sup>3</sup> I accessed and considered the meeting notice, and decided it contained information relevant to the conditions of the registration test. Therefore, on 15 September 2021, the senior officer wrote to the State's representative

---

<sup>3</sup> Attachment R [12].

and advised that I would be taking the meeting notice into account and should the State wish to provide any information or submissions, it should do so by 22 September 2021.

- [10] On 17 September 2021, the State's representative advised that the State would not be making any submissions. No further information was received from the applicant and so this concluded the procedural fairness process.

## Information considered

- [11] In accordance with s 190A(3)(a), I have considered the information in the application. 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). 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) the meeting notice, as described above;
- (b) the geospatial assessment and overlap analysis of the application area prepared by the Tribunal's Geospatial Services, dated 2 August 2021 (**geospatial report**); and
- (c) information in the Tribunal's geospatial database.

## Section 190C: conditions about procedural and other matters

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

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

- [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.<sup>4</sup> I have not addressed s 61(5) as I consider the matters covered by that condition are matters for the Federal Court.

## Consideration

- [13] 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(2), Schedule A, s 62 affidavits filed with application ( <b>s 62 affidavits</b> )	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] 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

---

<sup>4</sup> *Doepel* [16], [35]–[39].

Section	Details	Information	Result
s 62(1)(d)	Section 47 agreements	Schedule L(2)	Met
s 62(2)(a)	Information about the external 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

## Conclusion

[15] 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)?

[16] To meet s 190C(3), the Registrar must be satisfied that no person included in the claim group for the current application was a member of a native title claim group for any previous application. To be a ‘previous application’:

- (a) the application must overlap the current application in whole or part;
- (b) there must be an entry for the claim in the previous application on the Register when the current application was made; and
- (c) the entry must have been made or not removed as a result of the previous application being considered for registration under s 190A.

## Consideration

[17] 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

[18] 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)?

[19] 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.

[20] Schedule R indicates that the application has not be certified and so I must consider the application against the requirements of s 190C(4AA).

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

[21] The requirements of s 190C(4AA) are:

- (a) That the applicant is a member of the claim group and is authorised to make the application by all the other persons in the claim group; and
- (b) Either that there are no conditions under s 251BA on the authority of the applicant that relate to the making of the application, or that any such conditions have been satisfied.

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

- (a) a process which, under the traditional laws and customs of the persons in the claim group, must be complied with; or
- (b) where there is no traditional process, a process agreed to and adopted by the claim group.

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

- (a) includes a statement to the effect that the requirement in s 190C(4AA) has been met; and
- (b) briefly sets out the grounds on which the Registrar should consider that the requirement in s 190C(4AA) has been met (other than in relation to s 190C(4AA)(b)(i), in cases where there are no conditions on the applicant's authority).

[24] I therefore understand that in order to be satisfied that the requirements s 190C(4AA) are met, one of the decision making processes outlined in s 251B must be identified and complied with in relation to the authorisation of the applicant. I must also be satisfied that if there are any conditions on the applicant's authority, those conditions are met, and that the requirements of s 190C(5) are met. If all these requirements are met, then I can be satisfied that s 190C(4) is met.

### Consideration

[25] At the outset of this consideration, I note that s 190C(4AA) and related amendments to s 190C(5) came into force on 25 March 2021.<sup>5</sup> Other than the addition of the new limb in s 190C(4AA) requiring consideration of conditions placed on the applicant's authority, the wording of s 190C(4AA) replicates the wording of the previous s 190C(4)(b). That is, the requirement to be satisfied about the applicant's membership of the claim group and

---

<sup>5</sup> *Native Title Amendment Act 2021* (Cth), s 24(2).

authorisation to make the application remain unchanged. I therefore consider it is appropriate to apply the judicial guidance previously given in relation to s 190C(4)(b) in my consideration of s 190C(4AA). Similarly, given s 190C(5) has been updated only to reflect the additional requirement pertaining to conditions on the applicant's authority, I consider the case law on s 190C(5) has continued application.

***Is s 190C(5) met?***

[26] Attachment R states:

- (a) each member of the applicant is a member of the claim group and is authorised to make the application by all other members of the claim group;<sup>6</sup> and
- (b) all of the conditions on the authority of the applicant have been satisfied.<sup>7</sup>

[27] Attachment R also describes the notice and conduct of two meetings of the claim group held at Dirranbandi on 20 June 2021, at the second of which the applicant was authorised by the other members of the claim group using an agreed to and adopted decision making process by consensus, or in the absence of consensus, by majority vote.<sup>8</sup> I understand that the insertion of the word 'briefly' in s 190C(5)(b) suggests that the legislature was not concerned to require any detailed explanation of the process by which authorisation is obtained at this condition.<sup>9</sup> I therefore consider that the information in Attachment R is sufficient to satisfy both limbs of s 190C(5).

***Conclusion – s 190C(5)***

[28] I am satisfied the requirements of s 190C(5) are met.

***Is 190C(4AA) met?***

*Is the applicant a member of the claim group?*

[29] Section 190C(4AA) requires that all the persons comprising the applicant must be members of the claim group. As set out above, Attachment R contains such a statement. The s 62 affidavits from the applicant members also contain such a statement and each state that they believe all of the statements made in the application are true.<sup>10</sup> It follows that I am satisfied that the members of the applicant are all members of the claim group.

*Is the applicant authorised to make the application by all the other persons in the claim group?*

[30] Section 190C(4AA) also requires that the applicant be authorised to make the application, by all the other members of the claim group. This requires me to identify the decision making process used by the claim group and how it was applied to authorise the applicant to make the application.<sup>11</sup> I will first set out the information before me which I consider relevant to these enquiries and then consider whether these requirements are met.

---

<sup>6</sup> Attachment R [1].

<sup>7</sup> Ibid [3].

<sup>8</sup> Ibid [8]–[52].

<sup>9</sup> *Strickland* [57].

<sup>10</sup> Section 62 affidavits [2], [5].

<sup>11</sup> *Noble* [16].

### Decision making process

- [31] As outlined above, Attachment R provides that the decision making process adopted by the claim group was one of consensus, and in the absence of consensus, majority vote. The application therefore identifies the type of decision making process provided for in s 251B(b).
- [32] Where an agreed and adopted decision making process has been utilised, I must be satisfied that all members of the claim group were given reasonable opportunity to participate in the decision to authorise the applicant.<sup>12</sup> In deciding whether all members of the claim group have been given a reasonable opportunity to participate, I understand I must consider the notice and conduct of the authorisation meeting at which the applicant was authorised, the information about which I will summarise below.<sup>13</sup>

### Notice of authorisation meeting

- [33] Attachment R explains that two consecutive meetings of the claim group were scheduled for 20 June 2021:
- (a) **Authorisation Meeting #1**, to authorise amendments to the claim group description; and
  - (b) **Authorisation Meeting #2**, to authorise the applicant to make this amended application and resolve other matters.<sup>14</sup>
- [34] Attachment R states that the authorisation meetings were publicly advertised in the *Koori Mail*, the *South West Newspaper* and the *Toowoomba Chronicle* during May 2021.<sup>15</sup> The meeting notice was also published on the QSNTS website from 3 June 2021.<sup>16</sup> On 24 May 2021, QSNTS provided personal notice of the authorisation meetings by mail to the 111 members of the claim group for whom it held addresses.<sup>17</sup> In the two weeks prior to the authorisation meetings, further notice was given to claim group members via telephone call and text message.<sup>18</sup>
- [35] The meeting notice sets out the previous description of the claim group and explains that all members of the claim group, so described, were invited to attend Authorisation Meeting #1.<sup>19</sup> The meeting notice explains that the purpose of Authorisation Meeting #1 was to consider amending the claim group description. The proposed amended claim group description is included in the notice.<sup>20</sup> The notice then explains, that subject to the outcome of Authorisation Meeting #1, all members of the newly described claim group are invited to attend Authorisation Meeting #2.<sup>21</sup> The agenda of Authorisation Meeting #2 is set out in the notice, including the authorisation of the applicant, subject to proposed terms and conditions.<sup>22</sup> The meeting notice includes the date, time and venue for the authorisation

---

<sup>12</sup> Lawson [25].

<sup>13</sup> Burragubba [29]–[30].

<sup>14</sup> Attachment R [9]–[10].

<sup>15</sup> Ibid [11].

<sup>16</sup> Ibid [12].

<sup>17</sup> Ibid [14].

<sup>18</sup> Ibid [15]–[16].

<sup>19</sup> Yuwaalaraay Euahlayi People – Public Notice – 19 and 20 June 2021, [www.qsnts.com.au](http://www.qsnts.com.au).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.



meetings, a map of the application area and two contact numbers, one being a freecall number.<sup>23</sup> Details of an Information Session scheduled for the day prior to the authorisation meetings are also included.<sup>24</sup>

#### **Conduct of authorisation meeting**

- [36] Attachment R provides that meeting participants were required to register upon arrival and were issued a yellow wrist band.<sup>25</sup> Twenty-three members of the claim group registered their attendance and Authorisation Meeting #1 commenced at 10:45am, chaired by a QSNTS staff member.<sup>26</sup> The attendees passed a resolution confirming that there was no traditional decision making process that must be used, and agreed to adopt a decision making process by consensus, or in the absence of consensus, majority vote.<sup>27</sup> The attendees at Authorisation Meeting #1 agreed by consensus to amend the claim group description as proposed in the meeting notice.<sup>28</sup>
- [37] Attachment R explains that after Authorisation Meeting #1 concluded, one additional person registered their attendance for Authorisation Meeting #2, which meant that 24 people attended that meeting.<sup>29</sup> Authorisation Meeting #2 commenced at approximately 11.39am and was also chaired by a QSNTS staff member.<sup>30</sup> The attendees passed a resolution confirming that there was no traditional decision making process which must be used in making decisions regarding the application, and agreed to and adopted the same decision making process which had been utilised at Authorisation Meeting #1.<sup>31</sup> By Resolution 9, the attendees agreed by consensus to authorise the applicant to make the application.<sup>32</sup>

#### **Consideration**

- [38] When considering whether all members of a claim group have authorised an applicant to make an application pursuant to s 251B(b), I understand that the reference to 'all' is not to be interpreted literally and does not mean that every single member of the claim group must authorise the applicant.<sup>33</sup> Rather, it is sufficient if a decision is made once the members of the claim group are given every reasonable opportunity to participate in the decision making process, which can be ascertained by information about a well-attended meeting which was appropriately advertised.<sup>34</sup>
- [39] In my view, the notice was sufficient to enable the members of the claim group to judge for themselves whether to attend the meeting and vote for or against the proposals set out in the meeting notice.<sup>35</sup> The meeting notice set out the relevant details of the two authorisation meetings and included a map of the application area. The invitation to Authorisation

---

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Attachment R [23].

<sup>26</sup> Ibid [25], [30].

<sup>27</sup> Ibid [34].

<sup>28</sup> Ibid [37].

<sup>29</sup> Ibid [41]–[42].

<sup>30</sup> Ibid [43]–[44].

<sup>31</sup> Ibid [47].

<sup>32</sup> Ibid [50].

<sup>33</sup> *Lawson* [25].

<sup>34</sup> Ibid [27].

<sup>35</sup> *Weribone* [40]–[41], followed in *Burragubba* [30].

Meeting #1 invited the existing members of the claim group and the invitation to Authorisation Meeting #2 invited members of the proposed claim group, both with reference to a list of apical ancestors. In my view, if a person claimed to hold native title rights in the application area but was not a descendant of one of the listed ancestors, there was otherwise sufficient information in the notice, such as the map, meeting details and contact information, to enable them to decide whether to make enquiries about attending the meetings.

[40] I also consider the notice of the authorisation meetings was sufficiently broad, as both personal and public notification methods were employed. The meeting notice was published in two local newspapers and a special interest Aboriginal and Torres Strait Islander newspaper several weeks prior to the authorisation meeting. Personal notice was given to the existing claim group members by letter, phone call and text message. In my view, the content, publication and distribution of the meeting notice was such that ‘fair notice’ was given of the business to be dealt with at the authorisation meetings, to all the members of the claim group.<sup>36</sup>

[41] With regard to the conduct of the authorisation meetings, I understand the substance of the following questions must be addressed:

Who convened it and why was it convened? To whom was notice given and how was it given? What was the agenda for the meeting? Who attended the meeting? What was the authority of those who attended? Who chaired the meeting or otherwise controlled the proceedings of the meeting? By what right did that person have control of the meeting? Was there a list of attendees compiled, and if so by whom and when? Was the list verified by a second person? What resolutions were passed or decisions made? Were they unanimous, and if not, what was the voting for and against a particular resolution? Were there any apologies recorded?<sup>37</sup>

[42] In my view, the material before me addresses the substance of those questions. As discussed above, Attachment R and the meeting notice show how and to whom notice was given. The meeting notice included the agenda for the two meetings. Attachment R describes the process by which attendees were registered and how the proceedings were controlled through the issuing of wrist bands. Information about the resolutions which were passed and the details of whether they were passed by consensus or majority have been provided, along with information about who chaired the meetings. The material provides that the attendees authorised the applicant using the agreed to and adopted decision making process. In light of the information before me, I consider that the notice and conduct of the authorisation meetings was such that all members of the claim group were afforded a reasonable opportunity to participate in the decision to authorise the applicant.<sup>38</sup> I therefore consider that the applicant has been authorised to make the application, by all the other members of the claim group.

*Have the conditions on the authority of the applicant been satisfied?*

[43] Attachment R provides that the attendees at Authorisation Meeting #2 resolved by consensus to impose the conditions on the authority of the applicant set out in Attachment IA, using the agreed to and adopted decision making process.<sup>39</sup> In relation to the imposition of conditions

---

<sup>36</sup> Ibid.

<sup>37</sup> *Ward v Northern Territory* [25]–[26].

<sup>38</sup> *Burragubba* [29]–[30].

<sup>39</sup> Attachment R [49].

on the authority of an applicant, s 251BA(b) permits the use of an agreed to and adopted decision making process, where there is no decision making process mandated under a claim group's traditional laws and customs. Attachment R also states that the members of the applicant were aware and understood the terms and conditions of their appointment, and continue to abide by those terms and conditions.<sup>40</sup> In their s 62 affidavits, each member of the applicant deposes that they are subject to, and abide by, the conditions placed on their authority under s 251BA.<sup>41</sup>

[44] In light of the information before me, and in the absence of any information to the contrary, I consider the conditions on the applicant's authority which relate to the making of the application have been satisfied.

#### ***Conclusion – s 190C(4AA)***

[45] I am satisfied that the applicant members are members of the claim group and are authorised to make the application by all the other members of the claim group, using an agreed to and adopted decision making process pursuant to s 251B(b). I also consider that the conditions imposed under s 251BA on the authority of the applicant have been satisfied. This means the requirements of s 190C(4AA) are met.

#### **Conclusion**

[46] As the requirements of s 190C(5) and s 190C(4AA) are met, I am satisfied that s 190C(4)(b) 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)?**

[47] To meet s 190B(2), the Registrar must be satisfied the information and map contained in the application are sufficient for it to be said, with reasonable certainty, whether native title rights and interests are claimed in relation to particular land or waters. 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.<sup>42</sup>

#### **Consideration**

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

[48] Attachment B contains a written description of the external boundary, dated July 2021. The

---

<sup>40</sup> Ibid [54]–[55].

<sup>41</sup> Section 62 affidavits [9]–[11].

<sup>42</sup> Section 62(2)(a)–(b); *Doepel* [122].

external boundary is described with reference to a commencement point, the Culgoa River, the Queensland / New South Wales state border and longitude and latitude geographical coordinate points. The notes to the description provide that the geographical coordinate points are referenced to the Geocentric Datum of Australia 2020 (**GDA20**).

- [49] Attachment C contains a map titled 'QUD32/2017 Yuwaalaraay / Euahlayi People Native Title Determination Application', dated 1 July 2021. The map shows the external boundary of the application area with a bold blue dashed outline and the 'Commencement Point' is marked with a bright pink star. Geographical features, including the Culgoa River are labelled, and the notes to the map state that the coordinate points are referenced to GDA20.
- [50] 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?***

- [51] Schedule B describes the excluded areas from the application in general terms, including areas covered by freehold estates, public works and areas where native title rights have been extinguished. With regard to general exclusion clauses of this nature, *Strickland* provides that it 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.<sup>43</sup> Following this guidance, I am satisfied the areas affected by the general exclusion clauses in Schedule B can be ascertained at the appropriate time.
- [52] Attachment B states that the application area does not include any land and waters subject to:
- (a) QUD504/2011 Kooma People #4 Part A, as determined on 25 June 2014;
  - (b) QUD290/2017 Gamilaraay People, as accepted for registration 20 November 2017; and
  - (c) NSD2308/2011 Gomeroi People, as accepted for registration 20 January 2012.
- [53] In my view, the specific exclusions are clear from the information in Attachment B.

**Conclusion**

- [54] As I consider that the information and map provide certainty about the external boundary of the application area; and the information enables identification of any areas within the external boundary over which no claim is made, 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)?**

- [55] 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

---

<sup>43</sup> *Strickland* [55].

whether any particular person is in the claim group.

[56] Schedule A states:

The Yuwaalaraay/Euahlayi native title claim group are the descendants of the following ancestors: [list of apical ancestors, some with reference to their immediate descendants].

[57] 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.<sup>44</sup>

## Consideration

[58] *WA v NTR* provides that describing a claim group with reference to descent from named ancestors satisfies the requirements of s 190B(3)(b).<sup>45</sup> I consider that factual enquiries and genealogical research would enable members of the claim group to be ascertained using the description in Schedule A.

## Conclusion

[59] 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)?

[60] 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.<sup>46</sup>

## Consideration

[61] From the description in paragraph 1(a) of Schedule E, I understand that exclusive possession is only claimed in areas of land where it can be recognised, and that exclusive possession is not claimed in relation to any water in those areas. From the description in paragraph 1(b) of Schedule E, I understand that within the areas where exclusive possession can be recognised, three non-exclusive rights are claimed in relation to the water in those areas, specifically the right to hunt, fish and gather, to take the natural resources of the water, and to take water for personal, domestic and non-commercial communal purposes. From paragraph 2 of Schedule E, I understand that the 12 listed non-exclusive rights are claimed in any areas where

---

<sup>44</sup> *Wakaman* [34].

<sup>45</sup> *WA v NTR* [67].

<sup>46</sup> *Doepel* [16].

exclusive possession cannot be recognised. In my view, the description in Schedule E is clear and understandable and forms an exhaustive list of the claimed rights and interests.<sup>47</sup>

## Conclusion

[62] 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)?

[63] 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 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.

[64] 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.<sup>48</sup> 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 Federal Court.<sup>49</sup>

## Consideration

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

[65] 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 the following affidavits from claim group members:

- (a) Affidavit of Jason Daniel Dreise, 15 December 2016 (**Claimant 1 affidavit**);
- (b) Affidavit of Timothy Lewis Knox, 15 December 2016 (**Claimant 2 affidavit**); and
- (c) Affidavit of William Robert Taylor, 15 December 2016 (**Claimant 3 affidavit**).

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

[66] As confirmed in *McLennan*, in order to satisfy the condition in s 190B(5)(a), it will be sufficient if the applicant demonstrates that:<sup>50</sup>

---

<sup>47</sup> Ibid [16], [123].

<sup>48</sup> Ibid [16]–[17]; *Gudjala 2008* [83], [92].

<sup>49</sup> *Bell* [98].

<sup>50</sup> *McLennan* [28].

- (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;<sup>51</sup>
- (b) 'there is an association between the whole group and the area, although not all members must have such association at all times';<sup>52</sup> 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'.<sup>53</sup>

***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*

[67] Attachment F provides:

- (a) Prior to European settlement in the application area, the predecessors of the claim group occupied and used the application area and followed a belief system in which a creator being shaped the country and gave the people their laws, customs and totems;<sup>54</sup>
- (b) European settlement in the application area occurred between the 1840s and 1860s;<sup>55</sup>
- (c) Early explorers and settlers reported that the occupants of the application area were speakers of the Yuwaalaraay language, their boundaries being the Culgoa and Balonne Rivers in the west, St George in the north and south to Goodooga and Bangate in northern New South Wales;<sup>56</sup>
- (d) Early observers recorded the participation of the claim group's predecessors at regional ceremonies held at bora grounds, including several located near the application area;<sup>57</sup>
- (e) From the 1860s, many predecessors of the claim group worked on the pastoral leases which had been established over the application area and subsequent generations were thus employed until well into the second half of the twentieth century;<sup>58</sup>
- (f) In 1892 and 1906, Aboriginal Reserves were established at Goodooga and Angledool respectively, just south of the application area on the claim group's traditional country, and predecessors of the claim group were moved to these Reserves;<sup>59</sup>
- (g) The apical ancestors were associated with the application area at the time of settlement, including, for example:
  1. Kitty Bootha, who was born at Angledool around 1835–1845;<sup>60</sup>
  2. Biddigae (Biddy) Murray, whose daughter was born around 1880 at Yeranbah station, on the southern border of the application area;<sup>61</sup>

---

<sup>51</sup> *Gudjala* 2007 [52].

<sup>52</sup> *Ibid.*

<sup>53</sup> *Martin* [26]; *Corunna* [39], [45].

<sup>54</sup> Attachment F [4], [45].

<sup>55</sup> *Ibid* [2], [9], [23].

<sup>56</sup> *Ibid* [2], [5], [7].

<sup>57</sup> *Ibid* [24].

<sup>58</sup> *Ibid* [30]–[32].

<sup>59</sup> *Ibid* [34].

<sup>60</sup> *Ibid* [36].

3. Eliza McCrae, who was born around 1850 and was associated with the southern part of the application area including Mogila and Currawillinghi stations and the Hebel area;<sup>62</sup>
  4. Mary Murray [Orchard], who was born around 1842 on the Balonne River, in the northern reaches of the application area, and was associated with area from St George, just to the north of the application area, down to Hebel on the southern boundary;<sup>63</sup>
  5. Fanny Cubby, who was born before settlement and was associated with places in the application area including Booligar Station near Dirranbandi in the centre of the application area, where she gave birth to her son around 1879;<sup>64</sup>
  6. Jenny Murray (Horne), who gave birth to her daughter at Cubbie Station, in the central western part of the application area, in 1883;<sup>65</sup> and
  7. Albert Sharpley, who was born around 1872 and lived and worked around the central and southern parts of the application area including Dirranbandi, Hebel, Bangate and Yerranbah;<sup>66</sup>
- (h) In 1905, families or clan estates within the claim group were recorded as being associated with different parts of the application area, with reference to geographical features such as soil colour, vegetation, creeks and sand hills.<sup>67</sup> For example, one clan estate was identified through their association with an area where a type of lignum plant grew;<sup>68</sup>
- (i) Also in the early twentieth century, the traditional burial practices of the claim group were observed in relation to burials held around Bangate station,<sup>69</sup> and Claimant 3 explains that his father was buried at his 'home' at Dirranbandi in the application area;<sup>70</sup>
- (j) Claimants recall camping on the application area with their predecessors, including at Birch Lagoon at the very top of the application area, and near Dirranbandi in the centre, where many claim group members lived;<sup>71</sup>
- (k) Claimant 1's grandmother, who was the daughter of apical ancestor John Simpson, grew up at Angledool mission and passed away at St George in 1965.<sup>72</sup> Claimant 1's grandfather and other predecessors worked on the stations in the application area,

---

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid [43].

<sup>68</sup> Ibid.

<sup>69</sup> Ibid, Table, 56.

<sup>70</sup> Claimant 3 affidavit [4].

<sup>71</sup> Attachment F, Table, 46.

<sup>72</sup> Claimant 1 affidavit [2], [4]–[5].



including Currawillinghi station, where the Hebel township is now located on the southern boundary;<sup>73</sup>

- (l) Claimant 1's parents married at Angledool and moved all around the application area for shearing work, including around Hebel and Currawillinghi in the south, Dirranbandi in the centre and St George in the north;<sup>74</sup>
- (m) Claimant 2's mother is the great-granddaughter of apical ancestor Kitty Bootha and lives on the application area at Dirranbandi, as she has done so for most of her life;<sup>75</sup>
- (n) Claimant 2 recalls collecting emu eggs and yabbies with his predecessors, siblings and cousins in the application area including at Narine and Euligal on the eastern side of the application area.<sup>76</sup>

*Association of the current claim group with the application area*

[68] Attachment F provides:

- (a) Certain places in the application area associated with the activities of spiritual beings, and the claim group members, pursuant to their laws and customs, have a responsibility to protect these places, including bora grounds, burial sites and scar trees;<sup>77</sup>
- (b) Through their work on the pastoral stations which cover the application area and their residence at the nearby Aboriginal Reserves, the claim group have maintained their physical association with the application area up to the present day;<sup>78</sup>
- (c) Claim group members who do not live on the application area maintain their association with it through regular visits, during which they teach young people about the laws of the group, participate in initiations and observe traditional spiritual protocols;<sup>79</sup>
- (d) Current claimants also maintain their association with the application area through undertaking cultural heritage work and organising the repatriation of their predecessors' remains to country.<sup>80</sup>

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

- (a) Claimant 2 describes learning how to fish from his predecessors in the waterways of the application area, including the Narran and Ballandool Rivers in the middle of the application area, and the Culgoa River on the western boundary, and that he continues to fish at these places with his children;<sup>81</sup>

---

<sup>73</sup> Ibid [7].

<sup>74</sup> Ibid [5].

<sup>75</sup> Claimant 2 affidavit [2]–[3], [7].

<sup>76</sup> Ibid [14].

<sup>77</sup> Attachment F [46], Table, 56.

<sup>78</sup> Ibid [34], [40]–[41].

<sup>79</sup> Ibid [41], [47]–[48].

<sup>80</sup> Ibid Table, 57.

<sup>81</sup> Claimant 2 affidavit [16].

- (b) Claimant 3 describes the presence of a spirit at a certain waterhole on the Culgoa River that his grandmother taught him about and that he has told this story to his children and ensures they follow the rules of safe access to the waterhole;<sup>82</sup>
- (c) Claimant 3 identifies a lagoon near Dirranbandi, which his father and grandmother told him is where the creation spirit lives, and which he has subsequently taught his children about;<sup>83</sup>
- (d) Claimant 3 was also taught about the location of bora rings near Dirranbandi and on Cubbie Station;<sup>84</sup>
- (e) Claimant 3 describes the black soil and lignum plants of the parts of the application area with which he is associated, and explains that the claim group's boundary near Whyenbah in the north west of the application area can be identified by the red soil on one side of the river and the black soil on the other;<sup>85</sup>
- (f) Another senior claimant also identified the association of the clans of the claim group with different parts of the application area, including clan estates associated with the lignum plant;<sup>86</sup>
- (g) Claimant 2 and his siblings were all born at Dirranbandi and those who are still alive continue to live there;<sup>87</sup>
- (h) Claimant 3 previously worked on Cubbie Station and now lives at St George; he regularly visits his mother at Dirranbandi with his children for camping and fishing.<sup>88</sup>

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

[70] I have assessed the sufficiency of the factual basis with reference to the judicial guidance in *Strickland* that the requirements of the registration test are stringent and it is not necessary to elevate them to the impossible.<sup>89</sup> I have considered whether there is information sufficient to support the requirements of s 190B(5)(a) below, taking into account this judicial guidance and the features of this particular application, including the information that predecessors of the claim group were removed from the application area to the nearby Aboriginal Reserves of Goodoonga and Angledool.

***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 born or already living in and around the application area in the early years 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

---

<sup>82</sup> Claimant 3 affidavit [17].

<sup>83</sup> Ibid [20].

<sup>84</sup> Ibid [14].

<sup>85</sup> Ibid [22].

<sup>86</sup> Attachment F [43].

<sup>87</sup> Claimant 2 affidavit [7]–[8].

<sup>88</sup> Claimant 3 affidavit [14], [20]–[22].

<sup>89</sup> *Strickland* [55].

retrospective inference, I have considered the judicial guidance on making such inferences and that it is appropriate to construe the Native Title Act beneficially.<sup>90</sup>

- [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 by working on the pastoral stations which cover and surround it. Some claim group members moved around for work such as shearing, at locations spread across the application area from Hebel in the south to St George in the north. I understand some claim group members were able to sustain their association despite being moved to the nearby Aboriginal Reserves through this work. In my view, it appears that this relocation did not permanently diminish the association of the intervening generations of the claim group with the application area. 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.<sup>91</sup>

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

- [73] I understand from the material that many current claim group members continue to live, work on and visit the application area for various activities such as fishing and camping. The claimants in their affidavits describe locations in the application area which they frequented as children with their predecessors and continue to visit with their children today. This is demonstrated by the information from Claimant 1 about his association with the various waterways which traverse the central and western parts of the application area and the delineation of the boundary at Whyenbah identified by the change in soil colour. Claimant 2 describes the location of bora rings shown to him by his predecessors. In my view, these examples and others in the application support an association between the members of the current claim group and the application area.

*Is the factual basis sufficient to support an association, both past and present, with the whole 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.<sup>92</sup> It is not a requirement that every member of the claim group have an association with the entire application area at all times.
- [75] The material provides that members of the claim group, past and present, are associated with locations spread across the application area, including Hebel in the south, Cubbie Station in the west, St George to the north and Euligal to the east. Dirranbandi is located in the centre of the application area. There are also descriptions in the material of various water sources located in and around the application area, including the Culgoa and Ballone Rivers which comprise much of the western boundary, the Narran River which flows through the centre and Birch Lagoon which lies just outside the northern boundary. The map of the application

---

<sup>90</sup> *Harrington-Smith No 9* [294]–[296]; *Kanak* [73].

<sup>91</sup> *Gudjala 2007* [40].

<sup>92</sup> *Corunna* [31].

area in Attachment C identifies these locations, which I have also been able to verify using the Tribunal's geospatial database. In my view, there is sufficient information to support a physical association between the claim group and the whole application area.

- [76] I also note the information about the spiritual association which the claim group has with the application area through their beliefs that the landscape is imbued with the presence of creation beings and the spirits of ancestors. Examples are provided of locations in the application area where such spirits reside, in particular within water sources which extend the length of the application area. In my view, such information supports a spiritual association between the claim group and the whole application area.

### **Conclusion - s 190B(5)(a)**

- [77] 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)?**

- [78] 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.
- [79] 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 normative system has not existed throughout that period, the rights and interests which owe their existence to that system will have ceased to exist.<sup>93</sup>

- [80] 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

---

<sup>93</sup> *Yorta Yorta* [46]–[47], emphasis added.

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.<sup>94</sup>

[81] 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.<sup>95</sup>

[82] 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)***

[83] Attachment F and the claimants’ affidavits provide the following information:

(a) Pre-sovereignty society

1. The predecessors were members of a regional society and were socially linked to neighbouring groups who shared laws and customs;<sup>96</sup>
2. In the early years of settlement, researchers recorded the existence of this regional society which included the Yuwaalaraay, Bigambul, Wiradjuri, Gungarri and other constituent subgroups.<sup>97</sup>

(b) Rights and interests in land

1. Within the regional society, each of the groups held rights and interests in relation to particular areas or ‘estates’, which had well defined boundaries and enforceable rules pertaining to access;<sup>98</sup>
2. Under the system of laws and customs observed across the region, the claim group were, and remain, the estate group for the application area and are the only people who may assert native title rights and interests in the application area;<sup>99</sup>
3. Early observers recorded the claim group’s rules about permission to access others’ hunting grounds and that disputes arose from unlawful trespass;<sup>100</sup>
4. Claimant 1 explains how he was taught that he has a responsibility to look after and protect his country, particularly important sites such as burial grounds.<sup>101</sup>

---

<sup>94</sup> *Warrie* [105], [107], emphasis added.

<sup>95</sup> *Gudjala 2009* [40].

<sup>96</sup> Attachment F [15].

<sup>97</sup> *Ibid* [16].

<sup>98</sup> *Ibid* [18]–[20].

<sup>99</sup> *Ibid* [19], [39].

<sup>100</sup> *Ibid* [20], Table, 45.

(c) Social organisation

1. Claimants continue to observe section and moiety systems of kinship passed down to them from their predecessors, which includes marriage rules and restrictions on relationships with reference to totem animals;<sup>102</sup>
2. The system of social organisation also determines the roles that a person can undertake within the society, including, for example, that participation in burials is determined with reference to the deceased person's totem.<sup>103</sup>

(d) Spiritual beliefs and practices

1. The predecessors of the claim group participated in regional ceremonies with their neighbours at bora grounds nearby to the application area, which included ceremonies for deceased ancestors and initiations;<sup>104</sup>
2. Senior claimants recall participating in ceremonies when they were children at the bora grounds and the claim group continue to undertake various ceremonies, including dances and smoking ceremonies when a person has passed away;<sup>105</sup>
3. Claimant 1 describes recent ceremonies, including one at Dirranbandi in the application area, and that he has taught his nephew how to do the smoking for such ceremonies;<sup>106</sup>
4. As discussed above at s 190B(5)(a), the claim group members were taught about the presence of spirits in the water sources of the application area.<sup>107</sup> The claimants were also taught the rules of safe access to such places and that serious consequences, including drowning, could result from transgression of these rules, which have been taught to the claimants' children;<sup>108</sup>
5. When visiting their country today, claimants continue to observe the relevant spiritual protocols, for example, Claimant 1 deposes 'I still talk to the spirits of the old people before I go back to country. It's like a permission, letting them know I'm coming back to country and to make sure it's ok'.<sup>109</sup>

(e) Food collection and preparation

1. In the 1840s, people were observed using fishing fences and hoop nets around the application area, including on the Balonne River and Dirranbandi, as well as gathering berries and melons, and trapping ducks;<sup>110</sup>

---

<sup>101</sup> Claimant 1 affidavit [30].

<sup>102</sup> Attachment F [52].

<sup>103</sup> Ibid, Table, 56.

<sup>104</sup> Ibid [27], Table, 53–54.

<sup>105</sup> Ibid, Table, 51, 54; Claimant 1 affidavit [23].

<sup>106</sup> Claimant 1 affidavit [36].

<sup>107</sup> Ibid [20].

<sup>108</sup> Ibid; Claimant 2 affidavit [23]; Claimant 3 affidavit [17].

<sup>109</sup> Attachment F [41]; Claimant 1 affidavit [34].

<sup>110</sup> Attachment F, Table, 47.

2. Claimants recall fishing, collecting bush tucker and plant medicines with their predecessors, and now take their children and grandchildren out onto country to teach them these same skills;<sup>111</sup>
3. Claimant 1 describes learning to catch and gut fish and how to gather native limes and passionfruit from his mother and other predecessors when he was a child.<sup>112</sup> He also recalls men hunting echidna around St George and teaching him how to prepare them for cooking.<sup>113</sup> Claimant 1 continues these practices today when visiting country and has taught them to his children;<sup>114</sup>
4. Claimant 2 similarly describes learning how to collect bush tucker including the appropriate time of year to collect emu eggs.<sup>115</sup> Claimant 2 also describes going back to country with his children to fish, hunt, collect bush foods and check on important sites, 'teaching them the same things that my Mum and my elders taught me';<sup>116</sup>
5. Claimant 3 describes learning to fish from his father, as well as the Yuwaalaraay names for different species and the rules of appropriate apportionment of resources. He states that he goes out fishing on the Culgoa River with his children and grandchildren and teaches them these same practices and the associated rules.<sup>117</sup>

***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?*

[84] The material describes a regional society that existed prior to British sovereignty and the claim group's predecessors' place in that society as an identifiable group of Yuwaalaraay People. The material provides that the apical ancestors were alive around the time of settlement in the application area 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.

[85] 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'?*

[86] The material provides that European settlement in the application area occurred relatively recently and the great-grandchildren of some of the apical ancestors are now senior claim

---

<sup>111</sup> Ibid, Table, 47, 49.

<sup>112</sup> Claimant 1 affidavit [16], [18], [21].

<sup>113</sup> Ibid [19].

<sup>114</sup> Ibid [20]–[22].

<sup>115</sup> Claimant 2 affidavit [13].

<sup>116</sup> Ibid [10], [14].

<sup>117</sup> Claimant 3 affidavit [13].

group members. The claimants describe how they were taught the laws and customs from their predecessors, including how rights to land are acquired, the kinship system including marriage rules, rules of normative conduct in relation to particular sites in the application area and spiritual practices. For example, predecessors of the claim group were observed participating in regional ceremonies at bora sites. Senior members of the claim group recall participating in such ceremonies as children and know the location of these bora sites. They describe how their children and grandchildren now participate in ceremonies and have been taught the requisite skills, such as how to do the smoking. I also note the ongoing observance of rules relating to safe access to a spiritually-imbued water source on the application area, which the claim group members have taught to their children and grandchildren. In my view, the material shows that there exist laws and customs which have been observed by successive generations of the claim group in the application area.

- [87] I consider there is also sufficient information to show the laws and customs of the claim group are ‘traditional’ in the *Yorta Yorta* sense.<sup>118</sup> 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 fishing and collecting emu eggs, 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 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)***

- [88] 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)?***

- [89] 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.<sup>119</sup> 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.<sup>120</sup>

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

- [90] 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

---

<sup>118</sup> *Yorta Yorta* [46]–[47].

<sup>119</sup> *Gudjala 2009* [29].

<sup>120</sup> *Gudjala 2007* [82].



the application area, the apical ancestors and the claim group, and supports the existence of traditional laws and customs. 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. For example, Claimant 1 deposes:

All of my children identify as Yuwaalaraay through me. They come back to country with me all the time and we do things like go fishing, hunting, collecting bush foods and checking on important sites. They are also learning traditional dance and songs from [people] who are also Yuwaalaraay, and they are learning language from me. ...

Old people taught me things growing up, and today I'm teaching my children and the younger generation. I'm passing on my knowledge.<sup>121</sup>

- [91] In my view, there is sufficient information in the material to show 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)**

- [92] 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.

### **Conclusion**

- [93] 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)?**

- [94] 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.
- [95] 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.<sup>122</sup> 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.<sup>123</sup> 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

---

<sup>121</sup> Claimant 1 affidavit [10], [33].

<sup>122</sup> *Doepel* [126].

<sup>123</sup> *Ibid* [135].

will be entered on the Register.<sup>124</sup> 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?***

#### *1. For exclusive areas:*

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

[96] The Full Court held in *Griffiths FC* that demonstrating the existence of exclusive rights depends on the consideration of what the evidence discloses about the right's content under traditional laws and customs and that the relationship to country is essentially a 'spiritual affair'.<sup>125</sup>

[97] As discussed above at s 190B(5), spiritual beliefs about creative beings who inhabit the landscape and set the rules which govern traditional life have been passed down to the current claimants by their predecessors. These beliefs give rise to normative behaviours to manage the risk of supernatural misfortune which may result from improper access to country. I have summarised above the information from the claimants about the habitation of a water hole in the application area by a spirit, and that they were taught that failure to observe certain rules at that water hole could lead to drowning.<sup>126</sup>

[98] From the information before me, I understand that as the descendants of the apical ancestors and the holders of the relevant spiritual knowledge, the claim group members can speak to the relevant spirits, which enables safe access to country. One claimant explains: 'I still talk to the spirits of the old people before I go back to country. It's like a permission, letting them know I'm coming back to country and to make sure it's ok'.<sup>127</sup>

[99] Through observance of these protocols, I understand the claim group can obtain safe access to the application area. I therefore consider the claimants are the 'gatekeepers for the purpose of preventing harm', as described in *Griffiths FC*, and that the content of the traditional laws and customs shows how a right of exclusive possession operates in relation to the application area.<sup>128</sup>

[100] I therefore consider this right is prima facie established.

#### *1. For exclusive areas:*

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

*(i) hunt, fish and gather from the Water of the area;*

*(ii) take the Natural Resources of the Water in the area; and*

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

---

<sup>124</sup> Section 186(1)(g).

<sup>125</sup> *Griffiths FC* [127].

<sup>126</sup> Claimant 1 affidavit [30]; Claimant 2 affidavit [23]; Claimant 3 affidavit [17].

<sup>127</sup> Claimant 1 affidavit [34].

<sup>128</sup> *Griffiths FC* [127].

2. For non-exclusive [areas], the rights to:

*(c) hunt, fish and gather on the land and waters of the area;*

*(d) take Natural Resources from the land and waters of the area;*

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

[101] I have grouped the above rights together as they all relate to taking resources from the application area. As discussed above, early observers recorded people fishing using ‘fishing fences and hoop nets’ in the Narran and Balonne Rivers, and collecting resources including berries, grass seeds and melons.<sup>129</sup> As I have also discussed above, current claimants were taught how to exploit the resources of the application area by their predecessors in the appropriate manner, including how to obtain and prepare fish, fruit, and echidna.<sup>130</sup> By way of further example, Claimant 3 describes how he was taught by his predecessors how to use quandong fruit, the leaves of the quinnine tree, how to hunt emu and how to collect witchety grubs, and that he has taught these skills to his descendants.<sup>131</sup> I consider these rights are prima facie established.

2. For non-exclusive [areas], the rights to:

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

*(b) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters;*

*(f) conduct ceremonies on the area;*

*(g) bury Native Title Holders within the area;*

*(h) maintain places of importance and areas of significance to the Native Title Holders under their traditional laws and customs and protect those places and areas from physical harm;*

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

*(j) hold meetings on the area;*

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

*(l) be accompanied onto the area by certain non-native title holders, being:*

*(i) spouses and other immediate family members of Native Title Holders, pursuant to the exercise of traditional laws and customs; and*

*(ii) people required under the traditional laws acknowledged and traditional customs observed by the Native Title Holders for the performance of, or participation in ceremonies.*

[102] I have grouped the above rights together as they all relate to accessing the application area for purposes other than using its resources. There are examples in the material before me of claim group members, past and present, accessing the application area to camp,<sup>132</sup> conduct

---

<sup>129</sup> Attachment F, Table, 50.

<sup>130</sup> Claimant 1 affidavit [16], [18]–[19], [21].

<sup>131</sup> Claimant 3 affidavit [15]–[19].

<sup>132</sup> Claimant 1 affidavit [16].

ceremonies<sup>133</sup> and perform burials, which include the use of fire in ‘smoking’.<sup>134</sup> Early observers recorded other types of meetings on the application area, such as to arrange marriages, and meetings of the claim group continue to occur on the application area today, including the meetings held at Dirranbandi discussed above at s 190C(4).<sup>135</sup> The claimants explain the obligation, under their traditional laws and customs, to maintain and protect significant places on the application area. For example, Claimant 2 explains that he goes back to country two or three times a month, stating ‘I make sure those sites I know about are being cared for and looked after, I have a responsibility to do that as a Yuwaalaraay man’.<sup>136</sup> There are also many examples of the claimants teaching their traditional laws and customs on the application area, including the rules of safe access to water holes which I have discussed above.<sup>137</sup> Attachment F explains that, as at the time of sovereignty, spouses and other non-native title holders may accompany claim group members onto the application area for certain purposes including participation in ceremonies.<sup>138</sup> I consider these rights are prima facie established.

## Conclusion

[103] 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)?

[104] 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.

[105] 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.<sup>139</sup>

---

<sup>133</sup> Ibid [36].

<sup>134</sup> Claimant 1 affidavit [36]; Claimant 2 affidavit [4].

<sup>135</sup> Attachment F, Table, 52.

<sup>136</sup> Claimant 2 affidavit [23].

<sup>137</sup> Claimant 1 affidavit [30]; Claimant 2 affidavit [23]; Claimant 3 affidavit [17].

<sup>138</sup> Attachment F, Table, 57–58.

<sup>139</sup> *Doepel* [18]; *Gudjala* 2009 [84].

## Consideration

[106] 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), Attachment F describes current claimants living on the application area and using its natural resources such as game, fish, plants and water. There are also specific examples provided about such activities in the claimants’ affidavits, some of which I have extracted above. From this information, I am satisfied at least one claim group member has a physical connection to the application area.

[107] 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.

## Conclusion

[108] 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)?

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

## Consideration

[110] 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 paragraphs 1 and 2 provide 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 B paragraph 3 states that exclusive possession is not claimed over areas subject to valid previous non-exclusive possession acts	Met

## Conclusion

[111] 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)?

[112] 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

[113] 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

[114] 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	Yuwaalaraay/Euahlayi People
NNTT No.	QC2017/001
Federal Court of Australia No.	QUD32/2017
Date of Registration Decision	15 October 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:** 23 January 2017

**Date application entered on Register:** 5 May 2017

**Applicant:** As per Schedule

**Applicant's address for service:** As per Schedule

**Area covered by application:** As per Schedule, but add opening sentence of Schedule B:

Areas within the boundary identified in Attachment B that are not covered by the application

**Persons claiming to hold native title:** As per Schedule, but amend spacing between lines 1 and 2

**Conditions on authority of applicant:** Add: See Attachment IA [*Label and upload Attachment IA*]

**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.