



Registration Decision

Application name	Marlene Joy Weetra-Height and Ors on behalf of the Nauo Claim Group and the State of South Australia and Ors in the schedule (Nauo)
Name of applicant	Marlene Height, Lavinia Heron, Jody Miller
Federal Court of Australia No.	SAD6021/1998
NNTT No.	SC1997/008
Date of Decision	8 March 2022

Claim accepted for registration

I have decided the claim in the amended Nauo application satisfies all of 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 (**Register**).

Katy Woods

Delegate of the Native Title Registrar (**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.

¹ A section reference is to the *Native Title Act 1993* (Cth) (**Native Title Act**), unless otherwise specified.

Reasons for Decision

Cases cited

Aplin on behalf of the Waanyi Peoples v State of Queensland [2010] FCA 625 (**Aplin**)
Corunna v Native Title Registrar [2013] FCA 372 (**Corunna**)
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 State of Western Australia (No 5) [2003] FCA 218 (**Harrington-Smith No 5**)
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**)
State of Western Australia v Strickland [2000] FCA 652 (**Strickland FC**)
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 and Northern Territory v Lane [1995] FCA 1484 (**Lane**)
Western Australia v Native Title Registrar [1999] FCA 1591 (**WA v NTR**)
Western Australia v Ward [2002] HCA 28 (**Ward HC**)

Background

- [1] This claim has been made on behalf of the Nauo native title claim group (**claim group**). It covers approximately 7,416 square kilometres of the south western side of the Eyre Peninsula in South Australia, including the islands in Coffin Bay and extends 10 metres seaward into the Great Australian Bight (**application area**).
- [2] The application was first made to the National Native Title Tribunal (**Tribunal**) on 17 November 1997 and has been on the Register since 18 November 1997. Several amended applications have since been filed in the Federal Court of Australia (**Federal Court**), which have all been accepted for registration under s 190A(6), as delegates of the Registrar considered that the claim satisfied all the conditions in ss 190B–190C (**registration test**).
- [3] On 8 December 2021, a further amended application was filed in the Federal Court and given to the Registrar pursuant to s 64(4). This referral has triggered the Registrar’s duty to consider the claim in the amended application. This is the amended application currently before me, which for convenience, I will generally refer to as **the application** in my reasons below.
- [4] The granting of leave by the Court to amend the application was not made pursuant to s 87A, and so the circumstance described in s 190A(1A) does not arise. The amendments to the application include changes to the claim group description. As that type of amendment is not

contemplated under s 190A(6A), I consider that provision does not apply. Therefore, in accordance with s 190A(6), I must accept the claim for registration if it satisfies all the conditions of the registration test. For the reasons below, I consider the claim in the application meets all the conditions of the registration test. Attachment A contains the information which will be included on the Register.

Procedural fairness

- [5] On 7 January 2022, a senior officer of the Tribunal wrote to the representative of the State of South Australia (**State**) and enclosed a copy of the application, advising that any comment or information the State wished to provide should be received by 21 January 2022.
- [6] Also on 7 January 2022, a senior officer wrote to the applicant's representative to advise that any further information the applicant wished to provide should be received by 21 January 2022.
- [7] I considered the information in the application and formed the view that it was appropriate to take into account the following information, which the applicant had provided to the Registrar for the purposes of registration testing the previous version of the application (**additional material**):
- (a) 'Summary of the Amended Nauo Form 1', 13 April 2012 (**submissions**);
 - (b) Affidavit of Brenton Weetra, 18 August 2011 (**Claimant 1 affidavit**);
 - (c) Affidavit of Cynthia Weetra Buzza, 28 April 2011 (**Claimant 2 affidavit**);
 - (d) Affidavit of David Buzza, 17 August 2011 (**Claimant 3 affidavit**);
 - (e) Affidavit of Jody Miller, 6 September 2011 (**Claimant 4 affidavit**);
 - (f) Affidavit of Mark Larking, 28 April 2011 (**Claimant 5 affidavit**); and
 - (g) Affidavit of Pauline Branson, 28 April 2011 (**Claimant 6 affidavit**).
- [8] On 9 February 2022, a senior officer wrote to the State's representative to advise that I would be taking the additional material into account, and any comments from the State should be received by 16 February 2022.
- [9] As the Commonwealth of Australia (**Commonwealth**) had been joined as a party to the proceedings by the Federal Court, I formed the view that the Commonwealth should be given an opportunity to comment on the application before the registration test decision was made. Therefore, on 14 February 2022, a senior officer wrote to the Commonwealth's representative and advised that any information or submissions the Commonwealth wished me to consider should be provided by 21 February 2022. That correspondence enclosed a copy of the application and the additional material.
- [10] No information or submissions were received from the applicant, the State or the Commonwealth 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 and additional material. There is no information before me from searches of State, Territory or

Commonwealth interest registers obtained by the Registrar under s 190A(3)(b). Neither the State nor the Commonwealth has supplied any information 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 information contained in a geospatial assessment and overlap analysis of the application area prepared by the Tribunal's Geospatial Services dated 15 December 2021 (**geospatial report**), information in the Tribunal's geospatial database, and information on 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)?

[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.² I have not addressed s 61(5) as I consider the matters covered by that provision are matters for the Federal Court.

Consideration

[13] I consider the application contains the details specified in s 61:

Section	Details	Form 1	Result
s 61(1)	Native title claim group has authorised the applicant	Part A(2), Schedule A, s 62 affidavits of the applicant members filed with application (s 62 affidavits)	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] With regard to s 62, I have considered this claim against the requirements of that provision as it stood prior to the commencement of the *Native Title Amendment (Technical Amendments) Act 2007* (Cth) on 1 September 2007. That legislation made some minor technical amendments to s 62 which only apply to claims made from 1 September 2007 onwards, and the claim in the application before me was made before that date. I consider the application contains all the information specified in s 62:

Section	Details	Form 1	Result
s 62(1)(a)	Affidavits in prescribed form	Section 62 affidavits	Met
S 62(1)(d)	Section 47 agreements	-	Met – see reasons below

² *Doepel* [16], [35]–[39].

s 62(2)(a)	Information about the boundaries of the area	Schedule B	Met
s 62(2)(b)	Map of external boundaries of the area	Attachment C	Met
s 62(2)(c)	Searches	Schedule D	Met
s 62(2)(d)	Description of native title rights and interests	Schedule E	Met
s 62(2)(e)	Description of factual basis	Schedule F	Met
s 62(2)(f)	Activities	Schedule G	Met
s 62(2)(g)	Other applications	Schedule H	Met
s 62(2)(h)	Notices under s 29	Schedule I	Met

Section 62(1)(d)

[15] Section 62(1)(d) came into effect on 25 March 2021 and applies to all applications, regardless of the date on which they were originally made.³ Section 62(1)(d) states that, if the operation of s 47C has been agreed to in writing in accordance with s 47C(1)(b) or s 47C(5) in relation to all or part of the application area, then the application must be accompanied by a copy of the relevant agreement. As no s 47 agreement accompanies the application, I understand that no such agreement has been agreed to.

Conclusion

[16] As the application contains all of the prescribed details and other information, as required by 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)?

[17] 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

[18] The geospatial report states and my own searches confirm there is one application which overlaps the current application being SAD185/2021 Nauo #4. The Nauo #4 application therefore meets the requirements of s 190C(3)(a).

[19] My searches confirm there was no entry for Nauo #4 on the Register when this application was made on 17 November 1997.⁴ Therefore, the Nauo #4 application does not meet the

³ Native Title Legislation Amendment Bill 2020, Replacement Revised Explanatory Memorandum, Item 5 [155].

⁴ *Strickland FC* [41]–[43].

requirements of s 190C(3)(b) and is not a 'previous application' for the purposes of this condition. Therefore, I do not need to consider whether there are members of the current application who are also members of the Nauo #4 native title claim group.

Conclusion

[20] I am satisfied that no person included in the claim group was a member of a 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

Do the amendments to s 190C(4) apply?

[21] Amendments to s 190C(4) came into effect on 25 March 2021.⁵ Item 24 of the Replacement Revised Explanatory Memorandum to the *Native Title Legislation Amendment Bill 2020* provides:

This item provides for application and transitional provisions for this Part. The effect of this item is that where a claim group authorises an applicant or an ILUA under sections 251A or 251B prior to the commencement of this item on Proclamation, the current registration provisions for the claim or agreement would continue to apply to that agreement or claim, even after the item commences. Where the authorisation of an applicant does not occur until after the commencement of this item, the new provisions would apply (provided the relevant claimant or compensation application, or native title agreement occurs after commencement).⁶

[22] The certificate from South Australian Native Title Services Ltd (**SANTS**) in Attachment R states that the applicant was authorised at a meeting held on 28 August 2010.⁷ Considering this information and the guidance in the Replacement Revised Explanatory Memorandum, I understand I must apply the requirements of s 190C(4) as that provision stood prior to the 25 March 2021 amendments.

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

[23] To meet the requirements of s 190C(4), as it stood prior to the amendments of 25 March 2021, the Registrar must be satisfied that either:

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

[24] As a certificate accompanies the application in Attachment R, I must consider the application against the requirements of s 190C(4)(a) and in particular that:

- (a) the certificate identifies the relevant representative body;
- (b) the representative body has the power under Part 11 to issue the certification; and

⁵ *Native Title Legislation Amendment Act 2021* (Cth).

⁶ *Native Title Legislation Amendment Bill 2020*, Replacement Revised Explanatory Memorandum, Item 24 [46].

⁷ Attachment R [6].

(c) the certificate meets the requirements of s 203BE(4).⁸

Consideration

Is the relevant representative body identified?

[25] The certificate states it has been provided by SANTS. The geospatial report states and I have verified through my own searches, that SANTS is the representative body for the whole of the application area, pursuant to s 203FE(1). I am therefore satisfied the certificate identifies the relevant representative body.

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

[26] As SANTS is funded to perform all of the functions of a representative body pursuant to s 203FE, it can perform all of the functions listed in Part 11, including the certification functions in s 203BE. Paragraph 5 of the certificate states the application has been certified pursuant to s 203BE(1)(a). I am satisfied SANTS has the power to issue the certification. The certificate has been signed by the Principal Legal Officer of SANTS. I understand there is no impediment to the delegation of the certification function to particular individuals, acting either as a delegate or agent of the representative body.⁹

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

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

Section 203BE(4)(a) – statements

[28] 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. Section 203BE(2)(a)–(b) prohibits 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 to deal with matters arising in relation to it; 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.

[29] As the certificate contains these required statements in paragraph 5, I am satisfied s 203BE(4)(a) is met.

Section 203BE(4)(b) – reasons

[30] 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. Paragraphs 6–7 of the certificate set out SANTS’s reasons for its opinion, including:

- (a) SANTS’s work with the claim group over many years;
- (b) SANTS’s notification and facilitation of meetings of the claim group on 31 July 2010 and 28 August 2010; and

⁸ *Doepel* [80]–[81].

⁹ *Quall HCA* [48], [63].

(c) The resolution of the claim group at the 28 August 2010 meeting, using an agreed and adopted decision-making process, to authorise the applicant to make the application.

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

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

[32] 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 achieve agreement between the persons in respect of whom the applications are made and minimise the number of applications covering the land or waters.

[33] Paragraph 7 of the certificate states that SANTS is of the opinion that it has made all reasonable efforts to comply with the requirements of s 203BE(3). I consider this information is sufficient to meet s 203BE(4)(c).

Conclusion

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

Section 190B: merit conditions

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

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

[35] 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.

[36] 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?

[37] Schedule B contains a description of the external boundary of the application area, with reference to a Commencement Point, various features and roads including the Flinders Highway and the Birdseye Highway, surrounding native title determination applications and

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

longitude and latitude coordinate points to six decimal places. The notes to the description specify that the coordinate points are referenced to the Geocentric Datum of Australia 2020 (GDA2020).

- [38] Attachment C contains a map titled 'Nauo Native Title Claim'. The map shows the external boundary of the application area with a bold blue outline. The Commencement Point is labelled and the map includes a coordinate grid. The notes to the map provide that the data source referenced is GDA2020.
- [39] The assessment in the geospatial report is that the map and written description are consistent and identify the application area with reasonable certainty. I have considered the description and map and am satisfied they provide certainty about the external boundary of the application area, sufficient for the purposes of this condition.

Does the information about excluded areas meet this condition?

- [40] Schedule B specifically excludes all land and waters within the native title determination of SAD6011/1998 Barngarla and native title determination application SAD6019/1998 Wirangu No. 2, as accepted for registration on 15 May 2020. I consider the excluded areas can be identified from this information.

Conclusion

- [41] As I consider that both the external boundary and the excluded areas of the application area can be identified from the description with reasonable certainty, and that the map shows the external boundary of the application area, 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)?

- [42] To meet s 190B(3), the Registrar must be satisfied that:
- (a) the persons in the claim group are named in the application; or
 - (b) the persons in the claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.
- [43] I understand that the requirements of s 190B(3) do not go beyond consideration of the terms of the application, which means I have limited my consideration to the information in the application.¹¹
- [44] Schedule A states:
- Under the traditional laws and customs of the Nauo People the Native Title Holders are those living Aboriginal people who are the descendants whether by birth or traditional adoption from any of the following Nauo antecedents: [list of apical ancestors]
- and who identify as Nauo and are recognised by the other Native Title Holders under those traditional laws and customs as having rights and interests in the Determination Area (together the Native Title Holders).

¹¹ *Doepel* [16].

[45] It follows from the description that s 190B(3)(b) is applicable. I therefore understand I am not required to do more than make an assessment of the sufficiency of the description of the group for the purpose of facilitating the identification of any person as part of the group.¹²

Consideration

[46] From the description in Schedule A, I understand that an individual must be descended, by birth or adoption, from one of the named apical ancestors, self-identify as Nauo and be recognised by the other members of the claim group. I will consider each of these elements in turn below.

Descent

[47] Describing a claim group with reference to descent from named ancestors, including by adoption, satisfies the requirements of s 190B(3)(b).¹³ I consider that requiring a person to show descent from an identified ancestor provides a clear objective starting point from which to commence enquiries about whether a person is a member of the claim group. I consider that factual enquiries would lead to the identification of the biological and adopted descendants of the named apical ancestors.

Self-identification

[48] I understand that self-identification can be ascertained either by assertion or by virtue of the way an individual conducts themselves.¹⁴ I consider that enquiries to the person in question would confirm whether they self-identify as Nauo.

Recognition

[49] In my view, recognition by other claim group members introduces a subjective element to the claim group description. *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, that being a necessary characteristic of a society.¹⁵ I note the reference to the claim group's traditional laws and customs in the description and I consider that it is through the application of those traditional laws and customs, and enquiries to other claim group members, that it could be ascertained whether a person is recognised as holding rights in the application area.

Conclusion

[50] 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.

¹² *Wakaman* [34]; *Ward v Registrar* [25].

¹³ *WA v NTR* [67].

¹⁴ *Aplin* [226].

¹⁵ *Ibid* [256]–[261].

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

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

[51] 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. The claimed rights and interests must be understandable and have meaning.¹⁶

Consideration

[52] I understand from Schedule E that nine ‘non-exclusive’ rights are claimed in the application area. In my view, the claimed rights are clear and understandable from the description. 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 the claimed rights are established as native title rights on a prima facie basis.

Conclusion

[53] 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)?

[54] To meet s 190B(5), the Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist, is sufficient to support the assertions that:

- (a) the claim group have, and their predecessors had, an association with the area; and
- (b) 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) the claim group have continued to hold the native title in accordance with those traditional laws and customs.

[55] I understand my task is to assess whether the asserted facts can support the existence of the claimed native title rights and interests, rather than determine whether there is evidence that proves the facts necessary to establish the claim.¹⁷

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

[56] *McLennan* confirmed that to meet s 190B(5)(a), the factual basis must be sufficient to show:

- (a) the claim group presently has an association with the area, and the claim group’s predecessors have had an association with the area since sovereignty or European settlement;¹⁸

¹⁶ *Doepel* [99].

¹⁷ *Ibid* [16]–[17]; *Gudjala 2008* [83], [92].

¹⁸ *Gudjala 2007* [52].

(b) there is ‘an association between the whole group and the area’, although not ‘all members must have such association at all times’;¹⁹ and

(c) there is an association with the entire area claimed, rather than an association with only part of it or ‘very broad statements’, which have no ‘geographical particularity’.²⁰

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

[57] Attachment F states that European settlement in the region of the application area occurred in the 1840s.²¹ Early observers recorded Nauo people in and around Port Lincoln, Spencer Gulf and Coffin Bay, hunting, fishing and camping.²² Their use of wells and rockholes for fresh water was also recorded.²³ In the 1920s, Tindale recorded Nauo people in the region, including hunting and fishing at Port Lincoln, Iron Knob, Cowell and Elliston, and camping nearby to certain rockholes around Coffin Bay and Horse Peninsula.²⁴ Tindale also recorded one of the apical ancestors of the claim group, Mary the mother of Henry Weetra, as being from Streaky Bay to the north of the application area.²⁵ Henry Weetra was born around 1869 on Weetra Station on the Eyre Peninsula and travelled around the region his whole life, at times living at Poonindie mission just north of Port Lincoln, and otherwise staying with other Nauo people.²⁶

[58] From the 1840s, the spiritual association of the claim group’s predecessors to the application area was also recorded, including mythological stories about how the geological features of the Eyre Peninsula were created, such as the Coffin Bay sandhills in the application area.²⁷ Mythological stories about Nauo ancestral heroes such as the Eagle Hawk, and their travels across the Eyre Peninsula were also recorded in the early decades of settlement.²⁸

[59] The intervening generations of the claim group maintained their association with the application area by living and taking up work in and around the area, such as at Weetra station, Port Lincoln and Yeelanna.²⁹ Members of the intervening generations requested to be buried on the application area as they considered it their country, and the current claimants know the location of those graves.³⁰

[60] The current members of the claim group, which includes the great-grandchildren of the apical ancestors, maintain their association with the application area through regular visits during which they camp, hunt and harvest plants in the manner taught to them by their predecessors.³¹ Places where claimants continue to visit include Bascombe Wells National Park, Coffin Bay, Cowell, Elliston, Mount Wedge and Sheringa.³² The current claim group also

¹⁹ Ibid.

²⁰ *McLennan* [28]; *Martin* [26]; *Corunna* [39], [45].

²¹ Attachment F [2.2].

²² Ibid [2.2], [4.2.1].

²³ Ibid [4.2.5].

²⁴ Ibid [2.3], [4.2.1], [4.2.6].

²⁵ Ibid [2.5].

²⁶ Ibid; Claimant 2 affidavit [5].

²⁷ Ibid [4.2.12].

²⁸ Ibid.

²⁹ Claimant 4 affidavit [6]; Claimant 6 affidavit [3].

³⁰ Claimant 4 affidavit [6].

³¹ Attachment F [2.6]; Claimant 1 affidavit [3]; Claimant 2 affidavit [2], [13].

³² Attachment F [4.2.1].

continue to build and utilise fish traps in the manner and at the locations used by their predecessors in and around the application area, including at Port Lincoln, Coffin Bay, Dutton Bay and the Elliston region.³³ They were also taught the location of rockholes where fresh water can be obtained and have shown these places to their descendants.³⁴ In addition to living, camping, fishing and hunting, current claimants sustain their association with the application area by undertaking cultural heritage survey work.³⁵

- [61] Current claimants describe their spiritual association with the application area, which manifests in mythological stories that have been passed down through the generations.³⁶ These include the creation stories about the geographical features of the application area, the Eagle Hawk mythology, and stories which traverse the application area and travel beyond, north through South Australia and into the Northern Territory, and west into Western Australia, such as the Seven Sisters story.³⁷

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

- [62] I understand that in assessing the factual basis for the purposes of s 190B(5)(a), I am not obliged to accept very broad statements which have no geographical particularity.³⁸ I note the comments in *Strickland*, that the requirements of the registration test are stringent and it is not necessary to elevate them to the impossible.³⁹ I also consider the comments in *Lane* are relevant, in that the Registrar's statutory obligations should be performed with a degree of flexibility consistent with the beneficial nature of the legislation.⁴⁰ I have therefore assessed the sufficiency of the factual basis by applying this judicial guidance and taking into account the features of this application.

Does the factual basis support an association between the predecessors of the claim group at sovereignty and since that time?

- [63] In my view, the material demonstrates that the predecessors of the claim group had an association with the application area at the time of European settlement, which I understand occurred around the 1840s. There is historical information referenced which describes people in and around the application area who identified as Nauo and undertook various activities including hunting, fishing and obtaining fresh water from certain rockholes. The manifestation of their spiritual beliefs in the geological features of the region, such as the Coffin Bay sandhills, were also recorded. In my view, this information demonstrates the spiritual association that the predecessors had with the application area at the time of settlement. The material indicates that the children of the apical ancestors, such as Henry Weetra, had the same or similar association with the application area as their parents. I can therefore infer that the apical ancestors had a similar association with the application area as their own predecessors, who would have been alive prior to British sovereignty. I understand that it is

³³ Ibid [4.2.3]; Claimant 4 affidavit [15].

³⁴ Attachment F [4.2.5].

³⁵ Claimant 4 affidavit [24]–[26]; Claimant 5 affidavit [9].

³⁶ Ibid [4.1].

³⁷ Ibid [4.1.12]; Claimant 1 affidavit [11]–[12]; Claimant 4 affidavit [21]; Claimant 6 affidavit [9], [13].

³⁸ *Martin* [25].

³⁹ *Strickland* [55].

⁴⁰ *Lane* [9].

appropriate to make this retrospective inference and to construe the Native Title Act beneficially.⁴¹

- [64] I consider the material also supports an association between the intervening generations of the claim group and the application area. There is information from Tindale about the use of the application area by Nauo people in the 1920s, including the use of the same fresh water rockholes that their predecessors utilised at the time of settlement. The claimants also provide information about their parents' and grandparents' association with the application area, including the places where they lived, camped and fished using traditional fish traps. From this information, I am satisfied that the factual basis supports an association between the predecessors of the claim group at the time of British sovereignty and since that time.

Does the factual basis support an association between the claim group and the area currently?

- [65] I consider that the information before me supports an association between the current claim group and the application area. In forming this view, I have considered the examples from the material, some of which I have extracted above, of claim group members continuing to access the application area to camp and fish. I also note the information about the rockholes in the application area where fresh water can be obtained, and places where traditional fish traps are used by the claim group, in the manner taught to them by their predecessors and supported by information about the earlier generations of the claim group found in the historical record. There is also information about the spiritual association of the claim group with the application area, demonstrated through the current claim group's knowledge of the particular mythologies linked to places in the application area, such as the Eagle Hawk and Seven Sisters stories, which were told to them by their predecessors.

Does the factual basis support an association, both past and present, with the whole area claimed?

- [66] I understand that s 190B(5)(a) does not require all of the claim group members to have an association with the entirety of the application area at all times, but rather requires that the claim group has an association with the area 'as a whole'.⁴² Following this judicial guidance, I consider there is information in the application to support an association by the claim group, past and present, with the whole of the application area, sufficient for the purposes of s 190B(5)(a). This is because there is information about past and present claim group members utilising places throughout and around the application area. From the Tribunal's geospatial database, I can see that the locations mentioned in the material are spread across the area, including Port Lincoln just outside the application area to the east, Coffin Bay in the south of the application area, Yeelanna on the central eastern boundary and Elliston just outside of the north western boundary. I also understand from the geospatial database that Weetra station, after which ancestor Henry Weetra and his descendants were named, lies just outside the application area to the north, where this claim group have another claim: SAD63/2018 Nauo #3. I also consider there is information to support a spiritual association with the whole application area, demonstrated through the mythological stories which traverse the application area and extend beyond it to the north and west, which have been passed down through the generations of the claim group.

⁴¹ *Harrington-Smith No 5* [294]–[296], *Kanak* [73].

⁴² *Corunna* [31].

Conclusion – s 190B(5)(a)

[67] 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. I am satisfied there is sufficient factual basis to support an assertion of an association of the claim group to the whole application area. This means s 190B(5)(a) is met.

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

[68] 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 give rise to the claim to native title rights and interests. ‘Native title rights and interests’ is defined in s 223(1)(a) as those rights and interests ‘possessed under the traditional laws acknowledged, and traditional customs observed,’ by the native title holders. I have interpreted s 190B(5)(b) in light of the judicial consideration of s 223(1)(a), in which those same words appear.⁴³

[69] *Yorta Yorta* 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.⁴⁴

[70] *Warrie* held:

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

[71] *Gudjala 2009* 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

⁴³ *Gudjala 2007* [26], [62]–[66], which was not criticised by Full Court on appeal in *Gudjala 2008*.

⁴⁴ *Yorta Yorta* [46]–[47], emphasis added.

⁴⁵ *Warrie* [105], [107], emphasis added.

⁴⁶ *Gudjala 2009* [40].

[72] 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)?

[73] In addition to the information summarised at s 190B(5)(a) above, the material provides that at the time of British sovereignty, the predecessors of the claim group belonged to a regional society which extended across the Eyre Peninsula to the far north-east of South Australia.⁴⁷ Within this society, the predecessors of this claim group were an identifiable group of Nauo people.⁴⁸ The members of this society, known as the ‘Central Lakes Group’, shared laws and customs, traded and participated in ceremonies together, some of which were recorded in the early years of settlement.⁴⁹

[74] According to the material, at the time of settlement, the laws and customs which the Nauo people observed in and around the application area included a social system which regulated relationships including marriage,⁵⁰ gender-based rules and methods of hunting and harvesting resources,⁵¹ and the observance of certain protocols to ensure safe access to spiritually significant and gender-restricted places.⁵² These laws and customs had normative force with severe punishment meted out to transgressors, particularly in relation to improper access to places such as ritual grounds.⁵³ Predecessors of the claim group also participated in the society’s ceremonial life, with initiation giving rise to certain obligations with respect to Nauo country, and deference shown to the authority of senior initiated men.⁵⁴ Early observers described Nauo people engaging in particular methods of fishing along the coast of the Eyre Peninsula, including the use of tree branches to build fishtraps.⁵⁵ They also described the methods for preparing game and the normative rules which were observed in relation to its apportionment amongst the group.⁵⁶

[75] Today, members of the claim group continue to observe the marriage rules, rules of appropriate access to significant places, and other aspects of the social system which existed at the time of settlement such as gender roles and restrictions.⁵⁷ The material provides that these laws and customs continue to have normative force, for example permission must be sought from senior Nauo men and women to access the spiritually sensitive places for which they are responsible, with possible spiritual consequences arising for revealing information

⁴⁷ Attachment F [1], [4.1]

⁴⁸ Ibid.

⁴⁹ Ibid [4.1], [4.2.8], [4.2.12]–[4.2.13].

⁵⁰ Ibid [2.5].

⁵¹ Ibid [2.6].

⁵² Ibid [4.2.11].

⁵³ Ibid.

⁵⁴ Ibid [2.5], [4.1].

⁵⁵ Ibid [4.2.3].

⁵⁶ Ibid [4.2.7].

⁵⁷ Ibid [2.5], [4.1], [4.2.11].

about such places to people of the wrong gender.⁵⁸ The material provides that claimants were taught to defer to the authority of senior initiated claim group members by their predecessors, and seek their permission to access such places.⁵⁹

- [76] The claimants also continue to harvest resources from the application area in accordance with the rules and methods taught to them by their predecessors. For example, early observers recorded that the gathering of plant resources by men was prohibited and that Nauo women would harvest plants such as pigface and yams using digging sticks.⁶⁰ Current female members of the claim group were taught how to use digging sticks by their predecessors and continue to use them to harvest these same resources in the application area.⁶¹ Nauo men hunt kangaroo, emu and goanna, as taught to them by their predecessors, and are teaching these skills to their descendants along with the rules of correct preparation and apportionment.⁶² They similarly continue to catch fish using the methods they were taught as children, including through the use of tree branches, as recorded by the early observers.⁶³ Claimants now teach the younger generations how to build these traditional fishtraps.⁶⁴
- [77] The claim group's predecessors participated in ceremonies with neighbouring groups in relation to the mythological stories which travel across the region.⁶⁵ Claimants describe how they continue to perform these ceremonies today and that their children and grandchildren also participate.⁶⁶ Trade of wombat meat with neighbouring groups has continued since at least the time of settlement and continues to be practised by the current members of the claim group.⁶⁷

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

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

- [78] I consider that there is sufficient information in the material before me about the pre-sovereignty 'Central Lakes' society which included the application area, and about the Nauo people who were members of that society at the time of British sovereignty. From the information before me, I understand the ancestors who were recorded in the early decades of settlement would have lived with forebears who were members of the pre-sovereignty society. I understand from the application that the current members of the claim group are the descendants of those ancestors who were alive at the time of settlement. I therefore consider that the material demonstrates a link between the current claim group, the apical ancestors and that pre-sovereignty society.⁶⁸

⁵⁸ Ibid [4.2.11]–[4.2.12].

⁵⁹ Ibid [4.1].

⁶⁰ Ibid [2.6].

⁶¹ Ibid.

⁶² Ibid [2.6], [4.2.2], [4.2.7]–[4.2.8].

⁶³ Ibid [4.2.3].

⁶⁴ Ibid.

⁶⁵ Ibid [4.1]; [4.2.13].

⁶⁶ Ibid.

⁶⁷ Ibid [4.2.8].

⁶⁸ *Gudjala 2009* [40].

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

- [79] In my view, there is sufficient information about how the laws and customs have been acknowledged and observed by the current members of the claim group as well as the previous generations, to support the assertion that the laws and customs are ‘traditional’ in the *Yorta Yorta* sense.⁶⁹ As summarised above, laws pertaining to appropriate access to spiritually significant places were recorded throughout the historical period and continue to be observed today. The claim group continue to observe the gender roles and restrictions of the pre-sovereignty society, both in relation to certain places and the division of hunting, fishing and gathering tasks. The claimants also continue to practice ceremonies associated with the mythological stories which manifest in their country. The material provides that the current claimants were taught these laws and customs by their predecessors, and are now teaching them to their descendants.
- [80] I understand from the material that predecessors who were alive in the early settlement period learnt these laws from their own predecessors, some of whom would have been alive prior to sovereignty. I also understand that these laws and customs, passed down through the generations, continue to prescribe the normative behaviours of the claim group, such as the rules for appropriate marriage and the obligation to seek permission to access certain places. I consider these examples and others in the material before me provide a sufficient factual basis to support the assertion of ‘traditional laws and customs’, that is, laws and customs which were in existence prior to British sovereignty and have been observed and passed down through the generations to the current claim group through teaching, oral transmission and common practice.

Conclusion – s 190B(5)(b)

- [81] I am satisfied the factual basis is sufficient to support the assertion that there exist traditional laws acknowledged, and traditional customs observed, by the claim group. This means s 190B(5)(b) is met.

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

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

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

- [83] As set out above at ss 190B(5)(a)–(b), I am satisfied the factual basis supports the assertion of an ongoing association with the application area and the existence of traditional laws and customs. The material before me provides examples of how the laws and customs have been

⁶⁹ *Yorta Yorta* [46]–[47].

⁷⁰ *Gudjala 2009* [29].

⁷¹ *Gudjala 2007* [82].

passed down to current members of the claim group by their predecessors through teaching, oral transmission and common practice. In my view, the examples cited above support the assertion that the laws and customs of the claim group have been observed in the application area, since at least the time of settlement, and that these laws and customs continue to be observed and passed down to younger members of the claim group. The material before me demonstrates that claimants know how the generations since the apical ancestors acknowledged and observed their laws and customs in relation to the application area. In my view, this permits an inference that the claim group is a ‘modern manifestation’ of the pre-sovereignty society.⁷²

Conclusion – s 190B(5)(c)

[84] I consider the factual basis sufficient to support an assertion of continuity in the observance of traditional laws and customs, which means s 190B(5)(c) is met.

Conclusion

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

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

[86] 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.

[87] Section 190B(6) requires some measure of the material available in support of the claim and appears to impose a more onerous test to be applied to the individual rights and interests claimed.⁷³ I understand the words ‘prima facie’ mean ‘if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis’.⁷⁴

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

⁷² *Gudjala 2009* [31].

⁷³ *Doepel* [126]; [132].

⁷⁴ *Ibid* [135].

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

The nature and extent of the native title rights and interests of the Native Title Holders in the Native Title Land are the non-exclusive rights to use and enjoy those lands and waters, being:

(a) the right of access, to be present on, move about on and travel over the Native Title Land;

[89] The material provides that claim group members have accessed and travelled over the application area since at least the time of settlement, with examples given of the presence on the application area of ancestors such as Henry Weetra, members of the intervening generations and current claim group members, to live, work and travel across to engage in ceremony, amongst other things.⁷⁵ I consider this right is prima facie established.

(b) the right to take, enjoy, share and exchange the Natural Resources of the Native Title Land for traditional purposes;

(c) the right to use the natural water resources of the Native Title Land for traditional purposes;

(h) the right to light fires on the Native Title Land for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation;

[90] The material contains examples of claim group members using various animal resources from the application area, including kangaroo, emu and goanna, and vegetable resources including pigface and yams.⁷⁶ A particular example is provided about the ongoing exchange or trade of wombat meat with the claim group's northern neighbours.⁷⁷ I have discussed above the information in the historical record about the use of fresh water from certain rockholes in the application area and the current claimants' continued use of these whilst on country.⁷⁸ There are also examples provided of the use of fire for cooking and the methods for roasting vegetables and preparing wombat meat, which the current claimants were taught by their predecessors.⁷⁹ I consider these rights are prima facie established.

(d) the right to conduct ceremonies on the Native Title Land;

(e) the right to maintain and protect sites and places of cultural significance under the traditional laws and customs of the Native Title Holders on the Native Title Land;

(f) the right to teach on the Native Title Land the physical and spiritual attributes of the Native Title Land;

(g) the right to hold meetings on the Native Title Land;

[91] As discussed above, there is information in the material about the ongoing ceremonial life which claim group members have participated in since at least settlement, which involves meeting with people from neighbouring groups.⁸⁰ Senior claimants explain their obligation under the traditional laws and customs to protect significant places on the application area, such as gender-restricted waterholes and rock-art sites.⁸¹ There are numerous examples of claimants teaching their laws and customs, and related activities, on the application area, such

⁷⁵ Submissions, Table A.

⁷⁶ Ibid.

⁷⁷ Attachment F [4.2.8].

⁷⁸ Ibid [4.2.5].

⁷⁹ Ibid [4.2.7].

⁸⁰ Ibid [4.1], [4.2.12].

⁸¹ Claimant 1 affidavit [29]–[30]; Claimant 6 affidavit [10].

as how to hunt, fish, gather using digging sticks and access fresh water from rockholes.⁸² I consider these rights are prima facie established.

(i) the right to be accompanied onto the Native Title Land by those people who, although not Native Title Holders, recognise and are bound by the traditional laws and customs of the Native Title Holders and who are:

- (i) spouses of Native Title Holders; or
- (ii) people required by traditional law and custom for the performance of cultural activities on the Native Title Land.

[92] According to the material, people from neighbouring groups are accompanied onto the application area for the performance of ceremonies and this has occurred since settlement.⁸³ I also understand that the spouses of the claim group members are accompanied onto the application area to camp with their families and participate in other activities including hunting kangaroos and collecting yams with digging sticks.⁸⁴ I consider this right is prima facie established.

Conclusion

[93] 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 there is information in the application to show how those rights were observed by previous generations and in recent times. Additionally, according to the definition in s 223(1), a native title right or interest is one held under traditional laws and customs, and I am satisfied there is sufficient factual basis to support the assertion of the existence of traditional laws and customs, as discussed above at s 190B(5)(b). This means s 190B(6) is met.

Physical connection – s 190B(7): condition met

[94] To meet s 190B(7), the Registrar must be satisfied that at least one member of the native title claim group:

- (a) currently has or previously had a traditional physical connection with any part of the application area; or
- (b) previously had and would reasonably have been expected currently to have such a connection, but for things certain things done.

[95] I note this condition requires the material to satisfy the Registrar of particular facts such that evidentiary material is required, and that the physical connection must be in accordance with the traditional laws and customs of the claim group.⁸⁵

⁸² Ibid [4.2.10], for example.

⁸³ Submissions, Table A.

⁸⁴ Claimant 2 affidavit [2], [13].

⁸⁵ *Doepel* [18]; *Gudjala 2009* [84].

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

[96] Based on the information before me, I consider at least one claim group member currently has a traditional physical connection to the application area. In my view, the information I have extracted above at ss 190B(5)–(6) about claim group members accessing the application area to camp, hunt, fish and perform ceremonies demonstrates that there is a physical connection to the application area.

[97] I also consider the claim group members’ connection is ‘traditional’ in the sense required by s 190B(7). I consider the claimants’ knowledge of the application area has been passed to them from the predecessors of the claim group while spending time on and around the application area. As I am satisfied the factual basis is sufficient to support an assertion that the laws and customs have been passed down to the current members of the claim group by their predecessors, it follows that I am satisfied the current claim group members’ connection with the application area is in accordance with those traditional laws and customs.

Conclusion

[98] I am satisfied at least one member of the claim group currently has a traditional physical connection with a part of the application 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

[99] Section 190B(8) requires the application to comply with ss 61A(1)–(3):

Section	Requirement	Information addressing requirement	Result
s 61A(1)	No native title determination application if approved determination of native title	The geospatial report states and my own searches confirm that there are no approved determinations of native title in the area covered by this application	Met
s 61A(2)	Claimant application not to be made covering previous exclusive possession act areas	Schedule L – see reasons below	Met
s 61A(3)	Claimant applications not to claim possession to the exclusion of all others in previous non-exclusive possession act areas	Schedule E provides that no claim to exclusive possession is made	Met

Section 61A(2)

[100] Schedule L claims the benefit of ss 47–47B. I therefore understand the intention of the applicant is to claim native title only where extinguishment can be disregarded through the application of those provisions. Such a claim would necessarily exclude any areas where native title has been extinguished by previous exclusive possession acts. I understand the requirements of the registration test are already stringent and that it is appropriate to construe the Native Title Act in a way that renders it workable in the advancement of its main

objectives.⁸⁶ I therefore consider it is appropriate to interpret the application beneficially and as such, I am satisfied the requirements of s 61A(2) are met.

Conclusion

[101] As the application meets the requirements of ss 61A(1)–(3), s 190B(8) is met.

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

[102] 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), as summarised in the table below.

Section	Requirement	Information addressing requirement	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 claim group does not claim 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 claim group does not claim exclusive possession of any offshore place	Met
s 190B(9)(c)	Native title rights and/or interests in the claim area have otherwise been extinguished, except where required to be disregarded under ss 47(2), 47A(2), 47B(2) or 47C(8)	Schedule L states that the applicant claims the benefit of ss 47–47B, such that any prior extinguishment of native title is required to be disregarded	Met

Conclusion

[103] As the application meets the requirements of ss 190B(9)(a)–(c), s 190B(9) is met.

End of reasons

⁸⁶ *Strickland* [55].

Attachment A

Summary of registration test result

Application name	Marlene Joy Weetra-Height and Ors on behalf of the Nauo Claim Group and the State of South Australia and Ors in the schedule (Nauo)
NNTT No.	SC1997/008
Federal Court of Australia No.	SAD6021/1998
Date of decision	8 March 2022

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: National Native Title Tribunal

Date application filed/lodged: 17 November 1997

Date application entered on Register: 18 November 1997

Applicant: As per Schedule of Native Title Applications (**Schedule**)

Applicant's address for service: As per Schedule

Application Area: As per Schedule

Area covered by claim (as detailed in the application): As per Schedule

Persons claiming to hold native title: As per Schedule, but delete the comma after 'Frederick Milerah'

Registered native title rights and interests: As per Schedule, but fix the formatting in the last line as per Schedule E of the application

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.

8 March 2022