



Registration

Decision

Application name	Torres Strait Regional Seas Claim Part B
Name of applicant	Lui Ned David, Kabay Tamu, Frank Faud, Ted Mosby, Iona Manas, David Bosun, Alick Tipoti, Troy Laza, Kapua Gutchen, Brian Williams, Sabu Wailu, John Zaro
Federal Court of Australia No.	QUD27/2019
NNTT No.	QC2001/042
Date of Decision	21 October 2022

Date of Reasons

Claim accepted for registration

I have decided that the claim in the Torres Strait Regional Seas Claim Part B 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 entered on the Register of Native Title Claims.

Daniel Deibler

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

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

Reasons for Decision

CASES CITED

Anderson on behalf of the Numbahjing Clan within the Bundjalung Nation v Registrar of the National Native Title Tribunal [2012] FCA 1215 (*Anderson*)

Aplin on behalf of the Waanyi Peoples v State of Queensland [2010] FCA 625 (*Aplin*)

Bell v Native Title Registrar [2021] FCA 229 (*Bell*)

Burragebba on behalf of the Wangan and Jagalingou People v State of Queensland [2017] FCA 373 (*Burragebba*)

Corunna v Native Title Registrar [2013] FCA 372 (*Corunna*)

Evans v Native Title Registrar [2004] FCA 1070 (*Evans*)

Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People [2019] FCAFC 177 (*Warrie*)

Gudjala People #2 v Native Title Registrar [2007] FCA 1167 (*Gudjala 2007*)

Gudjala People # 2 v Native Title Registrar (2008) 171 FCR 317; [2008] FCAFC 157 (*Gudjala FC*)

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 9) [2007] FCA 31 (*Harrington-Smith*)

Hazelbane v Doepel [2008] FCA 290 (*Hazelbane*)

Lawson on behalf of the 'Pooncarie' Barkandji (Paakantyi) People v Minister for Land and 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) 214 CLR 422; [2002] HCA 58 (*Yorta Yorta*)

Northern Territory of Australia v Alyawarr, Kaytetye, Wurumunga, Wakaya Native Title Claim Group [2005] FCAFC 135 (*Alyawarr*)

Northern Territory of Australia v Doepel (2003) 133 FCR 112; [2003] FCA 1384 (*Doepel*)

Risk v National Native Title Tribunal [2000] FCA 1589 (*Risk*)

Sampi on behalf of the Bardi and Jawi People v State of Western Australia [2010] FCAFC 26 (*Sampi FC*)

State of Western Australia v Strickland [2000] FCA 652 (*Strickland FC*)

Strickland v Native Title Registrar [1999] FCA 1530 (*Strickland*)

Ward v Northern Territory [2002] FCA 171 (*Ward*)

Weribone on behalf of the Mandandanji People v State of Queensland [2013] FCA 255 (*Weribone*)

Western Australia v Native Title Registrar (1999) 95 FCR 93; [1999] FCA 1591 (*WA v NTR*)

Wiri People v Native Title Registrar [2008] FCA 574 (*Wiri People*)

Western Australia v Ward [2002] HCA 28 (*Ward HC*)

BACKGROUND

- [1] This is an amended application filed on behalf of the Meriam Le, Erubam Le, Ugarem Le, Masigalgal, Porumalgal, Warraberalgal, lamalgal, Badulgal and Mualgal island communities (the sea claim group). It covers an area of about 9,171 sq km in the Torres Strait.²
- [2] The original Torres Strait Sea Claim application was filed on 23 November 2001 and accepted for registration on 4 July 2002. It was entered on the Register of Native Title Claims (the Register) and has remained on the Register since that date.
- [3] On 23 September 2008 the Federal Court of Australia (the Court) ordered that the application be separated into two parts, namely 'Sea Claim Part A' and 'Sea Claim Part B'. On 23 August 2010 native title was determined to exist in relation to part of the Sea Claim Part A determination area (the TSRSC Part A determination).
- [4] By orders of 30 April 2019 and 3 May 2019 the applicant was granted leave to amend the Part B application (the fourth amended application). In addition, on 30 April 2019, Justice Murphy ordered the replacement of the then applicant pursuant to s 66B.
- [5] The applicant filed the fourth amended application with the Court on 10 May 2019. The Registrar of the Court gave a copy of the amended application to the Native Title Registrar (the Registrar) on 22 June 2022.
- [6] On 11 August 2022 Justice Mortimer ordered pursuant to s 66B the replacement of the then applicant with Ned David, Kabay Tamu, Frank Faud, Ted Mosby, Iona Manas, David Bosun, Alick Tipoti, Troy Laza, Kapua Gutchen, Brian Williams, Sabu Wailu and John Zaro.
- [7] On 16 August 2022 the applicant was granted leave to further amend the application. The applicant filed the fifth amended application with the Court on 25 August 2022. The Court gave a copy of this amended application and a copy of an affidavit of the applicant's representative to the Registrar on 29 August 2022 and 6 October 2022 respectively, pursuant to s 64(4) of the Act. This has triggered the Registrar's duty to consider the claim made in the application for registration in accordance with s 190A.³

Registration conditions

- [8] Sections 190A(1A), (6), (6A), (6B) set out the decisions available to the Registrar under s 190A. Section 190A(1A) provides for exemption from the registration test for certain amended applications and s 190A(6A) provides that the Registrar must accept a claim (in an amended application) when it meets certain conditions. Section 190A(6) provides that the Registrar must accept the claim for registration if it satisfies all of the conditions of s 190B (which deals mainly with the merits of the claim) and s 190C (which deals with procedural and other matters). Section 190A(6B) provides that the Registrar must not accept the claim for registration if it does not satisfy all of the conditions of ss 190B–190C.

² Schedule A; Attachment A; Geospatial assessment and overlap analysis prepared by the Tribunal's Geospatial Services on 31 August 2022 (geospatial report).

³ Section 190A(1).

[9] I am satisfied that neither s 190A(1A) nor s 190A(6A) apply to the claim made in this amended application. The granting of leave by the Court to amend the application was not made pursuant to s 87A, and thus the circumstance described in s 190A(1A) does not arise. The amended application includes, amongst other amendments, changes in the claim group description, changes to the claimed rights and interests and changes regarding authorisation of the applicant. These amendments are not of a type contemplated in s 190A(6A) and do not therefore meet the requirements of that condition.

[10] I have decided that the claim in the application must be accepted for registration and this document sets out my reasons for that decision. The information that is to be included on the Register is outlined in Attachment A.

Procedural fairness

[11] As a delegate of the Registrar, I am bound by the principles of administrative law, including the rules of procedural fairness, when making a registration decision.⁴ Those rules seek to ensure that decisions are made in a fair, just and unbiased way. I note that the common law duty to afford procedural fairness may be excluded by express terms of the statute under which the administrative decision is made or by any necessary implication.⁵ When applying the registration test and making my registration decision I have followed the case law regarding procedural fairness requirements⁶ and note that the following steps were undertaken to ensure procedural fairness has been accorded:

- On 14 July 2022 the applicant and the State of Queensland (the State) were informed by letter that a delegate of the Registrar was considering whether ss 190A(1A) or (6A) applied to the fourth amended application. The State was given seven days to make a submission about the applicability of these provisions. No submissions from the State were received.
- On 27 July 2022 the Tribunal's senior officer for this matter sent a letter to the applicant and the State informing them that the delegate would proceed with the full registration test as he had formed the view that the circumstances described in s 190A(1A) and s 190A(6A) were not applicable to the fourth amended application. The applicant and the State were given until 12 August 2022 to provide additional information or make submissions respectively. No submissions from the State or the applicant were received.
- On 30 August 2022 a senior officer sent a letter to the applicant and the State informing them that the Registrar had received the fifth amended application and that the delegate would proceed with the full registration test regarding the fifth amended application. The applicant and the State were given until 13 September 2022 to provide additional information or make submissions respectively. No submissions from the State or the applicant were received.

⁴ *WA v NTR* [37].

⁵ *Hazelbane* [25].

⁶ See, for instance, *WA v NTR* [21] – [38]; *Hazelbane* [23]–[31]; *Bell* [73]–[84].

- On 6 October 2022 the Court provided the Registrar with an affidavit of the applicant's representative (the Affidavit JMD), filed on 1 July 2022, which included in its annexures, amongst other documents, s 62 affidavits of the applicant. A copy of Affidavit JMD was provided to the State by letter of 7 October 2022 and the State was given until 14 October 2022 to comment on the material or provide further information. By email of 10 October 2022 the State advised that they will not be making a submission.

[12] This concluded the procedural fairness process.

Information considered

[13] Section 190A(3) sets out the information to which the Registrar must have regard in considering a claim under s 190A and provides that the Registrar 'may have regard to such other information as he or she considers appropriate'.

[14] I have had regard to information in the application. I have also considered the Affidavit JMD and its annexures.⁷

[15] I note there is no information before me obtained as a result of any searches conducted by the Registrar of State/Commonwealth interest registers.⁸

[16] The State has not provided any submissions in relation to the application of the registration test.⁹

[17] I have also considered information contained in a geospatial assessment and overlap analysis prepared by the Tribunal's Geospatial Services in relation to the area covered by the application, dated 31 August 2022 (the geospatial report). Moreover I have conducted my own searches using the Tribunal's registers and mapping database.

Procedural and other matters (s 190C)—Conditions met

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

[18] I have examined the application and I am satisfied that it contains the prescribed information and is accompanied by the prescribed documents.

[19] To meet s 190C(2), the Registrar must be satisfied that 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. This condition does not require any merit or qualitative assessment of the material to be undertaken.¹⁰

Section 61

[20] The application contains the details specified in s 61.

⁷ Section 190A(3)(a).

⁸ Section 190A(3)(b).

⁹ Section 190A(3)(c).

¹⁰ *Doepel* [16], [35]–[39].

Section	Details	Form 1	Result
s 61(1)	Native title claim group	Schedule A, Schedule R (2)	Met
s 61(3)	Name and address for service	Part B	Met
s 61(4)	Native title claim group named/described	Schedule A, Attachment A	Met

Section 62

[21] The application contains the details specified in s 62.

Section	Details	Form 1	Result
s 62(1)(a)	Affidavits in prescribed form	Affidavit JMD - Annexure JMD-23	Met
s 62(2)(a)	Information about the boundaries of the area	Schedule B, Attachment B	Met
s 62(2)(b)	Map of external boundaries of the area	Attachment C	Met
s 62(2)(c)	Searches	Schedule D	Met
s 62(2)(d)	Description of native title rights and interests	Schedule E	Met
s 62(2)(e)	Description of factual basis:	Schedule F	Met
s 62(2)(f)	Activities	Schedules E, F, G	Met
s 62(2)(g)	Other applications	Schedule H	Met
s 62(2)(ga)	Notices under s 24MD(6B)(c)	Schedule HA	Met
s 62(2)(h)	Notices under s 29	Schedule I	Met
s 62(2)(i)	Conditions on applicant's authority	Schedule IA, Attachment IA	Met

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

[22] I am satisfied that no person is included in the native title claim group for this application that was a member of the native title claim group for any previous overlapping application.

[23] Section 190C(3) reads:

The Registrar must be satisfied that no person included in the native title claim group for the application (the **current application**) was a member of the native title claim group for any previous application, if:

- (a) the previous application covered the whole or part of the area covered by the current application; and
- (b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and
- (c) the entry was made, or not removed, as a result of consideration of the previous application under section 190A.¹¹

[24] The explanatory memorandum that accompanied the *Native Title Amendment Bill 1997* provides that the 'Registrar must be satisfied that no member of the claim group for the

¹¹ Emphasis in original.

application ... is a member of the claim group for a registered claim which was made before the claim under consideration, which is overlapped by the claim under consideration and which itself has passed the registration test'.¹² The explanatory memorandum further discusses the general discouragement of overlapping claims by members of the same claim group and encouragement of consolidation of such multiple claims into one application.¹³

- [25] It is therefore my understanding that s 190C(3) was enacted to prevent overlapping claims by members of the same native title claim group from being on the Register at the same time. That purpose is achieved by preventing a claim from being registered where it has members in common with an overlapping claim that is on the Register when the registration test is applied.
- [26] I note that I am permitted to have regard to information, which does not form part of the application, when assessing the requirements of s 190C(3).¹⁴
- [27] The geospatial report and Schedule H identify the Kaurareg People #1 and the North Eastern Peninsula Sea Claim Group claimant applications as covering parts of the area covered by the current application. I have undertaken a search of the Tribunal's geospatial database and confirm that the applications overlap the current claim area. In my view, these applications meet the condition specified under subsection (a).
- [28] Subsection 190C(3)(b) requires an entry relating to the claim in the overlapping application to be on the Register when the current application was made. The current application was made on 23 November 2001, when the original application was filed with the Court. I have undertaken a search of the Register and this revealed that the Kaurareg People #1 application was accepted for registration and an entry for the claim in the application was added to the Register on 13 February 2009. My search of the North Eastern Peninsula Sea Claim Group application revealed that the application was not accepted for registration on 26 May 2017. Therefore, when the current application was made neither the Kaurareg People #1 nor the North Eastern Peninsula Sea Claim Group application were on the Register. I am therefore satisfied that none of the overlapping applications meets the condition identified in subsection (b).
- [29] In my view, as there is no previous application to which s 190C(3)(b) applies, I do not need to consider the requirements of s 190C(3) further.

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

- [30] For the reasons set out below, I am satisfied that the requirements set out in s 190C(4)(b) are met.

What is required to meet this condition?

- [31] I must be satisfied that either the certification or authorisation requirements set out in ss 190C(4)(a) or (b) respectively are met, in order for the condition of s 190C(4) to be satisfied.

¹² Explanatory Memorandum 29.25.

¹³ Ibid 35.38.

¹⁴ *Doepel* [16].

[32] According to Schedule R, Item 1 the application is not certified by a representative Aboriginal/Torres Strait Islander body. I must therefore consider whether the requirements of s 190C(4)(b) are met. That subsection provides that the Registrar must be satisfied that the following requirements, which are mentioned in subsection (4AA), are met:

- the applicant is a member of the native title claim group;
- the applicant is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group; and
- if there are any conditions under s 251BA on the authority that relate to the making of the application, then those conditions must be satisfied.

[33] Section 190C(5) contains a threshold test that must be met before the Registrar may be satisfied that the applicant is authorised in the way described in s 190C(4)(b).

[34] I will, therefore, consider s 190C(5) before turning to the requirements in s 190C(4)(b).

Does the application contain the information specified in s 190C(5)?

[35] Section 190C(5) requires that the application

- (a) includes a statement to the effect that the requirements mentioned in subsection (4AA) have been met; and
- (b) briefly sets out the grounds on which the Registrar should consider that they have been met.

[36] I am satisfied that Schedule R includes a statement to the effect that the requirements in s 190C(4AA) have been met and Attachment R contains an outline of the grounds on which the applicant considers the Registrar should be satisfied in this regard.

[37] I will assess whether the material provided addresses those requirements below.

Have the requirements of s 190C(4)(b) been met?

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

[38] It is my understanding that s 190C(4)(b):

- Requires the Registrar to be satisfied that the applicant has been authorised by all members of the native title claim group, which ‘clearly ... involves some inquiry through the material available ... to see if the necessary authorisation has been given’;¹⁵
- Requires the Registrar to be satisfied as to the identity of the claimed native title holders, including the applicant, and that the applicant needs to be authorised by all the other persons in the native title claim group;¹⁶

¹⁵ *Doepel* [78].

¹⁶ *Wiri People* [21], [29], [35]; *Risk* [60].

- Is not ‘to be met by formulaic statements in or in support of applications’;¹⁷
- Does not permit a claim group to choose between the two decision making processes described in s 251B, and therefore if there is a traditionally mandated process, then that process must be followed to authorise the applicant otherwise the process utilised for authorisation must be one that has been agreed to and adopted by the native title claim group.¹⁸

What information has been provided in support of this condition?

[39] The following information is included in Attachment R:

- Information about the replacement of the applicant for the Torres Strait Regional Seas Claim (TSRSC) Part B application was distributed in the May 2022 edition of the *Northern Cape and Torres Strait United Newsletter*, directing readers to the Torres Strait Regional Authority (TSRA) and Cape York Land Council (CYLC) websites and Facebook pages for information regarding information sessions and the authorisation meeting to be held on 18 June 2022.¹⁹
- The newsletter was sent to the TSRSC Part B applicant, TSRA native title office, Gur Baradharaw Kod Torres Strait Sea and Land Council (GBK), registered native title bodies corporate for the island communities (PBCs), and the Torres Strait Island Regional Council (TSIRC) offices for the relevant island communities. A copy of the newsletter was also available to download on the TSRA website.²⁰
- A schedule of the information sessions (schedule), which included the date, time and venue of the information sessions and details of the authorisation meeting, was published on the TSRA website, Facebook page and the CYLC Facebook page. The schedule was also provided to the TSRSC Part B applicant, TSRA, GBK, and PBCs.²¹
- Public notices for each information session and the authorisation meeting were sent to the TSRSC Part B applicant, TSRA, PBCs, and the TSIRC offices for the relevant island communities to place on island community notice boards.²² Public notices for the information sessions scheduled for Cairns, Townsville and Brisbane were sent to the TSRA native title office and public notices for ‘mainland information sessions’ were sent to the TSRSC Part B applicant and GBK for wider distribution to the TSRSC group.²³

¹⁷ *Strickland* [57].

¹⁸ *Harrington-Smith* [1230]; *Evans* [7].

¹⁹ Attachment R [1].

²⁰ *Ibid* [2].

²¹ *Ibid* [3] – [4].

²² *Ibid* [5] – [6].

²³ *Ibid* [7].

- In May and June 2022, 16 information sessions were held, to provide TSRSC group members with information and materials regarding the authorisation process and the decisions to be considered by the group at the authorisation meeting.²⁴
- Also, in May and June 2022, notices of the authorisation meeting were distributed and advertised in the Cairns Post, The Courier Mail, Townsville Bulletin, Torres News and online edition of the Koori Mail, inviting the TSRSC group to attend and advising of the matters to be considered, including whether to replace the applicant for the TSRSC Part B application.²⁵
- Radio advertisements for the authorisation meeting were broadcast on 14 occasions.²⁶
- The time, date and venue for the authorisation meeting was published on the TSRA website and Facebook page.²⁷
- The TSRA arranged for public notices of the authorisation meeting to be:
 - placed on island community notice boards through island council offices;
 - distributed by the Land and Sea Ranger program for placement at other notice boards, IBIS stores, schools, and to be shared with contacts; and
 - placed at local businesses on Waiben (Thursday Island).²⁸
- The public notice of the authorisation meeting was also provided to the TSRSC Part B applicant, the PBCs and other members of the TSRSC group members for wider community distribution.²⁹
- The authorisation meeting was held on Waiben and was attended by members of the sea claim group, namely members of the Meriam Le, Erubam Le, Ugarem Le, Masigalgal, Porumalgal, Warraberalgal, lamalgal, Badulgal and Mualgal island communities.³⁰
- At the meeting, the members of the sea claim group who attended resolved, relevant to this application:
 - that they did not have a process of decision making that was traditionally mandated and agreed to and adopted a decision making process;
 - that only members of the TSRSC group were in attendance, there had been sufficient notice of the meeting and sufficient opportunity for discussion, and the meeting was sufficiently representative of the TSRSC group to make authoritative decisions;

²⁴ Ibid [8] – [9].

²⁵ Ibid [10] – [11].

²⁶ Ibid [12].

²⁷ Ibid [13].

²⁸ Ibid [14].

²⁹ Ibid.

³⁰ Ibid [15] – [16].

- that the current applicant for the TSRSC Part B application was no longer authorised by the claim group to make the TSRSC Part B application and to deal with matters arising in relation to it;
- to authorise Mr Ned David, Mr Kabay Tamu, Mr Frank Faid, Mr Ted Mosby, Mr Iona Manas, Mr David Bosun, Mr Alick Tipoti, Mr Troy Laza, Mr Kapua Gutchen, Mr Brian Williams, Mr Sabu Wailu and Mr John Zaro to replace the current applicant for the TSRSC Part B application and to deal with matters arising in relation to it;
- that the authority of the persons authorised to replace the current applicant for the TSRSC Part B application be subject to certain conditions;
- that the persons authorised to replace the current applicant for the TSRSC Part B application are authorised to make an application to the Court for an order that they jointly replace the current applicant for the TSRSC Part B application; and
- that the current applicant for the TSRSC Part B application is authorised to continue to deal with all matters arising in relation to the TSRSC Part B application until such time as an order is made to replace the current applicant.³¹

[40] The Affidavit JMD confirms the information provided in Attachment R and includes the following additional information relevant to authorisation:

- The notice of the authorisation meeting included the date, time, venue and purpose of the meeting, invited members of the TSCRC group, the Meriam, Erubam Le, Ugaram Le, Masigalgal, Porumalgal, Warraberalgal, lamalgal, Badulgal and Mualgal island communities, and included a map of the TSCRC Parts A, B and proposed C areas.³²
- The authorisation meeting was facilitated by the lead applicant of this application due to the inability of the CYLC or Aboriginal and Torres Strait Islander Studies to facilitate the meeting as intended.³³
- The authorisation meeting was attended by legal representatives and anthropologists for the current applicant and TSRA support staff.³⁴
- Members of the sea claim group completed a registration attendance with their names, personal details and island communities, which was then considered by anthropologists to ensure those in attendance were members of the TSRSC group.³⁵ 54 members of the sea claim group signed the attendance register.³⁶

³¹ Ibid [17].

³² Affidavit JMD – Annexure JMD-16, JMD-18, JMD-19.

³³ Ibid [29].

³⁴ Ibid [30].

³⁵ Ibid [32].

³⁶ Ibid – Annexure JMD-20, JMD-21 [12].

- The minutes indicate that following the registration process, the meeting included:
 - introduction where the purpose and structure of the meeting were discussed;
 - provision of information about the Torres Strait proceedings, the overlapping applications, and the proposed applicants' protocol for Part B and Part C, and that there were opportunities for discussion, questions and answers;
 - following lunch, decisions were made in relation to each resolution, including to agree and adopt the following decision making process to use at the meeting:
 1. a decision which is proposed to be made will be put in the form of a clearly worded resolution;
 2. the proposed resolution will be presented to the meeting;
 3. the resolution must be moved and seconded before it is considered;
 4. anybody who will be affected by a decision has a right to be informed about the matter and a right to express an opinion on it;
 5. some people may have more authority within their island community than others, which relates to status as either elder or descendant of a particular person who themselves was a leader of their group, or both;
 6. decisions should be made on the basis of general consensus but this means a significant majority, not 100% agreement is required;
 7. the decision will be respected by everyone;
 8. the Chairperson will ensure that the meeting has a reasonable opportunity to discuss and consider a proposed resolution and determine whether a significant majority is in favour of it, which will be recorded in the minutes; and
 9. each island community may determine the manner in which they participate in making decisions about the business of the meeting, including whether they will participate by island community or cluster group.
 - each resolution was explained before being moved, seconded and then carried, some were noted as being carried unanimously including the replacement of the applicant and to authorise the new applicant to deal with matters arising in relation to the TSCRSC Part B application.³⁷

³⁷ Ibid.

- A statement by the anthropologists who attended the authorisation meeting provides that the anthropologists were of the opinion that the person who attended had the authority under traditional law and custom to make the decisions at the meeting.³⁸

Consideration

[41] As mentioned above, in order to be satisfied that the condition of s 190C(4)(b) has been met, the requirements of s 190C(4AA) must be met.

Is the applicant a member of the native title claim group?

[42] I note that the first limb of s 190C(4AA) requires that all the persons comprising the applicant must be members of the native title claim group.

[43] Schedule R, Item 2 and the s 62 affidavits³⁹ indicate that the persons comprising the applicant are members of the native title claim group. I have not been provided with any material that contradicts these statements. It follows that I am satisfied that the persons who comprise the applicant are members of the native title claim group.

Is the applicant authorised by all the other members of the claim group?

[44] Regarding the second limb of s 190C(4AA), namely that the persons who jointly comprise the applicant are authorised by all the other members of the claim group to make the application and to deal with matters arising in relation to it, the material must identify the decision making process utilised at the authorisation meeting and I must consider how that process was applied.⁴⁰

What decision making process has been identified?

[45] Section 251B stipulates two distinct decision making processes, namely

- (a) a process that is mandated by traditional laws and customs; and
- (b) a process that has been agreed to and adopted by the native title claim group.

[46] According to the s 62 affidavits and resolution no. 1 no mandatory decision making process under traditional law and customs existed and the claimants adopted and agreed to a decision making process, which was used at the authorisation meeting.⁴¹ Therefore, I will consider the applicant's material in light of the requirements of s 251B(b).

How has the decision making process been applied?

[47] The requirements of s 251B(b) were discussed by Stone J in *Lawson* where her Honour observed that the 'effect of the section is to give the word "all" a more limited meaning than it might otherwise have'.⁴² Her Honour held that:

³⁸ Ibid – Annexure JMD-21.

³⁹ Ibid – Annexure JMD-23 [1].

⁴⁰ *Doepel* [78]; *Wiri People* [21], [29], [35].

⁴¹ Affidavit JMD – Annexure JMD-23 [3], JMD-21 Resolution 1.

⁴² *Lawson* [25].

the subsection does not require that “all” the members of the relevant claim Group must be involved in making the decision. Still less does it require that the vote be a unanimous vote of every member. Adopting that approach would enable an individual member or members to veto any decision and may make it extremely difficult if not impossible for a claimant group to progress a claim. In my opinion the Act does not require such a technical and pedantic approach. 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.⁴³

[48] Whilst considering whether a reasonable opportunity to participate was given, Stone J was prepared to accept, in the absence of contrary evidence, that those who did not participate chose not to be involved in the decision making process.⁴⁴

[49] In *Weribone*, Rares J held that ‘[t]he notice must be sufficient to enable the persons to whom it is addressed ... to judge for themselves whether to attend the meeting and vote for a proposal’ and that ‘fair notice of the business to be dealt with at the meeting’ must be given.⁴⁵

[50] Further consideration has to be given to the conduct at the authorisation meeting and the process of authorisation of the application. In *Ward O’Loughlin J* identified deficiencies in the information provided in that matter regarding the authorisation process and listed a number of questions which in substance were required to be addressed. The questions identified by O’Loughlin J, which do not need to be answered in any formal way, but the substance of which must be addressed,⁴⁶ are:

Who convened it and why was it convened? To whom was notice given and why 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?⁴⁷

[51] I note that the notice clearly stated the purpose of the meeting – replacement of the applicant and authorisation of the new applicant, included the date, time and venue of the meeting and invited the members of the TSRSC group. In addition, the application area was shown on a map in the notice.⁴⁸ Besides the widely publicised notice, 16 information sessions were conducted, radio advertisements broadcast and information distributed in the *Northern Cape and Torres Strait United Newsletter*.⁴⁹ I therefore consider that the notice gave fair notice of the business to be dealt with at the meeting to the addressees and allowed them, together with the further provided information, to judge for themselves whether to attend the authorisation meeting and vote for or against the proposal.

⁴³ Ibid.

⁴⁴ Ibid [27].

⁴⁵ *Weribone* [40] – [41]; see also *Burragubba* [31].

⁴⁶ *Ward* [25].

⁴⁷ Ibid [24], cited with approval in *Lawson* [26].

⁴⁸ Affidavit JMD – Annexure JMD-16, JMD-18, JMD-19.

⁴⁹ Attachment R [1], [8] – [9], [12].

- [52] In regard to the questions identified in *Ward* it is my view that the substance of those questions has been addressed in the material provided. The authorisation meeting was organised by the TSRSC group amongst others to replace the applicant for the TSRC Part B application. Notice was given to members of the TSRSC group and the island communities composing the group.⁵⁰ The notice was published in six newspapers, on websites and Facebook pages, community noticeboards, and the information was also broadcast in radio advertisements.⁵¹ The material indicates that the persons who attended the authorisation meeting signed an attendance register which was reviewed by anthropologists who confirmed their eligibility.⁵² The meeting was chaired by the lead applicant.⁵³ The persons present at the meeting unanimously confirmed that no traditional decision making process existed, adopted a decision making process for the meeting, replaced the applicant and authorised the new applicant to deal with matters in relation to the TSRSC Part B application.⁵⁴
- [53] The information further shows that the persons who were present at the meeting were given a reasonable opportunity to participate in the decision making process. I consider that the conduct of the meeting is such that those present agreed to use the adopted decision making process, and the actual process is indicative that it was inclusive, having the proposed resolutions explained to them, allowing those present an opportunity to discuss and deliberate the proposed resolutions and have their votes count. For instance, the claim group members who were present were able to receive information, ask questions, have discussions and vote on the resolutions, with resolutions being moved, seconded and carried by general consensus being a significant majority.⁵⁵
- [54] I consider therefore that the native title claim group authorised the applicant once the members of the claim group were given every reasonable opportunity to participate in the decision making process. I am satisfied that the applicant is authorised under s 251B(b) to deal with matters arising in relation to the application.

Have any conditions been satisfied?

- [55] The last limb of s 190C(4AA) requires that if there are any conditions under s 251BA on the authority that relate to the making of the application, they have been satisfied.
- [56] According to Schedule R, Item 2 there are no conditions under s 251BA on the authority of the applicant that relate to the making of the application. However, according to Schedule IA, the conditions on the authority of the applicant to make the application and to deal with matters arising in relation to it are contained in a document titled 'Torres Strait Regional Seas Claim Part B Applicants' Protocol', which is attached to the application form as Attachment IA. This document is also referred to in the s 62 affidavits of the applicant and Resolution 8 of the

⁵⁰ Affidavit JMD – Annexure JMD-16, JMD-18, JMD-19.

⁵¹ Attachment R [10] - [14]

⁵² Affidavit JMD - Annexure JMD-20, JMD-21.

⁵³ Ibid [29].

⁵⁴ Ibid - Annexure JMD-21 Resolution 1, 7.

⁵⁵ Ibid - Annexure JMD-21.

authorisation meeting.⁵⁶ A version signed by all members of the applicant is annexed to the Affidavit JMD.⁵⁷

[57] Based on the 'Torres Strait Regional Seas Claim Part B Applicants' Protocol' the conditions placed on the authority of the applicant relate to how the members of the applicant will cease to be authorised as a member of the applicant, how decisions in relation to parts of the application area can be made, and how the claim can be progressed, such as in relation to consenting to the terms of a determination or entering into an agreement in relation to extinguishment. It is therefore my understanding that the conditions placed on the authority of the applicant do not relate to the making of an application but rather concern dealing with matters arising in relation to the application. As subsection 190C(4AA) requires that any conditions under s 251BA on the authority that relate to the making of the application be satisfied, not the conditions that relate to the dealing of matters arising in relation to it, I am of the view that there are no conditions that I need to consider were satisfied.

Decision

[58] I consider the process adopted ensured that the persons who jointly comprise the current applicant are authorised by all the other members of the claim group to make the application and to deal with matters arising in relation to it. There are no conditions on the authority of the applicant that relate to the making of an application. It follows that I am satisfied that the condition of s 190C(4)(b) is met.

Merits of the claim (s 190B) – Conditions met

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

[59] I am satisfied the claim meets the requirements of s 190B(2). The information provided about the external boundary and internally excluded areas are sufficient to identify with reasonable certainty the particular land or waters over which native title rights and interests are claimed.

[60] Attachment B describes the application area as all of the lands, waters, reefs, sandbanks, shoals, sea beds and subsoil on the seaward side of the high-water mark contained within boundaries defined by lines of longitude and latitude, the Prince of Wales Channel, a fisheries jurisdiction line, selected islands, rocks and cays, and coordinates defined by degrees, minutes and seconds, except those parts of the area that are the Part A determination area. Schedule B lists general exclusions.

[61] Attachment C contains a copy of a map titled 'QUD6040/01 (QC01/42) Torres Strait Regional Sea Claim', dated 16 November 2010, which includes:

- The application area depicted by bold red outline and labelled;
- Surrounding determinations depicted by black outline with black stipple and labelled;
- Topographic features and place names;

⁵⁶ Ibid Annexures JMD-21 Resolution 8, JMD-23.

⁵⁷ Ibid Annexure JMD-24.

- Scalebar, north point, coordinate grid, and
- Notes relating to the source, currency and datum of data used to prepare the map

[62] The geospatial report concludes that the description and map are consistent and identify the application area with reasonable certainty. I agree with this assessment and am therefore satisfied that the description and the map of the application area, as required by ss 62(2)(a) and (b), are sufficient for it to be said with reasonable certainty that the native title rights and interests are claimed in relation to particular land or waters.

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

[63] For the reasons below I am satisfied that the claim meets the requirements of s 190B(3).

[64] Section 190B(3) stipulates that the Registrar must be satisfied that:

- (a) the persons in the native title claim group are named in the application; or
- (b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

[65] It is my understanding that, when assessing the requirements of this provision:

- I am required to address only the content of the application;⁵⁸
- Section 190B(3) ‘requires only that the members of the claim group be identified, not that there be a cogent explanation of the basis upon which they qualify for such identification’;⁵⁹
- The focus ‘is not upon the correctness of the description of the native title claim group, but upon its adequacy so that the membership of any particular person in the identified native title claim group can be ascertained. It, too, does not require any examination of whether all the named or described persons do in fact qualify as members of the native title claim group.’⁶⁰
- Where a claim group description contains a number of paragraphs, the paragraphs should be read ‘as part of one discrete passage, and in such a way as to secure consistency between them, if such an approach is reasonably open’;⁶¹
- To determine whether the conditions (or rules) specified in the application have a sufficiently clear description of the native title claim group, ‘[i]t may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described’.⁶²

⁵⁸ *Doepel* [16], [51].

⁵⁹ *Gudjala 2007* [33].

⁶⁰ *Doepel* [37].

⁶¹ *Gudjala 2007* [34].

⁶² *WA v NTR* [67].

- [66] Schedule A and Attachment A provide that the sea claim group comprises members of the island communities Meriam Le, Erubam Le, Ugarem Le, Masigalgal, Porumalgal, Warraberalgal, lamalgal, Badulgal and Mualgal. The members of the sea claim group are the biological and socially recognised members of their respective island communities. Schedule A further indicates that the ancestors of the sea claim group and their deceased descendants are shown in genealogies, however because of the nature and extent of adoptions within the sea claim group, it is impracticable to identify and show all relevant biological and adoptive connections of each member nor all socially relevant connections between the persons shown in the genealogies.
- [67] I note that the description in Schedule A and Attachment A does not entail a list of the names of all of the persons in the native title claim group. I therefore consider s 190B(3)(b) to be applicable.
- [68] It is my understanding that there are a number of elements to the claim group description. I will discuss each criterion below before deciding whether I am satisfied that the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group. I am of the view that the description is to be read as a discrete whole.⁶³

Biological descent

- [69] I understand that members of the sea claim group include those who are the biological descendants of the members of the island communities, with the apical ancestors identified in particular orders of the TSRSC Part A determination. I further understand that the claim group description also provides for adoption, although the nature and extent of the adoptions are not specified.
- [70] I consider that requiring a person to show descent from a specific ancestor provides an objective criterion about whether a person is a member of the claim group and has been previously accepted by the Courts.⁶⁴ I consider that factual enquiries would lead to the identification of the people who meet this criterion.

Social recognition

- [71] As noted above, I understand that the description of the claim group is to be read as a discrete whole. I consider the recognition criteria to be a qualifier to membership by biological descent.
- [72] I also note that a description of membership containing qualifiers of recognition is not one with an external and objective point of reference from which to commence an inquiry. However, the Court has considered that membership to a claim group must be based on group acceptance and that this requirement is inherent in the nature of a society.⁶⁵ Moreover, the High Court in *Yorta Yorta* found that the existence of a society depended upon mutual

⁶³ *Gudjala 2007* [34].

⁶⁴ *WA v NTR* [67].

⁶⁵ *Aplin* [260].

recognition within the group.⁶⁶ In *Sampi FC*, the Full Court noted that ‘in determining whether a group constitutes a society in the *Yorta Yorta* sense is the internal view of the members of the group ... [t]he unity among members of the group required by *Yorta Yorta* means that they must identify as people together who are bound by the one set of laws and customs or normative system’.⁶⁷

[73] Based on the information provided in the application, it is my understanding that identification as a member of the sea claim group is linked to their descent from an apical ancestor and their connection to country. Specifically, Schedule F says that there ‘is an intrinsic linking of people and place by the laws acknowledged and customs observed ... That linking mirrors the social relationship of people and the laws and customs that govern those relationships’.⁶⁸

[74] In my view, through enquiries it would be possible to ascertain whether a person has the required connection to the country and is therefore socially recognised as a member.

Decision

[75] I am satisfied that the application describes the persons in the claim group sufficiently clearly such that, on a practical level, it can be ascertained whether any particular person is a member of the group. Therefore, only focusing upon the adequacy of the description of the claim group, I consider the requirements of s 190B(3) to be met.

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

[76] To meet the requirements of s 190B(4), the Registrar must be satisfied that the description contained in the application is sufficient to allow the claimed native title rights and interests to be readily identified. It is my understanding that the description must be understandable and have meaning.⁶⁹ However, this does not mean that rights broadly described cannot readily be identified within the meaning of s 190B(4).⁷⁰

[77] The description referred to in s 190B(4), and as required by s 62(2)(d), is ‘a description of the native title rights and interests claimed in relation to particular land or waters (including any activities in exercise of those rights and interests), but not merely consisting of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law’.

[78] When assessing whether the claimed native title rights and interests are readily identified I am confined to the material contained in the application itself.⁷¹ Moreover, I will not consider whether the claimed rights and interests are ‘native title rights and interests’, as defined in s 223, as in my view that question 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.

⁶⁶ *Yorta Yorta* [108].

⁶⁷ *Sampi FC* [45].

⁶⁸ Schedule F [156].

⁶⁹ *Doepel* [99], [123].

⁷⁰ *Strickland* [60].

⁷¹ *Doepel* [16].

[79] Schedule E contains a description of the claimed native title rights and interests. Having considered the description, I am satisfied that the description is understandable and has meaning and is sufficient to identify all the claimed rights and interests. I consider s 190B(4) to be met.

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

[80] Section 190B(5) provides that:

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 assertion. In particular, the factual basis must support the following assertions:

- (a) that the native title claim group have, and the predecessors of those persons had, an association with the area; and
- (b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests; and
- (c) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

[81] I understand that, when assessing the requirements of s 190B(5), I am not confined to the information contained in the application but can also have regard to additional information pursuant to s 190A(3).⁷² Moreover, I must treat the asserted facts as true.⁷³

[82] I consider my task to be assessing whether the asserted facts can support the existence of the claimed native title rights and interests.⁷⁴ To do so the applicant's material must be 'more than assertions at a high level of generality' and must not merely restate or be an alternate way of expressing the claim.⁷⁵ In my view, the factual basis must provide sufficient detail to enable a 'genuine assessment' of whether the three assertions outlined in s 190B(5) are supported by the claimants' factual basis material.⁷⁶

Factual basis for s 190B(5)(a)

What is needed to provide a sufficient factual basis for s 190B(5)(a)?

[83] As summarised in *McLennan*, in order to satisfy the condition in s 190B(5)(a), it will be sufficient if the applicant demonstrates that:⁷⁷

- (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;⁷⁸

⁷² Ibid [16]; *Strickland* [62] approved in *Strickland FC* [88] – [89].

⁷³ *Doepel* [17]; *Gudjala FC* [57], [83].

⁷⁴ Ibid.

⁷⁵ *Gudjala 2009* [28], [29]; *Anderson* [43], [48].

⁷⁶ *Gudjala FC* [92].

⁷⁷ *McLennan* [28].

⁷⁸ *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;⁷⁹ 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’.⁸⁰

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

[84] Regarding the association of members of the native title claim group, and that of their predecessors, with the application area, the applicant has provided the following information:

- The application area is located in the Torres Strait, comprising several island communities and sea which dominates the physical environment. The islands are small and relatively infertile, with the reefs large in comparison and marine resources abundant. The places and elements within the application area include ‘straits, bodies of water, currents, tides, winds, rains, stars, reefs, lagoons, shoals, sandbanks, mud banks, rocks and the marine resources [which] are extensively named by the predecessors of the sea claim group’.⁸¹
- The Torres Strait region was inhabited from at least several millennia before sovereignty. Prior to 1872 when the Crown first asserted sovereignty in the application area, the predecessors of the sea claim group and the persons determined to hold native title in the TSRSC Part A determination (TSRSC native title holders) lived on more than 25 islands in the region, including the island communities within the application area, and regularly visited, inhabited and used other islands in the region.⁸²
- The Torres Strait Islanders engaged in trading activities among themselves, between island communities and with neighbouring Papuans and Aboriginal people, long before the arrival of Europeans in the region.⁸³
- Settlement and continued occupation of the Torres Strait were the result of marine technology, the predecessor’s knowledge and ability to exploit, exchange and trade marine resources with the use of sea-going canoes, the way in which they engaged with the marine environment, and their knowledge of the underwater realm which was gained through their experience of diving. This was recognised by the first Europeans who encountered them and was remarked upon by others prior to sovereignty.⁸⁴
- From at least 1792, interactions with the Europeans, such as in relation to trade, commenced and became frequent occurrence by the 1840s.⁸⁵

⁷⁹ Ibid.

⁸⁰ *Martin* [26]; *Corunna* [39].

⁸¹ Schedule F [86] and [157].

⁸² Ibid [84], [151] – [152].

⁸³ Ibid [139].

⁸⁴ Ibid [93], [136] – [137].

⁸⁵ Ibid [140].

- By the mid-1860s, interactions between Torres Strait Islanders and foreigners increased substantially when foreigners came and stayed to exploit marine resources of the Torres Strait in the beche-de-mer and pearl shell industries.⁸⁶
- Before 1872 and 1879, Christian missionisation and the escalation of marine industry and government activity influenced the circumstances of the pre-sovereignty society.⁸⁷
- Many of the ancestors and predecessors of the sea claim group were born in and lived all or much of their lives in, and are buried within, the region.⁸⁸
- Prior to sovereignty, Torres Strait Islanders made economic use of the region, including the application area. The region, including the application area, continues to be used extensively and intensively by Torres Strait Islander hunters, fishers, divers and collectors for economic purposes, using sea-going vessels, in accordance with laws and customs.⁸⁹
- Members of the sea claim group and their predecessors have at all times occupied, inhabited and used the application area, and are considered under laws and customs to be the ‘proper’ people in relation to the application area.⁹⁰
- The claimants and predecessors considered the application area as ‘theirs’, namely being ‘owned’ by them as a consequence of having been occupied, inhabited and used by their ancestors.⁹¹
- The claimants and their predecessors have knowledge of, hold and own mythological stories associated with actions of story people and various places of the region and these ‘stories enrich the areas in which the story people lived or continue to be a presence or influence’.⁹²
- Some mythological paths of travelling story people criss-cross the Torres Strait and play a role in its cultural consolidation as a region, with some story people associated with the application area.⁹³
- Members of the sea claim group are associated with the application area by their laws and customs, whereby the claimants carry on activities to exercise their claimed rights and interests and to acknowledge and observe laws and customs, with those activities required for the sustenance of their human and social life.⁹⁴

⁸⁶ Ibid [141].

⁸⁷ Ibid [143].

⁸⁸ Ibid [148] - [149].

⁸⁹ Ibid [60], [153].

⁹⁰ Ibid [152], [154].

⁹¹ Ibid [154] – [155].

⁹² Ibid [158].

⁹³ Ibid [69].

⁹⁴ Ibid [143] – [145].

- Like their predecessors, many of the claimants were born in and lived for all or much of their lives in the application region and continue to do so. There are presently 13 or 14 permanent residential communities in the region, nine of which are adjacent to the application area and are inhabited by members of the sea claim group. Claimants frequently travel to, inhabit and use those and other islands.⁹⁵
- The persons living in the region comprise predominantly the claimants and the TSRSC native title holders.⁹⁶

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

[85] Based on the above information provided I am satisfied that the claim group presently has an association with the application area. This connection is both physical and spiritual in nature. The application area is predominantly inhabited by the claimants and many of the claimants were born in and lived for all or much of their lives in the application region and continue to do so. The claimants use the application area to hunt, fish, dive and collect resources for economic purposes. They are able to exploit the marine resources in the area because of their knowledge of the area, including the waters and the underwater realm. Because of their continuing occupation, use and knowledge of the area, the claimants consider the application area as theirs and being owned by them. Under the traditional laws and customs they are considered to be the ‘proper’ people in relation to the application area. Their knowledge of the application area also includes mythological stories associated with the actions of story people and places of the region.

[86] The factual basis also provides for a similar association with the application area of the predecessors of the claimants. The predecessors of the claimants lived in or near the island communities within the application area, and regularly inhabited and used nearby islands, prior to sovereignty. They engaged in trading activities between island communities and neighbouring Papuans and Aboriginal people well before the arrival of Europeans. They subsequently commenced trading with Europeans around the early 1790s and then participated in activities to exploit the marine resources with them in the mid-1860s, prior to Christian missionisation and the escalation of marine industry and government activity in the 1870s. Subsequent generations of the sea claim group have continued to live, inhabit, visit and/or use the island communities in the application area up to the claimants. The predecessors also had knowledge of, hold and own mythological stories associated with the area.

[87] I must be further satisfied that there is sufficient information to support the assertion of an association between the group and the whole area. It is my understanding that the application area comprises mostly of sea and there are only small islands which are relatively infertile. However, nine island communities are adjacent to the application area and the members of these communities frequently travel to, inhabit and use the islands in the application area. Moreover, the factual basis indicates that the mythological paths of travelling story people criss-cross the region and some story people associated with the application area. Finally I

⁹⁵ Ibid [57], [146].

⁹⁶ Ibid [147].

note that the claimants exploit the marine environment through hunting, fishing, diving and collecting marine resources within the application area, with the use of sea-going vessels. Their predecessors engaged, with the use of sea-going canoes, in the same activities as well as exchange and trade with other island communities as well as neighbouring Aboriginal communities and the Papuans. While the factual basis does not provide exact geographic information where these activities occur/occurred, I consider that, based on the location of nine island communities adjacent to the application area, they occur at least partially in the application area.

[88] Based on the factual basis provided, I consider that the information is sufficient to support the assertion of an association, both physical and spiritual, ‘between the whole group and the area’.⁹⁷ In my view, the factual basis material provides sufficient examples and facts of the necessary geographical particularity to support the assertion of an association between the whole group and the whole area.

Decision

[89] In sum, given the information before me, I consider the factual basis provided is sufficient to support the assertion described by s 190B(5)(a).

Factual basis for s 190B(5)(b)

What is needed to provide a sufficient factual basis for s 190B(5)(b)?

[90] 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 therefore consider it appropriate to apply case law regarding s 223(1)(a) to s 190B(5)(b).

[91] Based on the observations made by the High Court in *Yorta Yorta* I understand 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.⁹⁸ In the context of the Act, ‘traditional’ carries, however, two other elements in its meaning, namely:⁹⁹

...it conveys an understanding of the age of the traditions: the origins of the content of the law or custom concerned are to be found in the normative rules of the Aboriginal and Torres Strait Islander societies that existed before the assertion of sovereignty by the British Crown. It is only those normative rules that are “traditional” laws and customs [and]

...the normative system under which the rights and interests are possessed (the traditional laws and customs) is a system that has had a continuous existence and vitality since sovereignty. If that

⁹⁷ *Gudjala 2007* [52].

⁹⁸ *Yorta Yorta* [46].

⁹⁹ *Ibid.*

normative system has not existed throughout that period, the rights and interests which owe their existence to that system will have ceased to exist.¹⁰⁰

[92] In *Warrie*, the Full Federal Court observed that while ‘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’, the Act 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’.¹⁰¹

[93] Finally, further guidance for my assessment of the factual basis can be gained from *Gudjala 2009*, in which Dowsett J required:

- that the factual basis demonstrates the existence of a pre-sovereignty society and identifies the persons who acknowledged and observed the laws and customs of the pre-sovereignty society;¹⁰²
- that if descent from named ancestors is the basis of membership to the group, the factual basis demonstrates some relationship between those ancestral persons and the pre-sovereignty society from which the laws and customs are derived;¹⁰³ and
- that the factual basis contains an explanation as to how the current laws and customs of the claim group are traditional (that is laws and customs of a pre-sovereignty society relating to rights and interests in land and waters). Further, the mere assertion that current laws and customs of a native title claim group are traditional because they derive from a pre-sovereignty society from which the claim group is said to be descended, is not a sufficient factual basis for the purposes of s 190B(5)(b).¹⁰⁴

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

- a link between the pre-sovereignty society, the predecessors and the claim group in the application area; and
- 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)?

[95] In addition to the information outlined in regard to s 190B(5)(a) the claimants have provided the following information regarding the pre-sovereignty and current society and the traditional laws and customs:

¹⁰⁰ Ibid [46] - [47].

¹⁰¹ *Warrie* [107]; *Alyawarr* [78].

¹⁰² *Gudjala 2009* [37], [52].

¹⁰³ Ibid [40].

¹⁰⁴ Ibid [29], [54], [69].

Society

- The members of the sea claim group, currently and at sovereignty, are a member of a society comprising:
 - Torres Strait Islanders;
 - a broader regional group inclusive at its outer geographical and social limits of some indigenous persons of the southern coast of Papua New Guinea and/or some indigenous persons of the northern Cape York Peninsula (alternative larger societies).¹⁰⁵
- The original society comprised ancestors or biological or socially recognised descendants as were living at sovereignty and the descendants of any other indigenous inhabitant of the application region then living who did not leave a descendant to the current society.¹⁰⁶
- Current members of the society are the biological and socially recognised descendants of the members of the original society and the ancestors.¹⁰⁷
- The current society is relevantly continuous with the original society.¹⁰⁸
- The original society at sovereignty was, and the current society today continues to be, a vital society.¹⁰⁹

Traditional laws and customs

- The laws and customs acknowledged and observed by the pre-sovereignty society included:
 - Territorial and social organisation: the pre-sovereignty society was a stateless society with no intrinsic boundaries, symbolic centre or centre of political authority, with small family groups independent in much of their daily life, yet interdependent for survival and vitality through intermarriage and material sustenance by trade.¹¹⁰ The predecessors observed a classificatory kinship system; membership of local lineages, totemic claims or cult groups involved descent (including adoption) through male lines; marriage rules; relationship rules between descent groups such as maternal uncles teaching nephews how to hunt marine animals and acting as a mentor and protector; exchange of material and non-material items between descent groups; daily activities including near-shore fishing by small family groups; offshore fishing, warfare, inter-island and other trading and some ceremonial activities in larger groups; and no hereditary

¹⁰⁵ Schedule F [33] – [40], [42].

¹⁰⁶ *Ibid* [39].

¹⁰⁷ *Ibid* [43] - [44].

¹⁰⁸ *Ibid* [45].

¹⁰⁹ *Ibid* [46].

¹¹⁰ *Ibid* [81], [84].

positions of authority.¹¹¹ Similarly, the current society is stateless and is organised by membership of territorial groupings recruited by descent; reciprocity and exchange including rights and obligations arising from particular relationships; emplacement of social identity by original occupation and subsequent inheritance; territorial control and right to livelihood.¹¹²

- Marine orientation: the predecessors were dependent upon the sea for some part of their nutrition as survival on land-based resources alone was impossible. They used the marine resources since they first arrived on the Torres Strait islands.¹¹³ The occupation, inhabitation and use of the application area by the current claimants are characterised by a well-developed adaptation to exploitation, utilisation and management of the marine environment and resources. They significantly rely on the marine environment and resources commercially, nutritionally and symbolically, and have sophisticated seafaring and resource exploitation skills and technologies and associated navigational knowledge and maritime lore, which is enshrined in songs and myths. They conduct long distance voyaging by sea, have marine imagery permeating culture including religion, mythology, totems, art, song, dance, storytelling and personal identity, and believe in dugong and turtle hunting magic. They use named places and places of significance, some deriving from myths, in the seas of the application area, and regularly participate in marine resource fishing, hunting and gathering activities. They also believe island groups are connected by sea.¹¹⁴
- Holding and exercising rights: members of ‘societal sub-groups’ had access to marine territory associated with that sub-group by hereditary right and sanctions were available against intruders unless they were accompanied by a local sponsor or had a kinsman or a legitimate purpose.¹¹⁵ Currently there are 13 permanent residential island communities within the region, each occupied by descendants of the ancestors, and the claimants frequently travel to, inhabit and use many other islands in the application area.¹¹⁶ Ownership of a place is vested in the biological and socially recognised descendants of the ancestors. While marine territories are frequently associated with island communities, a territory may be associated with a descent group, a sub-group of a descent group, or with two or more communities or descent groups. Rights and interests in relation to the sea and relationships between people are congruent, with descendants of the ancestors and those with a sufficiently close relationship to a claimant having unrestricted access to a marine territory while others may need to seek permission or inform the group of their intention to access the territory and its resources. Therefore, the persons associated with a marine territory can use, enjoy, access and take its resources as of right, they may also regulate access to it and its resources by other

¹¹¹ Ibid [82] - [83].

¹¹² Ibid [47] – [53].

¹¹³ Ibid [86] - [87].

¹¹⁴ Ibid [88], [55].

¹¹⁵ Ibid [90].

¹¹⁶ Ibid [57].

Torres Strait Islanders, and may control access to or defend it and its resources against others including imposing sanctions for wrongful presence or use. The naming of places and associated stories is regarded as evidence of prior occupation, inhabitation and use, and therefore ownership of places.¹¹⁷

- Trade and exchange, economy and commerce: Trade and exchange served to redistribute items abundant in one place to places where they were relatively scarce, and were essential to survival.¹¹⁸ Marine resources were exploited and trade was carried out through the use of sea-going canoes traded with or purchased from people from New Guinea with other sea-going vessels exchanged for resources or labour.¹¹⁹ Participation in the marine industries allowed the predecessors to acquire boats and engage in pearling and trepanning with community crews, and be independent producers such as in the trade of turtle shell.¹²⁰ The exploitation and use of marine resources were regulated by laws and customs.¹²¹ Current claimants now use sea-going vessels to efficiently exploit the marine resources.¹²² Trade and exchange of material and non-material items through networks of relationships remain significant.¹²³ The laws and customs also provide for and regulate the exploitation and use of marine resources by the claimants.¹²⁴
- Receptiveness to innovation and change: in and prior to 1872, the Torres Strait Islanders were engaged in intensive interactions with foreigners and the laws and customs and ecological and other imperatives inclined them to be receptive to innovation and change through engagement with others and open up new trading relations.¹²⁵ Similarly, the current claimants remain receptive to innovation and change through engagement with others. For example, new technologies introduced to the claimants have been readily adopted, sometimes with adaptations, by the claimants for their own purposes.¹²⁶
- Language: at sovereignty, the predecessors spoke the Eastern Torres Strait language and the Western Torres Strait language, which had four speech variations.¹²⁷ The languages had many words that were the same or similar, and in the central islands a high degree of mutual intelligibility developed between the languages as a function of sustained and intensive social relationships.¹²⁸ Many people were also bilingual.¹²⁹ The claimants continue to use both languages, and

¹¹⁷ Ibid [89], [56].

¹¹⁸ Ibid [91].

¹¹⁹ Ibid [94].

¹²⁰ Ibid [95] - [96].

¹²¹ Ibid [99].

¹²² Ibid [60].

¹²³ Ibid [61].

¹²⁴ Ibid [62].

¹²⁵ Ibid [101] – [103].

¹²⁶ Ibid [63] – [64].

¹²⁷ Ibid [104], [65].

¹²⁸ Ibid [107].

¹²⁹ Ibid [108].

Torres Strait Creole came into common usage by some Torres Strait Islanders in the late 19th century which spread throughout the Torres Strait by the early 20th century.¹³⁰

- Cosmology, mythology and religion: while communities or parts of a community at sovereignty did not have a single or common set of religious practices, there were common themes of fertility, reproduction and death. There is no origin myth for the Torres Strait or for individual societal sub-groups.¹³¹ The cults were believed to have been introduced by story people from outside the Torres Strait, who travelled to different island communities.¹³² The cosmology included totemistic beliefs by which groups were believed to have an intrinsic relationship with particular species of animals, plants and other objects such as constellations of stars and wind direction, which was related to the structure of kin groups.¹³³ The predecessors believed in the continuity of a person's spirits after death and performed rituals to send the spirit to the spirit world.¹³⁴ They also used magic to assist in fishing, hunting, gardening and healing and practiced inter-island ceremonial activities.¹³⁵ Today mythological stories and associated sites and story people are part of the cultural property of the claimants and play a role in validating their relationships to their land and waters. Some mythological paths of story people play a role in its cultural consolidation as a region. There are several story people associated with the application area that are widely known and of importance today.¹³⁶ In their cosmology, physical objects such as plants, animals, tides, celestial objects, and the entire landscape and seascape are intricately integrated with their social world.¹³⁷
- Other laws and customs: the predecessors also acknowledged and observed, and the current claimants continue to acknowledge and observe, other laws and customs including identification, acknowledgement and respect for people who are senior and knowledgeable, and for the authority of such senior people; respect for instruction of younger people by elders; use of and property in stories, songs, dances, costumes and dress design, and cultural knowledge and practice; manufacture of equipment and artefacts; construction of structures; hunting, fishing, gathering, cultivation, preparation, distribution and consumption of food, medicinal and other resources; sharing with families, kin and communities; prohibitions or taboos on certain activities or foods such as the partner of a pregnant woman participating in dugong or turtle hunting; and recognition of, and

¹³⁰ Ibid [65] - [66].

¹³¹ Ibid [109].

¹³² Ibid [109], [110].

¹³³ Ibid [112].

¹³⁴ Ibid [113].

¹³⁵ Ibid [114], [116].

¹³⁶ Ibid [69].

¹³⁷ Ibid [70].

mechanisms for dealing with, conflict and for making decisions of various kinds in various contexts.¹³⁸

- The laws and customs have been handed down to members of the sea claim group by word of mouth and common practice by their ancestors.¹³⁹
- The normative system that exists in relation to the application area today is substantially continuous with that which existed at sovereignty and the laws and customs acknowledged and observed by the claimants continue to sustain the same rights and interests that existed at sovereignty.¹⁴⁰ In particular, the laws and customs mentioned above have substantially continued throughout the generations since sovereignty.¹⁴¹

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

[96] Based on the information provided, it is my understanding that the society that existed before sovereignty consisted of Torres Strait Islanders and was part of a wider regional group. That society, which was further divided in island communities/subgroups/descent groups, spoke the same or similar languages and shared common laws and customs regarding territorial and social organisation, marine environment, holding and exercising of rights and trade and exchange. The religious and mythological beliefs, while not being the same, had common features. The factual basis further provides that the laws and customs observed by the current society are in essence the same, even though they have, due to their receptiveness to innovation and change, undergone certain adaptation since prior to sovereignty. The content of the traditional laws and customs has been passed down to the current members of the claim group through the preceding generations.

[97] I consider that the ancestors and their society occupied the application area prior to sovereignty and that the claimants and the current society are the descendants of these ancestors.

[98] I am also of the view that the customs and laws of the pre-sovereignty society are in essence the same as the ones observed by the current society. The claimants observe a land holding system where rights and interests to land are acquired and owned by the biological and socially recognised descendants of the ancestors. Marine territories are associated with island communities, descent groups, a sub-group of a descent group, or with two or more communities or descent groups. The descendants of ancestors or those with sufficiently close relationships to claimants have unrestricted access to a territory and can control access to it and its resources including imposing sanctions for wrongful presence or use. The claimants also have knowledge of the mythological stories and associated sites and story people and say they are a part of their cultural property and play a role in validating their relationships to country. They also perform magic while hunting and perform traditional burial rites. Moreover, the claimants continue to speak traditional languages, use, enjoy and occupy the

¹³⁸ Ibid [71], [118].

¹³⁹ Ibid [123].

¹⁴⁰ Ibid [121] - [122].

¹⁴¹ Ibid [124] – [133].

application area similar to the way their ancestors did, observe cultural taboos, for example on food or activities, and trade and exchange resources.

[99] These examples and the, in essence, unchanged content of the laws and customs shows, in my view, that they have been passed down through the generations, by word of mouth and common practice, from the ancestors to the claimants. The factual basis also demonstrates that the occupation of the application area and the observance of the laws and customs has been without substantial interruption, although with some adaptation, from the pre-sovereignty society, through the descendants of the ancestors, to the current society of the claimants. I understand that the current claimants were taught by their predecessors, for example maternal uncles teaching their nephews how to hunt marine animals. Given sovereignty occurred in 1872 and there have only been a few generations between the ancestors and the claimants, I infer the apical ancestors would have also practiced these modes of teachings. It follows, in my view, that the laws and customs currently observed and acknowledged are 'traditional' in the *Yorta Yorta* sense as they derive from a society that existed at the time of sovereignty.

Decision

[100] I am satisfied that the factual basis provided is sufficient to support the assertion described by s 190B(5)(b).

Factual basis for s 190B(5)(c)

What is needed to provide a sufficient factual basis for s 190B(5)(c)?

[101] Section 190B(5)(c) is concerned with whether the factual basis is sufficient to support the assertion that the native title claim group has continued to hold the native title rights and interests claimed in accordance with their traditional laws and customs.

[102] Meeting the requirements 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.¹⁴² 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.¹⁴³

[103] Based on *Gudjala 2009* it is my understanding that, if the claimant's factual basis relies upon the drawing of inferences, '[c]lear evidence of a pre-sovereignty society and its laws and customs, of genealogical links between that society and the claim group, and an apparent similarity of laws and customs may justify an inference of continuity'.¹⁴⁴

¹⁴² *Martin* [29].

¹⁴³ *Gudjala 2007* [82].

¹⁴⁴ *Gudjala 2009* [33].

Is the factual basis sufficient for the assertion of s 190B(5)(c)?

[104] It is my view that there is a sufficient factual basis for the assertion that the laws and customs have continued to be observed by the claim group, substantially uninterrupted, since at least the time of sovereignty.

[105] In reaching my view in relation to this requirement, I have considered my reasons in relation to s 190B(5)(b) and in particular that:

- the relevant pre-sovereignty society has been identified and information about that society has been provided;
- there is a factual basis concerning the acknowledgement and observance of laws and customs by predecessors of the claimants in relation to the application area;
- according to the information provided, members of the native title claim group learn from their immediate predecessors about their laws and customs through word of mouth and common practice. For example, maternal uncles teach their nephews how to hunt marine animals and act as mentors;
- the factual basis includes examples of the claim group's current acknowledgement and observance of laws and customs in relation to the application area. The claimants observe a land holding system where rights and interests to land are acquired and owned by the biological and socially recognised descendants of the ancestors. The descendants of ancestors or those with sufficiently close relationships to claimants have unrestricted access to a territory and can control access to it and its resources including imposing sanctions for wrongful presence or use. The claimants have knowledge of the mythological stories and associated sites and story people. They perform magic while hunting and perform traditional burial rites. Moreover, the claimants continue to speak traditional languages, use, enjoy and occupy the application area similar to the way their ancestors did, observe cultural taboos, for example on food or activities, and trade and exchange resources.

Decision

[106] I am therefore satisfied that the factual basis provided is sufficient to support the assertion described by s 190B(5)(c).

Conclusion

[107] I am satisfied that the factual basis on which it is asserted that the claimed native title rights and interests exist is sufficient to support the assertion. In particular, there is a sufficient factual basis for the three assertions of ss 190B(5)(a)–(c).

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

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

[107] 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. If a claim is arguable on its face, whether

involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis.¹⁴⁵ The assessment requires, however, some weighing of the factual basis and imposes a more onerous test to be applied to the individual rights and interests claimed than s 190B(5).¹⁴⁶

[108] I understand that, when assessing the requirements of s 190B(6), I am permitted to consider material beyond the application.¹⁴⁷

[109] I note that a claimed native title right or interest can be prima facie established if the factual basis is sufficient to demonstrate that it is possessed pursuant to the traditional laws and customs of the native title claim group.¹⁴⁸

[110] I also understand the ‘critical threshold question’ for recognition of a native title right or interest under the Act to be ‘whether it is a right or interest “in relation to” land or waters’.¹⁴⁹ The phrase ‘in relation to’ is however ‘of wide import’.¹⁵⁰

[111] Taking into account the definition of ‘native title rights and interests’ in s 223(1),¹⁵¹ it is my view that under s 190B(6) I must consider whether, prima facie, the individual rights and interests claimed:

- exist under traditional laws and customs in relation to any of the land or waters in the application area;
- are native title rights and interests in relation to land or waters; and
- have not been extinguished over the whole of the application area.

[112] Only those rights and interests that I consider to be established prima facie will be entered on the Register.¹⁵²

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

[113] At the outset I note that all the rights and interests claimed in paragraph 26 of Schedule E are claimed in relation to the application area and therefore, prima facie, rights or interests ‘in relation to land or waters’. I also consider that paragraph 21 of Schedule B of the application sufficiently addresses any issue of extinguishment, for the purpose of the test at s 190B(6).

(a) to access, to remain in and to use the area;

(b) to access resources and to take for any purpose resources in the area;

[114] The information provided, as outlined under s 190B(5), indicates that claimants access the application area to inhabit, travel across on sea-faring vessels, hunt, fish, take and exploit the

¹⁴⁵ *Doepel* [135].

¹⁴⁶ *Ibid* [127], [132].

¹⁴⁷ *Ibid* [16].

¹⁴⁸ *Yorta Yorta* [86]; *Gudjala 2007* [86].

¹⁴⁹ *Ward HC* [577].

¹⁵⁰ *Alyawarr* [93].

¹⁵¹ *Gudjala 2007* [85].

¹⁵² Section 186(1)(g).

marine resources. The factual basis also outlines that the predecessors of the claimants accessed, remained and used the application area in the same way and took resources in the area.¹⁵³

[115] It is my view that the factual basis material prima facie establishes that these rights are possessed under the traditional laws and customs of the native title claim group.

(c) to maintain places and/or areas of importance, or significance, to the members of the sea claim group under their traditional laws and customs on the area and protect those places and/or areas from harm;

[116] The factual basis states that the persons who own a marine territory are entitled to defend or protect it. So were the predecessors who owned the marine territory previously.¹⁵⁴

[117] I consider that the factual basis material prima facie establishes that this right is possessed under the traditional laws and customs of the native title claim group.

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

(d) be accompanied on to the area by those persons who, though not members of the sea claim group, are:

(i) spouses of members of the sea claim group;

(ii) people who are members of the immediate family of a spouse of a member of the sea claim group; or

(iii) people reasonably required by the members of the sea claim group under traditional law and custom for the performance of ceremonies or cultural activities on the area.

[118] I note that the information provided entails a reference to an example that a non-community member was able to visit a marine territory with a 'local sponsor, a kinsman or a legitimate purpose'.¹⁵⁵ However, there is no information before me that this right or custom is still observed by the current claimants.

[119] In my view, the factual basis material is not sufficient to indicate that this right is held under the laws and customs passed down through the generations to the claimants. I am therefore unable to be satisfied that this right is prima facie established.

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

[120] For the application to meet the requirements of s 190B(7) I must be satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application, or previously had and would reasonably be expected to currently have a traditional physical connection with any part of the land or waters, but for certain things done. It is my understanding that the physical connection must be in accordance with the traditional laws and customs of the claim

¹⁵³ Schedule F [55], [57], [93], [95] - [96], [99], [136] – [138], [147] - [148], [151] – [154].

¹⁵⁴ Ibid [56], [89].

¹⁵⁵ Ibid [90].

group and that ‘traditional’ in this context must be understood to refer to the body of law and customs acknowledged and observed by the ancestors of the claimants at the time of sovereignty.¹⁵⁶

[121] I refer to the information above in relation to s 190B(5) of these reasons, which provides a sufficient factual basis supporting the assertion that the native title claim group acknowledges and observes the traditional laws and customs of the pre-sovereignty society.

[122] The factual basis includes information that describes a traditional physical association of members of the claim group with the application area, including claimants travelling over with the use of sea-going vessels, inhabiting, hunting, fishing, gathering marine resources and performing other traditional practices within the application area.¹⁵⁷

[123] Given the above I am satisfied that at least one member of the native title claim group currently has a traditional physical connection with the land or waters within the application area.

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

[124] In my view the application does not offend any of the provisions of ss 61A(1)–(3) and therefore the application satisfies the condition of s 190B(8):

Requirement	Information addressing requirement	Result
Section 61A(1) No native title determination application if approved determination of native title	Geospatial report, Tribunal’s geospatial database	Met
Section 61A(2) Claimant application not to be made that covers any previous exclusive possession act areas	Schedule B, paragraph 21	Met
Section 61A(3) Claimant applications not to claim exclusive possession in areas covered by previous non-exclusive possession acts	Schedule E, Schedule B paragraph 21, Schedule P	Met

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

[125] In my view the application does not offend any of the provisions of ss 190B(9)(a)–(c) and therefore the application meets the condition of s 190B(9):

Requirement	Information addressing requirement	Result
Section 190B(9)(a) No claim made of ownership of minerals, petroleum or gas that are wholly owned by the Crown	Schedule Q	Met
Section 190B(9)(b) Exclusive possession is not claimed over all or part of waters in an offshore place	Schedule P	Met
Section 190B(9)(c) Native title rights and/or interests in the application area have otherwise been extinguished	Schedule B, paragraph 21	Met

¹⁵⁶ *Gudjala* 2009 [84]; *Yorta Yorta* [86].

¹⁵⁷ Schedule F [55], [57], [93], [95] - [96], [99], [136] – [138], [147] - [148], [151] – [154].

End of reasons

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Torres Strait Regional Seas Claim Part B
NNTT No.	QC2001/042
Federal Court of Australia No.	QUD27/19

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 November 2001

Date application entered on Register:

5 July 2002

Applicant:

As appears on the extract from the Schedule of Native Title Applications

Applicant's address for service:

As appears on the extract from the Schedule of Native Title Applications

Conditions on Applicant's authority

163A. The conditions on the authority of the applicant to make the application and to deal with matters arising in relation to it are contained in a document titled "Torres Strait Regional Seas Claim Part B Applicants' Protocol" at Attachment IA.

[A copy of Attachment IA is attached to this Extract.]

Attach Attachment IA to Extract

Area covered by application:

As appears on the extract from the Schedule of Native Title Applications but in 21.(a) replace 'fourth' with 'fifth' and add at the end:

[Copies of Attachments B and C are attached to this Extract.]

Persons claiming to hold native title:

As appears on the extract from the Schedule of Native Title Applications but add at the end:

[A copy of Attachment A is attached to this Extract.]

Registered native title rights and interests:

As appears on the extract from the Schedule of Native Title Applications but delete:

'25. [Previously deleted.]; and

'(d) be accompanied on to the area by those persons who, though not members of the sea claim group, are:

(i) spouses of members of the sea claim group;

(ii) people who are members of the immediate family of a spouse of a member of the sea claim group; or

(iii) people reasonably required by the members of the sea claim group under traditional law and custom for the performance of ceremonies or cultural activities on the area.'

Daniel Deibler

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

21 October 2022