



Registration Decision

Application name	Sidney Chatfield & Ors on behalf of the Gomeroi People and Attorney General of New South Wales & Ors (Gomeroi People)
Name of applicant	Sidney Chatfield, Peter White, Malcolm Talbot, Leslie Woodbridge, Richard Green, Clayton Simpson-Pitt, Madeline McGrady, Chris McGrady, Allan Tighe, Don Edrich Murray, Dorothy Tighe, Ian Brown, Lee-Ann Pearl Davern, Noeline Sherill 'Sheryl' Nicholls, Shannon Draper, Christine Porter, Susan Smith, Elaine Binge, Anthony Munro
Federal Court of Australia No.	NSD37/2019
NNTT No.	NC2011/006
Date of Decision	24 July 2023

Claim accepted for registration

I have decided that the claim in the Gomeroi People 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*)

Attorney-General of the Northern Territory v Ward [2003] FCAFC 283 (*Ward FC*)

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

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

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

De Rose v State of South Australia (No 2) [2005] FCAFC 110 (*De Rose FC No 2*)

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

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

Griffiths v Northern Territory of Australia [2007] FCAFC 178 (*Griffiths*)

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

Gudjala People # 2 v Native Title Registrar [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] 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] FCA 1384 (*Doepel*)

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

Sampi v Western Australia [2005] FCA 777 (*Sampi*)

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] FCA 1591 (*WA v NTR*)

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

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

BACKGROUND

[1] This is an amended application filed on behalf of the Gomeroi People native title claim group (the claim group). It covers land and waters of about 111,318 sq km in north western New South Wales. The application area is located on the Queensland – New South Wales Border, about 170 km west of Coffs Harbour and 115 km north west of Newcastle.

- [2] The original application was filed on 20 December 2011 and was accepted for registration on 20 January 2012. It was entered on the Register of Native Title Claims (the Register) and has remained on the Register since that date.
- [3] By orders of 13 August 2013 and 9 September 2022, the applicant was replaced pursuant to sections 66B.
- [4] By orders of 26 April 2023, the applicant was granted leave to amend the application. The applicant filed an amended application with the Federal Court (the Court) on 8 May 2023.
- [5] The Registrar of the Court gave a copy of the amended application and accompanying affidavits to the Native Title Registrar (the Registrar) on 10 May 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.²

Registration conditions

- [6] Sections 190A(1A), (6), (6A) and (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.
- [7] I am satisfied that neither s 190A(1A) nor s 190A(6A) applies 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 amendments to the application include changes to the authorisation of the applicant to make the application, which are not of a type contemplated in s 190A(6A) and do not therefore meet the requirements of that condition.
- [8] I have decided that the claim in the application must be accepted for registration and this document sets out my reasons for that decision. Attachment A contains information that will be included in the Register.

Procedural fairness

- [9] 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.³ 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.⁴ When applying the registration test and making my registration decision I have followed the case law

² Section 190A(1).

³ *WA v NTR* [37].

⁴ *Hazelbane* [25].

regarding procedural fairness requirements⁵ and note that the following steps were undertaken to ensure procedural fairness has been accorded:

- On 11 May 2023, the Tribunal’s senior officer for this matter informed the applicant and the State of New South Wales (the State) that a delegate of the Registrar had considered whether ss 190A(1A) or (6A) applied to the amended application and that the delegate would proceed with the full registration test, as he had formed the view that the circumstances described in ss 190A(1A) and 190A(6A) were not applicable to the amended application. The applicant and the State were given until 25 May 2023 to provide additional information or make submissions respectively.
- By email of 25 May 2023, the State informed the senior officer that the Minister would not make any submissions.
- Upon a request by the applicant the deadline for additional material was extended until 30 May 2023. On 30 May 2023, the applicant provided the following additional information:
 - Letter NTSCORP to NNTT dated 30 May 2023 (the Letter); and
 - Annexure A: Summary of Attachment F Affidavits (the Summary).

The applicant asserted that the Summary was confidential in nature as the information it entailed was of a culturally sensitive nature and related to claimants’ personal information.

- On 5 June 2023, the senior officer provided the Letter to the State and provided the State with an opportunity to comment or respond to the material until 19 June 2023. As the delegate also considered the Summary to be confidential in nature, the State was asked to provide a confidentiality undertaking in regard to the document by 9 June 2023, should the State wish to receive a copy. On 8 June 2023, the State provided the signed confidentiality undertaking and was provided with the Summary. By email of 13 June 2023, the State informed the senior officer that the Minister would not make any submissions.

[10] This concluded the procedural fairness process.

Information considered

[11] 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’.

[12] I have had regard to information in the application. I have also considered the above listed documents provided by the applicant directly to the Registrar on 30 May 2023.⁶

⁵ See, for instance, *WA v NTR* [21] – [38]; *Hazelbane* [23] – [31]; *Bell* [73] – [84].

⁶ Section 190A(3)(a).

- [13] I note there is no information before me obtained as a result of any searches conducted by the Registrar of State/Commonwealth interest registers.⁷
- [14] The State has not provided any submissions in relation to the application of the registration test.⁸
- [15] I have 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 15 May 2023 (the geospatial report). Moreover, I have conducted my own searches using the Tribunal's registers and geospatial database.

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

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

- [16] I have examined the application and I am satisfied that it contains the prescribed information and is accompanied by the prescribed documents.
- [17] 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.⁹
- [18] It is my understanding of s 190C(2) that I need only consider those parts of ss 61 and 62 which impose requirements relating to the application containing certain details and information or being accompanied by any affidavit or other document. It is therefore my view that it is not necessary to consider the requirement of s 61(2), as it imposes no obligations of this nature in relation to the application. I am also of the view that I do not need to consider the requirements of s 61(5), as it does not outline specific details, information, affidavits or documents but only refers in general terms to the prescribed form, prescribed information and prescribed documents. I already consider these matters under s 190C(2) where required by those parts of ss 61 and 62 which actually identify the details/other information that must be in the application and the accompanying prescribed affidavit/documents.
- [19] Below I consider each of the particular parts of ss 61 and 62, which require the application to contain details/other information or to be accompanied by an affidavit or other documents.

Section 61

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

⁷ Section 190A(3)(b).

⁸ Section 190A(3)(c).

⁹ *Doepel* [16], [35]–[39].

Section	Details	Form 1	Result
s 61(1)	Native title claim group	Schedule A, Attachment A, Part A Item 2, Section 62 affidavits	met
s 61(3)	Name and address for service	Part B	met
s 61(4)	Native title claim group named/described	Schedule A, 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	Section 62 affidavits	met
s 62(1)(d)	Section 47C agreement	Schedule L Item 2	met
s 62(2)(a)	Information about the boundaries of the area	Schedule B, Attachment B	met
s 62(2)(b)	Map of external boundaries of the area	Attachment C	met
s 62(2)(c)	Searches	Schedule D	met
s 62(2)(d)	Description of native title rights and interests	Schedule E, Attachment E	met
s 62(2)(e)	Description of factual basis:	Schedules F and G and Attachments F, F(1) – F(13)	met
s 62(2)(f)	Activities	Schedule G and Attachments F, F(1) – F(13)	met
s 62(2)(g)	Other applications	Schedule H	met
s 62(2)(ga)	Notices under s 24MD(6B)(c)	Schedule HA, Attachment HA	met
s 62(2)(h)	Notices under s 29	Schedule I	met
s 62(2)(i)	Conditions on applicant's authority	Schedule IA	met

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

[22] As outlined in my reasons below, 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] 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 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'.¹⁰ The Explanatory Memorandum further

¹⁰ Explanatory Memorandum 29.25.

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.¹¹

[24] 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.

[25] 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).¹²

[26] The geospatial report advises that no other native title claim applications or determinations fall within the external boundaries of the Gomeroi People claim. Using the Tribunal's geospatial database and registers, I have verified this information and have also verified that the information is still correct at the time of making this decision. I am therefore satisfied that there is no previous application that covered the whole or part of the area covered by the current application.

[27] In my view, as there is no previous application to which ss 190C(3)(a) to (c) apply, I do not need to consider the requirements of s 190C(3) further.

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

[28] 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?

[29] 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 at s 190C(4) to be satisfied.

[30] I note that Schedule R, Item 1 states that the application has not been certified. I will therefore consider whether the requirements of s 190C(4)(b) are met.

[31] 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.

[32] 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).

¹¹ Ibid 35.38.

¹² *Doepel* [16].

[33] 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)?

[34] 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.

[35] I am satisfied that Part A, Schedule R, Item 2 and Attachment R include statements to the effect that the requirements in s 190C(4AA) have been met and contain an outline of the grounds on which the applicant considers the Registrar should be satisfied in this regard.

[36] 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)?

[37] 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’;¹³
- 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;¹⁴
- Is ‘not a condition to be met by formulaic statements in or in support of applications’;¹⁵
- 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.¹⁶

What information has been provided in support of this condition?

[38] The following information is included in the application:

- NTSCORP maintains a Gomeroi Mailing List, which has been compiled over many years, based on information provided by Aboriginal people who assert native title

¹³ *Doepel* [78].

¹⁴ *Wiri People* [21], [29], [35]; *Risk* [60].

¹⁵ *Strickland* [57].

¹⁶ *Harrington-Smith* [1230]; *Evans* [7].

rights and interests in the application area. This information had been provided to NTSCORP through various avenues including previous education workshops, Gomeroi nation meetings, meetings of the Gomeroi claim group, people calling NTSCORP to register their interest in being contacted in relation to the application and from research undertaken by anthropologists and historians employed or engaged by NTSCORP. Names are added to the list based on advice from members of NTSCORP's Research Unit who are responsible for conducting genealogical checks to confirm the individuals are members of the Gomeroi claim group in accordance with the claim group description;¹⁷

- On 26 May 2022, NTSCORP sent a meeting notice in hard copy by post to 1037 individuals on the Gomeroi Mailing List, for whom postal addresses were known at that time;¹⁸
- The meeting notice was also published in the Koori Mail on 1 June 2022, Moree Champion on 2 June 2022, and The Northern Daily Leader on 4 June 2022.¹⁹ In addition the meeting notice was sent to 26 Local Aboriginal Land Councils in the application area, six Aboriginal health services operating in the application area, three Aboriginal Legal Service offices in the application area and two Aboriginal Employment Strategy offices operating in the application area;²⁰
- The meeting notice contained an agenda for the meeting, a description of the claim group and the application area and information about the date, time and venue of the meeting. People were asked to register their attendance, in particular if they wanted to attend remotely via telephone or videoconference. The notice included NTSCORP's details for registration;²¹
- The authorisation meeting took place at the Tamworth Regional Entertainment and Conference Centre on 27, 28, 29 and 30 June 2022;²²
- NTSCORP staff registered attendees at the meeting and checked their membership to the claim group;²³
- Those persons who were not members of the claim group, but were either attending as carers or partners of members of the claim group, were also registered, but were not allowed to participate in any decisions made at the meeting;²⁴
- The Attendance Registers kept by NTSCORP indicate that 168 members of the claim group and 9 observers attended in person on 27 June 2022, 198 members and 10 observers attended in person on 28 June 2022, 204 members and 13 observers

¹⁷ Attachment R [5] – [6].

¹⁸ Ibid [3], [7].

¹⁹ Ibid [8].

²⁰ Ibid [9] – [12].

²¹ Ibid [13], Annexures MJH-1, MJH-2, MJH-3, MJH-4, MJH-5.

²² Ibid [15].

²³ Ibid [23] – [31].

²⁴ Ibid [32].

attended in person on 29 June 2022 and 179 members and 8 observers attended in person on 30 June 2022;²⁵

- Prior to the authorisation meeting, NTSCORP staff verified the membership to the claim group of persons attending the meeting remotely and registered their attendance. The Register kept by NTSCORP for online attendance indicates that 9 members of the claim group attended the meeting remotely on 27 June 2022, 13 members on 28 June 2022, 15 members on 29 June 2022 and 11 members on 30 June 2022;²⁶
- All resolutions that were put to the authorisation meeting were read to the meeting and displayed on a large video screen as well as shared on screen for the Online Attendees, along with the names of the mover and seconder in each case;²⁷
- For each resolution NTSCORP staff explained the effect of the resolution, answered questions and provided the members of the claim group with an opportunity to seek clarification and make amendments to resolutions if necessary;²⁸
- NTSCORP staff also provided an update in relation to the Gomeroi People's claim;²⁹
- Throughout the meeting, NTSCORP staff also facilitated the Online Attendees' involvement in the meeting to ensure the Online Attendees were able to make comments and ask questions in relation to items discussed;³⁰
- A Senior Community Facilitator and the CEO from NTSCORP chaired the meeting;³¹
- Votes were counted and tallied by NTSCORP staff;³²
- The claim group confirmed that no mandatory traditional decision-making process existed and agreed and adopted the following process:
 1. the decision to be made will be put in the form of a clearly worded written motion;
 2. the motion will be read out to the meeting;
 3. the motion must be moved and seconded by members of the group before it is decided on;
 4. the decision will then be made by the native title claim group by a majority vote;

²⁵ Ibid [35], [39].

²⁶ Ibid [40] – [47].

²⁷ Ibid [52].

²⁸ Ibid [53].

²⁹ Ibid [59].

³⁰ Ibid [48].

³¹ Ibid [57], [60] – [61], [70] – [74], [77], [87] – [92], [100].

³² Ibid [54] – [55].

5. for claim group members attending the meeting in person, votes will be cast by a show of hands;
 6. for claim group members attending the meeting by videoconference or telephone via Zoom, votes will be cast by the claim group member sending a text message or calling the nominated telephone number provided;
 7. a decision of the majority of votes cast in relation to the motion shall be a decision of those attending the meeting.³³
- Using the agreed and adopted decision-making process³⁴ the claim group rescinded authorisation of the former applicant³⁵ and authorised the new applicant to make the (amended) application and deal with matters arising in relation to it.³⁶ The claim group also imposed certain conditions on the authority of the applicant;³⁷
 - All of the above mentioned resolutions were passed by majority.³⁸

Consideration

[39] As mentioned above, in order to be satisfied that the condition at 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?

[40] 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.

[41] Item 2 of Part A, Item 2 of Schedule R and the section 62 affidavits 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?

[42] 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.

What decision-making process has been identified?

[43] Section 251B stipulates two distinct decision-making processes, namely:

- (a) a process that is mandated by traditional laws and customs; and

³³ Ibid [68].

³⁴ Ibid [51].

³⁵ Ibid [82].

³⁶ Ibid [98].

³⁷ Ibid [102] – [103].

³⁸ Ibid [68], [82], [98], [102] – [103].

(b) a process that has been agreed to and adopted by the native title claim group.

[44] According to Part A, Item 2, the section 62 affidavits and Attachment R, 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.³⁹ 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?

[45] 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'.⁴⁰ Her Honour held that:

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.⁴¹

[46] 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.⁴²

[47] 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.⁴³

[48] 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,⁴⁴ 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

³⁹ Section 62 affidavits [7]; Attachment R [51], [68].

⁴⁰ *Lawson* [25].

⁴¹ *Ibid.*

⁴² *Ibid* [27].

⁴³ *Weribone* [40], [41]; see also *Burrugubba* [31].

⁴⁴ *Ward* [25].

or decisions made? Were they unanimous, and if not, what was the voting for and against a particular resolution? Were there any apologies recorded?⁴⁵

- [49] I note that the notice contained the agenda for the meeting and therefore clearly stated the purpose of the meeting. The notice also included the date, time and venue of the meeting and invited Gomeroi People, according to the claim group description, to attend. The notice was published in three newspapers and sent to 1037 Gomeroi People known to NTSCORP by mail. In addition, the notice was sent to Local Aboriginal Land Councils, Aboriginal health services, Aboriginal Legal Service offices and Aboriginal Employment Strategy offices in the application area. I consider that the notice gave fair notice of the business to be dealt with at the meeting to the addressees and allowed them to judge for themselves whether to attend the authorisation meeting and vote for or against the proposals.
- [50] 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 NTSCORP to authorise a new applicant for, and amendments to, the native title application. Notice was given to Gomeroi People. The notice was published in newspapers and sent to known Gomeroi People. In addition and as outlined above further efforts for a wide publication were undertaken. The attendees were provided with an update about the application and explanations regarding each of the proposed resolutions. Attendees' membership to the claim group was verified prior to the meeting and their attendance was registered. The meeting was chaired by NTSCORP staff. The persons attending the meeting adopted a decision-making process for the meeting, and authorised the new applicant. While I have not been provided with the names of the persons who moved and seconded each resolution, I note that these were recorded and shared with the attendees via a screen. I have been provided with the voting results of each resolution passed.
- [51] The adopted decision-making process and Attachment R indicate that the persons who were present at the meeting were given a reasonable opportunity to discuss the proposed resolutions and to participate in the decision-making process.

Have any conditions been satisfied?

- [52] 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.
- [53] Schedule IA outlines the conditions, in so far as relevant, as follows:
- (a) The Applicant must do all things necessary to implement the resolutions and decisions of the Gomeroi People native title claim group meeting and must not act inconsistently with those resolutions and decisions;
 - (b) The Applicant must not disclose to third parties who are not members of the Gomeroi People native title claim group information which is confidential to the Gomeroi People native title claim group;

⁴⁵ Ibid [24], cited with approval in *Lawson* [26].

- (c) The Applicant must not amend, resolve, have listed for trial or discontinue the Application without first obtaining a resolution of the Gomeroi People native title claim group specifically authorising it to do so;
- (d) The Applicant must not attempt to terminate the services of NTSCORP Limited as solicitor acting in relation to the Application, and any future acts arising in relation to it, or engage another solicitor for those purposes, without first obtaining a resolution of the Gomeroi People native title claim group specifically authorising it to do so;

[54] In regard to condition (a) I note that the amended application reflects the change of applicant and states the conditions imposed by the claim group in the authorisation meeting. In addition, I have not been provided with any information indicating that the applicant has acted inconsistently with the resolution passed by the claim group. I am therefore satisfied that condition (a) has been met.

[55] I am also not aware, nor have I been provided with any material that the applicant has disclosed confidential information. It is therefore my view that condition (b) is satisfied.

[56] In regard to condition (c) I note that the application has been amended by excluding two lots on plan from the application area. According to condition (c) such an amendment requires an authorisation by the claim group. I note that the claim group held another authorisation meeting on 8 and 9 October 2022. According to Attachment R the meeting was again organised by NTSCORP and advertised in the same way as the authorisation meeting in June 2022.⁴⁶ Attendees' membership was again verified and registered and 232/221 members of the claim group and 10/11 observers attended the meeting in person on 8 and 9 October 2022 respectively.⁴⁷ 19/16 members respectively attended the meetings remotely.⁴⁸ The attendees used an agreed and adopted decision-making process to authorise the removal of those two parcels from the application area.⁴⁹ Based on the information provided I am satisfied that condition (c) has been complied with.

[57] Lastly I note that according to Part B of the application NTSCORP is representing the applicant. It is my view that condition (d) is satisfied.

[58] Based on the provided information I am therefore satisfied that all the relevant conditions have been satisfied.

Decision

[59] I consider the process adopted ensured 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. I am satisfied that all conditions on the authority of the applicant that relate to the making of an application have been satisfied. It follows that I am satisfied that the condition at s 190C(4)(b) is met.

⁴⁶ Attachment R [105] – [115], Annexure MJH-6, MJH-7, MJH-8, MJH-9.

⁴⁷ Attachment R [123] – [130].

⁴⁸ *Ibid* [135].

⁴⁹ *Ibid* [151], [153].

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

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

[60] 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.

[61] Schedule B refers to Attachment B. Attachment B contains a metes and bounds description making reference to state borders, watercourses, road reserve, cadastral boundaries, contour lines and geographic coordinate points. Schedule B also entails general exclusions and specifically excludes two lots on plan.

[62] Schedule C refers to Attachment C, which contains a map dated 9 December 2011 and titled 'Native Title Determination Application Gomeroi People'. The map includes:

- The application area depicted by a bold blue outline;
- Topographic image background;
- Major localities shown and labelled;
- Scalebar, northpoint, coordinate grid and legend; and
- Notes relating to the source, currency and datum of data used to prepare the map.

[63] The geospatial report concludes that the description and map 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

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

[65] 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.

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

- I am required to address only the content of the application;⁵⁰

⁵⁰ *Doepel* [16], [51].

- 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’;⁵¹
- The focus ‘is not upon the correctness of the description of the native title claim group, but upon its adequacy so that the members 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’;⁵²
- 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’;⁵³
- To determine whether the conditions (or rules) specified in the application provide 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’.⁵⁴

[67] Schedule A provides that:

The native title claim group comprises all the descendants of the following apical ancestors:

[list of 114 named persons]

Descendants include persons who are descendants by adoption according to traditional law and custom.

[68] Schedule A then refers to further information attached and marked ‘A’. Attachment A contains the following information:

Adoption into the Gomeroi people is acknowledged and practiced [sic] in accordance with Gomeroi traditional law and custom.

If an objective test for adoption is required, it can be tested for by the following features based upon Gomeroi traditional laws and customs:

- Has the adopted individual been raised from childhood by a member of the Gomeroi native title claim group?
- Has the adopted individual, since childhood, identified himself or herself as a member of the Gomeroi native title claim group?
- Has the adopted individual, since childhood, been identified by other members of the Gomeroi native title claim group as a member of the Gomeroi native title claim group?

⁵¹ *Gudjala 2007* [33].

⁵² *Doepel* [37].

⁵³ *Gudjala 2007* [34].

⁵⁴ *WA v NTR* [67].

- Has the adopted individual, since childhood, been attributed the same rights and interests as other members of the Gomeroi native title claim group, by members of the Gomeroi native title claim group?
- Has the adopted individual demonstrated a consistent and active involvement in the Gomeroi native title claim group since childhood, comparable with the consistent and active involvement of non-adopted members of the Gomeroi native title claim group?

[69] I note that neither Schedule A nor Attachment A entail a list of the names of all the persons in the native title claim group. I therefore consider s 190B(3)(b) to be applicable.

[70] I understand that the Gomeroi People are the descendants of a number of named ancestors. I consider that requiring a person to show descent from one or more specific ancestors provides an objective criterion about whether a person is a member of the claim group. I further note that descendants also include descendants by adoption. Attachment A include criteria when adoption is considered sufficient under traditional customs and law. I consider that factual enquiries would lead to the identification of the persons who meet this criterion of descent, including by adoption. I also note that descent and adoption have been accepted by the Courts previously as criteria for membership to a claim group.⁵⁵

[71] In light of the above, 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

[72] 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.⁵⁶ However, this does not mean that rights broadly described cannot readily be identified within the meaning of s 190B(4).⁵⁷

[73] 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’.

[74] When assessing whether the claimed native title rights and interests are readily identified I am confined to the material contained in the application itself.⁵⁸ 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.

⁵⁵ Ibid.

⁵⁶ *Doepel* [99], [123].

⁵⁷ *Strickland* [60].

⁵⁸ *Doepel* [16].

[75] Attachment 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

[76] 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.

[77] 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).⁵⁹ Moreover, I must treat the asserted facts as true.⁶⁰

[78] I consider my task to be assessing whether the asserted facts can support the existence of the claimed native title rights and interests.⁶¹ 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.⁶² 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.⁶³

[79] I note that the relevant information is set out in Schedules A, F and G, Attachments F, F(1) – F(13), the Summary and the Letter.

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

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

[80] As summarised in *McLennan*, in order to satisfy the condition in s 190B(5)(a), it will be sufficient if the applicant demonstrates that:⁶⁴

⁵⁹ *Doepel* [16]; *Strickland* [62] approved in *Strickland FC* [88] – [89].

⁶⁰ *Doepel* [17]; *Gudjala FC* [57], [83].

⁶¹ *Ibid.*

⁶² *Gudjala 2009* [28], [29]; *Anderson* [43], [48].

⁶³ *Gudjala FC* [92].

⁶⁴ *McLennan* [28].

- (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 effective sovereignty;⁶⁵
- (b) there is an association between the whole group and the area, although not all members must have such association at all times;⁶⁶ 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'.⁶⁷

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

[81] The applicant has provided the following relevant information in regard to s 190B(5)(a):

- The apical ancestors were born between 1807 and 1892. 100 ancestors were born in the application area, two on the border of the application area and a further two in the broader vicinity of the application area;⁶⁸
- One now-deceased former claimant was born in 1925 in the application area and was the grandson of two apical ancestors.⁶⁹ He grew up in the centre of the application area and lived in that area until 1975, when he and his family moved to the central eastern part of the area.⁷⁰ His wife is from the northern part of the application area.⁷¹ He hunted, fished and camped in different parts of the application area all his life.⁷² He was taught that Gomeroid country is from Muswellbrook to St George in Queensland including Toomelah on the Queensland border area and the west side of Armidale, and part of Inverell and over to Collarenebri.⁷³ His ancestors are buried in the central part of the application area;⁷⁴
- Another now-deceased former claimant was born in the central western part of the application area and has lived there all his life, except for a period of about 10 years.⁷⁵ All his family and all his cousins, uncles and aunts are buried in that area, in a registered heritage site.⁷⁶ When he was a kid he hunted and fished in the area.⁷⁷ He was the great great grandson of three apical ancestors and the great grandson of one apical ancestor;⁷⁸

⁶⁵ *Gudjala 2007* [52].

⁶⁶ *Ibid.*

⁶⁷ *Martin* [26]; *Corunna* [39].

⁶⁸ Schedule A

⁶⁹ Attachment F(1) [1] – [4]; Summary [1]; Letter [20].

⁷⁰ Attachment F(1) [5] – [6].

⁷¹ *Ibid* [6].

⁷² *Ibid* [39] – [42].

⁷³ *Ibid* [44].

⁷⁴ *Ibid* [6].

⁷⁵ Attachment F(2) [3]; Letter [20].

⁷⁶ Attachment F(2) [5].

⁷⁷ *Ibid* [11], [17] – [19].

⁷⁸ Summary [2].

- One claimant, born in 1970, grew up in the north western part of the application area.⁷⁹ Even after he moved out of the application area for work, he continued to visit the area for extended periods of time.⁸⁰ He mainly visits the application area to hunt, fish and gather.⁸¹ He is the great great grandson of an apical ancestor;⁸²
- One now-deceased former claimant, born in 1951, grew up and lived his whole life in the northern part of the application area.⁸³ As a child his parents took him for multiple day trips to a place that is connected to the rainbow serpent in the application area.⁸⁴ He was the great great grandson of two apical ancestors and the great grandson of two further apical ancestors;⁸⁵
- One claimant was born just outside the application area in 1951.⁸⁶ He grew up on different stations and places along the Queensland/New-South Wales border and lived for several years in the north western part of the application area.⁸⁷ He is the great great great grandson, the great great grandson, the great grandson and the grandson of apical ancestors;⁸⁸
- One now-deceased former claimant, born in 1952, lived in or just outside the application area his entire life.⁸⁹ He took his children and grandchildren on country to educate them, hunt, fish and gather.⁹⁰ He was the great grandson and great great grandson of apical ancestors;⁹¹
- One claimant's grandmother and great grandmother were born in the central eastern part of the application area.⁹² The claimant is the great great grandson and great great great grandson of apical ancestors;⁹³
- One claimant was born in the north western part of the application area, and has lived there his entire life.⁹⁴ His great grandfather, great great grandfather and great great uncle were born in the same area.⁹⁵ The claimant is the great grandson of apical ancestors;⁹⁶
- One now-deceased former claimant was born in 1937 in the north eastern part of the application area, where his parents worked at that time. He lived his entire life in the

⁷⁹ Attachment F(3) [4].

⁸⁰ Ibid [5] – [9].

⁸¹ Ibid [10].

⁸² Summary [3].

⁸³ Attachment F(4) [3]; Letter [20].

⁸⁴ Attachment F(4) [4].

⁸⁵ Summary [4].

⁸⁶ Attachment F(5) [2].

⁸⁷ Ibid [5], [7].

⁸⁸ Summary [5].

⁸⁹ Attachment F(6) [4], [20]; Letter [20].

⁹⁰ Attachment F(6) [5] – [7].

⁹¹ Summary [6].

⁹² Attachment F(7) [38].

⁹³ Summary [7].

⁹⁴ Attachment F(8) [2], [4].

⁹⁵ Ibid [32].

⁹⁶ Summary [8].

southern half of the application area.⁹⁷ He was the great great grandson of apical ancestors,⁹⁸

- One claimant was born in the southern part of the application area, and moved in and out of the application area until he was ten years old. He and his family then settled in the southern part of the application area. During the time the family lived outside the application area they would regularly visit the application area.⁹⁹ He is the great great grandson of three apical ancestors;¹⁰⁰
- One claimant lives in the central northern part of the application area and his parents and great grandmothers lived in the same town.¹⁰¹ He is the great great grandson, great great great grandson and great great great great grandson of apical ancestors;¹⁰²
- One claimant was born in 1946 in the eastern part of the application area.¹⁰³ Her great grandfather, an apical ancestor, was born in the same area¹⁰⁴ and so were her parents.¹⁰⁵ Her great great grandmother on her father's side was also an apical ancestor.¹⁰⁶ In addition she is the great granddaughter and great great granddaughter of two further apical ancestors;¹⁰⁷
- One claimant's mother was born in the northern part of the application area and her great great grandfather was one of the first two people who settled in Mungindi.¹⁰⁸ Her father worked on cattle and sheep properties in the northern part of the application area.¹⁰⁹ The claimant is the great granddaughter of an apical ancestor;¹¹⁰
- In the western part of the application area there was a central meeting place for ceremonies, such as initiations;¹¹¹ in the north eastern part is a massacre site and in the northern part is an area with up to 26 sacred sites on it;¹¹² and in the north eastern part was a big gathering place, a corroboree site.¹¹³ There is also a burial site of an old king.¹¹⁴ There are also sacred and special sites in the north western part¹¹⁵ and the eastern part of the application area;¹¹⁶

⁹⁷ Attachment F(9) [2]; Letter [20].

⁹⁸ Summary [9].

⁹⁹ Attachment F(10) [2], [4].

¹⁰⁰ Summary [10].

¹⁰¹ Attachment F(11) [5] – [7].

¹⁰² Summary [11].

¹⁰³ Attachment F(12) [1].

¹⁰⁴ Ibid [3].

¹⁰⁵ Ibid [7].

¹⁰⁶ Ibid [3].

¹⁰⁷ Summary [12].

¹⁰⁸ Attachment F(13) [1].

¹⁰⁹ Ibid [4].

¹¹⁰ Summary [13].

¹¹¹ Attachment F(2) [9].

¹¹² Attachment F(4) [10], [52].

¹¹³ Ibid [30].

¹¹⁴ Ibid [51].

¹¹⁵ Attachment F(8) [44], [56] – [58].

¹¹⁶ Attachment F(12) [43] – [44].

- In the late 1940s there was an initiation in the north eastern part of the application area.¹¹⁷

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

[82] I note that the assertion of British sovereignty is dated 26 January 1788 for the application area. I also note that the earliest year of birth of an apical ancestor is 1807. I am therefore able to infer that the parents of that apical ancestor would have been alive at the time of sovereignty.

[83] I also note that the great majority of the apical ancestors were born in the application area.

[84] It is therefore my view that the apical ancestors or their predecessors had an association with the application area at the time of sovereignty and/or effective sovereignty.

[85] I further note that the multiple affidavits by claimants show that most of them were born in the application area and that they continue to live in the area. Some of them also provide information about parents, grandparents, great grandparents or great great grandparents being born and living in the application area.

[86] I therefore consider that the claim group presently has and the claim group's predecessors have had a continued association with the area since the time of the apical ancestors.

[87] Besides this physical connection to the area, I also note that a spiritual association of the claimants and their predecessors exists with the application area. The claimants are knowledgeable about significant sites in different parts of the application area.

[88] Lastly, I note that the material provides that the physical and spiritual association of the claimants and their predecessors relates to the entire application area. The birth places provided for the apical ancestors are spread over all parts of the application area and so are the places of birth and residence of current claimants and their predecessors. Similarly, the significant sites are located in most parts of the application area.

Decision

[89] In light of the above I am satisfied that the claim group has and its predecessors have had an association with the area since (effective) sovereignty and that there is an association between the whole group and the entire area. 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

¹¹⁷ Attachment F(6) [20].

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.¹¹⁸ In the context of the Act, 'traditional' carries, however, two other elements in its meaning, namely:¹¹⁹

...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 normative system has not existed throughout that period, the rights and interests which owe their existence to that system will have ceased to exist.¹²⁰

[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'.¹²¹

[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;¹²²
- 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;¹²³ 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

¹¹⁸ *Yorta Yorta* [46].

¹¹⁹ *Ibid.*

¹²⁰ *Ibid* [46] - [47].

¹²¹ *Warrie* [107]; *Alyawarr* [78].

¹²² *Gudjala 2009* [37], [52].

¹²³ *Ibid* [40].

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).¹²⁴

[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] I consider the information extracted above at s 190B(5)(a) also relevant for the assertions at s 190B(5)(b). In addition the material provides the following relevant information about the assertion at s 190B(5)(b):

- The Gomeri nation is subdivided into clans/mobs for particular areas. There is a common system of laws and customs, but there are some local variations and ways which are specific to particular areas.¹²⁵ The Gomeri People within the nation were nomads;¹²⁶
- The subdivision into clans was the result of a big flood a long time ago that separated and isolated the different clans on little islands for a long time;¹²⁷
- One or two generations before the current claimants, Gomeri People had to practice their culture in secret, due to government repression;¹²⁸
- Claimants were taught by their parents, grandparents, uncles, aunts and Elders about traditional law and customs as well as about sites, plants, medicine, hunting, fishing, how to make tools and weapons and preparation of food. Teaching took place during walks on country, around a campfire, by word of mouth and observing people;¹²⁹
- Claimants teach their children and grandchildren in the same way;¹³⁰
- Traditional law regulates what things Gomeri People cannot eat, in particular their totem;¹³¹

¹²⁴ Ibid [29], [54], [69].

¹²⁵ Attachment F(1) [45].

¹²⁶ Attachment F(1) [46]; Attachment F(2) [45], [48].

¹²⁷ Attachment F(11) [21]

¹²⁸ Attachment F(7) [29]

¹²⁹ Attachment F(1) [15] – [16], [20], [24] – [27], [30], [34], [37], [45]; Attachment F(2) [24], [27], [28], [57]; Attachment F(3) [36] – [38], [40]; Attachment F(4) [4], [8], [12], [13], [23], [53], [55], [62]; Attachment F(5) [24], [27], [38]; Attachment F(6) [11], [13], [34], [41]; Attachment F(7) [12], [14], [34] Attachment F(8) [25], [28], [38]; Attachment F(9) [19], [24] – [27]; Attachment F(10) [20] – [21], [26], [29]; Attachment F(12) [15], [27] – [28].

¹³⁰ Attachment F(1) [36]; Attachment F(2) [25]; Attachment F(3) [15], [17], [21] – [24], [37]; Attachment F(4) [22], [53], [55]; Attachment F(5) [25], [32]; Attachment F(6) [5] – [11], [26], [34], [41], [76]; Attachment F(7) [22], [32]; Attachment F(9) [32]; Attachment F(10) [9], [26]; Attachment F(11) [50]; Attachment F(12) [10]

- Traditional law and custom regulate that only the clan of a particular area can speak for that area and that people from other areas pay their respect when visiting the area.¹³² This custom continues to be acknowledged today;¹³³
- Responsibility and authority for an area is transmitted through descent;¹³⁴
- Elders are considered guiders, educators and knowledge holders. According to traditional laws and customs they and their opinion have to be respected and they have to be consulted before making decisions;¹³⁵
- Traditional customs include sharing food, for example when people visit or with other Gomeroi People, in particular Elders;¹³⁶
- Traditional customs and law regulate where one can go and where not to go, for example there are men's sites and women's sites;¹³⁷
- Not complying with restrictions for sites can lead to misfortune or injury or punishment by mystical beings;¹³⁸
- There are specific customs regulating burials and death;¹³⁹
- Breaking traditional laws and customs can be punished by physical punishment or banishment;¹⁴⁰
- Marriage is controlled by skin names/totems;¹⁴¹
- Claimants speak some Gomeroi language, but some of their predecessors were fluent.¹⁴²

[96] Attachment F of the application contains a number of general statements which address the assertion at s 190B(5)(b), that there exist traditional laws acknowledged by, and traditional customs observed by the native title claim group. These statements refer to matters such as the Gomeroi kinship system, the transmission of laws and customs by the intergenerational

¹³¹ Attachment F(1) [15], [26], [46]; Attachment F(2) [52]. Attachment F(4) [57]; Attachment F(5) [42], Attachment F(6) [56]; Attachment F(10) [57]

¹³² Attachment F(1) [17], [32], [45] Attachment F(4) [39], [58]; Attachment F(7) [24]; Attachment F(8) [69]

¹³³ Attachment F(1) [17], [32]. Attachment F(6) [75].

¹³⁴ Attachment F(3) [40]; Attachment F(7) [23]; Attachment F(8) [30]

¹³⁵ Attachment F(3) [45], [47] – [48] Attachment F(5) [38], [73]; Attachment F(6) [46] – [47]; Attachment F(7) [23], [26]; Attachment F(10) [49]

¹³⁶ Attachment F(1) [19]; Attachment F(2) [20]; Attachment F(3) [12] – [13]; Attachment F(8) [15], [71]; Attachment F(12) [14]

¹³⁷ Attachment F(1) [22], [33]. Attachment F(4) [37]; Attachment F(8) [43]; Attachment F(10) [54]; Attachment F(13) [11]

¹³⁸ Attachment F(6) [52] – [53]; Attachment F(8) [26] – [27], [52]; Attachment F(11) [49]

¹³⁹ Attachment F(2) [52] – [53]. Attachment F(4) [31] – [32], Attachment F(5) [68], Attachment F(6) [87] – [89]; Attachment F(10) [36]; Attachment F(11) [24] – [25]; Attachment F(12) [11]

¹⁴⁰ Attachment F(3) [51] – [52]; Attachment F(4) [35], Attachment F(5) [61] – [62], Attachment F(6) [77]; Attachment F(11) [28]; Attachment F(12) [21]

¹⁴¹ Attachment F(5) [63]; Attachment F(11) [16], [18]

¹⁴² Attachment F(1) [36]; Attachment F(2) [42], [55]. Attachment F(5) [53], Attachment F(6) [62]; Attachment F(7) [42] – [43]; Attachment F(8) [54]; Attachment F(10) [69]; Attachment F(12) [20]

transfer of knowledge, and the relationship between traditional laws and customs and tenure in the land and waters.

[97] Schedule G of the application generally lists the activities carried out by Gomeroi People on their traditional lands.

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

[98] It is my understanding that during the Dreamtime the Gomeroi nation was subdivided by a big flood into different clans. Notwithstanding this subdivision, the Gomeroi nation was characterised by a common set of laws and customs, which have however local differences. The Gomeroi nation is described as being a traditionally nomadic group, who travelled throughout the whole of the application area.

[99] In addition, the Gomeroi People shared a common language prior to sovereignty.

[100] The common set of laws and customs of the Gomeroi nation concerned for example the authority of Elders in decision-making, the role of particular families or clans for certain areas in the application area, a skin or totem system which regulates marriage and is also the foundation of dietary restrictions, and a system regulating membership and authority by descent.

[101] The factual basis material provides ample examples that current claimants and their predecessors, such as parents, grandparents and great grandparents acknowledged and observed these laws and customs. In addition, the material also provides about observance of restrictions on visiting places, customs and techniques for hunting, fishing, cooking, and toolmaking, among others.

[102] I also note that some of the claimants speak some Gomeroi language and that some of their predecessors were fluent in Gomeroi language.

[103] Knowledge is transmitted from parents, grandparents or Elders to younger members of the group by word of mouth, shared experiences and active use of the country. Current claimants continue to transmit knowledge to younger generations in the same way.

[104] Given that the parents of at least one of the apical ancestors were alive at the time of sovereignty in the application area, the way of knowledge transmission and the fact that current claimants speak language and observe rules which were also observed by their parents and grandparents, at least one of whom was an apical ancestor herself,¹⁴³ I am satisfied that there has been a continued observance of laws and customs since effective sovereignty.

[105] I further note that the laws and customs have a normative character as they are, on the one hand, enforced by Elders and, on the other hand, non-observance can result in punishment by mystic beings.

¹⁴³ Attachment F(1) [24]; Summary [1].

[106] It is therefore my view that the factual basis is sufficient to demonstrate that the ancestors of the claimants are linked to the Gomeroi nation that existed in the application area at the time of effective sovereignty. This link also exists in relation to the claimants, who observe a set of customs and laws which have been passed on to them through their ancestors from before sovereignty. In my view these normative rules have not merely been transmitted to the claimants by word of mouth but were taught and experienced by them on country. I therefore consider the laws and customs currently observed and acknowledged as ‘traditional’ in the *Yorta Yorta* sense as they derive from a society that existed at the time of effective sovereignty.

Decision

[107] In light of the above I am satisfied that the factual basis is sufficient to support the assertion that traditional laws acknowledged and traditional customs observed by the claim group exist that give rise to the claim to native title rights and interests.

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

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

[108] 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.

[109] 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.¹⁴⁴ 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 effective sovereignty.¹⁴⁵

[110] 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’.¹⁴⁶

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

[111] 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 effective sovereignty in the application area.

[112] As outlined in my reasons regarding s 190B(5)(b), the applicant has identified the relevant pre-sovereignty society and outlined some facts in relation to that society, in particular regarding their decision-making, subdivision, recruitment, totem system and responsibility for specific areas. Moreover, examples of observance and acknowledgement of this system and of

¹⁴⁴ *Martin* [29].

¹⁴⁵ *Gudjala 2007* [82].

¹⁴⁶ *Gudjala 2009* [33].

other customs and laws by the present claim group and their predecessors have been provided, such as camping, hunting, fishing, resource gathering and adhering to restrictions for certain places.

[113] The knowledge about language, laws and customs has been transmitted from generation to generation. The material outlines in detail how Elders are considered knowledge-holders and educators and how current claimants have been taught on country by their family and Elders.¹⁴⁷

Decision

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

Conclusion

[115] 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)?

[116] 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.¹⁴⁸ 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).¹⁴⁹

[117] I understand that, when assessing the requirements of s 190B(6), I am permitted to consider material beyond the application.¹⁵⁰

[118] 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.¹⁵¹

[119] 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’.¹⁵² The phrase ‘in relation to’ is however ‘of wide import’.¹⁵³

¹⁴⁷ Attachment F(1) [15] – [16], [20], [24] – [27], [30], [34], [37], [45]; Attachment F(2) [24], [27], [28], [57]; Attachment F(3) [36] – [38], [40]; Attachment F(4) [4], [8], [12], [13], [23], [53], [55], [62]; Attachment F(5) [24], [27], [38]; Attachment F(6) [11], [13], [34], [41]; Attachment F(7) [12], [14], [34] Attachment F(8) [25], [28], [38]; Attachment F(9) [19], [24] – [27]; Attachment F(10) [20] – [21], [26], [29]; Attachment F(12) [15], [27] – [28].

¹⁴⁸ *Doepel* [135].

¹⁴⁹ *Ibid* [127], [132].

¹⁵⁰ *Ibid* [16].

¹⁵¹ *Yorta Yorta* [86]; *Gudjala 2007* [86].

¹⁵² *Ward HC* [577].

[120] Taking into account the definition of ‘native title rights and interests’ in s 223(1),¹⁵⁴ 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.

[121] Only those rights and interests that I consider to be established prima facie will be entered on the Register.¹⁵⁵

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

[122] At the outset I note that all the rights and interests claimed in Attachment E are claimed in relation to the application area and are therefore, prima facie, rights or interests ‘in relation to land or waters’. I also consider that Attachment E sufficiently addresses any issue of extinguishment, for the purpose of the test at s 190B(6), since the application differentiates between where exclusive native title can be recognised and where it cannot be recognised.

Possession, occupation, use and enjoyment of the lands and waters of the application area to the exclusion of all others

[123] I understand that the above claimed right is one of exclusive possession, and for such claims, there is significant judicial guidance. In *Ward HC*, the High Court commented that:

... a core concept of traditional law and custom [is] the right to be asked permission and to ‘speak for country’. It is the rights under traditional law and custom to be asked permission and to ‘speak for country’ that are expressed in common law terms as a right to possess, occupy, use and enjoy land to the exclusion of all others.¹⁵⁶

[124] In *Griffiths* the Full Court held:

It is not necessary to a finding of exclusivity in possession, use and occupation, that the native title claim group should assert a right to bar entry to their country on the basis that it is “their country”. If control of access to country flows from spiritual necessity because of the harm that ‘the country’ will inflict upon unauthorised entry, that control can nevertheless support a characterisation of the native title rights and interests as exclusive. The relationship to country is essentially a ‘spiritual affair’. It is also important to bear in mind that traditional law and custom, so far as it bore upon relationships with persons outside the relevant community at the time of sovereignty, would have been framed by reference to relations with indigenous people. The question of exclusivity depends upon the ability of the [native title holders] effectively to exclude from their country people not of their community. If, according to their traditional law and custom, spiritual sanctions are visited upon unauthorised entry and if they are the gatekeepers for the purpose of preventing such harm

¹⁵³ *Alyawarr* [93].

¹⁵⁴ *Gudjala 2007* [85].

¹⁵⁵ Section 186(1)(g).

¹⁵⁶ *Ward HC* [88].

and avoiding injury to the country, then they have ... an exclusive right of possession, use and occupation.¹⁵⁷

[125] Lastly, in *Sampi* the Court held:

The right to possess and occupy as against the whole world carries with it the right to make decisions about access to and use of the land by others. The right to speak for the land and to make decisions about its use and enjoyment by others is also subsumed in that global right of exclusive occupation.¹⁵⁸

[126] I note that, as outlined in my considerations regarding s 190B(5), Gomeroi law and custom regulates that only the clan of a particular area can speak for that area and that people from other areas pay their respect when visiting the area and ask permission to enter.¹⁵⁹ I also note that this custom is still observed today.¹⁶⁰

[127] I also note that the claimants believe that not observing restrictions for certain places will lead to physical harm or misfortune, that some places are protected and guarded by mystical beings or spirits and that some places can only be visited safely with a Gomeroi Elder.¹⁶¹

[128] In my view, the factual basis material provides that territoriality and clan boundaries were and are a characteristic of Gomeroi traditional law and custom. In accordance with this, members of the claim group were able to exercise control over access to the application area by other Aboriginal persons. In addition, Gomeroi People believe that there is a spiritual necessity to control access because 'the country' and the spirits in it will inflict harm or misfortune upon unauthorised entry. For this reason, I am satisfied that a right to exclusive possession of the application area is prima facie established.

Non-exclusive rights

- (a) the right to access the application area;**
- (b) the right to use and enjoy the application area;**
- (c) the right to move about the application area;**
- (d) the right to camp on the application area;**
- (e) the right to erect shelters and other structures on the application area;**
- (f) the right to live being to enter and remain on the application area;**
- (h) the right to hunt on the application area;**
- (i) the right to fish in the application area;**
- (j) the right to have access to and use the natural water resources of the application area;**
- (k) the right to gather and use the natural resources of the application area (including food, medicinal plants, timber, tubers, charcoal, wax, stone, ochre and resin as well as materials for fabricating tools, hunting implements, making artwork and musical instruments);**

¹⁵⁷ *Griffiths* [127].

¹⁵⁸ *Sampi* [1072].

¹⁵⁹ Attachment F(1) [17], [32], [45] Attachment F(4) [39], [58]; Attachment F(7) [24]; Attachment F(8) [69].

¹⁶⁰ Attachment F(1) [17], [32]. Attachment F(6) [75].

¹⁶¹ Attachment F(6) [52] – [53], [64] – [65]; Attachment F(8) [26], [52]; Attachment F(10) [36]; Attachment F(11) [49]; Attachment F(13) [24].

(m) the right to share and exchange resources derived from the land and waters within the application area;

(q) the right to transmit traditional knowledge to members of the native title claim group including knowledge of particular sites on the application area;

[129] In each of the provided 13 affidavits it is described in detail how claimants continue to move about, live, camp, hunt, fish, gather resources from country and make tools and weapons.¹⁶² Claimants also outline that it is custom to share food and resources with visitors, family or Elders.¹⁶³

[130] I also note that claimants provide that they received their knowledge about the application area, hunting, fishing, preparation of food, plants, medicine and tool making from their parents, grandparents, uncles, aunts and Elders during walks on country or around a campfire.¹⁶⁴ They teach their children and grandchildren in the same way.¹⁶⁵

[131] It is therefore 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.

Non-exclusive rights

(g) the right to hold meetings on the application area;

(n) the right to participate in cultural and spiritual activities on the application area;

(o) the right to maintain and protect places of importance under traditional laws, customs and practices in the application area;

(p) the right to conduct ceremonies and rituals on the application area;

[132] Various statements in the factual basis material refer to previous gathering sites, where claim group members or predecessors congregated for various ceremonial and cultural purposes and different types of meetings.¹⁶⁶ Claimants also indicate that meetings between claim group members and Gomeroi Elders for the purpose of resolving disputes take place.¹⁶⁷ I also note that claimants and their predecessors carried out activities including corroborees, funerals, smoking ceremonies, marriage ceremonies and initiation ceremonies.¹⁶⁸

[133] Lastly I note that protecting places of importance is seen as a responsibility of the Elders and the clan for the respective area and that several claimants are involved in cultural heritage work and protection.¹⁶⁹

¹⁶² Attachments F(1) – F(13).

¹⁶³ Attachment F(1) [19]; Attachment F(2) [20]; Attachment F(3) [12] – [13]; Attachment F(8) [15], [71]; Attachment F(12) [14].

¹⁶⁴ Attachment F(1) [15] – [16], [20], [24] – [27], [30], [34], [37], [45]; Attachment F(2) [24], [27], [28], [57]; Attachment F(3) [36] – [38], [40]; Attachment F(4) [4], [8], [12], [13], [23], [53], [55], [62]; Attachment F(5) [24], [27], [38]; Attachment F(6) [11], [13], [34], [41]; Attachment F(7) [12], [14], [34] Attachment F(8) [25], [28], [38]; Attachment F(9) [19], [24] – [27]; Attachment F(10) [20] – [21], [26], [29]; Attachment F(12) [15], [27] – [28].

¹⁶⁵ Attachment F(1) [36]; Attachment F(2) [25]; Attachment F(3) [15], [17], [21] – [24], [37]; Attachment F(4) [22], [53], [55]; Attachment F(5) [25], [32]; Attachment F(6) [5] – [11], [26], [34], [41], [76]; Attachment F(7) [22], [32]; Attachment F(9) [32]; Attachment F(10) [9], [26]; Attachment F(11) [50]; Attachment F(12) [10].

¹⁶⁶ Attachment F(2) [9], [46]; Attachment F(5) [57]; Attachment F(6) [30]; Attachment F(12) [9].

¹⁶⁷ Attachment F(8) [77]; Attachment F(11) [43]

¹⁶⁸ Attachment F(1) [4]; Attachment F(3) [49]; Attachment F(4) [30]; Attachment F(6) [31]; Attachment F(7) [14]; Attachment F(8) [12], Attachment F(11) [24].

¹⁶⁹ See for example: Attachment F(3) [19]; Attachment F(4) [6] – [7]; Attachment F(10) [6]; Attachment F(13) [50] – [51].

[134] Based on this information, I am satisfied that the applicant's factual basis material establishes these rights prima facie.

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

Non-exclusive rights

(l) the right to manage natural resources including the right to carbon;

[135] I note that there is only very limited information provided in the factual basis material that relates to the management of natural resources. There are some statements that claimants were taught by their predecessors to only take the amount of fish, plants or animals that was necessary to feed themselves and that claimants continue to observe this.¹⁷⁰ The material only contains one reference to fire management activities and states that this is not undertaken anymore.¹⁷¹

[136] It is therefore my view that the factual basis material is not sufficient to establish prima facie a right to manage natural resources including the right to carbon. It is further my view that the 'right to manage natural resources' and 'a right to carbon', without any further qualification, indicate elements of control and ownership that are contradictory to a non-exclusive interest.

Non-exclusive rights

(r) the right to speak for and make non-exclusive decisions about the application area in accordance with traditional laws and customs;

(s) the right to speak authoritatively about the application area among other Aboriginal People in accordance with traditional laws and customs; and

(t) the right to control access to or use of the lands and waters within the application area by other Aboriginal People in accordance with traditional laws and customs.

[137] I am of the view that these rights are all rights, which seek to establish some form of control by the claim group over the land and waters of the application area and how they are used. It is therefore my understanding that these rights can be summarised as a right to speak for and control access to country in areas where exclusive native title cannot be recognised.

[138] I note that the Courts have accepted a non-exclusive right to make decisions about the use and enjoyment of the application area in cases where the control is only directed at other Aboriginal people, in particular where the claim group was a subset of a wider society incorporating other groups bound by the same traditional laws and customs.¹⁷² Such an accepted limitation always required that the Aboriginal People were governed¹⁷³ or bound¹⁷⁴ by the traditional laws and customs acknowledged and observed by the native title holders.

[139] I note that the claimed right to speak for and make non-exclusive decisions does not limit the addressees of the decisions in any way. The right to speak authoritatively about the application area and the right to control access to or use of the application area limit those

¹⁷⁰ See for example Attachment F(1) [25], [31].

¹⁷¹ Attachment F(5) [35].

¹⁷² *Ward FC* [11]; *De Rose FC No 2* [169], [170]; *Alyawarr* [151].

¹⁷³ *Ward FC* [11]; *De Rose FC No 2* [169], [170];

¹⁷⁴ *Alyawarr* [151].

rights to Aboriginal People. However, while all three claimed rights refer to the traditional laws and customs of the claim group, the claimed rights do not clarify or presuppose that the addressees are bound or governed by the traditional laws and customs of the claim group.

[140] It is my view that the limitations in the claimed rights are not sufficient for a non-exclusive right to speak for and control access to country to exist. Based on *Ward HC*¹⁷⁵ and *Sampi*¹⁷⁶, the right to speak for country is, in common law terms, expressed as the right to possess, occupy, use and enjoy land to the exclusion of all others. Similarly the right to make decisions about an area is part of the global right to exclusive occupation and possession. It is therefore my understanding that an insufficiently restricted non-exclusive right to speak for and make decisions about the area cannot exist, as both rights require the exclusion of all others.

[141] I therefore consider that the claimed non-exclusive right to speak for, make decisions about and control access to the area is not prima facie established.

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

[142] 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 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.¹⁷⁷

[143] The factual basis includes ample information that describes a traditional physical association of members of the claim group with the application area, including camping, fishing, collecting resources, manufacturing tools and weapons and adhering to restrictions for certain places.¹⁷⁸

[144] 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

[145] 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	met

¹⁷⁵ *Ward HC* [88].

¹⁷⁶ *Sampi* [1072].

¹⁷⁷ *Gudjala 2009* [84]; *Yorta Yorta* [86].

¹⁷⁸ See Attachments F(1) – F(13).

Section 61A(2) Claimant application not to be made that covers any previous exclusive possession act areas	Schedule B, paragraph (B)1.	met
Section 61A(3) Claimant applications not to claim exclusive possession in areas covered by previous non-exclusive possession acts	Schedule B, paragraph (B)4.	met

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

[146] 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 (B) 7.	met

End of reasons

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Gomeroid People
NNTT No.	NC2011/006
Federal Court of Australia No.	NSD37/2019

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:

20 December 2011

Date application entered on Register:

20 January 2012

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

The Gomeroid People native title claim group has placed the following conditions under section 251BA of the *Native Title Act 1993* (Cth) on the authority of the Applicant to make the application and to deal with matters arising in relation to it:

The Gomeroid People native title claim group acknowledges the authority and responsibilities of the Applicant as set out in the *Native Title Act 1993* (Cth).

The Gomeroid People native title claim group confers authority on the people who make up the Applicant on the condition that they, and each of them, will act at all times in the interests of the Gomeroid People native title claim group and will not act in any way which is for personal benefit or in pursuit of a personal interest.

The Gomeroid People native title claim group imposes the following additional conditions on the authority of the Applicant to make the Gomeroid People native title determination application (NSD37/2019) (the 'Application'), and to deal with matters arising in relation to it:

(a) The Applicant must do all things necessary to implement the resolutions and decisions of the Gomeroi People native title claim group meeting and must not act inconsistently with those resolutions and decisions;

(b) The Applicant must not disclose to third parties who are not members of the Gomeroi People native title claim group information which is confidential to the Gomeroi People native title claim group;

(c) The Applicant must not amend, resolve, have listed for trial or discontinue the Application without first obtaining a resolution of the Gomeroi People native title claim group specifically authorising it to do so;

(d) The Applicant must not attempt to terminate the services of NTSCORP Limited as solicitor acting in relation to the Application, and any future acts arising in relation to it, or engage another solicitor for those purposes, without first obtaining a resolution of the Gomeroi People native title claim group specifically authorising it to do so;

(e) The Applicant must not execute any future act agreement, Indigenous Land Use Agreement or any other agreement that confers benefits or obligations on Gomeroi People, or has the effect of extinguishing, impairing or otherwise affecting native title or confirming the prior extinguishment, impairment or effect on native title in the area under claim, or take steps in Court or Tribunal proceedings which would have any of those effects, unless it is expressly authorised by a resolution of the Gomeroi People native title claim group to do so;

(f) The Applicant must not establish a Corporation or other legal entity to hold benefits on behalf of the Gomeroi People native title claim group without first obtaining a resolution of the native title claim group specifically authorising it to do so;

(g) The Applicant must not expend any monies, or make directions in relation to the expenditure or use of any monies, which have been provided pursuant to a future act agreement, Indigenous Land Use Agreement or any other agreement that confers benefits on the Gomeroi People native title claim group, without first obtaining a resolution of the native title claim group specifically authorising it to do so;

Any person being a member of the Applicant will be replaced for acting contrary to these conditions and therefore exceeding the authority conferred on the Applicant by the Gomeroi People native title claim group. In this circumstance, NTSCORP Limited is instructed to notify and convene a meeting of the Gomeroi People native title claim group, for the purposes of considering replacing the Applicant.

It is a further condition of the Applicant's authority that it make decisions in the following manner:

1. Before the Applicant makes a decision, there must be a minimum of 13 members of the Applicant in attendance, either in person or by electronic means.

2. The Applicant should attempt to make each decision by consensus of the members of the Applicant in attendance, either in person or by electronic means.

3. In the event that the Applicant has discussed the decision in detail, and cannot reach consensus, then the Applicant is authorised to vote on the matter by show of hands or by saying their vote, and

the matter will be decided by a majority vote of members of the Applicant in attendance, either in person or by electronic means.

4. A decision of the majority made in accordance with the above process will be a decision of the Applicant.

5. If the Applicant makes a decision to enter into an agreement in accordance with the above process, the agreement will be taken to have been executed by the Applicant if:

(i) it is signed by a majority of the members of the Applicant; and

(ii) entry into the agreement is otherwise in accordance with the conditions imposed on the Applicant's authority by the Gomeroi People native title claim group.

Should one of the individuals comprising the Applicant pass away or resign, those who remain shall continue to be the Applicant without alteration, and shall continue to be authorised to exercise all rights of the Applicant under the *Native Title Act 1993* (Cth), subject to any conditions imposed by the Gomeroi People native title claim group, unless and until a full claim group meeting authorises a new Applicant.

Area covered by application:

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

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

Persons claiming to hold native title:

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

Registered native title rights and interests:

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

2. (l) the right to manage natural resources including the right to carbon;

2. (r) the right to speak for and make non-exclusive decisions about the application area in accordance with traditional laws and customs;

2. (s) the right to speak authoritatively about the application area among other Aboriginal People in accordance with traditional laws and customs; and

2. (t) the right to control access to or use of the lands and waters within the application area by other Aboriginal People in accordance with traditional laws and customs.

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.

24 July 2023