National Native Title Tribunal

Registration test decision

Application name	Yaegl People #2
Name of applicant	Lillian Williams, Ron Heron, Vivienne King, Eileen McLeay, Judy Breckinridge, Deidre Randall, William Walker, Noeline Kapeen, Ferlin Laurie, Clarence Randall, Ken Laurie
State/territory/region	NSW
NNTT file no.	NC11/1
Federal Court of Australia file no.	NSD168/2011
Date application made	23 February 2011
Name of delegate	Lisa Jowett

I have considered this claim for registration against each of the conditions contained in ss. 190B and 190C of the *Native Title Act 1993* (Cwlth).

For the reasons attached, I am satisfied that each of the conditions contained in ss. 190B and C are met. I accept this claim for registration pursuant to s. 190A of the *Native Title Act 1993* (Cwlth).

Date of decision: 1 July 2011

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Lisa Jowett

Delegate of the Native Title Registrar pursuant to sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cwlth) under an instrument of delegation dated 2 August 2011 and made pursuant to s. 99 of the Act.

Reasons for decision

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Introduction

This document sets out my reasons, as the delegate of the Native Title Registrar (the Registrar) for the decision to accept the application for registration pursuant to s. 190A of the Act.

Note: All references in these reasons to legislative sections refer to the *Native Title Act 1993* (Cwlth) which I shall call 'the Act', as in force on the day this decision is made, unless otherwise specified. Please refer to the Act for the exact wording of each condition.

Application overview

The Registrar of the Federal Court of Australia (the Court) gave a copy of the Yaegl People #2 claimant application to the Registrar on 23 February 2011 pursuant to s. 63 of the Act. This has triggered the Registrar's duty to consider the claim made in the application under s. 190A of the Act.

Given that the claimant application was made on 23 February 2011 and has not been amended, I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply.

Therefore, in accordance with subsection 190A(6), I must accept the claim for registration if it satisfies all of the conditions in 190B and 190C of the Act. This is commonly referred to as the registration test.

This application is the second of two native title determination applications made by the Yaegl People. The first application, NC96/38—Yaegl People—NSD6052/98 (Yaegl People), was made in 1996 and accepted for registration on 11 December 2006. The area of the earlier application covers the mouth of the Clarence River at Yamba and its immediate tributries to the north, east and south into The Lake (Wooloweyah Estuary). The external boundary of this second Yaegl People application extends over the same area as well as country to the south of the Clarence River. It specifically excludes the area of the claim made in the first Yaegl application.

Registration test

Section 190B sets out conditions that test particular merits of the claim for native title. Section 190C sets out conditions about 'procedural and other matters'. Included among the procedural conditions is a requirement that the application must contain certain specified information and documents. In my reasons below I consider the s. 190C requirements first, in order to assess whether the application contains the information and documents required by s. 190C, *before* turning to questions regarding the merit of that material for the purposes of s. 190B.

Pursuant to ss. 190A(6) and (6B), the claim in the application must be accepted for registration because it does satisfy all of the conditions in ss. 190B and 190C. A summary of the result for each condition is provided at Attachment A.

Information considered when making the decision

Subsection 190A(3) directs me to have regard to certain information when testing an application for registration; there is certain information that I *must* have regard to, but I *may* have regard to other information, as I consider appropriate.

I am also guided by the case law (arising from judgments in the courts) relevant to the application of the registration test. Among issues covered by such case law is the issue that some conditions of the test do not allow me to consider anything other than what is contained in the application while other conditions allow me to consider wider material.

Attachment B of these reasons lists all of the information and documents that I have considered in reaching my decision.

I have *not* considered any information that may have been provided to the Tribunal in the course of the Tribunal providing assistance under ss. 24BF, 24CF, 24CI, 24DG, 24DJ, 31, 44B, 44F, 86F or 203BK of the Act.

Also, I have *not* considered any information that may have been provided to the Tribunal in the course of its mediation functions in relation to this or any other claimant application. I take this approach because matters disclosed in mediation are 'without prejudice'. Further, mediation is private as between the parties and is also generally confidential (see ss. 94K and 94L of the Act).

Procedural fairness steps

As a delegate of the Registrar and as a Commonwealth Officer, when I make my decision about whether or not to accept this application for registration I am bound by the principles of administrative law, including the rules of procedural fairness, which 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—*Hazelbane v Doepel* [2008] FCA 290 at [23] to [31]. The steps that I and other officers of the Tribunal have undertaken to ensure procedural fairness is observed, are as follows:

- On 24 February 2011, the Tribunal informed the applicant that the registration test would be applied to this application.
- Also on 24 February 2011, the Tribunal provided a copy of the application and accompanying documents to the state government, giving it the opportunity to provide any additional material to the Registrar to be considered for the purpose of the registration test.
- On 10 March 2011, the Tribunal wrote to the state government and the applicant advising that the delegate would also consider the following information in relation to the earlier application, NC96/38—Yaegl People—NSD6052/98:
    - the amended application filed 11 August 2006—in particular, the affidavits of Judy Breckenridge [Attachment F(1)]; Thelma Kapeen [Attachment F(2)]; Ron Heron [Attachment F(3)] and Deidre Randall [Attachment F(4)]; and
    - the amended application filed 26 September 2003—in particular, Attachment F.

- In the same letter to the applicant, the Tribunal advised that the delegate's preliminary view was that further information in respect of the conditions of the registration test at ss. 190B(5), (6) and (7) would be of assistance, and if provided this should be done by 16 March 2011.
- On 14 March 2011 the state government advised the Tribunal that it would not be providing any comments in relation to the material from the earlier Yaegl People application.

The representative for the applicant had advised the Tribunal that it intended to submit additional information relevant to the factual basis of the claim; however, none has been provided as at the date of this decision.

As no adverse or additional material has been submitted in relation to this application, neither I, nor other officers of the Tribunal, have been required to undertake any further steps in relation to procedural fairness obligations.

Procedural and other conditions: s. 190C

Subsection 190C(2)
Information etc. required by ss. 61 and 62

> The Registrar/delegate must be satisfied that the application contains all details and other information, and is accompanied by any affidavit or other document, required by sections 61 and 62.

The application **satisfies** the condition of s. 190C(2), because it **does** contain all of the details and other information and documents required by ss. 61 and 62, as set out in the reasons below.

In reaching my decision for the condition in s. 190C(2), I understand that this condition is procedural only and simply requires me to be satisfied that the application contains the information and details, and is accompanied by the documents, prescribed by ss. 61 and 62. This condition does not require me to undertake any merit or qualitative assessment of the material for the purposes of s. 190C(2)—*Attorney General of Northern Territory v Doepel* (2003) 133 FCR 112 (*Doepel*) at [16] and also at [35] to [39]. In other words, does the application contain the prescribed details and other information?

It is also my view 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 (as specified in s. 190C(2)). I therefore do not consider the requirements 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). The matters in ss. 61(5)(a), (b) and (d) relating to the Court's prescribed form, filing in the Court and payment of fees, in my view, are matters for the Court. They do not, in my view, require any separate consideration by the Registrar. Paragraph 61(5)(c), which requires that the application contain such information as is prescribed, does not need to be considered by me under s. 190C(2), as I already test these things 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.

My consideration of 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) is detailed below.

Native title claim group: s. 61(1)

> The application must be made by a person or persons authorised by all of the persons (the native title claim group) who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed, provided the person or persons are also included in the native title claim group.

The application **contains** all details and other information required by s. 61(1).

Under this section, I must consider whether the application sets out the native title claim group in the terms required by s. 61(1). If the description of the native title claim group in the application

indicates that not all persons in the native title claim group have been included, or that it is in fact a subgroup of the native title claim group, then the relevant requirement of s. 190C(2) would not be met and I should not accept the claim for registration—*Doepel* at [36].

Schedule A of the application describes the persons in the native title claim group by means of their descent from five people, and lists the names of those ancestors.

There is nothing on the face of the application that leads me to conclude that the description of the native title claim group does not include all of the persons in the native title group, or that it is a subgroup of the native title claim group.

Name and address for service: s. 61(3)

> The application must state the name and address for service of the person who is, or persons who are, the applicant.

The application **contains** all details and other information required by s. 61(3).

The application contains both the name of the applicant and an address for service on page 16.

Native title claim group named/described: s. 61(4)

> The application must:
> (a) name the persons in the native title claim group, or
> (b) otherwise describe the persons in the native title claim group sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.

The application **contains** all details and other information required by s. 61(4).

The application at Schedule A does not name the persons in the native title claim group but provides a description of the persons in the group.

Affidavits in prescribed form: s. 62(1)(a)

> The application must be accompanied by an affidavit sworn by the applicant that:
> (i) the applicant believes the native title rights and interests claimed by the native title claim group have not been extinguished in relation to any part of the area covered by the application, and
> (ii) the applicant believes that none of the area covered by the application is also covered by an approved determination of native title, and
> (iii) the applicant believes all of the statements made in the application are true, and
> (iv) the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it, and
> (v) setting out details of the process of decision-making complied with in authorising the applicant to make the application and to deal with matters arising in relation to it.

The application **is** accompanied by the affidavits required by s. 62(1)(a).

The application is accompanied by affidavits from each of the eleven persons who comprise the applicant. The affidavits are witnessed, signed by each deponent and make all the statements required by this section.

Application contains details required by s. 62(2): s. 62(1)(b)

> The application must contain the details specified in s. 62(2).

The application **contains** all details and other information required by s. 62(1)(b).

The application does contain the details specified in ss. 62(2)(a) to (h), as identified in the reasons below.

Information about the boundaries of the area: s. 62(2)(a)

> The application must contain information, whether by physical description or otherwise, that enables the following boundaries to be identified:
> (i) the area covered by the application, and
> (ii) any areas within those boundaries that are not covered by the application.

The application **contains** all details and other information required by s. 62(2)(a).

Schedule B of the application refers to Attachment B which contains information about the area covered by the application, and then lists the areas within those boundaries that are not covered by the application.

Map of external boundaries of the area: s. 62(2)(b)

> The application must contain a map showing the boundaries of the area mentioned in s. 62(2)(a)(i).

The application **contains** all details and other information required by s. 62(2)(b).

Schedule C of the application refers to Attachment C, which contains a map depicting the boundaries of the application area.

Searches: s. 62(2)(c)

> The application must contain the details and results of all searches carried out by or on behalf of the native title claim group to determine the existence of any non-native title rights and interests in relation to the land and waters in the area covered by the application.

The application **contains** all details and other information required by s. 62(2)(c).

Schedule D of the application states that no searches have been carried out.

Description of native title rights and interests: s. 62(2)(d)

> The application must contain a description of native title rights and interests claimed in relation to particular lands and 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.

The application **contains** all details and other information required by s. 62(2)(d).

Schedule E refers to Attachment E which provides a description of the native title rights and interests claimed in relation to the particular land and waters covered by the application area. The description does not consist only of a statement to the effect that the native title rights and interests are all the rights and interests that may exist, or that have not been extinguished, at law.

Description of factual basis: s. 62(2)(e)

> The application must contain a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist, and in particular that:
> (i) the native title claim group have, and the predecessors of those persons had, an association with the area, and
> (ii) there exist traditional laws and customs that give rise to the claimed native title, and
> (iii) the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

The application **contains** all details and other information required by s. 62(2)(e).

Schedule F refers to the affidavit material attached to the application and to Attachments F and F(1) to F(4) which contain information going to the factual basis on which it is asserted that the native title rights and interests claimed exist, and also for the particular assertions in the section. Further information in relation to the factual basis is contained in Schedule G and Attachment M.

Activities: s. 62(2)(f)

> If the native title claim group currently carries out any activities in relation to the area claimed, the application must contain details of those activities.

The application **contains** all details and other information required by s. 62(2)(f).

Schedule G contains details of activities carried out by the native title claim group in the application area.

Other applications: s. 62(2)(g)

> The application must contain details of any other applications to the High Court, Federal Court or a recognised state/territory body of which the applicant is aware, that have been made in relation to the whole or part of the area covered by the application and that seek a determination of native title or of compensation in relation to native title.

The application **contains** all details and other information required by s. 62(2)(g).

Schedule H refers to the existence of the other claimant application made by the Yaegl People—*Selena Blakeney & Ors on behalf of the Yaegl People v Minister of Lands*, NSD6052/1998—stating that the application is excluded from the area covered by the Yaegl People #2 application.

Section 24MD(6B)(c) notices: s. 62(2)(ga)

> The application must contain details of any notification under s. 24MD(6B)(c) of which the applicant is aware, that have been given and that relate to the whole or part of the area covered by the application.

The application **contains** all details and other information required by s. 62(2)(ga).

Schedule HA states that the applicant is not aware of any notices issued under s. 24MD(6B)(c) that relate to the whole or part of the application area.

Section 29 notices: s. 62(2)(h)

> The application must contain details of any notices given under s. 29 (or under a corresponding provision of a law of a state or territory) of which the applicant is aware that relate to the whole or a part of the area covered by the application.

The application **contains** all details and other information required by s. 62(2)(h).

Scheudle I states that there are no s. 29 notices that relate to the whole or part of the area covered by the application.

Subsection 190C(3)
No common claimants in previous overlapping applications

> The Registrar/delegate must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:
> (a) the previous application covered the whole or part of the area covered by the current application, and
> (b) the previous application was on the Register of Native Title Claims when the current application was made, and
> (c) the entry was made, or not removed, as a result of the previous application being considered for registration under s. 190A.

The application **satisfies** the condition of s. 190C(3).

The nature of the Registrar's task at s. 190C(3) is to consider whether there are members in common between the application being considered for registration (the current application) and a 'previous application'. An application will be a previous application where each of the conditions in subparagraphs (a) to (c) arises. Accordingly, where each of the conditions in s. 190C(3)(a) to (c) are satisfied in relation to a particular application, I must consider whether any member of the native title claim group in the current application was a member of a native title claim group in that previous application: *State of Western Australia v Strickland* [2000] FCA 652; (2000) 99 FCR 33 (*Strickland FC*)—at [9].

The Tribunal's geospatial report of 15 March 2011 confirms that the Yaegl People #2 application does not overlap any other native title determination application.

As there are no overlapping applications I need not consider the issue of common membership.

Subsection 190C(4)
Authorisation/certification

> Under s. 190C(4) the Registrar/delegate must be satisfied that either:
> (a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application, or
> (b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.
>
> Note: The word ***authorise*** is defined in section 251B.

Under s. 190C(5), if the application has not been certified as mentioned in s. 190C 4(a), the Registrar cannot be satisfied that the condition in s. 190C(4) has been satisfied unless the application:

(a) includes a statement to the effect that the requirement in s. 190C(4)(b) above has been met, and

(b) briefly sets out the grounds on which the Registrar should consider that the requirement in s. 190C(4)(b) above has been met.

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

For the reasons set out below, I am **satisfied** that the circumstances set out in s. 190C(4)(b) are met, including that the condition in s. 190C(5) is met.

As the application is not certified pursuant to s. 190C(4)(a), it is necessary to consider if the application meets the condition in s. 190C(4)(b); that the applicant is a member of the native title claim group and is authorised by all other persons in the claim group to make the application and deal with matters arising in relation to it.

A note to s. 190C(4) directs the Registrar to s. 251B of the Act, for the meaning of the word 'authorise':

251B Authorising the making of applications

For the purposes of this Act, all the persons in a native title claim group or compensation claim group authorise a person or persons to make a native title determination application or a compensation application, and to deal with matters arising in relation to it, if:

(a) where there is a process of decision-making that, under the traditional laws and customs of the persons in the native title claim group or compensation claim group, must be complied with in relation to authorising things of that kind—the persons in the native title claim group or compensation claim group authorise the person or persons to make the application and to deal with the matters in accordance with that process; or

(b) where there is no such process—the persons in the native title claim group or compensation claim group authorise the other person or persons to make the application and to deal with the matters in accordance with a process of decision-making agreed to and adopted, by the persons in the native title claim group or compensation claim group, in relation to authorising the making of the application and dealing with the matters, or in relation to doing things of that kind.

Additionally, in my consideration of the authorisation condition at s. 190C(4)(b) I must also consider the requirements as set out in s. 190C(5):

If the application has not been certified as mentioned in paragraph (4)(a), the Registrar cannot be satisfied that the condition in subsection (4) has been satisfied unless the application:

a) includes a statement to the effect that the requirement set out in paragraph 4(b) has been met; and

b) briefly sets out the grounds on which the Registrar should consider that it has been met.

Information considered

In my consideration of the authorisation of the applicant to make this application and to deal with matters arising in relation to it, I have had regard to the following material within the Yaegl People #2 application:

- Attachment R(1) being the affidavit of*[Applicant's legal representative]*, affirmed 22 February 2011, to which is attached Annexure A—copies of newspaper notices advertising the authorisation meeting; and Annexure B—a copy of a letter sent by *[applicant's legal representative]* to local Aboriginal land councils and Aboriginal organisations giving notice of the authorisation meeting.
- Attachments R(2) to R(12) being affidavits of each person comprising the applicant, affirming details of the process of decision-making and authorisation undertaken to authorise the applicant to make and deal with the Yaegl People #2 application.

Vivienne King (R4) and Deidre Randall (R8) did not attend the authorisation meeting of 29 and 30 June 2010. Neither of their affidavits contains information about the decision-making process. Both Ms King and Ms Randall attest to being telephoned during the meeting and being advised by *[applicant's legal representative]* that the claim group wished to include them in the group of persons comprising the applicant, to which they both agreed. Otherwise their affidavits contain the same information regarding authorisation as each of the affidavits of the other nine persons who were authorised to comprise the applicant.

The requirements of s. 190C(5)

The affidavits of each person comprising the applicant, in my view, contain a statement relevant to satisfy the requirements of s. 190C(5)(a):

> They [the individuals authorised to be part of the Applicant] are and I am members of the claim group through our descent from one or more of the apical ancestors named in Schedule A of the form 1 of the Application—para 14 in each of the affidavits R(2), R(3) to R(12) and para 11 of R(4) and R(8)

And:

> The native title claim group authorised the following persons to comprise the native title Applicant - Lillian Williams, Ron Heron, Vivienne King, Eileen McLeay, Noeline Kapeen, Judy Breckinridge, Deidre Randall, William Walker, Ferlin Laurie, Clarence Randall, Ken Laurie. The native title claim group authorised the Applicant to make the native title application to deal with matters arising in relation to it—para 10 in each of the affidavits R(2) to R(12).

While the affidavits of Deidre Randall (R8) and Vivienne King (R4), who did not attend the authorisation meeting of 29 and 30 June 2010, take a slightly different form, the affidavits of all of the persons comprising the applicant contain a statement relevant to satisfy the requirements of s. 190C(5)(b):

> The basis on which I am authorised to comprise one of the individuals who are jointly the Applicant in this application for determination of native title is pursuant to the agreed to and adopted process of decision-making complied with at the meeting of the native title claim group convened on 29 and 30 June 2010.

The other nine persons comprising the applicant set out in further detail the process followed by the native title claim group to authorise the applicant to make and deal with the application. Additionally the affidavit of *[applicant's legal representative]*, R(1), sets out the resolutions reached at the authorisation meeting, including the decision-making process complied with by the group. In my view all this sufficiently sets out the grounds on which the Registrar should consider that the requirement of s. 190C(4)(b) has been met and I therefore am satisfied that the application meets the requirements of s. 190C(5).

In *Doepel*, Mansfield J discusses the interaction between s. 190C(4)(b) and s. 190C(5) and how the Registrar is to be satisfied as to these conditions of the registration test:

> In the case of subs (4)(b), the Registrar is required to be satisfied of the fact of authorisation by all members of the native title claim group. Section 190C(5) then imposes further specific requirements before the Registrar can attain the necessary satisfaction for the purposes of s. 190C(4)(b). The interactions of s. 190C(4)(b) and s. 190C(5) may inform how the Registrar is to be satisfied of the condition imposed by s. 190C(4)(b), but clearly it involves some inquiry through the material available to the Registrar to see if the necessary authorisation has been given—at [78].

It is therefore still necessary for me to consider whether I am satisfied that the applicant is authorised pursuant to s. 190C(4)(b), noting that I am not limited to what is in the application on the issue.

How was the authorisation process conducted?

The affidavits of *[applicant's legal representative]* and those of the applicant provide detail about the process by which the authorisation meeting of 29 and 30 June 2010, convened by *[applicant's legal representative]*, was notified, advertised, prepared, convened and conducted.

[Applicant's legal representative], representing the applicant, has coordinated the authorisation process. The following is a summary of how the authorisation meeting was notified, taken from the information provided by *[applicant's legal representative]* in her affidavit:

- *[Applicant's legal representative]* arranged for notices of the authorisation meeting to be published in the *Koori Mail* on 16 June 2010 and the *Grafton Daily Examiner* on 22 June 2010.
- A copy of the notice, annexed to *[applicant's legal representative]* affidavit, gives notice that *[applicant's legal representative]* will convene a meeting of 'all Aboriginal People who assert native title rights and interests in an area of land and waters on the north coast of NSW which is bounded by Woody Bay near Woody Head, Woombah and Tullymorgan to the north'. The notice includes the date and location of the meeting; the purpose of the meeting (being to discuss and authorise the filing of a native title determination application over an area described in the notice); and details about assistance available to attendees.
- *[Applicant's legal representative]* provided copies of the notice to persons who had previously advised *[applicant's legal representative]* that they assert native title rights and interests in the area described in the notice.

- Copies of the notice were also provided to local Aboriginal land councils and organisations operating in the area described in the notice—the Yaegl Local Aboriginal Land Council, the Birrigan Gargle Local Aboriginal Land Council and the Nungera Aboriginal Cooperative.
- *[Applicant's legal representative]* was advised by those unable to attend the meeting that they would have family members attending who would represent their views.
- Assistance to meet travel and accommodation costs was provided by *[Applicant's legal representative]* to persons attending the meeting.

Having regard to the above information, I am satisfied that the 29 and 30 June 2010 meeting was sufficiently notified to allow every opportunity for members of the Yaegl native title claim group to attend and participate in decisions about this application, and to authorise an applicant to make and deal with the application.

How the meeting was attended

Details about the conduct of claim group meeting which took place in Yamba on the 29 and 30 June 2010 are provided in *[Applicant's legal representative]* affidavit, who attests to the following:

- '[A]t least' 30 persons who assert native title rights interests in the area described in the notice attended the meeting and were representative of their families.
- *[Applicant's legal representative]* witnessed a resolution unanimously passed that—
    - the people present at the meeting were sufficiently representative of the Yaegl native title claim group,
    - for those who were not able to attend, their views and the views of their Elders were represented by those who did attend,
    - there was sufficient notice of the meeting, and
    - confirmed the description of the native title claim group as that which appears now in the application at Schedule A.
- *[Applicant's legal representative]* witnessed the meeting resolve unanimously to agree to and adopt a decision-making process which is outlined as a seven-step process.
- *[Applicant's legal representative]* witnessed the meeting resolve unanimously to authorise the 11 persons identified in the application to comprise the applicant, and for the applicant to make and deal with the Yaegl People #2 claimant application.
- *[Applicant's legal representative]* and other *[applicant's legal representative]* personnel outlined the requirements of authorisation.

The affidavits of the persons comprising the applicant who were at the meeting attest to the meeting being well attended by members of the native title claim group, with people from each of the families attending. *[Applicant's legal representative]* believes that there was sufficient representation of the native title claim group by the persons in attendance at the meeting such that they were able to make decision in relation to authorisation (at [21]).

Having regard to the above information, I am satisfied that those attending the 29 and 30 June 2010 meeting were sufficiently representative of the Yaegl People #2 claim group and were sufficiently informed about the requirements of authorisation.

Decision-making process

The affidavit of *[applicant's legal representative]* and those of the persons comprising the applicant who attended the meeting in person provide information about the resolutions and process of decision-making to authorise the application to make and deal with the application. A resolution on the decision-making process was passed in the following terms:

> Yaegl People confirm that when making decisions of this kind (authorising a native title application and dealing with matters arising in relation to it) there is no particular process of decision making under traditional laws and customs that MUST BE complied with by Yaegl People.
>
> Accordingly, Yaegl people adopt the following process of decision making for the purposes of the native title claim:
>
> 1. There will be general discussion of issues
> 2. Elders input will assist in guiding the discussion
> 3. Discussion will continue until there is general consensus
> 4. A clearly worded motion reflecting the general consensus will be read to the meeting
> 5. The motion must be moved and seconded by Yaegl People before it is decided on
> 6. The decision will then be made by Yaegl People by a show of hands vote
> 7. The decision of the majority in relation to the motion shall be the decision of the Yaegl People

The affidavits attest that 'all of the decisions at the meeting on 29 and 30 June 2010 [were made] using this agreed to and adopted method of decision making'.

All of the affidavits, regardless of whether or not they attended the authorisation meeting in person, attest that:

- the meeting discussed and authorised the filing of a native title application over the land and waters identified by the map at Attachment C of the application;
- the authorisation of Lillian Williams, Ron Heron, Vivienne King, Eileen McLeay, Judy Breckinridge, Deidre Randall, William Walker, Noeline Kapeen, Ferlin Laurie, Clarence Randall, Ken Laurie to comprise the applicant and its authorisation to make and deal with the Yaegl claimant application; and
- the persons who comprise the applicant are members of the native title claim group through descent from one or more of the apical ancestors listed at the application's Schedule A.

Sufficient and cogent information is set out in the affidavits and attachments which accompany the application. I am satisfied that the decision-making process agreed to and adopted by those

who attended the authorisation meeting of 29 and 30 June 2010 was followed in accordance with the requirements of s. 251B(b).

I am satisfied that the applicant has been authorised by the native title claim group to make the application and deal with matters arising in relation to it.

Merit conditions: s. 190B

Subsection 190B(2)
Identification of area subject to native title

> The Registrar must be satisfied that the information and map contained in the application as required by ss. 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

The application **satisfies** the condition of s. 190B(2).

Schedule B of the application describes the area covered by the application at Attachment B. Attachment B contains a metes and bounds description of the external boundaries of the application area, referencing the mean high water mark of the South Pacific Ocean, topographic features, geographic coordinates referenced to the Geocentric Datum of Australia 1994 (GDA94), cadastral boundaries and the seaward three nautical mile limit. Included are notes relating to the source, currency and datum of data used to prepare the description.

The description specifically excludes all the land and waters subject to claimant application NSD6034/98—Yaegl People—NC96/38.

Part B, paragraphs 1 to 7 of Schedule B contain general exclusions. That is, the application area excludes areas of land and waters affected by any previous exclusive possession acts and any land or waters where native title has otherwise been extinguished. These exclusions are qualified such that, should they fall within the provisions of ss. 23B(9), (9A), (9B), (9C), and (10), or within the provisions of ss. 47, 47A or 47B, the area covered by the act is not exlcuded from the application.

Schedule C refers to Attachment C which is a monochrome copy of an A3 colour map entitled 'Native Title Determination Application Yaegl People #2', produced by the Tribunal's Geospatial Services, dated 24 November 2010. The map includes:

- the application area depicted by a bold blue outline and stipple pattern;
- the area of NSD6034/98—Yaegl People—NC96/38, depicted by a bold magenta outline and stipple pattern;
- topographic image as a background;
- scalebar, northpoint, coordinate grid, locality diagram, legend; and
- notes relating to the source, currency and datum of data used to prepare the map.

Section 190B(2) requires that the information in the application describing the areas covered by the application must be sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters. For the Registrar to be satisfied, it is my view that the written description and map should be sufficiently consistent with each other and the reader should be able to discern the location of the area covered by the application on the surface of the earth with reasonable certainty.

In making its assessment of the map and description, the Tribunal's Geospatial Services identified a slight discrepancy between the map and description:

> Page two of the description references the application as along "...Lawrence Road; then generally northerly along the southern and eastern **boundaries of that road, the southern boundary of Riverbank Road**, eastern boundaries of Bridge Street...(emphasis added)" Where it refers to 'Riverbank Road' this could be interpreted as intersecting Lawrence Road in two different positions. The map clearly shows where the application boundary follows Lawrence Road, however, if the application were to be later amended, reference to "...boundaries of that road (to Weir Road), the southern boundary of Riverbank Road..." would remove any possible misinterpretation of the application boundary with absolute certainty.

The assessment confirms that notwithstanding the above, the description and map are consistent and identify the application area with reasonable certainty. I agree with that assessment.

Having regard to the identification of the external boundary in Schedule B and the map showing the external boundary, I am satisfied that the external boundaries of the application area have been described such that the location of it on the earth's surface can be identified with reasonable certainty.

The specific exclusions to the area of the application are clearly identifiable, and while the written description at Schedule B contains some general exclusions, they are sufficient to offer an objective mechanism to identify which areas fall within the categories described.

In conclusion, I am satisfied that the information and the maps required by paragraphs 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular areas of the land or waters.

The application satisfies the condition of s. 190B(2) as a whole.

Subsection 190B(3)
Identification of the native title claim group

> 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.

The application **satisfies** the condition of s. 190B(3).

Under this condition, I am required to be satisfied that one of either s. 190B(3)(a) or (b) has been met. The application does not name the persons in the native title claim group but contains a description, and it is therefore necessary to consider whether the application satisfies the requirements of s. 190B(3)(b).

Schedule A of the application contains the following description of the persons in the native title claim group:

> The Yaegl People are the native title claim group on whose behalf the applicant makes this application. The Native Title Claim Group comprises all the descendents of the following apical ancestors:
>
> Dugald Cameron (who was born in Chatsworth Island around 1870);
> Jack Freeburn (who was born in Yamba around 1868);

> Sailor Morris (who was born in Chatsworth Island around 1831);
> Nodo Combo (who was born in Yamba around 1859) and
> Rose Combo nee Yamba and also known as Rosie Yamba (who was born in Yamba around 1856).

I note the comments of Mansfield J in *Doepel* at [51] and [37] respectively that the focus of s. 190B(3)(b):

- is whether the application enables the reliable identification of persons in the native title claim group; and
- is not on 'the correctness of the description . . . but upon its adequacy so that the members of any particular person in the identified native title claim group can be ascertained'.

Carr J in *State of Western Australia v Native Title Registrar* (1999) 95 FCR 93 (*Western Australia v Native Title Registrar*) was of the view that 'it may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described. But that does not mean that the group has not been described sufficiently—at [67].

I am of the view that the native title claim group is described sufficiently clearly to enable identification of any particular person in that group – it being the case that they must descend directly from the named ancestors. It may be that some factual inquiry is required to ascertain how members of the claim group are descended from the named apical ancestors, but that would not mean that the group had not been sufficiently described.

Subsection 190B(4)
Native title rights and interests identifiable

> The Registrar must be satisfied that the description contained in the application as required by s. 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.

The application **satisfies** the condition of s. 190B(4).

Section 190B(4) requires the Registrar to be satisfied that the description of the claimed native title rights and interests contained in the application is sufficient to allow the rights and interests to be identified—*Doepel* at [92]. In *Doepel*, Mansfield J refers to the Registrar's consideration:

> The Registrar referred to s. 223(1) and to the decision in *Ward*. He recognised that some claimed rights and interests may not be native title rights and interests as defined. He identified the test of identifiability as being *whether the claimed native title rights and interests are understandable and have meaning*. There is no criticism of him in that regard—at [99] (emphasis added).

I am of the view that for a description to be sufficient to allow the claimed native title rights and interests to be readily identified, it must describe what is claimed in a clear and easily understood manner.

Native title rights and interests are defined in the Act at s. 223(1), which states:

> The expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
>
> (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
> (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
> (c) the rights and interests are recognised by the common law of Australia.

With this definition in mind it may be argued that rights and interests that have been found by the courts to fall outside the scope of s. 223 cannot be 'readily identified' for the purposes of s. 190B(4).

On another view, s. 190B(4) is only intended to consider those rights and interests that are not readily identified in the sense of them being unintelligible or not understandable. On this view, any rights that fall outside the scope of s. 223 should be considered under s. 190B(6) as not able to be established prima facie. I have adopted this latter view and do not consider under this condition whether or not any of the rights claimed fall outside the scope of s. 223.

The description of the native title rights and interests claimed in relation to particular land or waters is found at Schedule E:

> The Yaegl People as defined in Schedule A of this application, claim the following non-exclusive rights and interests:
>
> (a) the right to access the application area;
> (b) the right to use and enjoy the application area;
> (c) the right to camp on the application area;
> (d) the right to erect shelters on the application area;
> (e) the right to live being to enter and remain on the application area;
> (f) the right to move about the application area;
> (g) the right to hold meetings 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 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, stone, charcoal, ochre and resin as well as materials for fabricating tools and hunting implements and making artwork and musical instruments);
> (l) the right to participate in cultural and spiritual activities on the application area;
> (m) the right to maintain and protect places of importance under traditional laws, customs and practices in the application area;
> (n) the right to conduct ceremonies on the application area;
> (o) the right to share and exchange resources derived from the land and waters within the application area;
> (p) the right to speak for and make non-exclusive decisions about the application area in accordance with traditional laws and customs;
> (q) the right to speak authoritatively about the application area among other Aboriginal People in accordance with traditional laws and customs;

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

2. The native title rights and interests referred to in paragraph 1 do not confer possession, occupation, use and enjoyment to the exclusion of all others.

3. The native title rights and interests are subject to and exercisable in accordance with:

(a) the laws of the State of New South Wales and the Commonwealth of Australia including the common law;
(b) the rights (past or present) conferred upon persons pursuant to the laws of the Commonwealth and the laws of the State of New South Wales; and
(c) the traditional laws and customs of the Yaegl People for personal, domestic and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes).

I am satisfied that the description of the claimed native title rights and interests is sufficient to allow them to be readily identified in the sense that they are described in a clear and easily understood manner.

Subsection 190B(5)
Factual basis for claimed native title

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 interest, and
(c) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

The application **satisfied** the condition of s. 190B(5) because the factual basis provided is **sufficient** to support each of the particularised assertions in s. 190B(5), as set out in my reasons below.

For the application to meet this merit condition, I must be satisfied that a sufficient factual basis is provided to support the assertion that the claimed native title rights and interests exist and to support the particularised assertions in paragraphs (a) to (c) of s. 190B(5). In *Doepel*, Mansfield J states that:

> Section 190B(5) is carefully expressed. It requires the Registrar to consider whether the `factual basis on which it is asserted' that the claimed native title rights and interests exist `is sufficient to support the assertion'. That requires the Registrar to address the quality of the asserted factual basis for those claimed rights and interests; but only in the sense of ensuring that, if they are true, they can support the existence of those claimed rights and interests. In other words, the Registrar is required to determine whether the asserted facts can support the claimed conclusions. The role is not to test whether the asserted facts will or may be proved at

> the hearing, or to assess the strength of the evidence which may ultimately be adduced to establish the asserted facts—at [17].

Consideration of this condition necessitates taking into account the concept and meaning of the word 'traditional'. The decision of the High Court in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; (2002) 194 ALR 538; [2002] HCA 58 (*Yorta Yorta*) defines 'traditional' in the context of the phrase 'traditional laws and customs'. That is:

> 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. But in the context of the *Native Title Act*, "traditional" carries with it two other elements in its meaning. First, 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.
>
> Secondly, and no less importantly, the reference to rights or interests in land or waters being possessed under traditional laws acknowledged and traditional customs observed by the peoples concerned, requires that 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—at [46] and [47].

In my consideration of the factual basis for the claim made in this application, I am guided by the principles outlined in *Yorta Yorta*:

- traditional laws and customs are ones that a society passes on from one generation to another;
- laws and customs arise out of, and go to define, a particular society, that is a body of persons united in, and by, its acknowledgement and observance of a body of laws and customs;
- traditional laws or customs are derived from a body of norms or normative system that existed before sovereignty;
- rights and interests are rooted in pre-sovereignty traditional laws and customs; and
- it must be shown that the society, under whose laws and customs the native title rights and interests are said to be possessed, has continued to exist throughout the period since sovereignty was asserted as a body united by its acknowledgement and observance of the laws and customs.

That these principles from *Yorta Yorta* guide consideration of the condition in s. 190B(5) was discussed by Dowsett J in *Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala [2007]*)—at [26]. I note that the review of that decision by the Full Court in *Gudjala # 2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala FC*) did not criticise this approach. I note also that the most recent decision by Dowsett J in *Gudjala #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala [2009]*) again refers to the *Yorta Yorta* principles as guiding the Registrar's consideration of the condition in s. 190B(5).

The test in s. 190A involves an administrative decision—it is not a trial or hearing of a determination of native title pursuant to s. 225, and therefore it is not appropriate to apply the standards of proof that would be required at such a trial or hearing. It is not the task of the delegate to make findings about whether or not the claimed native title rights and interests *exist*. It is not the role of the delegate to reach definitive conclusions about complex anthropological issues pertaining to the applicant's relationship with their country as that is a judicial enquiry.

Below I consider each of the three assertions set out in the three paragraphs of s. 190B(5) and I refer only to those statements in the material before me which are pointedly relevant to each of the assertions.

Information considered

The application contains the following material directly relevant to my consideration:

- Attachment F—addressing each of the assertions;
- Attachment F(1)—affidavit of Deidre Randall, affirmed 15 February 2011;
- Attachment F(2)—affidavit of *[name removed]*, affirmed 18 February 2011;
- Attachment F(3)—affidavit of Clarence Randall, affirmed 15 February 2011;
- Attachment F(4)—affidavit of Ron Heron, affirmed 18 February 2011;
- Schedule G; and
- Attachment M.

Attachment F provides general assertions in relation to the claim group's current and previous association with the claim area, its traditional laws and customs and the continuity of the group's native title held in accordance with those laws and customs. The affidavits of the four claim group members provide examples that illustrate and particularise the assertions and statements made at Attachment F.

I have also considered information contained in the earlier Yaegl People claimant application:

- The amended application filed 11 August 2006—in particular, the affidavits of Judy Breckenridge, affirmed 3 August 2006 [F(1)]; Thelma Kapeen [Attachment F(2)]; Ron Heron [Attachment F(3)] and Deidre Randall [Attachment F(4)]; and
- The amended application filed 26 September 2003—in particular, Attachment F.

Reasons for s. 190B(5)(a)

I am **satisfied** that the factual basis provided is sufficient to support the assertion described by s. 190B(5)(a).

This subsection requires me to be satisfied that the factual material provided is sufficient to support the assertion that the native title claim group has, and its predecessors had, an association with the area of the application. While it is not necessary for the factual basis to support an assertion that *all* members of the native title claim group have an association with the area *all* of the time, it is necessary to show that the claim group *as a whole* has an association with the area—*Gudjala [2007]* at [51] and [52].

In summary, Attachment F makes the folowing broad statements:

- Yaegl people have occupied the application area and exercised a system of traditional laws and customs before and since sovereignty (1788).
- According to those traditional laws and customs, the Yaegl people are the owners of the land and waters in the application area.
- Material evidence exists showing physical association and connections with the claim area by the native title claim group's ancestors, which includes archealogical evidence of artefacts, fragments and traditional occupancy sites.
- The current Yaegl native title claim group is descended from those persons who occupied the area prior to sovereignty and they have continued be present on the application area and continued to use and enjoy the area since 1788.

All of the persons affirm in their affidavits that they are members of the native title claim group and provide details of their descent from an ancestor or ancestors referred to in Schedule A.

The affidavits provide information that demonstrates the above statements. Each attest to grandparents and other relatives living on, visiting and travelling around the claim area—Yamba, McLean, Angourie, Cabbage Island and Ulugundahi Island. Ron Heron identifies various sites and the association of Yaegl ancestors with these sites along the coast from Woody Head in the north to Wooli in the south. In the 1960s people lived in settlements and missions at Reedy Creek, near Pippi Beach and at Angourie Road, 'all of these places being Yaegl country'—R Heron at [9].

There is extensive illustration in the affidavits of the claim group's current association with the area, both in the immediate vicinity of the Clarence River and along the coast between Woody Head and Wooli. Fishing, hunting and the gathering of coastal resources involves widespread association with the area through camping, travelling, the sharing of knowledge and practise of traditional law and custom. There are many references to locations and geographical sites identified as Yaegl country where people visit, live and about which people have historical and traditional knowledge.

In all the affidavits the boundary of the claim area is identified and described in terms of geographical markers passed onto the deponents by their Elders who told them where their 'country starts and ends'. The boundaries of Yaegl country are referenced to Bandjalang and Gumbaynggirr boundaries to the north and south respectively.

Ron Heron identifies a number of sites in the claim area shown to him by his Elders, where there are middens, scar trees, natural fish traps, art sites, traditional quarry sites for stones for hunting tools, providing evidence of previous habitation of the area by Yaegl people. His affidvait is replete with examples of areas regularly visited by current members of the claim group which are important and valued by virtue of their significance to the claim group's predecessors. It is clear that knowledge of the traditions associated with these areas is widespread across the application area and has been passed down through the generations. Mr Heron makes the statement that:

> The land and waters of the claim area that are part of Yaegl ancestral land and the Yaegl connection to the land and waters has been continuous since the Dreamtime when the land and waters were given to the people—at [107].

Clarence Randall attests in his affidavit:

> I heard my grand father and my uncles' mention Rosie and Nodo Yamba and Sailor Morris too' [apical ancestors for this application]. We knew that they were from the area, there was always talk about where and how people were connected...—at [11].

I have also considered material about the claim that has been included in the earlier Yaegl People applications. The affidavits and Schedule F material make reference to the all of the ancestors named in Schedule A of the Yaegl People #2 application. While this claim is only over the bed and banks of the eastern reaches and mouth of the Clarence River, extensive material has been attached to the claim's previous applications which is, in my view, relevant to my consderation of the Yaegl people's factual basis that native title exists in relation to the broader area of country they claim in this application before me.

A literature review is provided at Attachment F of the 2006 amended application in Yaegl People—*Historical, archaeological and site information*. In summary, the document highlights historical records of Aboriginal occupation in the vicinity of and at the mouth of the Clarence River, archaeological surveys in and around those areas and recording of Yaegl informants for anthropological research. For example:

- Written observations of Aboriginal inhabitation made by Matthew Flinders in July 1799 when he was anchored at the mouth of the Clarence River.
- Descriptions by government officials of Aboriginal people camping and fishing at the time of European navigation of the Clarence River, as well as at the mouth of the river.
- Records of sites, including shell middens demonstrating the presence of an Aboriginal community stretching along the northern banks of the Clarence River.
- Published accounts of the origins of a mythological site at the mouth of the Clarence River.
- Historical references to the community of people around the lower Clarence River variously identified as Yiegra, Yambah tribe, Yeagirr tribe, Yaygir and Yegera.
- References in historical, linguistic and anthropological materials to language, myths and sites of significance and other cultural material informed by the named apical ancestors of the Yaegl people and their descendents.

In my view this additional material provides a factual basis to support assertions relating to intergenerational links between the current native title claim group's association with the area and those of their apical ancestors identified in the claim group description. It also appears to me that there is an historical record of occupation in the area around the time of European settlement by Aboriginal people whose identification is likely Yaegl.

I am therefore satisfied that there is sufficient information before me to support the assertion that the native title claim group currently has an association with the whole of the area and that the predecessors of the claim group had an association with the whole of the claim area.

Reasons for s. 190B(5)(b)

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

This subsection requires that I be satisfied that the material before me provides a sufficient factual basis for the assertion that there exist traditional laws acknowledged and customs observed by the native title claim group and that these give rise to the claimed native title rights and interests. My consideration is based on the principles decided in *Yorta Yorta* and assisted by Dowsett J's comments and analysis in *Gudjala [2009]*. The material should establish a factual basis that the traditional laws and customs currently acknowledged and observed by the claim group are rooted in the laws and customs of a society in existence at the time of sovereignty over the area of the claim and is one that has continued to exist in substantially uninterrupted form since sovereignty to the present day.

In summary, Attachment F makes the following general statements:

- Yaegl people have maintained to the present day a system of law and custom in existence prior to and after 1788.
- Members of the claim group continue to acknowledge and observe traditional laws and customs through intergenerational transfer of knowledge.
- The native title claim group is bound by a normative system of traditional laws and customs which provides for principles of kinship and observance of laws relating to land tenure and traditional usage of land and waters.
- A kinship system exists which:
    - recognises ancestors and patterns of descent, and
    - determines traditional rights and customs regarding land and waters and affiliation with totemic beings which relate to those land and waters.
- Laws and customs relate to:
    - religious and spiritual beliefs and their maintenance,
    - communication and intergenerational transmission of traditional knowledge, and
    - recognition of responsibilities and custodianship towards land and waters and access to country.
- Traditional laws and customs are acknowledged and observed in relation to tenure in the land and waters.

The information in Schedule F outlining the factual basis is, in my view, expressed at a high level of generality and would not in itself be sufficient to support the assertion described by s. 190B(5)(b). However, it is supplemented by the affidavits of claim group members contained in this application, as well as the Schedule F and affidavits contained in the earlier Yaegl People application. The affidavits are particularly strong in the way they demonstrate some of the traditional laws acknowledged and customs observed by themselves and the wider claim group. Each of the affidavits talk about the continuing exercise of rights and interests by the claim group, the practice of which have been passed down to them through their Elders. Each person attests in their affidavit to their descent from at least one of the apical ancestors listed at Schedule A (Dugald Cameron) and refers to the presence of Yaegl people throughout the claim area since before European contact. This, in my view, would appear to 'permit an inference that the claim

group is a modern manifestation of a pre-sovereignty society, and that its laws and customs have been derived from that earlier society'—*Gudjala [2009]* at [31].

There is little direct evidence in the affidavits to show how traditional laws and customs relating to rights and interests are derived (*Gudjala [2009]* at 35]). However, the cumulative weight of:

- the information in Schedule F of the application,
- in the summary of the historical record in the earlier application,
- in all the affidavits made in relation to both claims, and
- the inferences I am able to draw from this information,

is sufficient to establish that there is a factual basis for the assertion that at sovereignty there was a Yaegl society, the members of which have continued to acknowledge and observe traditional laws and customs. The basis for my view is outlined below in a summary of the key elements of that information.

The affidavits affirmed by members of the native title claim group in 2006 provide information that illustrates aspects of Yaegl traditional law and custom, including:

- the knowledge of Yaegl people that the land and waters, banks and islands of the Clarence River was their traditional country—that 'this is Yaegl';
- marriage restrictions and relationship structures between young people and their Elders;
- permissions, responsibilities and restrictions regarding access to Yaegl country;
- the Yaegl totem of the *[text removed],* the story of the [*[text removed]*, the *[text removed];*
- the story of the *[text removed]* and its significance in the lives and connection to country of Yaegl people;
- passing on of Yaegl culture and knowledge, laws and customs through story telling; and
- obligations to share the resources of the area and to follow traditional Yaegl rules and responsibilities in relation to the gathering, preparation and eating of food from the area.

As summarised above in relation to the requirements of s. 190B(5)(a), historical records exist to show that Yaegl people occupied and were actively present in the Clarence River region since and prior to the assertion of British sovereignty. Some of this historical record is directly informed by the Yaegl ancestors named at Schedule A and members of the generation which followed them.

The affidavits contained in the application provide references to what appears to be a continuing body of traditional law and custom acknowledged and observed by which Yaegl people have been and are currently bound. It is clear in the affidavits that intrinsic to the activities of hunting and gathering is sharing and exchanging between members of the claim group, with much transmission of laws and customs, knowledge about country occuring when people are fishing and hunting:

> I have been taught to follow the traditional Yaegl rules of how food should be treated and prepared and the relationship between who hunts it and who gathers and the person it is given to. It is called 'offering' in the Yaegl way—R Heron at [43].

Fishing and accessing the waters of the Clarence River and elsewhere in the claim area is a significant part of the lives of Yaegl people. All the affidavits relate the method of 'worming' – catching, preparing, sharing and eating 'cobra'. Stories relate Yaegl knoweldge, practice and responsibilities and arise during the activities associated with camping, fishing, hunting, gathering and moving around the claim area.

The affidavits speak of the respect and recognition that Yaegl people have for their Elders—sharing of food with Elders first; respect for Elders is important; Elders come first when when things are shared out, and that traditionally Elders get more say and make the final decision.

[Name removed] attests to having been told the stories about how the Clarence River was formed (at [51]), and each of the other affidavits refer at length *[text removed].*

Each of the affidavits relate stories and experiences which petain to the group's beliefs in spirits of the area. The beliefs translate to:

- restrictions placed on certain areas and at certain times (at night for example);
- repercussions brought on the people when spirits are disturbed;
- signs of impending bad luck or good fortune; and
- Elders speaking with the spirits to appease them.

Many of these areas are identified—certain beaches (*[text removed]),* massacre sites (*[text removed])* and burial grounds (*[text removed]):*

> 'Yaegl people have never lost their strong belief in spirits which inhabit the claim area and continue to follow the law that certain places should not be visited particularly after dark'—R Heron at [83].

Some of the affidavits talk about the symbolism and presence of animals and birds and their significance for Yaegl people—*[text removed]*—and how they continue to influence their lives and actions today.

There is in my view a sufficient factual basis to support the assertion that traditional laws and customs are acknowledged and observed by the claim group. This is demonstrated in the affidavits by examples of physical and spiritual connection to country in the exercise of rights and interests by members of the group. When considered as a whole, all of the material before me provides a sufficient factual basis for the assertion that there exist traditional laws acknowledged and customs observed by the Yaegl people and that these give rise to the native title rights and interests they claim.

Reasons for s. 190B(5)(c)

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

This subsection requires that I be satisfied that there is sufficient factual basis to support the assertion that the native title claim group continues to hold native title in accordance with their traditional laws and customs.

Attachment F states the following:

- That from 1788 to the present day the native title claim group has continued to occupy, use and enjoy and be present upon the application area in accordance with their traditional laws acknowledged and customs observed.
- The rights and interests claimed in the application are those which accrue to members of the group under that traditional law and custom.
- The activities in exercise of those rights and interests are listed at Schedule G and are illustrated by the statements of members of the claim group in their affidavits.

The affidavits provide examples of stories, experiences and knowledge passed down through generations of Yaegl people and which continue to be passed onto the current younger generation—about places of spiritual significance, *[text removed];* traditional customs and practices. *[Name removed]* (classifed as an Elder—her affidavit of 18 February 2011 at [40]) attests to being taught Yaegl custom as a child by uncles and aunts, and now teaches her own grandchildren about fishing and hunting, customs associated with food preparation, medicinal practices, sharing and kinship relationships, language and access to land protocols and obligations. Ron Heron also attests to the continuity of law and custom through the passing on of knowledge:

> It is important to pass the knowledge on and that is our law and custom. Traditional law and custom is still passed on with stories. Knowledge is transferred from generation to generation, transmitted orally by senior family members to the young ones. I talk to men a few years younger than me and that is how I pass it, the men's things. It was the same for me, *[name removed]* taught me. Our Grandfathers and our Uncles would open up to us Yaegl boys, not with the boys from out of town but they did warn them about where they could go. They weren't told everything about that place but they were told where to go, mainly to protect them at the time. *[name removed]* and *[name removed]* knew the important men's business things. They knew their Uncles and Grandfathers and had learnt from them—at [18].

Each person states in their affidavit that they grew up knowing the area of the application 'belongs to Yaegl' and that people can identify country as Yaegl. It is the Elders who have defined and continue to define for the claim group the boundaries of Yaegl country. The rules and obligations that bind members of the claim group and teach people how to 'be Yaegl' have been passed down by their Elders:

> Many traditional practices and beliefs continue amongst Yaegl People. We had to adapt to survive but we have never conformed to European values, we never abandoned our law and custom–R Heron at [108].

It is claimed that traditional law and custom has been passed on between the generations through stories and instruction—about the extent of and connection of people to Yaegl country (R Heron, C Randall), the significance of particular sites and areas (the river and the sea), the importance of certain behaviour and relationships and the adherence to ways of doing things and speaking (R Heron, D Randall). Each affidavit talks of the obligation of Yaegl people to protect and maintain places and stories of significance in the land and waters of Yaegl country (D Randall, *name removed*).

> We also continue to recognise our kinship relationships and we are taught this from the time we are young children...—R Heron at [23].

In my view, the strength of the affidavit material allows the inference to be made that Yaegl people continue to hold native title in accordance with their traditional laws and customs and therefore there is support for that assertion.

Subsection 190B(6)
Prima facie case

> The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.

The application **satisfies** the condition of s. 190B(6). The claimed native title rights and interests that I consider can be established, prima facie, are identified in my reasons below.

Under s. 190B(6) I must be satisfied that at least some of the native title rights and interests claimed by the native title group can be established, prima facie. The Registrar takes the view that registration requires a minimum of only one right or interest to be established. In *Doepel*, Mansfield J noted at [16] the following:

> Section 190B(5), (6) and (7) however clearly calls for consideration of material which may go beyond the terms of the application, and for that purpose the information sources specified in s. 190A(3) may be relevant. Even so, it is noteworthy that s. 190B(6) requires the Registrar to consider whether `prima facie' some at least of the native title rights and interests claimed in the application can be established. By clear inference, the claim may be accepted for registration even if only some of the native title rights and interests claimed get over the prima facie proof hurdle.

I refer to the further comments from *Doepel* about the nature of the test at s. 190B(6):

- It is a prima facie test and 'if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis'—*Doepel* at [135].
- It involves some 'measure' and 'weighing' of the factual basis and imposes 'a more onerous test to be applied to the individual rights and interests claimed'—*Doepel* at [126], [127] and [132].

It follows that the task under this section is to consider whether there is any probative factual material available evidencing the existence of the particular native title rights and interests claimed. In performing this task, I have had regard to settled law about:

- what is a 'native title right and interest' (as that term is defined in s. 223);
- whether or not the right has been extinguished; and
- whether or not the right is precisely expressed such that it sets out the nature and extent of the right.

If a described right and interest in this application has been found by the courts to fall outside the scope of s. 223(1) then it will not be established, prima facie, for the purposes of s. 190B(6).

In the circumstances where I have found that a particular claimed right cannot be prima facie established, I refer the applicant to the provisions of s. 190(3A) of the Act. I note that the

provisions of s. 190(3A) are available to the applicant if there is further information which would support a decision under that section to include a right on the Register.

Consideration

As mentioned above in relation to the requirements of s. 190B(5), the registration test involves an administrative decision—it is not a trial or hearing of a determination of native title pursuant to s. 225, and therefore it is not appropriate to apply the standards of proof that would be required at such a trial or hearing. It is not my role to draw definitive conclusions from the material before me about whether or not the claimed native title rights and interests exist, only whether they are capable of being established, prima facie.

I note that, in my view, as set out above at s. 190B(5), the application provides a sufficient factual basis to support the assertion that there exist traditional laws and customs acknowledged and observed by the native title claim group that give rise to the claim to native title rights and interests.

The application does not make a claim to exclusive possession, but claims 19 non-exclusive rights. In my consideration below of the rights claimed in the application, I have grouped together rights which appear to be of a similar character, and therefore rely on the same evidentiary material or which require consideration of the same case law as to whether they can, prima facie, be established.

(a) the right to access the application area;

(c) the right to camp on the application area;

(d) the right to erect shelters on the application area;

(e) the right to live being to enter and remain on the application area;

(f) the right to move about the application area;

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

Established

All of the affidavits, affirmed recently and earlier in 2006 in respect of the smaller area claimed by the Yaegl people, provide numerous examples of activities to demonstrate that the claim group's past and current association with the application area has involved and currently involves all of the rights claimed above. Such activities include fishing, camping, the collecting of marine and river resources, residing permanently in the claim area, attending gatherings and meetings, teaching young people about Yaegl country and visiting and maintaining sites of significance. It is clear that members of the claim group regularly spend time in the claim area and access to the land, and that waters is in pursuit of these activities.

People have regularly camped in the area (Ron Heron, Clarence Randall) for long periods of time and younger generations are taken out on the claim area camping to fish and learn about Yaegl country, law and custom.

(h) the right to hunt on the application area;

(i) the right to fish in the application area;

(k) the right to gather and use the natural resources of the application area (including food, medicinal plants, timber, stone, charcoal, ochre and resin as well as materials for fabricating tools and hunting implements and making artwork and musical instruments)

Established

All of the affidavits document the claim group's activities associated with fishing; [*text removed]*; hunting [*text removed]*; and the gathering of various flora for consumption and for medicinal purposes. Honeycomb, yams, bush lemons, fruit and berries, geebungs and pig face are all mentioned as part of the tradition of gathering and sharing bush tucker. Fishing in particular has and continues to form a large part of the claim group's activities in, and traditional association with, the claim area.

The affidavits describe the gathering of resources by the claim group and people's knowledge of the places in which various resources are found, having been passed down through the generations. The use of resources other than food by the claim group is also documented—ochre to use in painting, quills and shells used in artwork, and stone from a traditional quarry site for tools and blades.

(j) the right to have access to the natural water resources of the application area;

Established

The affidavits are replete with examples of the claim group's association with the water courses of the application area and their accessing of their resources. Fish traps in the water courses of the Clarence River are regularly accessed by the claim group. Activities such as swimming, boating, fishing in and gathering the resources of the water courses in the claim area are all significant to the claim group's association with the claim area. The stories of the claim group are clearly related to the significance the water courses and the part their resources play in the cultural heritage of the group.

Access to the natural water resources is necessary to the claim group's activities in the claim area.

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

Established

All the affidavits describe the sharing and exchanging of resources among members of the claim group as an integral part of Yaegl law and custom. Claim group members share the fish catch with close relatives, ensure that their Elders come first when sharing out food and other resources, and have in the past exchanged resources gathered in the application area with neighbouring groups.

It is clear that fishing and gathering marine and river resources is and has been a large and important part of Yaegl traditional law and custom and a central activity in people's lives. Activities around fishing and hunting for cobra and pippies in the Clarence River and its tributaries, along the beaches at the mouth of the river and around the islands are the source of many customs and knowledge sharing. The flora and fauna are also shared and exchanged between members of the claim group – for example, with Elders who are no longer able to physically hunt and gather.

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

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

Established

All of the affidavits identify areas and sites of importance to the claim group and their place in Yaegl traditional law and custom. *[Text removed].*

The affidavits attest to the cultural and spiritual activities aligned with fishing, hunting, gathering and storytelling.

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

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

(r) 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;

Established

The affidavits of Deidre Randall and Ron Heron refer to Yaegl people's neighbours, the Bandjalang and Gumbayngirr, and the customary relationships between the groups in relation to the rights and obligations which pertain to access to Yaegl country, knowledge sharing and the defining of their respective boundaries (D Randall—at [75] to [76] and R Heron—at [104] to [106]).

Each of the affidavits talk about places where strangers are not able to be taken and state that it is wrong for Aboriginal people from other areas to come and speak for Yaegl country and that they would need permission before they came (for example, T Kapeen—at [26]). *[Text removed]*

(b) the right to use and enjoy the application area;

Not Established

In the recent part determination in *Akiba on behalf of the Torres Strait Islanders of the Regional Seas Claim Group v State of Queensland (No 2)* [2010] FCA 643 (*Akiba*), Finn J decided that a formula such as 'use and enjoy' might be taken to signify an exclusive right which included to 'possess and occupy'. His Honour commented that 'shorn of the words 'and enjoy', the description of the right is both apt and unobjectionable'—at [522].

I am of the view that there is sufficient material in the application to establish prima facie the right to use the area of the application. This has been referred to in my reasons above at s. 190B(5) and in relation to other rights and interests claimed where use of the application area is a necessary effect of the practice and activities associated with those rights. However, as long as the right is framed as it is, in conjunction with 'and enjoy', I am of the view that it cannot be established prima facie as a non-exclusive right.

(n) the right to conduct ceremonies on the application area;

Not Established

In my view, there is not sufficient material in the application or the affidavits about the claim group's conduct of ceremonies, either currently or in the past. Potentially ceremonies may be involved in some of the activities listed at Schedule G and referred to by members of the claim group; however, there is no direct reference to the conduct of or participation in ceremonies by members of the claim to establish this right, prima facie.

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

Not Established

In my view this is not a right or interest in relation to land and waters but part of the claim group's laws and customs. While the reference to 'particular sites' indicates that at least some of what is claimed under this heading relates to land and waters, it is difficult to conclude that the 'right' as a whole has this characteristic.

As currently expressed, it appears that these are activities of the claim group associated with the established rights claimed at paragraph (l) and (m).

Conclusion

I have considered the rights claimed in the application against existing law in relation to whether or not they are capable of being recognised and whether the application provides sufficient information to establish, prima facie, their existence. I am satisfied, having considered the information before me, that some of the rights claimed in this application can be established prima facie. Therefore the rights to be registered on the Register of Native Title Claims are as follows:

> The Yaegl People as defined in Schedule A of this application, claim the following non-exclusive rights and interests:
>
> (a) the right to access the application area;
> (c) the right to camp on the application area;
> (d) the right to erect shelters on the application area;
> (e) the right to live being to enter and remain on the application area;
> (f) the right to move about the application area;
> (g) the right to hold meetings 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 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, stone, charcoal, ochre and resin as well as materials for fabricating tools and hunting implements and making artwork and musical instruments);
> (l) the right to participate in cultural and spiritual activities on the application area;
> (m) the right to maintain and protect places of importance under traditional laws, customs and practices in the application area;
> (o) the right to share and exchange resources derived from the land and waters within the application area;
> (p) the right to speak for and make non-exclusive decisions about the application area in accordance with traditional laws and customs;

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

2. The native title rights and interests referred to in paragraph 1 do not confer possession, occupation, use and enjoyment to the exclusion of all others.

3. The native title rights and interests are subject to and exercisable in accordance with:

(d) the laws of the State of New South Wales and the Commonwealth of Australia including the common law;
(e) the rights (past or present) conferred upon persons pursuant to the laws of the Commonwealth and the laws of the State of New South Wales; and
(f) the traditional laws and customs of the Yaegl People for personal, domestic and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes).

Subsection 190B(7)
Traditional physical connection

The Registrar must be satisfied that at least one member of the native title claim group:
(a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application, or
(b) previously had and would reasonably be expected to currently have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to the land or waters) by:
(i) the Crown in any capacity, or
(ii) a statutory authority of the Crown in any capacity, or
(iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease.

The application **satisfies** the condition of s. 190B(7).

Under 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. This condition 'can be seen as requiring some measure of substantive (as distinct from procedural) quality control upon the application'—*Gudjala FC* at [84].

In *Doepel*, Mansfield J also considered the nature of the Registrar's task at s. 190B(7):

> Section 190B(7) imposes a different task upon the Registrar. It does require the Registrar to be satisfied of a particular fact or particular facts. It therefore requires evidentiary material to be presented to the Registrar. The focus is, however, a confined one. It is not the same focus as that of the Court when it comes to hear and determine the application for determination of native title rights and interests. The focus is upon the relationship of at least one member of the native title claim group with some part of the claim area. It can be seen, as with s 190B(6), as requiring some measure of substantive (as distinct from procedural) quality control upon the application if it is to be accepted for registration—at [18].

Sufficient material is provided in the attachments to the application and all the affidavits I have considered to show that Yaegl people have traditional physical connection with the land and waters of the application area. The material has been quoted in my consideration at both s. 190B(5) and s. 190B(6).

Ron Heron provides numerous examples throughout his affidavits (18 February 2011 and 4 August 2006) in relation to residing on and regularly travelling around, hunting, camping and fishing in the area of the application. He was taught by his uncles and grandfather to fish in the waters of the Clarence River and he states that he continues to have a traditional connection with the land and waters covered by the area of the application.

I am satisfied that at least one member of that group currently has a traditional physical connection with parts of the application area.

Subsection 190B(8)
No failure to comply with s. 61A

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s. 61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.

Section 61A provides:

(1) A native title determination application must not be made in relation to an area for which there is an approved determination of native title.

(2) If :
- (a) a previous exclusive possession act (see s. 23B) was done, and
- (b) either:
  - (i) the act was an act attributable to the Commonwealth, or
  - (ii) the act was attributable to a state or territory and a law of the state or territory has made provisions as mentioned in s. 23E in relation to the act;

a claimant application must not be made that covers any of the area.

(3) If:
- (a) a previous non-exclusive possession act (see s. 23F) was done, and
- (b) either:
  - (i) the act was an act attributable to the Commonwealth, or
  - (ii) the act was attributable to a state or territory and a law of the state or territory has made provisions as mentioned in s. 23I in relation to the act;

a claimant application must not be made in which any of the native title rights and interests confer possession, occupation, use and enjoyment of any of the area to the exclusion of all others.

(4) However, subsection (2) and (3) does not apply if:
- (a) the only previous non-exclusive possession act was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made, and
- (b) the application states that ss. 47, 47A or 47, as the case may be, applies to it.

The application **satisfies** the condition of s. 190B(8). I explain this in the reasons that follow by looking at each part of s. 61A against what is contained in the application and accompanying documents and in any other information before me as to whether the application should not have been made.

Reasons for s. 61A(1)

Section 61A(1) provides that a native title determination application must not be made in relation to an area for which there is an approved determination of native title.

In my view the application **does not** offend the provisions of s. 61A(1).

The geospatial report dated 15 March 2011 and a search that I made of the Tribunal's geospatial databases on 27 June 2011 reveals that there are no approved determinations of native title over the application area.

Reasons for s. 61A(2)

Section 61A(2) provides that a claimant application must not be made over areas covered by a previous exclusive possession act, unless the circumstances described in subparagraph (4) apply.

In my view the application **does not** offend the provisions of s. 61A(2).

Schedule B at paragraph 1 excludes from the application area any land or waters covered by previous exclusive possession acts as defined by s. 23B of the NTA. Paragraph 2 further lists eight categories of exclusive possession acts (interests, leases and grants) which are also excluded from the area covered by the application.

Reasons for s. 61A(3)

Section 61A(3) provides that an application must not claim native title rights and interests that confer possession, occupation, use and enjoyment to the exclusion of all others in an area where a previous non-exclusive possession act was done, unless the circumstances described in s. 61A(4) apply.

In my view, the application **does not** offend the provisions of s. 61A(3).

The application makes no claim to rights and interests that confer possession, occupation, use and enjoyment to the exclusion of all others.

Subsection 190B(9)
No extinguishment etc. of claimed native title

> The application and accompanying documents must not disclose, and the Registrar/delegate must not otherwise be aware, that:
> (a) a claim is being made to the ownership of minerals, petroleum or gas wholly owned by the Crown in the right of the Commonwealth, a state or territory, or
> (b) the native title rights and interests claimed purport to exclude all other rights and interests in relation to offshore waters in the whole or part of any offshore place covered by the application, or

(c) in any case, the native title rights and interests claimed have otherwise been extinguished, except to the extent that the extinguishment is required to be disregarded under ss. 47, 47A or 47B.

The application **satisfies** the condition of s. 190B(9), because it **meets** all of the three subconditions, as set out in the reasons below.

Reasons for s. 190B(9)(a)

The application **satisfies** the subcondition of s. 190B(9)(a).

The application at Schedule Q states that 'it does not make any claim to minerals, petroleum or gas wholly owned by the Crown'.

Reasons for s. 190B(9)(b)

The application **satisfies** the subcondition of s. 190B(9)(b).

The application at Schedule P states it does not made any claim to exclusive possession of an offshore place.

Result for s. 190B(9)(c)

The application **satisfies** the subcondition of s. 190B(9)(c).

Schedule B states at paragraph 7 that 'the area covered by the application excludes land or waters where the native title rights and interests claimed have been otherwise extinguished'.

There is no information in the application or otherwise to indicate that any native title rights and/or interests in the application area have been extinguished.

[End of reasons]

Attachment A
Summary of registration test result

Application name	**Yaegl People #2**
NNTT file no.	**NC11/1**
Federal Court of Australia file no.	**NSD168/2011**
Date of registration test decision	**June 2011**

Section 190C conditions

Test condition	**Subcondition/requirement**		**Result**
s. 190C(2)			**Aggregate result:** **met**
	re s. 61(1)		**met**
	re s. 61(3)		**met**
	re s. 61(4)		**met**
	re s. 62(1)(a)		**met**
	re s. 62(1)(b)		**Aggregate result:** **met**
		s. 62(2)(a)	**met**
		s. 62(2)(b)	**met**
		s. 62(2)(c)	**met**
		s. 62(2)(d)	**met**
		s. 62(2)(e)	**met**
		s. 62(2)(f)	**met**
		s. 62(2)(g)	**met**
		s. 62(2)(ga)	**met**

Test condition	Subcondition/requirement		Result
		s. 62(2)(h)	met
s. 190C(3)			met
s. 190C(4)			Overall result: met
	s. 190C(4)(a)		N/A
	s. 190C(4)(b)		met

Section 190B conditions

Test condition	Subcondition/requirement	Result
s. 190B(2)		met
s. 190B(3)		Overall result: met
	s. 190B(3)(a)	N/A
	s. 190B(3)(b)	met
s. 190B(4)		met
s. 190B(5)		Aggregate result: met
	re s. 190B(5)(a)	met
	re s. 190B(5)(b)	met
	re s. 190B(5)(c)	met
s. 190B(6)		met
s. 190B(7)(a) or (b)		met
s. 190B(8)		Aggregate result: met
	re s. 61A(1)	met
	re ss. 61A(2) and (4)	met

Test condition	Subcondition/requirement	Result
	re ss. 61A(3) and (4)	**met**
s. 190B(9)		**Aggregate result:** **met**
	re s. 190B(9)(a)	**met**
	re s. 190B(9)(b)	**met**
	re s. 190B(9)(c)	**met**

Attachment B
Documents and information considered

The following lists **all** documents and other information that I have considered in coming to my decision about whether or not to accept the application for registration.

1. The application as filed in the Federal Court on 23 November 2001, including the following attachments and affidavits:
    1.1. Two affidavits of Deidre Randall affirmed 15 February 2011
    1.2. Affidavit of Carmel Charlton affirmed 18 February 2011
    1.3. Two affidavits of Clarence Randall affirmed 15 February 2011
    1.4. Two affidavits of Ron Heron affirmed 15 and 18 February 2011
    1.5. Affidavit of Mishka Holt, Principal Solicitor, NTSCORP Limited, affirmed 22 February 2011
    1.6. Affidavit of Lillian Williams affirmed 15 February 2011
    1.7. Affidavit of Vivienne King affirmed 15 February 2011
    1.8. Affidavit of Eileen McLeay affirmed 15 February 2011
    1.9. Affidavit of Noeline Kapeen affirmed 15 February 2011
    1.10. Affidavit of Judy Breckenridge affirmed 15 February 2011
    1.11. Affidavit of William Walker affirmed 15 February 2011
    1.12. Affidavit of Ferlin Lee Laurie affirmed 17 February 2011
    1.13. Affidavit of Ken Laurie affirmed 15 February 2011
2. Native title determination application NC96/38—Yaegl People—NSD6052/98, including:
    2.1. The amended application filed 11 August 2006—in particular, the affidavits of Judy Breckenridge, affirmed 3 August 2006 [F(1)]; Thelma Kapeen, affirmed 4 August 2006 [F(2)]; Ron Heron, affirmed 4 August 2006 [F(3)] and Deidre Randall, affirmed 3 August 2006 [F(4)]; and
    2.2. The amended application filed 26 September 2003—in particular, Attachment F.
3. The Tribunal's Geospatial Services 'Geospatial Assessment and Overlap Analysis' (the 'geospatial report') for 10 March 2011, being an expert analysis of the external and internal boundary descriptions and mapping of the application area and an overlap analysis against the Register, Schedule of Applications, determinations, agreements and s. 29 notices and equivalent.

[End of document]