National Native Title Tribunal

REGISTRATION TEST

Edited Statement of Reasons for Publication on NNTT Website

DELEGATE: Graham Miner

Application Name: Port Curtis Coral Coast

Names of Applicants: Colin Johnson, Louis Blackman, George Walker, Kerry Blackman, Michelle Smith, Maureen Eggmolesse, Thelma Lingwoodock, Violet Smith, Charlie Broome

Region: Central Queensland NNTT Number: QC01/29

Date Application Made: 25/07/01 Federal Court No.: Q6026/01

The delegate has considered the application against each of the conditions contained in s.190B and s.190C of the Native Title Act 1993 (Cth) (the Act).

DECISION

The application is ACCEPTED for registration pursuant to s.190A of the Native Title Act 1993 (Cth).

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Graham Miner
Delegate of the Registrar pursuant to
sections 190, 190A, 190B, 190C, 190D

Date of Decision

Brief History of the Application
The Port Curtis Coral Coast application was filed in the Federal Court, Queensland District Registry on 25 July 2001 ("Port Curtis application") and constitutes an amendment application that combines the following applications (referred to hereafter as the "Pre-Combined applications"):

- Gooreng Gooreng #1 QG6143/98;
- Gooreng Gooreng #2 Q6018/99;
- Bailai QG6139/98;
- Taribelang Bunda QG6145/98; and
- Gurang Q6019/99.

By order of Justice Drummond of the Federal Court made 17 August 2001 the Pre-Combined applications were combined and amended in terms of the Port Curtis application.

Information considered when making the Decision
In determining this application I have considered and reviewed the application and all of the information and documents from the following files, databases, and other sources:

- the National Native Title Tribunal's registration test and legal files for the Port Curtis application and each of the Pre-Combined applications;
- the National Native Title Tribunal's registration test and legal files for Wakka Wakka #2 Q6032/99 (being an application which overlaps the Port Curtis application)**;**
- the National Native Title Tribunal Geospatial Database;
- the Register of Native Title Claims;
- the Schedule of Native Title Applications;
- the Native Title Register; and
- the Register of Indigenous Land Use Agreements.

Copies of the material provided directly to the Registrar for consideration has been supplied to the State, including that relating to the Pre-Combination applications, and the State has been provided with an opportunity to comment on that material. The State notified the Tribunal that it had no comments to make in relation to the content of the material provided.

I have also considered material and submissions made to the Tribunal to the extent and as indicated in my reasons.

Note: Information and materials provided in the mediation of any native title claims made on behalf of this native title group has not been considered in making this decision. This is due to the 'without prejudice' nature of mediation communications and the public interest in maintaining the inherently confidential nature of the mediation process.

All references to legislative sections refer to the *Native Title Act* 1993 (Cth) unless otherwise specified.

A. Procedural Conditions

s.190C(2)

Information, etc., required by section 61 and section 62:

The Registrar 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.

Details required in section 61

s.61(1) The native title claim group includes all the persons who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed.

Reasons relating to this sub-condition

This criterion requires me to be satisfied that the application has been made on behalf of a properly constituted native title claim group, being all the persons who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title that has been claimed.

Accordingly I am of the view that I must have regard to the decision of O'Loughlin J in *Risk v National Native Title Tribunal [2000] FCA 1589 (10 November 2000)*. The Risk decision is authority for the proposition that to comply with the requirements of s61(1), the application must be made on behalf of a 'properly constituted native title claim group', and 'not individuals or small sub-groups', as was the case in Risk.

In this regard, O'Loughlin J stated as follows:

> *"By operation of subs 190C(2) the Registrar must be satisfied in relation to all the requirements contained in s 61. It follows that, when applying the registration test, the Registrar must consider whether (on the basis of the application and other relevant information) the application has been made on behalf of a 'native title claim group' [para 30]*
>
> *"One of the consequences of the amendments to the Act in 1998 was the better identification of native title claim groups. The act [sic] now ensures that applications can only be lodged on behalf of properly constituted groups – not individuals or small sub-groups. This approach is consistent with the principle that native title is communally held….The importance of the term ("native title claim group") is apparent from its appearance in the table that forms part of*
> *subs 61(1) of the Act. Subsection 61(1) imposes requirements not only in relation to the question of authorisation, but also in relation to the anterior question of whether the application has been made on behalf of a "native title claim group". An application which is not made on behalf of a 'native title claim group' cannot validly proceed . . . '* [paras 29 & 30].

Attachment A to the application provides that the persons in the native title claim group are the members of twenty-two family groups. The family groups are identified as the descendants of a named ancestor or ancestors. The claim groups in respect of each of the Pre-Combined applications are also described by reference to the descendants of certain named ancestors.

The claim groups in respect of each of Pre-Combined applications are also described by reference to the descendants of certain named ancestors. Whilst the list of apical ancestors specified at Attachment A of the Port Curtis application broadly coincides with those relating to the Pre-Combined applications, the following differences are apparent:

1. the Gooreng Gooreng (Q6143/98 & Q6018/99) applications both refer to the descendants of *[Ancestor 1 - name deleted]*. She is not included in Attachment A of the Port Curtis application;
2. the Gurang (Q6019/99) application refers to the descendants of *[Ancestor 2 - name deleted]*; *[Ancestor 3 - name deleted]* and *[Ancestor 4 - name deleted]*. Attachment A of the Port Curtis application refers to the descendants of *[Ancestor 2 - name deleted]*and *[Ancestor 5 - name deleted]* but does not refer the descendants of *[Ancestor 4 - name deleted]*or *[Ancestor 3 - name deleted]*;
3. the Bailai (Q6139/98) application identifies the group as the biological descendants of *[Ancestor 6 - name deleted]*. *[Ancestor 6 - name deleted]* is not referred to in Attachment A of the Port Curtis application;
4. the Taribelang Bunda (QG6145/98) application shows the persons claiming to hold native title as being the descendants of *[Ancestor 7 - name deleted]* and *[Ancestor 8 - name deleted]*, excepting *[Ancestor 9 - name deleted]*, and her biological descendants. This exception is not reflected in Attachment A of the Port Curtis application.

In addition, the following discrepancies between the claim group descriptions for the relevant Pre-combined applications and Attachment A of the application also exist:

5. the Gooreng Gooreng applications (Q6143/98 & Q6018/99) both refer to the descendants of :
   - "*[Ancestor 10 - name deleted]* from Miriam Vale Cattle Station and *[Ancestor 11 - name deleted]*"; and
   - "*[Ancestor 12 - name deleted]*, *[Ancestor 13 - name deleted]*and *[Ancestor 14 - name deleted]*"; and
6. Attachment A to the Port Curtis application refers to the descendants of:
   - "*[Ancestor 10 - name deleted]* from Miriam Vale Cattle Station and *[Ancestor 15 - name deleted]*"; and
   - "*[Ancestor 16 - name deleted]*, *[Ancestor 13 - name deleted]*and *[Ancestor 17 - name deleted]*".

However, I am in receipt of a letter from the Gurang Land Council ("GLC") dated 31 January 2002 ("31 January letter") that in my view provides sufficient clarification in respect of each of these differences. GLC have provided the following clarification (the numbering below corresponds with each point of difference outlined above):

1. *[Ancestor 1 - name deleted]* is not included in Attachment A of the Port Curtis application because she is a descendant of *[Ancestor 2 - name deleted]* who was an apical ancestor on the Gurang (Q6019/99) application. Accordingly, the descendants of *[Ancestor 1 - name deleted]* are identified in the Port Curtis application through *[Ancestor 2 - name deleted]*.
2. Attachment A to the Port Curtis application does not refer to the descendants of *[Ancestor 3 - name deleted]* as the descendants of *[Ancestor 3 - name deleted]* are included in the descent line from the Gooreng Gooreng (Q6143/98 & Q6018/99) applications, namely the descendants of *[Ancestor 18 - name deleted]* from Miriam Vale Cattle Station and *[Ancestor 19 - name deleted]*.
3. The original Gurang (Q6019/99) application of 11 June 1999 refers to the descendants of, inter alia, *[Ancestor 5 - name deleted]*. However, pursuant to an amendment application filed 8 July 1999,on the basis of further genealogical research, the Gurang People replaced *[Ancestor 5 - name deleted]* with *[Ancestor 4 - name deleted]* as an apical ancestor. The 31 January letter explains that the inclusion of *"the descendants of [Ancestor 5 - name deleted]"* as part of the native title claimant group for the Port Curtis application was a "typographical error", and that the name should be "*[Ancestor 4 - name deleted]*". I accept this (p.8).
4. The Bailai claimants have decided that they prefer to name their apical ancestor, *[Ancestor 20 - name deleted]*, who is the mother of *[Ancestor 6 - name deleted]*. Thus the Port Curtis application shows the "descendants of *[Ancestor 20 - name deleted]*" and this will enable that part of the claimant group to be identified (p.8).

5. The 31 January letter explains that, although *[Ancestor 9 - name deleted]* originally excluded herself and her biological descendants from the Taribelang Bunda QG6145/98 application, she has since considered further information and now wishes to be included as part of the Port Curtis Coral Coast application. As she is a descendant of *[Ancestor 7 - name deleted]* and *[Ancestor 8 - name deleted]* she will be included as part of that descent group (p.9).

6. This reference to the relevant apical ancestors should read *[Ancestor 10 - name deleted]* from Miriam Vale Cattle Station and *[Ancestor 15 - name deleted]*". *[Ancestor 11 - name deleted]* had no relationship with *[Ancestor 10 - name deleted]* and it should read "*[Ancestor 11 - name deleted]* is a different person. Her descendants are included in the Port Curtis Coral Coast application under her as an apical ancestor. (p.9)

7. *[Ancestor 14 - name deleted]* and *[Ancestor 17 - name deleted]* and *[Ancestor 16 - name deleted]* and *[Ancestor 12 - name deleted]* are the same person. GLC have explained that the reason for the name changes is that in the Port Curtis Coral Coast application, the descendants of these women wanted their apical ancestors' maiden names noted in the application.

On the basis of the above clarification of discrepancies between the Pre-Combination applications and the Port Curtis Coral Cost application, I am satisfied that all those members of the native title claimant groups of the pre-combination applications are included in the combined Port Curtis Coral Coast application.

Each of the applicants state in their s.62(1) affidavit which accompanies the Port Curtis application that they are authorised by all the persons in the native title claim group and that they were so authorised in accordance with the decision making processes detailed in Schedule R of the application.

As outlined in the Brief History above, the Port Curtis application was filed in the Federal Court, Queensland District Registry on 25 July 2001 ("Port Curtis application") and constitutes an amendment application that combines the Pre-Combined applications. By the order of Justice Drummond of the Federal Court made on 17 August 2001 the Pre-Combined applications were combined and amended in terms of the Port Curtis application.

The combination of the Pre–Combination applications in my opinion raises an issue in relation to the compliance of the group with s.61(1). Briefly, the issue is whether the persons comprising the native title group, consisting as they do the members of the respective Pre-Combination groups, hold common or group rights and interest comprising the particular native title claimed according to their traditional law and custom.
For the following reasons I am of the view that the material provided by the applicants is sufficient to establish that this is so.

I am satisfied that the applicant/s who have been authorised to make the application are from each of the Pre-Combination groups, two from Gurang, Baila, Taribelang Bunda peoples and three from Goreng Goreng (see reasons in respect of s.190C(4)). Each of the applicants state in their respective section 62 affidavits that they are members of the native title claim group in this application, that the native title rights and interests claimed by the group have not been extinguished in relation to any part of the area covered by the application, and that all of the statements made in the application are true.
The applicants also say that the nature and extent of the native title rights and interests in relation to the land and water covered by the application are as set out in Attachment D. Further, the applicants have sworn that the exercise of native rights and interests so described in Attachment D are subject to and in accordance with the traditional laws acknowledged and the traditional customs observed by the native title group (Attachment D, para. 2 (b)).
In my opinion that sworn evidence supports a finding that the Port Curtis community possesses the native title rights and interests existing in the area. I am consequently satisfied that the Port Curtis group is a composite community consisting of the Pre-Combination groups who treat as their country discreet areas within the claim area and that the enjoyment of particular rights and responsibilities and control of different areas of country follow from the observance of traditional laws and customs of the community.

I also note that the Pre-Combination groups entered into an agreement dated 5 April 2001

(the Combination Agreement) that provides in part:
"1.2 The filing of the combined native title determination application is subject to all the claim groups agreeing to the provisions of an agreement to be prepared by Gurang Council by 30 April 2001.
1.3 The Agreement will set out a process to identify and acknowledge the native rights and interest of each of the abovementioned groups in relation to the combined area ……."
The agreement thus contemplated a process to identify and acknowledge the respective native rights and interests of the parties in relation to the relevant parts of the claimed area.

Further, and significantly, the Federal Court has mediated the combined application and ordered that the applications of the Pre-Combination groups be combined and amended in terms of the amended combined application. In those circumstances I believe I should take the view that the Court accepted that the group complied with the requirements of s.61(1) particularly as s.84C provides, in summary, that if an application does not comply with, inter alia, s.61, a party to the proceeding may at any time apply to the Federal Court to strike out the application.

I am satisfied that the Port Curtis native title claimants regard themselves as a community of traditional owners, that is a native title claim group as that term is described in s.61(1). I am satisfied that they have observed a process to identify all of the persons who hold common or group rights in the native title claimed over the application area. I add that in reaching this conclusion I have also taken into account the fact that the relevant meetings were organised by Gurang Land Council in the exercise of its responsibility for managing native title claims in the region covered by the claim.

For the above reasons, I am satisfied that the native title claim group described in the application includes all the persons who, according to their traditional laws and customs, hold the native title claimed over the area covered by the application. See my reasons under s. 190C(4) in relation to whether the applicants have been authorised by all the persons in the group to make, and to deal with matters arising in relation to, the application.

Result: Requirements met.

s.61(3) Name and address for service of applicants

Reasons relating to this sub-condition

The applicants' names are detailed at the commencement of the application. The details of address for service appear at Part B of the application.

Result: Requirements met

s.61(4) Names the persons in the native title claim group or otherwise describes

the persons so that it can be ascertained whether any particular person is one of those persons

Reasons relating to this sub-condition

Attachment A to the application describes the native title claim group. For the reasons which led to my conclusion set out below that the requirements for s.190B(3) have been met, I am satisfied that the persons in the native title claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

Result: Requirements met

s.61(5) Application is in the prescribed form, lodged with the Federal Court, contains prescribed information, and is accompanied by any prescribed documents

Reasons relating to this sub-condition

s.61(5)(a):
The application is in the form prescribed by Regulation 5(1)(a) *Native Title (Federal Court) Regulations* 1998

s.61(5)(b):
The application was filed in the Federal Court as required pursuant to s. 61(5)(b).

s.61(5)(c):
The application meets the requirements of s. 61(5)(c) and contains all information prescribed in s.62. I refer to my reasons in relation to s. 62 below.

s.61(5)(d):
As required by s. 61(5)(d) the application is accompanied by the prescribed documents, being affidavits prescribed by s. 62(1)(a) and a map as prescribed by s. 62(1)(b).

See my reasons for decision under s. 62(1)(a) and (b) below. I note that s190C(2) only requires me to consider details, other information and documents required by s61 and s62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee to the Federal Court.

For the reasons outlined above, it is my view that the requirements of s61(5) are met.

Result: Requirements met

Details required in section 62(1):

s.62(1)(a) Affidavits address matters required by s.62(1)(a)(i) – s.62(1)(a)(v)

Reasons relating to this sub-condition

Affidavits of each of the nine applicants accompany the application. Each affidavit is signed, dated and competently witnessed. The affidavits satisfactorily address the matters required by s. 62(1)(a)(i)-(v).

Result: Requirements met

s.62(1)(c) Details of traditional physical connection (information not mandatory)

Comment on details provided

The application contains some details relating to traditional physical connection at schedule M.

Result: Provided

Details required in section 62(2) by section 62(1)(b):

s.62(2)(a)(i) Information identifying the boundaries of the area covered

Reasons relating to this sub-condition

For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the information and maps in the application are sufficient to enable the area covered by the application to be identified.

Result: Requirements met

s.62(2)(a)(ii) Information identifying any areas within those boundaries which are not covered by the application

Reasons relating to this sub-condition

For the reasons which led to my conclusion that the requirements of s. 190B(2) have been met, I am satisfied that the information contained in the application is sufficient to enable any areas within the external boundaries of the claim area which are not covered by the

application to be identified.

Result: **Requirements met**

s.62(2)(b) ***A map showing the external boundaries of the area covered by the application***

Reasons relating to this sub-condition

A map that shows the external boundaries of the claim area comprises Attachment C to the application. For the reasons that led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the map contained in the application shows the external boundaries of the claim area.

Result: **Requirements met**

s.62(2)(c) ***Details/results of searches carried out by the applicant to determine the existence of any non-native title rights and interests***

Reasons relating to this sub-condition

Schedule D of the application states: *"no additional searches have been undertaken for the purposes of this amendment application".*

The Gurang Land Council has confirmed in writing that no searches have been undertaken.

Result: **Requirements met**

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

Reasons relating to this sub-condition

A description of the claimed native title rights and interests is contained in Attachment D to Schedule E of the application. The description does not merely consist of a statement to the effect that the native title rights and interests are all the native title rights and interests that may exist, or that have not been extinguished, at law. I have outlined these rights and interests claimed in my reasons for decision in relation to s190B(6).

Result: **Requirements met**

s.62(2)(e) 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 native title in accordance with those traditional laws and customs.***

Reasons relating to this sub-condition

The decision in *Queensland v Hutchison* [2001] FCA 416 at [25] is authority for the proposition that only material that is part of the application can be relied in support of this requirement. Accordingly, I have regard only to information contained in the application in order to be satisfied that the requirements of this condition are met.

A general description of the factual basis upon which it is asserted that the native title rights and interests claimed exist and for the particular assertions in (i), (ii) and (iii) above is contained at Schedule F to the application. Schedule F refers to:

- the native title claim group being descendants of the Aboriginal communities that occupied the claim area at the time of sovereignty; and
- the association of the predecessors of the members of the native title claim group to the claim area being recorded in ethnographic materials such as that of Norman Tindale and historical records.

In addition, Schedule F refers to members of the native title claim group:

- having continued to live in, visit and travel through the area;
- having knowledge relating to the area that has been passed on to them from their ancestors and continuing to pass on such spiritual and cultural knowledge to members of the claim group
- managing, conserving and protecting country as demanded by spiritual and cultural knowledge passed on to them by their ancestors;
- speaking for country;
- following certain cultural decision-making processes in relation to country;
- seeking and giving permission regarding access to country and particular places of significance within it; and
- being actively involved in the protection and management of the claim area, and areas or sites of significance, including involvement in cultural heritage surveys and in negotiations regarding access to and use of the country and its resources.

On this basis, I am satisfied that Schedule F contains a general description of the factual basis that is required by s62(2)(e).

Result: Requirements met

s.62(2)(f) If native title claim group currently carry on any activities in relation to the area claimed, details of those activities

Reasons relating to this sub-condition

Details of activities carried on by the native title claim group are contained in the application at Schedules F, G and M. Activities referred to include:

- conducting traditional rituals within the claim area; and
- camping, hunting and fishing.

It is my view that this description of activities is sufficient to comply with the requirements of s.62(2)(f).

Result: Requirements met

s.62(2)(g) Details of any other application to the High Court, Federal Court or a recognised State/Territory body the applicant is aware of (and where the application seeks a determination of native title or compensation)

Reasons relating to this sub-condition

Schedule H of the application refers to the Wakka Wakka application Q6032/99 and the Gubbi Gubbi application Q6034/99.

The Tribunal's geospatial records show that each of these applications overlapped the Port Curtis application as at the date that it was filed.

I am satisfied that the application complies with the requirements of s.62(2)(g).

Result: Requirements met

s.62(2)(h) Details of any s.29 notices given pursuant to the amended Act (or notices given under a corresponding State/Territory law) in relation to the area, of which the applicant is aware

Reasons relating to this sub-condition

The applicants refer in Schedule I to a s.29 notification of proposed compulsory acquisition of native title rights and interests on behalf of United Launch Systems International Pty Ltd (Hummock Hill Island).

Result: Requirements met

For the reasons identified above I consider that the application complies with the conditions contained in s.190C(2).

Aggregate Result: Requirements met

s.190C(3)

Common claimants in overlapping claims:

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

(a) the previous application covered the whole or part of the area covered by the current application; and

(b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made: and

(c) the entry was made, or not removed, as a result of consideration of the previous application under section 190A.

Reasons for the Decision

As outlined at the commencement of my reasons under the heading "Brief History of the Application", the Port Curtis application is the result of an order of the Federal Court made 17 August 2001 combining the following applications ("Pre-Combined applications"):

- Gooreng Gooreng #1 QG6143/98;
- Gooreng Gooreng #2 Q6018/99;
- Bailai QG6139/98;
- Taribelang Bunda QG6145/98; and
- Gurang Q6019/99.

Section 190C(3) requires me to be satisfied that any person who is a member of the Port Curtis Coral Coast native title claim group is not also a member of the native title claim group for any previous native title determination application ("the previous application"), where:

(a) the previous application overlaps in whole or part the claim area covered by the Port Curtis application; and

(b) an entry relating to the previous application was on the Register of Native Title Claims ("Register") as at the date on which any overlapping Pre-combined application was made; and

(c) the entry on the Register in respect of the previous application was made, or not removed, as a result of consideration of the previous application under s190A.

The interpretation of s190C(3) was clarified in *State of Western Australia v Strickland* [2000] FCA 652. Their Honours Beaumont, Wilcox and Lee found that:

(a) the date upon which an application is made for the purposes of s190C(3)(b) is (for those applications made prior to the commencement of the Native Title Amendment Act 1998 – ie. prior to 30 September 1998 ("Old Act applications")) the date when the initial application was made to the Registrar [para 45]; and
(b) under s190C(3)(c) the phrase "consideration of the previous application under s.190A" should be read such that the entry for the earlier overlapping application remains on the Register as a consequence of testing under s190A, at the time that the Registrar applies the registration test to the current application. [paras 55 & 56].

The Port Curtis application was filed in the Federal Court on 25 July 2001. A search of the Tribunal's Geospatial data conducted 29 January 2002, reveals that three native title determination applications that currently overlap the Port Curtis application (other than those of the Pre-combined applications which had been accepted for registration) were on the Register as at 25 July 2001. Details of these applications are as follows:

NNTT No	**FC Number**	**Name**	**Application Area (sq km)**	**Overlap Area (sq km)**	**Overlap**
QC97/021	QG6131/98	Darumbal People	52381.672	0.180	Technical
QC97/036	QG6144/98	Gangulu People	11953.885	0.009	Technical
QC99/033	Q6032/99	Wakka Wakka People #2	31467.645	1851.980	Part

I am satisfied that I am not required to consider the issue of common membership between the Port Curtis application and the Darumbal and Gangalu applications pursuant to s190C(3) on the basis that the Tribunal's Geospatial analysis in respect of the Port Curtis application dated 29 January 2002 states that the overlaps between the Port Curtis application and each of the Darumbal and Gangalu applications are technical overlaps that will be rectified pursuant to an audit currently underway by the Tribunal's Geospatial Division.

Further, I am satisfied that I am not required to consider the issue of common membership between the Port Curtis application and the Wakka Wakka People #2 application for the following reasons.

The Wakka Wakka #2 application was entered on the Register on 13 February 2001 as a result of consideration of that application under s 190A. A search of the Tribunal's Geospatial records conducted on 14 February 2001 shows that the following of the Pre-combined applications overlapped the Wakka Wakka #2 application (per the Schedule of

Applications):

- Gurang QG6019/99;
- Gooreng Gooreng QG6143/98; and
- Taribelang Bunda QG6145/98 (the Overlapping Pre-combined applications").

The dates upon which each of the Overlapping Pre-combined applications were "made" for the purposes of s.190C(b) are the dates upon which those applications were lodged with the Registrar of the Tribunal or filed in the Federal Court (as the case may be), being:

- Gurang QG6019/99 – 10 June 1999;
- Gooreng Gooreng QG6143/98 – 15 September 1997; and
- Taribelang Bunda People QG6145/98 – 22 September 1997.

As each of the Overlapping Pre-combined applications was made, within the meaning of s 190C(3)(b), before the date on which Wakka Wakka #2 was entered on the Register, I am not required to have regard to the issue of claimants in common as between Wakka Wakka #2 and the Port Curtis application. Accordingly, the Port Curtis application does not offend the provisions of s.190C(3).

In arriving at the conclusion that the Port Curtis application does not offend the provisions of s.190C(3), I have noted (having regard to an overlap analysis prepared by the Tribunal's Geospatial Mapping and Analysis Branch on 29 January 2002) that the entry on the Register for the Butchulla Q6140/98 application fell within the external boundaries of the Port Curtis application. Details of this overlap by reference to the Register as at 29 January 2002 are as follows:

FC Number	NNTT No.	Name	Application Area (sq km)	Overlap Area (Sq km)	Overlap
QG6140/98	QC97/030	Butchulla People	16525.03	14.417	Part

It appears having regard to the Port Curtis and Butchulla applications, that there are prima facie claimants in common between the Port Curtis application and the Butchulla application. I formed this prima facie view on the basis that:

- the Butchulla applicants include *[Ancestor 21 - name deleted]* and *[Ancestor 22 - name deleted]*; and
- Attachment A to the Port Curtis application specifies that the native title claim group includes *"Descendants of [Ancestor 2 - name deleted]"*.

I note that, as at the date of making this decision, the Tribunal is not in receipt of any material or submissions by or on behalf of the applicants which addresses this issue or would lead me to be satisfied that there are not claimants in common between the Butchulla and Port Curtis applications, at least having regard to the *[Family 1 - name deleted]* family.

The material date for the purposes of s.190C(3) in respect of the Butchulla application is 28 August 1997. This is so as the Butchulla application, being an Old Act application, was lodged with the Tribunal on 28 August 1997 and is therefore taken to have been registered as at that date. The Butchulla application was accepted for registration pursuant to s.190A on 13 September 1999 and therefore remained on the Register within the meaning of s.190C(3)(c) from 28 August 1997.

A search of the Tribunal's Geospatial records conducted on 26 February 2001 in respect of the Taribelang Bunda Q6145/98 application, shows that the Taribelang Bunda application overlapped the Butchulla application. The date on which the Taribelang Bunda application was made for the purposes of s.190C(3)(b) is 22 September 1997. Accordingly, as the Butchulla application was on the Register as at the date that the Taribelang Bunda application was made, a consideration of common claimants between the Port Curtis application and the Butchulla application was required.

However, I have not been required to consider the issue of common claimants as between the Port Curtis application and the Butchulla application in considering the Port Curtis application pursuant to s190C(3) for the following reasons:

- by order of the Federal Court made 30 January 2002, leave was granted for the Butchulla application to be amended in accordance with an amendment application filed 27 December 2001 ("Butchulla amendment");
- the Butchulla amendment was accepted for registration pursuant to s.190A, and entered on the Register, on 4 February 2002; and
- an overlap analysis prepared by the Tribunal's Geospatial Analysis and Mapping Branch dated 5 February 2002 for the Port Curtis application (which analysis takes into account the Butchulla amendment as entered on the Register on 4 February 2002) shows that there is no longer any overlap between the area of the Butchulla application as entered on the Register and the area of the Port Curtis application.

Accordingly, the Port Curtis application does not offend the provisions of s.190C(3).

Result: Requirements met

s.190C(4)(a) or s.190C(4)(b)

Certification and authorisation:

The Registrar must be satisfied that either of the following is the case:

(a) the application has been certified under paragraph 202(4)(d) by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part: 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: s.190C(5) – Evidence of authorisation:
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 set out the grounds on which the Registrar should consider that it has been met.

Reasons for the Decision

The relevant representative Aboriginal/Torres Strait Islander body has not certified the application. Therefore the conditions of s.190C(4)(a) are not relevant.

I am only required to be satisfied that one of these conditions is met. I have therefore limited my consideration to compliance with s.190C4(b) – authorisation by the native title claim group.

There are two limbs to s190C(4)(b):

1. the applicant must be a member of the native title claim group;
2. the applicant must be authorised to make the application and deal with matters arising in relation to it by all other persons in the claim group.

A prerequisite to compliance with s190C(5) is the provision by the applicants of a statement:

- to the effect that the requirement in s190C(4)(b) is met; and
- briefly setting out the grounds on which I should consider that the requirements of s190C(4)(b) are met.

The first limb:
Schedule R of the application includes the following statement: *"The applicants are members of the native title claim group and are authorised to make this application and deal with matters that arise in relation to it, by all other persons in the native title claim group".*
Each of the applicants have also sworn to that effect in their s.62(1)(a) affidavit.

I am therefore satisfied that all the applicants are members of the native title claim group.

The second limb:
A prerequisite to compliance with s190C(5) is provision by the applicant of a:

- statement to the effect that the requirements in s190C(4)(b) is met; and
- a brief statement setting out the grounds on which I should consider that the requirements of s190C(4)(b) are met.

In *Risk v National Native Title* Tribunal [2000] FCA 1589 O'Loughlin J noted that under the native title applications can only be lodged on behalf of properly constituted groups and that authorisation must come from all of the persons who hold the common or group rights and interests. His Honour noted (citing Wilcox J in *Moran v Minister for Land and*

Water Conservation for the State of New South Wales [199] FCA 1637) that the applicant does not have to be individually authorised. It is sufficient that the applicant has been authorised to make the claim pursuant to a process of decision making recognised under the traditional laws and customs of the claimant group.

As referred to above, the s62(1)(a) affidavits by each of the applicants specifically state that they are 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. The applicants further state that they are authorised in accordance with the decision making process detailed in Schedule R.

Schedule R of the application includes details of the authorisation process that was followed, as required by s190C(5)(b). Relevantly, Schedule R specifies that:

- at a mediation conference held on 5 April 2001 before the Deputy District Registrar of the Federal Court and involving representatives from each of the Pre-Combined applications it was agreed that the combined Port Curtis application would be lodged and that, inter alia, the combined native title claim group would incorporate all persons who are members of each of the Pre-Combined applications;
- Orders made 5 April 2001 by Deputy District Registrar *[Person 1 - name deleted]* of the Federal Court in respect of each of the Pre-Combined applications, stated, inter alia, that *"the combined claim group will be the combination of the claim groups of QG6145/98, Q6018/99, Q6019/99, QG6139/98 and QG6145/98"*;
- Gurang Land Council (in its capacity as the native title representative body for the region) ("GLC") advertised notice of the various community meetings held in respect of the authorisation of the Port Curtis application in the Bundaberg Mail, the Rockhampton Bulletin and the Courier Mail and forwarded written invitations to each of the applicants for the Pre-Combined applications; and
- invitation to all meetings was expressed as open to all members of the community and the decision making process involved an agreed consensual basis with issues, where necessary, put to the community for vote.

With regard to the authorisation meetings held by and on behalf of the claim groups for each of the Pre-Combined applications, Schedule R relevantly states:

- separate community meetings of the Gurang, Gooreng Gooremg and Bailai people were held on 24 and 25 May 2001, at which meetings the Gurang, Gooreng Gooreng and Bailai people present resolved to amend their respective applications to so as to combine with each of the other applications in accordance with the terms of the agreement and court orders of 5 April 2001;
- a community meeting involving Taribelang Bunda, Gurang, Bailai and Gooreng Gooreng people was held on 26 May 2001, at which meeting it was resolved and agreed that: *"the nine applicants (2 from Gurang, Bailai, Taribelang Bunda and 3 from Gooreng Gooreng) were authorised to make a combined application and deal with matters arising in relation to it. The proposed terms of the application, in particular the definition of the native title claim group, the claim area and the native title rights and interests were presented, discussed and approved by all persons present"* (para 7 of Schedule R);

- a Taribelang Bunda community meeting was held on 21 July 2001: *"which resolved to amend their application so as to combine with each of the other applications in accordance with the terms of the agreement and court orders of 5 April 2001. At this meeting the Taribelang Bunda nominated two applicants and ratified the other applicants from the Gurang, Gooreng Gooreng and Bailai."* (para 8 of Schedule R);
- that it was agreed at a subsequent meeting that the Port Curtis application would be executed by the nine applicants and that the nine applicants executed their affidavits, and the contents of the final application was produced and discussed, on 23 and 24 July 2002.

It is my view that the authorisation status of the two Taribelang Bunda applicants, *[Applicant 1 - name deleted]* and *[Applicant 2 - name deleted]*, is unclear on the face of Schedule R of the application. In particular, having regard to paragraphs 7 and 8 of Schedule R, it is unclear whether *[Applicant 1 - name deleted]* and *[Applicant 2 - name deleted]* were in fact duly authorised by all of the persons in the Port Curtis native title claim group (ie. the Gurang, Gooreng Gooreng and Bailai components of the Port Curtis claim group).

By its letter to the Tribunal dated 31 January 2001 ("31 January letter") GLC provided clarification in respect of the authorisation process generally, and in particular that for the two Taribelang Bunda applicants. In the letter GLC states that the nature of the Port Curtis application required an authorisation process involving "*two separate but complementary procedures*", namely (as I understand it):

- an initial procedure whereby the members of each group would nominate (or first authorise – as the case may be) its own applicants for consideration by each of the other groups. GLC note in respect of this initial procedure that: *"At various points in the authorisation process, a particular applicant might receive the necessary authorisation"*;
- a second procedure whereby each group authorised its own nominees (or ratified the authorisation by other groups of its own nominees). GLC note in respect of this second procedure that such a process, which occurs in the course of authorising the claim, must occur in stages (p.6).

With regard to the authorisation of *[Applicant 1 - name deleted]* and *[Applicant 2 - name deleted]* GLC relevantly states as follows in the 31 January letter (p.7):

- at the 26 May 2001 meeting: *"all of the groups other than the Taribelang Bunda authorised the claim and their own applicants, along with interim Taribelang Bunda applicants, [Applicant 2 - name deleted] and [Person 2 - name deleted] …subject to the Taribelang Bunda ratifying the authorisation of those persons or any other persons whom the Taribelang Bunda might choose to authorise at a later stage."*;
- at the later meeting of 21 July 2001: *"the Taribelang Bunda ratified the previous authorisation of the claim and all the non-Taribelang Bunda applicants by the other three groups. The group then formally authorised [Applicant 1 - name deleted] as an applicant and ratified the previous authorisation of [Applicant 2 - name deleted]. The word 'nominated' has been used inadvertently and in ignorance."*

On the basis of the clarification provided to me by GLC in the 31 January letter, I am satisfied that both *[Applicant 2 - name deleted]* and *[Applicant 1 - name deleted]* have been duly authorised as applicants by the Port Curtis native title claim group. In arriving at this view I have taken into account the fact that each of the applicants for the application have deposed to having been authorised by all the persons in the native title claim group. Schedule R of the application specifically states that the decision making process was an agreed consensual process that was adopted by the members of the native title group and that GLC is the representative body for the region.

Submissions by *[Person 3 - name deleted], [Person 4 - name deleted]* and *[Person 5 - name deleted]:*

The Tribunal is in receipt of written submissions (including a bundle of supporting material) from *[Person 3 - name deleted], [Person 4 - name deleted] and [Person 5 - name deleted]*dated 12 January 2002 ("the *[Persons 3/4/5 - name deleted]* letter") which I am of the view that I am required to have regard to in considering the Port Curtis application pursuant to s.190C(4).

I note that *[Person 3 - name deleted], [Person 4 - name deleted] ,* and *[Person 5 - name deleted],* ("the authors") were applicants in respect of the Taribelang Bunda Q6145/98 application and are native title claimants in the Port Curtis application.

By letter to *[Person 3 - name deleted] and [Person 4 - name deleted]* dated 9 January 2002 ("9 January 2002 letter"), the Tribunal sought written confirmation and clarification in relation to an attendance by *[Person 3 - name deleted] and [Person 4 - name deleted]* at the Tribunal's Brisbane Registry on 2 January 2002, during which *[Person 3 - name deleted] and [Person 4 - name deleted]* advised Tribunal officers that:

- *[Person 3 - name deleted] and [Person 4 - name deleted]* had authority to speak for the Taribelang Bunda People;

- *[Person 3 - name deleted] and [Person 4 - name deleted]* did not consent to, and wished to withdraw authorisation for, the Port Curtis Coral Coast application;

- *[Person 3 - name deleted, [Person 4 - name deleted]*and *[Person 5 - name deleted],* authorisation of/signatures for the application was given under duress, and

- there may be a small number of Taribelang Bunda People (consisting mainly of the *[Family 1 – name deleted]* family) who support the application, but the majority do not.

The *[Persons 3/4/5 - names deleted]* letter was provided to the Tribunal in response to the 9 January 2002 letter and states at paragraph 2 (referring to the 9 January 2002 letter):
"The first four points by which you summarized the outcomes of our meeting are confirmed by this letter as accurate and agreed upon by [Person 3 - name deleted], [Person 4 - name deleted] and all others involved."

Insofar as may be relevant to the issue of authorisation of the Port Curtis application, the *[Persons 3/4/5 - names deleted]* letter asserts that:

- *[Person 3 – name deleted]* is "*commissioned to speak"* on behalf of certain Taribelang Bunda People (details of which authority and People are outlined at page 1 of the*[Persons 3/4/5 - names deleted]* letter and in various attachments thereto); and
- the authors *"are authorised by the community, and especially the five family heads* (who signed the document #2 attached to the *[Persons 3/4/5 - names deleted]* letter – refer my reasons below in this regard), *to withdraw from the Combined Claim."*.

The *[Persons 3/4/5 - names deleted]* letter appears also to assert (insofar as may be relevant to the issue of authorisation of the Port Curtis application) that:

- the authors are seeking to withdraw their agreement in respect of the filing of the Port Curtis application. (This was given at the Federal Court case management conference held on 5 April 2001 and reflected in a document before the Tribunal entitled "Agreement", dated 5 April 2001 and signed by representatives for each of the Pre-Combined applications, including the authors themselves ("the Combination Agreement")); and
- the authors are authorised to, in effect, withdraw authorisation for the Port Curtis application by "81% of the local Taribelang Bunda constituency".

By letter dated 16 January 2002 GLC was given the opportunity to respond to the matters set out in the *[Persons 3/4/5 - names deleted]* letter and related material. Gurang Land Council did so on behalf of the applicant by letter dated 25 January 2002 together with certain documents (the GLC submission).
I have had regard to material supplied by GLC to the extent indicated in these reasons.

I have taken into account in arriving at my conclusions in respect of the *[Persons 3/4/5 - names deleted]* material that the combination of the Taribelang Bunda People's application with the Port Curtis application has been:

- agreed to by all Pre-Combination groups pursuant to the Combination Agreement, and
- ordered by the Federal Court and that the applicants named in the Port Curtis application have been authorised to make the application.

In this context I believe it is important to note that the substance of the authors assertion is that *[Person 3 – name deleted]* has been authorised to withdraw the authorisation of the Taribelang Bunda People from the Port Curtis application. They do not appear to assert that the applicants for the Port Curtis claim were not authorised.
The withdrawal of the Taribelang Bunda People from the combined application is clearly a very serious step. That being so there would need to be convincing evidence that the Taribelang Bunda People had approved that step and authorised *[Persons 3 - name deleted]*, or anyone else, to take that action. In my view that would be a matter for the Court, not this Tribunal.
I propose to address the assertions made by the authors in the *[Persons 3/4/5 - names deleted]* letter in relation to my consideration of s.190C(4).

Attached to the *[Persons 3/4/5 - names deleted]* letter is a letter from *[Person 6 - name deleted]*, Project Officer of the Taribelang Bunda People Claim Group to QUALIS dated 29 May 2001(the *[Person 6 - name deleted]* letter). In brief the letter requested advice whether an injunction could be sought in the Federal Court in respect of the *"misrepresentation of our group over native title issues"*. Attached to that letter are, amongst other documents, a number of documents entitled Explanatory Notes each of which is numbered. It appears that *[Person 6 - name deleted]* was the author of the Explanatory Notes.
In Explanatory Note #1 provided with the *[Persons 3/4/5 - names deleted]* letter it is stated *" From Taribelang Bunda point of view, both the agreed boundaries, and the way that rights and interests to land are going to be administered under this new Combined Agreement, must first be determined and instituted before any new application is made." (See para. 5)*
The Explanatory Note #1 further states: *"One of the biggest battles is with the Land Council. Taribelang Bunda have a negotiating position regarding the re-adjustment of boundaries, to satisfy traditional, cultural lore; but the Land Council seems to have refused to facilitate meetings which enable all the parties to negotiate meaningfully over boundaries and proposed administrative structures for the new claim application. So, on the one hand we have terms to negotiate, but no format provided nor responsibility shown by the land Council to, mediate, in this way." (See para.7).*
In my view this and other material provided by the authors, indicates that the authors seek withdraw on the basis that they are not satisfied with the GLC's process to identify and acknowledge the native title rights of the Taribelang Bunda People in relation to the combined claim area as is contemplated in the Combination Agreement (clauses 1.2 & 1.3).

I propose to firstly address the assertion that *[Persons 3 - name deleted]* has been *commissioned* to speak on behalf of certain Taribelang Bunda People referred to above. The authors of the *[Persons 3/4/5 - names deleted]* letter state in summary that this is proven by a photocopied document signed by the "*preceding elders*". That document states:

> "*We the undersigned who are acknowledged elders of the Taribelang Bunda Corporation here by decree that [Person 3 - name deleted] is the elder and spokesperson for the corporation.*
> *Dated this 6th day of me 1993."*

The document bears the signatures *[Person 7 - name deleted]*, *[Person 4 - name deleted]*, *[Person 8 - name deleted]*, *[Person 9 - name deleted]* and *[Person 10 - name deleted]*.

I am satisfied that prima facie the above document was signed by the signatories on or about 6 May 1993. The document does not establish that the Corporation is entitled to represent the Taribelang Bunda People in respect of native title matters and there is no other evidence before me to that effect in respect of this document. On the assumption the authority has not been revoked, the document may give *[Person 3 - name deleted]* authority to speak on behalf of the Corporation. However, that does not in my view give *[Person 3 - name deleted]* authority to speak on behalf of the members of the Taribelang

Bunda People comprising part of the combined claim. I believe it follows that above document does not give *[Person 3 - name deleted]* authority to withdraw the Taribelang Bunda People's authorisation for the Port Curtis application.

In addition the authors assert, in summary, that *[Person 3 - name deleted]* commissioning "*carries not only the endorsement* of *the local community and descendants of the tribal people, but the commissioning of the Creator himself*".
In my view there is no evidence before me to support the assertion of such endorsement.
Similarly, the authors of the *[Persons 3/4/5 - names deleted]* letter also assert that other elders of family groups endorse *[Person 3 - name deleted]* authority.
I my opinion there appears to be no evidence to support the assertion. No elder is named nor is there any evidence in the form of any statement in support of the assertion.

The authors have also referred in the *[Persons 3/4/5 – names deleted]* letter to, and have provided a list of, people on behalf of whom *[Person 3 - name deleted]* is said to be commissioned to speak. The list is said to be of "*potential members of the Taribelang Bunda Aboriginal Corporation"*
In my view, the fact that the named persons may be members of the Corporation, or may be entitled to be members of the Corporation, does not of itself authorise *[Person 3 - name deleted]* to speak for them short of adequate evidence of the appropriate granting of that authority. I am satisfied that there is no such evidence before me. Further, even accepting that the named persons, or some of them, are members of the Taribelang Bunda People the fact they are named on the list provided does not of itself establish that *[Person 3 - name deleted]* has authority from them to speak for them or withdraw from the application.

The authors of the *[Persons 3/4/5 – names deleted]* letter place emphasis on a letter dated 23 April 2001 addressed to GLC (the negotiation position letter). They say that: *" the signing of the of the negotiation position document #2, is proof that [Person 3 - name deleted] and [Person 4 - name deleted] along with [Person 5 - name deleted] are authorised by the community, and especially the five family heads that signed this document #2, to withdraw from the Combined Claim. At the time, all five signees were visited by [Person 3 - name deleted] and [Person 6 - name deleted], and thoroughly informed of our position regarding the claim, to which they all agreed before signing."*

Fistly, I have considered whether the contents of the negotiation position letter constitutes authority to withdraw from the combined application as alleged. The negotiation position letter refers to a document received by the Taribelang Bunda People Aboriginal Corporation from GLC dated 18 April 2001 and an enclosed *Co-operation Agreement*. The preparation of the Co-operation Agreement was envisaged by the Combination Agreement that was signed on behalf of all Pre-Combination groups on 5 April 2001. *[Person 3 - name deleted]* is a signatory to that agreement. In summary the negotiation position letter states that the signatories have no intention of signing the Co-operation Agreement, sets out the reasons why and the basis upon which they are prepared to commence negotiation. The letter also airs complaints in respect the service provided by GLC. Thus the negotiation position letter enunciates the position of the signatories. There

is no mention of authorisation to withdraw from the Combination Agreement or Port Curtis application.

Further, the authors state that five family heads signed the document. The signatories to the copy of negotiation position letter submitted by the authors are shown as *[Person 4 - name deleted]*, *[Person 11 - name deleted]*, *[Applicant 1 - name deleted]*, *[Person 5 - name deleted]* and *[Person 3 - name deleted]*. There are no signatures on the copy provided by the authors. This of course in not uncommon with a file copy. However, the *[Persons 3/4/5 – names deleted]* letter states, referring to the negotiation position letter, that *"The original of this document was signed by all five elders as listed on the copy here."*
The negotiation position letter has a notation on page 2 as follows: "*(This was signed by these representative, family heads.)"*
GLC has supplied with its submission a copy of the original negotiation position letter it received. Only *[Person 4 - name deleted]*, *[Person 11 - name deleted]* and *[Person 3 - name deleted]* signed the letter. In respect of *[Person 12 - name deleted]* and *[Person 5 - name deleted]* there is a notation above each of their names *"in agreeance but away"*. It is clear that the letter was not signed by all the signatories as claimed by the authors of the *[Persons 3/4/5 – names deleted]* letter.
For the above reasons the negotiation position letter does not in my opinion prove, as the authors assert, "*that [Person 3 - name deleted] and [Person 4 - name deleted] along with [Person 5 - name deleted] are authorised by the community, and especially the five family heads that signed this document #2, to withdraw from the Combined Claim".*

The authors also assert in the *[Persons 3/4/5 - names deleted]* letter that the applicants from the Taribelang Bunda People who were to represent Taribelang Bunda People's interests on the combined claim were selected at a "stacked meeting" of non-traditional Taribelang Bunda People on 24 May 2001. The authors further assert that the interests of 17 families should have been taken into account whereas GLC chose to include only the interests of one family line, the *[Person 13 - name deleted]* (snr) family line.
Explanatory Note #3 attached to the *[Person 6 - name deleted]* letter relates to this matter and alleges that GLC took steps in relation to the combined application (a meeting to discuss overlaps) and chose two representatives (elders) for that meeting without consultation with other elders. The note purports to set out evidence *"of the way the Land Council operates, to establish their own interests over-riding ours"* by constantly choosing the heads of three family group who represent only a comparatively small number of the Taribelang Bunda People. In summary the author of the Note is asserting that GLC is "misrepresenting" 17 families. The Note appears to be raising these matters in relation to the proposed injunction proceedings and its author does not assert that the applicants have not been properly authorised. However, these allegations may be seen as raising an issue as to whether the applicants were properly authorised and consequently I believe I should address them.

I have consequently carefully considered the information supplied by, and the submissions of, the authors of the *[Persons 3/4/5 - names deleted]* letter. In arriving that my conclusion in respect of this issue I have had regard to the fact that the applicants in

the Port Curtis application have each sworn in their section 62(1)(a) affidavits that: "*I am authorised by all persons in the native title group to make the application and to deal with the matters arising in relation to it".* Schedule R to application outlines the process followed in the authorisation of the applicants and is verified by the applicants.
In my opinion the onus is on the authors to establish the matters they allege.
The assertions are not sworn, are contrary to the applicants sworn evidence and are unsupported by any other evidence.
I am consequently not satisfied that the assertion have established that the Taribelang Bunda People were not properly represented at the authorisation meeting as alleged or that the applicants were other than properly authorised.

The *[Persons 3/4/5 - names deleted]* letter also states in relation to the meeting on 24 May 2001 that: "*Since [Person 3 - name deleted], [Person 4 - name deleted, [Person 5 - name deleted] and other families detailed above were not well informed about this meeting at the time, they didn't attend, nor were they encouraged to by the Land Council to do so".* I propose addressing this statement as it may be seen as relating to the applicants' authorisation.
Curiously the GLC Attendance List (Attachment 3 to GLC's letter of 31 January 2002) shows *[Person 3 - name deleted]* as attending this meeting.
I note that the authors of the *[Persons 3/4/5 - names deleted]* letter do not assert that they were unaware of the meeting. Indeed, attached to the *[Persons 3/4/5 - names deleted]* letter is a copy of letter from GLC to *[Person 3 - name deleted]* dated 2 May 2001 advising him of the above meeting and other meetings. In my opinion the authors elected not to attend.
The authors further state that *[Person 3 - name deleted]* and *[Person 4 - name deleted]* attended the combined meeting of all the Pre-Combination groups held on 26 May 2001 at which they submitted the negotiation position letter to *[Person 14 - name deleted]*.
Explanatory Note #6 states: *"The meeting was chaired and conducted Gurang people. [Person 3 - name deleted] and [Person 4 - name deleted] appeared for a short time, until the first speaker, [Person 15 - name deleted], spoke against their presence whereupon they welcomed their expulsion from the meeting, but left for copies of these documents with the meeting's contingents".*
In response the GLC submission states: *"The meeting comprised some 80 people representative of all the groups making the combined application. In the view of the Land Council and based on the information and the material in relation to the groups presently held by the Land Council, I can state that the meeting was held with appropriate people from within the various native title group's who hold the traditional authority to authorise the combined claim.*
[Person 3 - name deleted] and [Person 4 - name deleted] were simply informed that the groups had decided to make the combined application and that if [Person 3 - name deleted] and [Person 4 - name deleted] personally did not wish to support the application they had the option of leaving. I emphasise that they were not expelled from the meeting".
The statement that *[Person 3 - name deleted]* and *[Person 4 - name deleted] "welcomed their expulsion from the meeting"* is not in my view clear. Further it does not appear to be a statement made first hand by *[Person 3 - name deleted]* and *[Person 4 - name deleted]*.

I say this because the statement is contained in a document that is attached to the *[Person 6 - name deleted]* letter and appears to have been written by *[Person 6 - name deleted]*. The GLC submission (*[Person 14 - name deleted]*) emphasises that they were not expelled from the meeting. Without further evidence I am not prepared to accept that that *[Person 3 - name deleted]* and *[Person 4 - name deleted]* were expelled from the meeting. I am satisfied on balance that they withdrew from the meeting.

The non-attendance of *[Person 3 - name deleted]* and *[Person 4 - name deleted]* at the meeting on 24 May 2001 and their departure from the meeting on 26 May 2001 raises an issue whether the applicants were authorised by <u>all</u> persons in the native title claim group. There is I believe no dispute that the authors are members of the Taribelang Bunda People. I am satisfied that the authors agreed to the combination of the claims. In fact they signed the Combination Agreement although they allege this was under duress. I will address the issue of duress later in these reasons. Similarly it is clear that they subsequently adopted a position that does not support the combined application and that they did not participate in the authorisation meetings process.
On the other hand the applicants have sworn that they have been authorised by all the persons in the native title group to make the application and to deal with matters arising in relation to it. This is supported by the following statement in the GLC submission: *"In the view of the Land Council and based on the information and the material in relation to the groups presently held by the Land Council, I can state that the meeting was held with appropriate people from within the various native title groups who hold the traditional authority to authorise the combined claim."* (p.14/15)

In *Risk v National Native Title* Tribunal [2000] FCA 1589 O'Loughlin J noted that under the native title applications can only be lodged on behalf of properly constituted groups and that authorisation must come from all of the persons who hold the common or group rights and interests. His Honour noted (citing Wilcox J in *Moran v Minister for Land and Water Conservation for the State of New South Wales* [199] FCA 1637) that the applicant does not have to be individually authorised. It is sufficient that the applicant has been authorised to make the claim pursuant to a process of decision making recognised under the traditional laws and customs of the claimant group.
Having regard to that authority and the applicants affidavits supported by the above information from GLC it is my view that the non-attendance by, and departure of, *[Person 3 - name deleted]* and *[Person 4 - name deleted]* from the relevant meetings does not establish that the Port Curtis applicants were other than properly authorised.
I note that the authors of the *[Persons 3/4/5 – names deleted]* letter do not complain about the conduct of meeting convened by GLC and held on 21 July 2001 by the Taribelang Bunda People to which I have referred above.

Also attached to the *[Person 6 - name deleted]* letter is a copy of an undated document entitled *"Elder's Authority"*. It would appear that that authority was created on or about, or prior to, 29 May 2001, ie the date of the *[Person 6 - name deleted]* letter. *[Person 4 - name deleted], [Person 3 - name deleted], [Person 11 - name deleted], [Applicant 1 - name deleted], [Person 16 - name deleted], [Person 17 - name deleted]* and *[Person 18 - name deleted]* signed the document.

The document appears to me to relate to the proposed injunction proceedings in that it states in part as follows:
"*Our concern in this proposed action, is that the 17 families who should be represented both by the representatives attending each meeting, and by the Gurang Land Council's appointment of meetings and inclusions/invitation of representatives to them, has not represented these 17 family groups faithfully. These current day, 17 families, go back to the last initiated tribal member of the Taribelang Bunda, [Ancestor 7 - name deleted] and his wife, [Ancestor 8 - name deleted]".*
The signatories state in this document that they have the support of 6 out of 9 of the applicants in respect of the registered Taribelang Bunda People application.
The *Elders Authority* does not in my opinion bestow authority on *[Person 3 - name deleted]* to speak for, or withdraw, the Taribelang Bunda People from participation in the Port Curtis application. The document relates to a proposed injunction application that did not proceed.
However, I have raised the existence of this document because I note that it was signed by *[Applicant 1 - name deleted]*. *[Applicant 1 - name deleted]* is an applicant in the combined claim and has sworn a s.62(1)(a) affidavit which states in part that she has been authorised by all members of the native title group. Is there an inconsistency in *[Applicant 1 - name deleted]* position? I believe not for the following reasons.
Firstly, the nature of the content of the document as outlined above.
Secondly, at the May meetings of the Taribelang Bunda People, *[Applicant 2 - name deleted]* and *[Person 2 - name deleted]* were authorised. The *Elders Authority*, relating to the proposed injunction application, was probably signed on or about 29 May 2001. The injunction application did not proceed. At the subsequent meeting of the Taribelang Bunda People convened by GLC and held on 21 July 2001, *[Applicant 1 - name deleted]* was authorised as an applicant. On 23 July 2001 *[Applicant 1 - name deleted]* swore her s.62(1)(a) affidavit. Presumably at that time she was content that she was authorised by all persons in the native title group.

I referred above to allegation by the authors of the *[Persons 3/4/5 – names deleted]* letter (p.3) that *[Person 3 - name deleted]* and *[Person 4 - name deleted]* were subjected to duress in authorising the application.
In summary, the duress is said to arise from the following matters.
1. *[Person 1 - name deleted]* assured *[Person 3 - name deleted]*, *[Person 4 - name deleted]* and *[Person 5 - name deleted]* at the initial combination application hearing that the Taribelang Bunda People could withdraw from the combined application if GLC neglected its responsibilities towards them. The authors allege that GLC has neglected their interests.
2. The authors reiterate that their assertions concerning the lack of representation at the authorisation meetings and the misrepresentation by GLC.
3. The authors assert that the rejection of their submissions in respect of the combined claim by those present that the meeting held on 26 May 2001 was duress.
It is not clear what the authors are referring to when they say they "*were subjected to duress in authorising the application".* It seems most likely that they are referring to the signing of the Combination Agreement. However, in my opinion, the issue of whether the Combination Agreement was entered into, or some consent or authorisation given, as a

result of duress is not a matter for this Tribunal to determine. Such an issue is one for a competent court to decide. In particular I believe the Combination Agreement is binding until otherwise decided by such a court. As far as I am aware on the information before me no steps have been taken to initiate any proceedings.
I have however considered the above assertions in the context of satisfying myself that the applicants in the Port Curtis application have been authorised as required by s190C(4)(b). I will address the matters as numbered above.
1. I am not satisfied that the authors have presented evidence to the Tribunal to support that assertion. Further, in my opinion such a representation, if appropriately proven, does not establish that the application has not subsequently been properly authorised as required by s190C(4).
2. I believe I have addressed this matter earlier in these reasons (p. 24).
3. The rejection of the submission referred to does not establish that the application has not been properly authorised.
Thus, in summary, I am not satisfied that the matters relied upon as constituting the alleged duress establish that the application was other than correctly authorised.

I have referred several times to the Combination Agreement that was signed on behalf of all the Pre-Combination groups on or about 5 April 2001.
This is a convenient point to address a matter that arises in relation to that agreement. I note that *[Person 3 - name deleted]*, *[Person 4 - name deleted]* and *[Person 5 - name deleted]* were signatories on behalf of the Taribelang Bunda People. In my opinion in so doing they were acting as representatives of the Taribelang Bunda People and not individually.
The Combination Agreement provides for the combined claim to be filed in the Federal Court subject to all the claim groups agreeing to the provisions of an agreement to be prepared by Gurang Land Council (the Co-operation Agreement) (clause1.2). The Co-operation Agreement was to set out a process to identify and acknowledge the native rights and interests of each of the groups in relation to the combined area (1.3).
It is common ground that the Co-operation Agreement has yet to be executed.
I believe this raises an issue whether the fact that this has not occurred impacts upon the registration process in respect of the Port Curtis application.
Notwithstanding that the Co-operation Agreement has not been executed the Pre-Combination claims have been combined, the amended Port Curtis application has been filed and referred to the Tribunal for registration testing. In those circumstances it seems to me that any issue that may arise relating to the failure of the Co-operation Agreement to be executed is not a matter for the Tribunal to consider. Indeed, such issues are not matters that the Tribunal has any authority to address. I have therefore concluded that this matter does not impact upon the obligation of the Registrar, or his Delegate, to apply the registration test to the application.

Additional Matters:
The Tribunal received copies of three pieces of correspondence from *[Person 19 - name deleted]* on 17 January 2002, being letter *[Person 19 - name deleted]* to Tribunal dated 17 January 2002; letter *[Person 19 - name deleted]* to GLC dated 12 December 2001 and

letter *[Person 19 - name deleted]* to Tribunal dated 9 December 2001. In these letters, *[Person 19 - name deleted]* states that she is a representative of the Gurang People and a descendant of *[Ancestor 3 - name deleted]*. The letters generally express dissatisfaction with the management of native title issues in the region. There is nothing in the letters which evidences or suggests that the Port Curtis application is otherwise than duly authorised as required by s190C(4)(b).

I note that on 30 January 2002, the Tribunal's case manager for the Port Curtis application received a telephone call from *[Person 20 - name deleted]*, during which *[Person 20 - name deleted]* stated, inter alia, that (whilst he was aware of it) he had not attended an authorisation meeting in respect of the Port Curtis application and he was concerned that his mother, *[Person 21 - name deleted]* was not an applicant on the Port Curtis application. *[Person 21 - name deleted]* was an applicant in respect of the Gurang Q6019/99 application.

No written submissions have been received by the Tribunal from or on behalf of *[Person 20 - name deleted]* by way of substantiation or clarification of the above telephone conversation. There is no indication that *[Person 20 - name deleted]* opposed the authorisation of the applicants. His concern was apparently that his mother had not been authorised.

It is my view that the above matters raised by *[Person 20 - name deleted]* over the telephone to the case manager do not establish that the Port Curtis application is otherwise than duly authorised as required by s190C(4)(b) as:

- the fact that a particular individual was not authorised by the Port Curtis claim group is not a matter to which I am required to have regard in the context of s190C(4);
- *[Person 20 - name deleted]* apparently elected not to attend an authorisation meeting. In such circumstances I am of the view, for reasons expressed above in relation to the *[Persons 3/4/5 - names deleted]* material, that 190C(4) does not require that the applicant be authorised by each and every person in the claim group. I believe this is so provided the authorisation of the applicant has taken place pursuant to a proper decision making process.

I am satisfied that the applicants are members of the native title claim group and are authorised to make the application, deal with matters arising in relation to it, by all other persons in the native title group. For these reasons, I am satisfied that the requirements of s. 190C(4)(b) are met.

Result: Requirements met

B. Merits Conditions

s.190B(2)

Description of the areas claimed:

The Registrar must be satisfied that the information and map contained in the application as 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 land and waters.

Reasons for the Decision

Map and External Boundary Description

External Boundary:
Schedule B contains a written description of the external boundaries of the claim by reference to metes and bound, together with coordinate pairs to assist. Reference is provided for the coordinate system and datum of the coordinates as well as sourcing the base spatial data used.

The description includes a number of islands, rocks and reefs defined by reference to their respective geographical place names. The Tribunal is in receipt of correspondence from Gurang Land Council dated 31 January 2002 that clarifies that the applicants' intention is to claim these areas *"to the low water mark including the intertidal zone."*

I am satisfied that the description at Schedule B sufficiently identifies the land such that the external boundaries of the area covered by the application may be identified with reasonable certainty. The requirements of s62(2)(a)(i) are met.

Map:
A map of the claim area is referred to at Schedule C of, and attached to, the application. The map is a monochrome copy of an original map prepared by the Geospatial Analysis and Mapping Branch of the National Native Title Tribunal on 11 May 2001. The map provides a legend, coordinate grid, projection and datum information, scale bar, north point and disclaimers. I am satisfied that the map meets the requirements of s.62(2)(b). I am also satisfied that is that the written description of the external boundaries and the map are consistent with each other and describe the claim area with reasonable certainty.

For the reasons outlined above I am satisfied that the requirements of s190B(2) are met in relation to the external boundaries of the claim area.

Internal Boundary Description

The internal boundary description is contained at paragraphs 2 to 5 of Attachment B to the application. These clauses provide information identifying the internal boundaries of the claimed area by way of a formula that excludes a variety of tenure classes from the claim area.

Paragraphs 2 to 5 read as follows:

"*2. Subject to paragraphs 4 and 5, the area covered by the application exclude any land or waters which is presently or previously covered by:*

(a) a scheduled interest;

(b) a freehold estate (including any right in land or waters taken to be the vesting of a freehold estate by virtue of subsection 23B(3));

(c) a commercial lease that is neither an agricultural lease nor a pastoral lease;

(d) an exclusive agricultural lease or an exclusive pastoral lease;

(e) a residential lease;

(f) a community purpose lease;

(g) a lease dissected from a mining lease and referred to in section 23B(2)(c)(vii) of the Native Title Act 1993 (Cth);

(h) any lease (other than a mining lease) that confers a right to exclusive possession over particular land or waters

which was validly granted or vested on or before 23 December 1996.

3. Subject to paragraphs 4 and 5, the land and waters the subject of the application excludes any area covered by the valid construction or establishment of any public work (as defined by the Native Title Act 1993 (Cth)), where the construction or establishment of the public work commenced on or before 23 December 1996.

4. Where the act specified in clauses 2 or 3 falls within the provisions of -

(a) section 23B(9) - Exclusion of acts benefiting Aboriginal peoples or Torres Strait Islanders;

(b) section 23B(9A) - Establishment of a national park or a State park;

(a) section 23B(9B) - Acts where legislation provides for non-extinguishment;

(b) section 23B(9C) – Exclusion of Crown to Crown grants;

(c) section 23B(10) - Exclusion by regulation,

the area covered by the act is not excluded from the application.

5. Where an act referred to in paragraphs 2 or 3 covers land or waters referred to in -

(a) section 47 - pastoral leases held by or on behalf of as trustee for any of the members of the native title claim group;

(b) section 47A - reserves etc. covered by claimant applications; or

(c) section 47B - vacant Crown land covered by claimant applications,

the area covered by the act is not excluded from the application."

It is clearly the applicants' intention to identify areas within the external boundaries which are excluded from the claim area by means of a general or class exclusion and in particular having regard to the provisions of s.23B.

It is my view that the description of areas excluded by class can be objectively applied to establish whether any particular area of land or waters within the external boundary of the application is within the claim area or not. This requires research of tenure data held by the State of Queensland, but nevertheless it is reasonable to expect that the task can be done on the basis of the information provided by the applicants. Accordingly I consider that the description provides a reasonable level of certainty in regard to whether native title rights and interests are claimed in relation to particular areas of land or waters within the external boundaries of the area the subject of the application.

I have taken into account Nicholson J's order on 21 May 1999 in matter of *Daniels and Ors, et al v The State of Western Australia (WAG6017 of 1996),* being the only authority available to date on what may satisfy the requirements of s. 62 (2)(a) (i) and (ii) of the Native Title Act 1993. In particular I refer to para 32 of Nicholson J's order in which he states:
"*These requirements are to be applied to the state of knowledge of an applicant as it could be expected to be at the time the application or amendment is made. Consequently a class or formula approach could satisfy the requirements of the paragraphs where it was the appropriate specification of detail in those circumstances. For example, at the time of an initial application when the applicants had no tenure information it may be satisfactory compliance with the statutory requirement."*

In my view the exclusions contained in Attachment B of the application, in the event that the validity of the particular grants identified is established in due course, effectively exclude those parts of the areas claimed which are or were subject to the scheduled tenures.

Clauses 4 and 5 state that the exclusions are subject to the provisions of sections:

- 47 to 47B; and
- 23B(9) to 23B(10) (inclusive).

Whilst particulars by way of a basis for claiming the benefit of these provisions have not been provided by the applicants at this time, I consider that the description provided at paragraphs 4 and 5 allows it to be shown, upon the provision of such particulars, whether the benefit of these provisions may vest in the applicants and that is all that is required by this section.

I am satisfied that the physical description of the internal boundaries meets the requirements of s.62(2)(a)(ii).

For the reasons given above, I am satisfied that the requirements of s190B(2) are met.

Result: Requirements met

s.190B(3)

Identification of the native title claim group:

The Registrar must be satisfied that:

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

Reasons for the Decision

An exhaustive list of names of the persons in the native title claim group has not been provided. It is therefore necessary to consider if the application meets the requirements of s.190B(3)(b).

Attachment A to the application provides that the persons in the native title claim group are the members of twenty-two family groups. As outlined and concluded in my reasons above in relation to s61(1), I am satisfied that all those members of the native title claimant groups in respect of the Pre-Combined applications are included in the combined Port Curtis application.

I am also satisfied that the descendants of the named ancestors could be identified with minimal inquiry and as such, ascertained as part of the native title claim group. By referencing the identification of members of the native title claim group as descendants of a named ancestor, it is possible to objectively verify the identity of members of the native title claim group, such that it can be clearly ascertained whether any particular person is in the group.

The requirements of s.190B(3)(b) are therefore met.

Result: Requirements met

s.190B(4)

Identification of claimed native title:

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

Reasons for the Decision.

Attachment D to Schedule E describes the claimed native title rights and interests claimed

The claimed rights and interests are subject to the following qualification as set out in Attachment D.
2. "The native title rights and interests claimed in relation to the claim area are always subject to and in accordance with:
(a) the laws of the State and the Commonwealth; and
(b) the traditional laws acknowledge and traditional customs observed by the native title claim group.

3. To the extent that any area of the claim area or as being the subject of a previous non-exclusive possession Act, as defined by the Native Title Act 1993 (Cth), the native title group does not claim possession, occupation, use and enjoyment of the area to the exclusion of all others.

4. The native title claimed-
(a) does not operate exclusive of the crowns valid ownership of any minerals, petroleum or gas;
(b) is not exclusive rights or interests if they relate to waters in an offshore place; and is not claimed by the native title group in relation to any part of the claim area are being validly extinguished by operation of the laws of the State or the Commonwealth."

I am satisfied that the native title rights and interests described and claimed in Attachment D are readily identifiable.

Result: Requirements met

s.190B(5)

Sufficient factual basis:

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;
(b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests;
(c) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.

Reasons for the Decision

A general description of the factual basis upon which it is asserted that the native title rights and interests claimed exist and for the particular assertions in sub-paragraphs (a), (b) and (c) is contained at Schedule F to the application.

On 19 January 2001 French J handed down his decision in *Martin v Native Title Registrar* [2001] FCA 16. Amongst other things, his Honour considered this condition of the registration test in that case. I have had regard to his Honour's findings that:

> *"Provision of material disclosing a factual basis for the claimed native title rights and interests, for the purposes of registration, is ultimately the responsibility of the applicant. It is not a requirement that the Registrar or his delegate undertake a search for such material"* - at [23].

In regard to paragraph (a) of s190B(5) his Honour said:

> *"…What he (the delegate) had to be satisfied of was that the factual basis on which it was asserted that the native title rights and interests claimed exist supported the proposition that the native title claim group and the predecessors of those persons had an association with the area"* - at [22].

His Honour imparts the same formulation of the question to the circumstances of paragraph (b) of s190B(5) - see [27].

In regard to paragraph (c) of s190B(5) his Honour noted that:

> *"…the delegate had to be satisfied that there was a factual basis supporting the assertion that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs. This is plainly a reference to the traditional laws and customs which answer the description set out in par (b) of s 190B(5)"* - at [29]

In considering this condition I have had regard to information contained at Schedules F, G and M of the application and the following material provided in respect of the Pre-Combination applications for registration test purposes:

Bailai QG6139/98:

- affidavit of *[Applicant 3 - name deleted]* sworn 26 March 1999;
- affidavit of *[Claimant 1 - name deleted]* sworn 26 March 1999;

Gooreng Gooreng QG6143/98 & Q6018/99:

- Affidavit of *[Claimant 2 - name deleted]* sworn 18 June 1999;
- Affidavit of *[Claimant 3 - name deleted]* sworn 23 June 1999;
- Affidavit of *[Ancestor 4 - name deleted]* sworn 9 June 1999;
- Affidavit of *[Claimant 4 - name deleted]* sworn 10 June 1999;
- Affidavit of *[Claimant 5 - name deleted]* sworn 10 June 1999;

- Affidavit of *[Claimant 6 - name deleted]* sworn 29 June 1999, and
- Anthropological Report of *[Person 22 - name deleted]* and *[Person 23 - name deleted]* dated 24 June 1999

Taribelang Bunda QG6145/98:
- Affidavit of *[Person 5 - name deleted]* dated 16 April 1999;
- Affidavit of *Person 5 - name deleted]* dated 1 June 1999;
- Affidavit of *[Claimant 7 - name deleted]* dated 16 April 1999;
- Affidavit of *[Claimant 8 - name deleted]* dated 16 April 1999;
- Affidavit of *[Person 3 - name deleted]* dated 19 April 1999, and
- Affidavit of *[Person 2 - name deleted]* dated 16 April 1999.

Gurang Q6019/99:
- Affidavit of *[Claimant 9 - name deleted]* sworn 5 June 1999;
- Affidavit of *[Claimant 10 - name deleted]* sworn 6 July 1999;
- Affidavit of *[Claimant 11 - name deleted]* sworn 7 July 1999;
- Affidavit of *[Claimant 12 - name deleted]* sworn 28 July 1999;
- Affidavit of *[Claimant 13 - name deleted]* sworn 28 July 1999;
- Affidavit of *[Claimant 14 - name deleted]* sworn 3 August 1999;
- 3 page typed document entitled "History";
- Bundle of documents entitled "Annexures to *[Person 22]'s* Story"; and
- various documentation provided to the Tribunal as confidential supporting material comprising historical and anthropological documents of public record and personal and genealogical information relating to the native title claim group.

There are three criteria to consider in ultimately determining whether or not I am satisfied that there is a sufficient factual basis to support the applicants' assertions about the existence of the native title rights and interests listed at Attachment D to the application.

Criterion One: 190B (5)(a) – that the native title claim group have, and the predecessors of those persons had, an association with the area.
The area in question is that described above (s.190B(2)) and, in summary, comprises the combined areas of the Pre-Combination applications modified to remove certain overlaps

The applicants state at Schedule F of the application that *"The native title claim group is comprised of the present day members of the Bailai, Gooreng Gooreng, Gurang, and Taribelang Bunda communities. They are the descendants of the Aboriginal communities that occupied the claim area at the time of sovereignty".*

In respect of the Bailai People, the affidavits of *[Applicant 3 - name deleted]* and *[Claimant 1 - name deleted]* depose that the land and waters covered by the Bailai application are within their traditional country. Specifically, *[Claimant 1 - name deleted]*:
- refers to and identifies her maternal grandmother, *[Ancestor 20 - name deleted]*, (the ancestor referred to in Attachment A);

- gives a short description of her mother's and maternal grandmother's association with the claim area;
- describes learning from her mother traditional hunting, fishing and cooking, and using plants for medicine;
- names Barney Point (a place within the claim area) as an example of a traditional meeting place for Aboriginal people; and
- describes how she has passed on her traditional knowledge to her children, including taking them to various places within the claim area. Specific locations are named (for example, Nagoorin, Red Rover, Palm Drive, Police Creek).

The affidavit of *[Claimant 3 - name deleted]* (a Gooreng Gooreng person) deposes that the land and waters covered in that application are within Gooreng Gooreng traditional country. Specifically, the affidavit of *[Claimant 3 - name deleted]*:

- refers to and identifies his maternal great-grandmother (mother's mother's mother) as *[Ancestor 16 - name deleted]*, and his paternal great-grandmother (father's father's mother) as *[Ancestor 18 - name deleted]*, born at Miriam Vale Station. Both ancestors are listed in Attachment A to the combined application*;*
- describes learning from his great-grand mother, *[Ancestor 16 - name deleted]*, how to fish in the Burnett River, and from his parents traditional hunting and gathering;
- describes learning from his father his own "skin and totem", and that this was also the totem of those ancestors who met Captain Cook in the year 1770 at the place now called the Town of 1770. The applicant deposes that these men showed Cook where to find fresh water at the place known now as Agnes Waters, and
- describes passing on traditional knowledge to his children (hunting, gathering, language, stories, among other things).

In the respect of Gurang People, each of the affidavits of *[Claimant 10 - name deleted]*, *[Claimant 9 - name deleted]*, *a*nd *[Claimant 11 - name deleted]*, deposes that under the traditional laws and customs of the Gurang Claim Group that they and their ancestors have had long association with the area as part of Gurang country. Specifically, the affidavit of *[Claimant 10 - name deleted]*l:

- refers to and identifies her father as *[Ancestor 21 - name deleted]*, and her Grandmother as *[Ancestor 2 - name deleted]*, (an ancestor listed in Attachment A to the application);
- describes learning from her family traditional stories, which she has passed on to her children;
- describes camping and fishing in Gurang Traditional country; and
- gives language names for traditional foods of Gurang people.

In respect of Taribelang Bunda, the affidavits of *[Person 5 - name deleted]* and *[Person 2 - name deleted]*, each depose that the land and waters covered by the application form part of their traditional country under the laws and customs of the native title claim group. I am satisfied that both *[Person 5 - name deleted]*, and *[Person 2 - name deleted]*, are members of the native title claim group. In particular, the affidavits of *[Person 5 - name deleted]*:

- identifies his traditional country;

- refers to and identifies his grandfather as *[Ancestor 7 - name deleted]* (an ancestor listed in Attachment A to the application);
- refers to hunting, fishing and collecting bush medicines within Taribelang Bunda traditional country; and
- refers to the initiation of his grandfather as a Taribelang Bunda man.

In addition, at Schedules F, G and M of the application the applicants provide details of activities currently carried out by members of the claim group, such as members of the native title claim group continuing to reside in the claim area, hunt and collect animals, fish and other foods from the land and waters within the area, and undertaking cultural heritage related activities on the area covered by the application

I am satisfied that there is before me evidence of a sufficient factual basis to support the assertion that the native title claim group have, and the predecessors of those persons had, an association with the claim area.

Criterion Two: 190B(5)(b) – that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests.

This subsection requires me to be satisfied that traditional laws and customs exist, that those laws and customs are respectively acknowledged and observed by the native title claim group, and that those laws and customs give rise to the claim to native title rights and interests.

On the basis of Schedule F and G I am satisfied that there exist traditional laws and customs observed by the native title claim group that give rise to the claim to native title rights and interests. In addition, affidavits accompanying the Pre-Combination applications describe some of the continuing traditional culture and laws**.**

In the matter of Bailai People, the affidavits of *[Claimant 1 - name deleted]* and *[Applicant 3 - name deleted]* demonstrate that a body of traditional laws and customs exists, in respect of and in accordance with which the deponents educate the younger members of their family. *[Applicant 3 - name deleted]* in particular undertakes cultural heritage work and represents the Bailai people in relation to matters affecting the environment of the claim area.
Relevantly, the affidavit of *[Claimant 1 - name deleted]* provides detail as to traditional laws and customs acknowledged and observed by the Bailai group. For example, *[Claimant 1 - name deleted]* affidavit:

- refers to her spending time in different places throughout Bailai country with her children, teaching them traditional customs such as hunting, gathering, fishing, cooking and bush medicine.
- refers to her passing on her knowledge of Bailai law and custom, and of Bailai country to her children.

Relevantly, *[Applicant 3 - name deleted]* affidavit:

- refers to the establishment of the Bailai Aboriginal Corporation, through which Bailai people discharge their responsibilities under traditional law and custom;
- refers to traditional rules of behaviour observed, for example, in decision making; and
- describes her involvement, in accordance with tradition and custom, in cultural heritage work, for example through negotiations with companies such as Comalco and Chevron.

For Gooreng Gooreng People, the affidavit of *[Claimant 2 - name deleted]* provides detail as to traditional laws and customs acknowledged and observed by the Gooreng Gooreng group. *[Claimant 2 - name deleted]* affidavit:

- refers to his father learning tribal law from *[Person 24 - name deleted]*, his grandmother's uncle or brother (can no longer be ascertained).
- refers to learning from his father Gooreng Gooreng language, and to his right and responsibility to safeguard and pass on knowledge associated with his traditional country.

Similarly, the affidavit of *[Claimant 3 - name deleted]* provides details as to traditional laws and customs acknowledged and observed by the Gooreng Gooreng group. *[Claimant 3 - name deleted]* affidavit:

- refers to site protection work he has undertaken on traditional country
- refers to traditional knowledge regarding totems, skin names, and marriage laws
- refers to the rituals he observes when he goes on to his country to hunt or fish, so as not to offend the spirits of his ancestors.

Each of the supporting affidavits for Gurang People, being those of *[Claimant 9 - name deleted]*, *[Claimant 11 - name deleted]* and *[Claimant 10 - name deleted]* provides detail as to traditional laws and customs acknowledged and observed by the Gurang group. For example, *[Claimant 11 - name deleted]* affidavit:

- refers to her being taught how to hunt and find traditional foods and bush medicines;
- refers to her taking her children and grandchildren to where she was born in Gurang country, and teaching them traditional customs such as hunting, and gathering;
- describes areas on Gurang country which are significant to her and to her family, and
- describes in general terms a sacred site which only her family may visit.

Relevantly, *[Claimant 9 - name deleted]* affidavit:

- refers to traditional stories her father taught her, and which she in turn has taught her children;
- refers to her mother's totem, and how this affects traditional fishing, and
- describes elders mixing traditional medicines;

These affidavits of *[Claimant 11 - name deleted]* and *[Claimant 9 - name deleted]* demonstrate that a body of traditional laws and customs exists, in respect of and in accordance with which the deponents educate the younger members of their family.

The affidavits attached to the Taribelang Bunda pre-combination application, evidence the existence of the traditional laws and customs observed by the native title claim group. Read together, they identify a system of rules and beliefs adhered to by members of the native title claim group. They specify many of the rights and responsibilities of members of that group and, to some extent, a process by which those rights and responsibilities are recognised and exercised.

Relevantly, the affidavits of *[Person 5 - name deleted]*:

- describes his learning about Taribelang Bunda people and dreamtime and country from his father, uncles and other older relatives;
- states that his father was always speaking language, and that the deponent can also speak some words;
- describes going hunting and fishing with his father, and collecting bush medicines within Taribelang Bunda country;
- describes learning from his father how to make boomerangs, spears and fire sticks, and which trees and timber to use, and teaching younger people how to do it;
- describes taking his daughter and now his grandchildren hunting and fishing, and telling them about their culture;
- describes learning from his father about initiation and burials under traditional ceremony of a relative within Taribelang Bunda country and other burials of relatives within that country, and
- describes learning about the rules for adoption by the claim group.

I am satisfied that there is a sufficient factual basis to support the assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the native title rights and interests claimed.

Criterion Three: 190B(5)(c) - that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

Under this criterion, I must be satisfied that the native title claim group continues to hold native title in accordance with their traditional laws and customs.

The information referred to above (190B(5)(b)) provides evidence of an existing and continuing system of rules, beliefs and practices adhered to by members of the native title claim group. The system specifies some of the rights and responsibilities of members of that group and processes by which those rights and responsibilities are recognised and exercised. These rights and responsibilities include the transmission of traditional knowledge, conducting ceremonies, caring for the land and waters within the claim area, carrying on of bush skills such as fishing and hunting and the rights and responsibilities attached to these skills.

Thus, the applicants assert at Schedule F, G and M of the application that the members of the native title claimant group continue to assert ownership of the area, manage the country, pass on spiritual and cultural knowledge, follow certain cultural decision-making processes, and undertake cultural heritage work.

On the basis of my reasons outlined above in relation to ss.190B(5)(a) & (b), I am satisfied that the applicants' affidavits, together with the supplementary anthropological material, evidence a sufficient factual basis to support the assertion that the native title claim group have continued to hold the native title in accordance with their traditional laws and customs.

Result: Requirements met

s.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.

Reasons for the Decision

Under s190B(6) I must consider that prima facie at least some of the native title rights and interests claimed can be established. "Native Title rights and interests" are defined an s223 of the Native Title Act. The definition specifically attaches native title rights and interests to land and water and in summary requires the rights and interests to be linked to traditional laws and customs and those claiming the rights and interests to have a connection with the relevant land and waters and those rights and interests to be recognized under the common law of Australia.

The term "prima facie" was considered in *North Ganalanja Aboriginal Corporation v. Queensland 185 CLR 595* by their Honours Brennan CJ, Dawson Toohey, Gaudron and Gummow J J who noted:
"*The phrase can have various shades of meaning in particular statutory contexts but the ordinary meaning of the phrase "prima facia" is at first sight on the face of it as it appears at first sight without investigation ""(citing Oxford English Dictionary 2n*^{d} *ed 1989).*

I have accepted the ordinary meaning referred to by their Honours in considering this application, in deciding which native title rights and interests claimed can prima facie be established.

The claimed native title rights are found listed in Attachment D referred to Schedule E. The native title rights and interests claimed are qualified as being subject to the laws of the Commonwealth and State and where the area contained is covered by a valid previous non-exclusive possession act (s23F) the native title claim group does not claim possession, occupation, use and enjoyment of the area. I note the benefits of ss.47, 47A or 47B are claimed and the statements in Schedule Q that the applicants do not claim any minerals, petroleum or gas wholly owned by the Crown.

The evidence I have found to be probative in making my decision has been provided on a confidential basis and is as follows:

Affidavit of *[Claimant 4 - name deleted]* sworn 10 June 1999
Affidavit of *[Claimant 2 - name deleted]* sworn 18June 1999
Affidavit of *[Claimant 5 - name deleted]* sworn 10 June 1999
Affidavit of *[Ancestor 4 - name deleted]* sworn 9 June 1999
Affidavit of *[Claimant 3 - name deleted]* sworn 23 June 1999
Affidavit of *[Claimant 6 - name deleted]* sworn 29 June 1999
Affidavit of *[Claimant 14 - name deleted]* sworn 3 August 1999
Affidavit of *[Claimant 13 - name deleted]* sworn 28 July 1999
Affidavit of *[Claimant 12 - name deleted]* sworn 28 July 1999
Affidavit of *[Claimant 7 - name deleted]* sworn 16 April 1999
Affidavits of *[Person 5 - name deleted]* sworn 16 April 1999 and 18 April 1999
Affidavit of *[Applicant 3 - name deleted]* sworn 26 March 1999
Affidavit of *[Claimant 1 - name deleted]* sworn 26 March 1999
Affidavit of *[Claimant 8 - name deleted]* sworn 16 April 1999
I have also had recourse to a confidential anthropological report from *[Person 22 - name deleted]* and *[Person 23 - name deleted]* dated 24 June 1999.

I have also had regard to the affidavits of each of the applicants pursuant to s62(1)(a). In relation to the native title rights claimed at:

(a) an entitlement as against the whole world to possession, occupation, use and enjoyment of the claim area.

I note the qualification that this right is subject to the laws of the State and Commonwealth and to valid extinguishments by operation of those laws and the qualification in Schedule Q and the benefits claimed in regard to s.47A, s.47A(2) or s.47(2). I have had regard to Schedules F and G. I also note the affidavit of *[Claimant 3 - name deleted]* dated 23 June 1999 at paragraphs 3,4,5,7, 8 and 9.

[Claimant 3 - name deleted] deposes that

- he is a traditional owner.
- he has inherited his rights in this respect through his great grandmother, *[Ancestor 16 - name deleted]* and his father's father's mother *[Ancestor 18 - name deleted]* who were born in the claim area and he was told by his father through inherited knowledge;
- his ancestors met Captain Cook and showed him how to find water, and
- he was born on the claim area as were his great grandmother, grand mother, father and his own sons and that they have continued to hunt and perform cultural activities on the claim area to this day.

I am satisfied in light of the express qualifications and the material to support the factual basis (see reasons under s190B(5)) that there is prima facie establishment of the rights claimed at (a).

(b) a right to possess, occupy, use and enjoy the claim area.

I also note the affidavit of *[Claimant 5 - name deleted]* dated 10 June 1999 at paragraph 5,6, 12 and 13.
[Claimant 5 - name deleted] deposes, in summary, as follows:

- he is a Gooreng Gooreng person through both his mother and father and that he was reared in his traditional country and that as a child he hunted over part of the area near where he had lived and that he has continued to hunt and fish in the broader area of the country throughout is adult life;
- he initiated and was supervisor of the Gooreng Gooreng Cultural Heritage Management project through the Aboriginal and Torres Strait Islander studies unit at the University of Queensland and that he participated in surveying and identification of sites in the claim area;
- he has acquired knowledge of traditional law and customs through research, from elders and his mother and is involved in cultural heritage management trips in which he has involved his son, and
- he speaks on behalf his people and country.

I also note the affidavit of *[Claimant 1 - name deleted]* dated 26 March 1999 at paragraphs 4, 7, 9, 10 and 12. *[Claimant 1 - name deleted]* deposes in summary as follows.

- she resides in Bailai country (being part of the claim area);
- when she was young her mother showed her and her brother the best places to fish in her country;
- her mother taught her about plants in her country that could be used as medicine and that she has passed on this knowledge to her children.

I am satisfied that there is sufficient evidence to support a prima facie establishment of the rights claimed at (b).

(c) a right to make decisions about the use and enjoyment of the claim area and its natural resources.

I note that *[Applicant 3 - name deleted]* deposes in her affidavit dated 26 March 1999 to:

- the Bailai Aboriginal Corporation being established in 1996 so that the Bailai people could meet their traditional responsibilities to country by protecting and preserving their cultural heritage, their sacred sites and conserving and managing the country;
- her knowledge of special sites and places and of her involvement in the cultural heritage work visiting, recording and monitoring places within the country to protect them from proposed development projects;
- to negotiations regarding cultural heritage management plans with various companies.

I also note the Confidential Anthropological Report of *[Person 22 - name deleted]* and *[Person 23 - name deleted]*.

I am satisfied that there is sufficient evidence to support a prima facie establishment of the rights claimed at (c).

(d) a right to give or refuse, and to determine the terms of any permission to enter, remain on or use or occupy the claim area by others.

I note the affidavits of *[Person 3 - name deleted]* sworn 19 April 1999 (paragraph 6), *[Applicant 3 - name deleted]* sworn 26 march 1999 (paragraph 5 and 14), *[Claimant 4 - name deleted]* sworn 10 June 1999 (paragraph 13 and 14), and *[Claimant 12 - name deleted]* sworn 28 July 1999 (paragraph 5).

[Person 3 - name deleted] deposes to the existence of several areas within his people's country that are sacred to his people but which he does not wish to identify as this confidential information.
[Applicant 3 - name deleted] deposes that the Bailai Aboriginal Corporation was established to, inter alia, preserve, protect and manage sacred sites and conserve and manage country.
[Claimant 4 - name deleted] deposes to the existence of sacred places within the claim area on Moogul (Mt Colloseum).
[Claimant 12 - name deleted] deposes to the existence of sacred sites, water holes, lagoons, corroboree sites, bora rings and burial grounds shown to him by his mother which he cannot name because of their sacred significance to his people.

I am satisfied that there is sufficient evidence to support a prima facie establishment of the rights claimed at (d).

In relation to the native title rights and interests claimed at:
(e) a right to access and use the claim area and its natural resources for customary purposes, including to perform customary ritual and ceremony.

I note the affidavits of *[Claimant 5 - name deleted]* dated 10 June 1999 at paragraphs 6,7,11,15, the affidavit of *[Claimant 3 - name deleted]* dated 23 June 1999 at paragraphs 9 and 10 and the affidavit of *[Applicant 3 - name deleted]* at paragraph 5,6,7,9,10,11 and 13.
[Claimant 5 - name deleted] deposes in summary to:

- hunting in the area as a child and as an adult and using spears which his father taught him to make for fishing in the area and that he maintains that practice today when opportunity permits;
- his mother walking across the country and a telling him stories about locations in the area;
- his holding traditional knowledge and passing it onto other people at appropriate times including his children, and
- his taking his family back at least a dozen times the year to visit traditional country.

[Claimant 3 - name deleted] deposes to:

- welcoming neighbouring Aboriginal people into his country during NAIDOC week and on other occasions;
- when going on his country to hunt and fish of speaking to the spirits of ancestors.

[Applicant 3 - name deleted] deposes to her:

- involvement in the establishment of the Bailai Aboriginal Corporation in 1996 to enable her people to protect and preserve their cultural heritage and sacred sites and managed the country;
- learning traditional methods of fishing and gathering in the area whilst growing up and that she still where possible today fishes and gathers food in the area;
- being taught by her grandmother how to find and use bush foods as medicine and how to conserve plants and animals;
- learning about special sites and places important to her people and being involved in cultural heritage work that involves visiting recording and monitoring places within the country, and
- involvement with the Bailai Aboriginal Corporation and it being involved in a securing the release of the remains of two Bailai people for reburial in their country.

I accept that there is a prima facie establishment of the rights claimed at (e).

(f) a right to engage in a way of life consistent with the traditional connection of the native title holders to the claim area.

I note the affidavit of *[Claimant 1 - name deleted]* dated 26 March 1999 at paragraphs 7,8,9, 10, 11 and 12, the affidavit of *[Applicant 3 - name deleted]* dated 26 March 1999 at paragraph 11 and 13 and the affidavit of *[Claimant 2 - name deleted]* dated 18 June 1999 at paragraph 8 and 10 and the affidavit of *[Claimant 5 - name deleted]* dated 10 June 1999 at paragraphs 10, 11,12 and 13.

[Claimant 1 - name deleted] deposes to:

- being shown by her mother the best places in their country to fish, hunt and gather food;
- being taught how to cook fish in the traditional way by her mother and to teaching her children that method;
- being taught by her mother about the plants in her country that could be used as medicine and passing this knowledge to the children, and
- taking her children to places within her traditional country to go hunting and gathering foods.

[Applicant 3 - name deleted] deposes that she has been involved in recent years in cultural heritage work involving visiting, recording and monitoring places within her country to protect them from proposed development projects. Also that the Aboriginal Corporation has secured the release of remains of Bailai persons for reburial in their country.

[Claimant 2 - name deleted] deposes in part that:

- he has a right to go on his country to get bush food and hunt and fish;
- he has a right and responsibility to safeguard and pass on knowledge associated with the land and water in the claim area, and
- he has a right to speak for his country and is invited to open meetings and welcome people to country.

[Claimant 5 - name deleted] deposes in summary that:

- he initiated and was supervisor of the Gooreng Gooreng Cultural Heritage Management project through the Aboriginal and Torres Strait Islander studies unit at the University of Queensland and that he participated in surveying and identification of sites at locations in the claim area;
- he has acquired knowledge of traditional law and customs through research, elders and his mother;
- he holds knowledge of the area and passes it on to others including his children, and
- he goes back at least a dozen time a year to his peoples traditional country.

I accept that there is a prima facie establishment of the rights claimed at (f).

(g) a right to use and enjoy the natural resources of the claim area for customary and commercial purposes.

I note the affidavits of *[Claimant 13 - name deleted]* dated 28 July 1999 at paragraph 4, *[Claimant 12 - name deleted]* dated 28 July 1999 at paragraphs 2 and 7, *[Claimant 3 - name deleted]* dated 23 June 1999 at paragraph 15, *[Claimant 4 - name deleted]* dated 10 June 1999 at paragraph 11.

*[Claimant 13 - name deleted]*deposes that his mother passed down her family's knowledge about the meeting of the tribes for corroboree at which there would be an exchange and giving away of tools and food.

In summary *[Claimant 12 - name deleted]* deposes to:

- being taught how to snare and tan wallabies from special tree bark to sell them for pocket money;
- being shown places in the claim area where red, white and yellow ochre can be obtained and going to those places when he needs to acquire ochre.

*[Claimant 3 - name deleted]*deposes, in summary, that his father taught him to make boomerangs, that are used in dances and to sell to tourists from trees growing in the country, also how to make spears that are now sold to tourists.

*[Claimant 4 - name deleted]*deposes to being shown a special place by her father called Coloured Sands on the coast that was a trading place where people met to trade goods and artefacts.

*[Claimant 9 - name deleted]*deposes to her family hunting, gathering food in the area and to the old people using berries, leaves and bark for medicinal purposes.

In reliance on the affidavits and in view of the fact that minerals and petroleum or gas solely owned by the Crown are not claimed and that the right is claimed subject to the laws of the State and Commonwealth, I am prepared to accept that there is prima facie establishment of the rights claimed at (g).

(h) a right to protect, manage and maintain sites and places of importance under traditional laws, customs and practices in the claim area.

I note the affidavits of *[Claimant 4 - name deleted]* dated 10 June 1999 at paragraphs 13, *[Claimant 7 - name deleted]* dated 16 April 1999 at paragraph 10 and *[Claimant 2 - name deleted]* dated 18 June 1999 at paragraph 8 and 10.

[Claimant 4 - name deleted] deposes that:

- Moogul (Mt Colloseum) is a sacred place for her people;
- her family visits Moogul each year for ceremonial purposes (dancing and singing), and
- the remains of people who have been repatriated are buried at Moogul.

[Claimant 7 - name deleted] deposes to taking children and grandchildren to special places in his peoples country and explaining the significance of those places to them.

[Claimant 2 - name deleted] deposes that

- he has a right and responsibility to safeguard and pass on knowledge associated with the land and water in the claim area, and
- he has a right to speak for his country and is invited to open meetings and welcome people to country.

[Applicant 3 - name deleted] deposes to:

- being involved in the establishment of the Bailai Aboriginal Corporation in 1996 to enable her people to protect and preserve their cultural heritage and sacred sites and manage the country, and
- learning about special sites and places important to her people and being involved in cultural heritage work that involves visiting recording and monitoring places within the country.

I accept that there is prima facie establishment of the rights at (h).

(i) a right to be acknowledged as the traditional Aboriginal owners of the claim area

I find this right has not been established. There is in my view insufficient evidence provided of connection to the land and waters claimed to sustain this right. I am therefore not prepared to register the rights and interests claimed at (i).

(j) the right to inherit and transmit the native title rights and interests.

I take this to mean the right to inherit and transmit the native rights and interest relating to the claimed area in accordance with traditional law and custom.

note the affidavits of *[Claimant 3 - name deleted]* sworn 23 June 1999 (paragraphs 3 and 4), *[Claimant 14 - name deleted]* sworn 3 August 1999 (paragraphs 2 and 3), *[Claimant 1 - name deleted]* sworn 26 March 1999 (paragraph 3), *[Person 5 - name deleted]* sworn 16 April 1999 (paragraph 2)

Briefly, *[Claimant 3 - name deleted]* deposes to his traditional country being in the claim area and to his having inherited his rights and interests from his ancestors who were born in the area as was he.

*[Claimant 14 - name deleted]*deposes that she has a tradition affiliation to the claim area, has the right to safeguard and pass on knowledge associated with land, traditional laws and customs and inherited this right from her great grandmother.

[Claimant 1 - name deleted] deposes that the Bailai land and water (which comprises part of the combined claim) is the country of her grandmother under traditional law and custom of her people.

[Person 5 - name deleted] deposes that his father informed him what was his country and that the land covered by the application to which his affidavit relates forms part of his traditional country.

I accept that there is prima facie establishment of the rights at (j) and that consequently the right and interest claimed can be registered.

Result: Requirements met

s.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 have been expected currently to 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.***

Reasons for the Decision

Under s. 190B(7)(a), 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.
Schedule M of the Port Curtis Coral Coast application states that "Members of the native title claimant group demonstrate physical connection by visiting, working, camping, and undertaking cultural heritage related activities on the area covered by the application." In addition, as this is a combination application, I have drawn on each of the Pre-Combination applications for evidence of traditional physical connection.

Traditional physical connection is not defined in the Native Title Act. I am interpreting this phrase to mean that physical connection should be in accordance with the particular traditional laws and customs relevant to the claim group.

There is evidence that at least one member of each of the pre-combination native title claim groups currently has, or previously had, a traditional physical connection with part of the land or waters covered by the application.

For example the affidavit of Bailai woman, *[Claimant 1 - name deleted]*, evidences her traditional physical connection to the land as it refers to her status as a senior member of the claim group, describes her connection to the land and refers to her having hunted, gathered, fished, cooked, and collected bush medicine. It describes her having taken her children throughout Bailai country including Curtis Island to go hunting and gathering foods. It also evidences that she has passed on her knowledge of Bailai law and custom and of the claim area to her children.

In his affidavit in respect of QC99/19 Gooreng Gooreng #2, *[Claimant 3 - name deleted]* deposes to:

- his birth on traditional country in west Bundaberg;
- the manner in which he has inherited traditional proprietary rights and interests from his predecessors;
- his going to his country to hunt or fish and whilst there speaking to the spirits of ancestors;
- his knowledge of the Gooreng Gooreng language, songs and dances, and
- his current involvement in traditional activities and in particular the return of ancestor bones for traditional burial.

For Gurang People, *[Claimant 11 - name deleted]* affidavit speaks of her traditional physical connection to the land as it refers to her status as a senior member of the claim group, describes her connection to the land and refers to her learning to hunt, gather, cook, and collect bush medicine; as well as learn the stories of the land. The affidavit also describes her taking her children throughout Gurang country to camp (sometimes at shelters originally built by her father), hunt, gather foods and pass on stories about family.

The information contained in the affidavits of *[Person 5 - name deleted]* and *[Claimant 7 - name deleted]*, among others, in respect of the Taribelang Bunda application, referred to above in relation to the requirements of s 190B(5), evidence frequent and continuing connection with various places within traditional Taribelang Bunda country.

Based on the material before me I am satisfied that *[Claimant 1 - name deleted]*, *[Claimant 3 - name deleted]*, *[Claimant 11 - name deleted]*, *[Person 5 - name deleted]*, and *[Claimant 7 - name deleted]* are members of the Port Curtis Coral Coast native title claim group and have the requisite traditional physical connection for the purposes of this provision.

Result: Requirements met

s.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.

Reasons for the Decision

For the reasons that follow I have concluded that there has been compliance with s. 61A.

S.61A(1)- Native Title Determination:
A search of the National Native Title Register has revealed that no determination of native title falls within the external boundary of this application as at 29 January 2002.

S.61A(2)- Previous Exclusive Possession Acts ("PEPAs"):
I am satisfied that the claim area does not cover any areas covered by PEPAs as defined under s. 23B (refer my reasons in respect of s.190B(2)).

S.61A(3) – Previous Non-Exclusive Possession Acts (PNEPAs):
Attachment D to Schedule E of the amended application states (at para 3): *"to the extent that any area of the claim area is or has been the subject of a previous non-exclusive possession act, as defined by the Native Title Act 1993 (Cth), the native title claim group does not claim possession, occupation, use and enjoyment of that area to the exclusion of all others."*

In light of this express statement in Attachment D, I am satisfied that there is no claim to exclusive possession over areas covered by PNEPAs, as defined under s. 23F of the Act.

S.61A(4) – ss.47, 47A, 47B:

Schedule L of the application states that the native title claim group is not aware of any area to which ss.47, 47A and 47B apply within the area covered by the application. However, I note that the applicants claim the benefit of ss.47, 47A and 47B at paragraph 5 of Attachment B to the application.

I have inferred from this that the applicants do claim the benefit of these sections, even though they acknowledge that they were not aware of any such area within the area of the application as at the date the application was filed in the Federal Court.

I am required to ascertain whether this is an application that should not have been made because of the provisions of s. 61A. In my opinion, the applicants' express statements in respect to the provisions of that section are sufficient to meet the requirements of s190B(8). Subsection 61A(4) of the Act provides that an application may be made in these terms. Whether or not the applicants have provided sufficient information to bring an area of land and waters covered by the application within the ambit of sections 47, 47A and 47B is a matter to be settled in another forum.

Conclusion:

For the reasons identified above the application does not disclose and it is not otherwise apparent that because of s.61A the application should not have been made.

Result: Requirements met

s.190B(9)(a)

Ownership of minerals, petroleum or gas wholly owned by the Crown:

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:
(a) To the extent that the native title rights and interests claimed consist or include ownership of minerals, petroleum or gas – the Crown in the right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;

Reasons for the Decision

Schedule Q of the application states that the native title claim group does not claim ownership of minerals, petroleum or gas where they are wholly owned by the Crown.

Result: Requirements met.

S.190B(9)(b)

Exclusive possession of an offshore place:

The application and accompanying documents must not disclose, and the Registrar must not be otherwise aware, that:
(a) To the extent that the native title rights and interests claimed relate to waters in an offshore place – those rights and interests purport to exclude all other rights and interests in relation to the whole or part of the offshore place;

Reasons for the Decision.

Schedule P of the application states that the native title claim group does not claim exclusive possession of any offshore place. Refer to my reasons for 190B(2) in relation to those parts of the claim area which comprise islands, rocks and reefs.

Result: **Requirements met.**

S.190B(9)(c)

Other extinguishment:

The application and accompanying documents must not disclose, and the Registrar must not be otherwise aware, that:
(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 subsection 47(2), 47A(2) or 47B(2).

Reasons for the Decision

The application does not disclose, and I am not otherwise aware that the native title rights and interests have otherwise been extinguished. A search of the Register of Indigenous Land Use Agreements reveals that there are no agreements entered on the Register that affects any part of the claim area.

Result: **Requirements met**

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