National Native Title Tribunal

Registration test decision

Application name:	Yirendali People Core Country Claim
Name of applicant:	James Hill, Martina Jacobs, Jeffrey Lammermoor
State/territory/region:	Queensland
NNTT file no.:	QC06/20
Federal Court of Australia file no.:	QUD495/06
Date application made:	13 December 2006
Name of delegate:	Linda Blue

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

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

Date of decision: 17 August 2007

_____

Linda Blue

Delegate of the Native Title Registrar pursuant to
sections 190, 190A, 190B, 190C, 190D of the ***Native Title Act 1993*** (Cwlth)

Reasons for decision

Table of contents

Introduction

This document sets out my reasons for the decision to accept the Yirendali people's application for registration.

Section 190A of the *Native Title Act 1993* (Cwlth) (the Act) requires the Native Title Registrar to apply a 'test for registration' to all claimant applications given to him under ss. 63 or 64(4) by the Registrar of the Federal Court of Australia (the Court).

Delegation of the Registrar's powers

I have made this registration test decision as a delegate of the Native Title Registrar (the Registrar). The Registrar delegated his powers regarding the registration test and the maintenance of the Register of Native Title Claims under ss. 190, 190A, 190B, 190C and 190D of the Act to certain members of staff of the National Native Title Tribunal, including myself, on 30 July 2007. This delegation is in accordance with s. 99 of the Act. The delegation remains in effect at the date of this decision.

The test

For a claimant application to be placed on the Register of Native Title Claims, s. 190A(6) requires that I must be satisfied that all the conditions set out in ss. 190B and 190C of the Act are met.

Section 190B sets out conditions that test particular merits of the claim for native title. Section 190C sets out conditions about procedural matters. I consider the s. 190C requirements first, in order to assess whether the application contains the required information and documentation before considering the merit of that material for the purposes of s. 190B.

Application overview

The history of this application is short. The Yirendali people made an application to the Federal Court for a determination of native title on 13 December 2006. The claim before me has not been amended. The area of land over which native title rights and interests is being asserted lies in central Queensland.

With regard to procedural fairness, as a delegate of the Registrar and as a Commonwealth Officer, I am obliged to ensure that any person who may be adversely affected by a decision is given an opportunity to provide their view before I make my decision. Procedural fairness has been assured in this application, demonstrated by the Tribunal providing a copy of the application and all accompanying documents filed with the Federal Court to the State of Queensland and the Central Queensland Land Council Aboriginal Corporation on 15 December 2006.

Procedural and other conditions: s. 190C

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

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

Delegate's comment

The objective of s. 190C(2) is to ensure that the application contains all of the material required and is accompanied by any document required under ss. 61 and 62 of the Act. If the required material is provided, in the prescribed manner, s. 190C(2) will be met.

It is necessary then to address each of the requirements under ss. 61 and 62 in turn.

Native title claim group: s. 61(1)

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

Result

The application **meets** the requirement under s. 61(1).

Reasons

This procedural condition is satisfied unless the description of the native title claim group in the application states that not all persons in the native title claim group were included or that it was in fact a subgroup of the native title claim group.

Schedule A states the claim group is 'comprised of all persons descended from the Yirendali ancestors' and identifies those ancestors by name. There is nothing on the face of Schedule A or elsewhere in the application suggest not all persons in the claim group are included or that those named are in fact a subgroup of the native title claim group. I am also satisfied, given the description of the claim group, that those persons comprising the applicant also form part of the claim group.

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

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

Result

The application **meets** the requirement under s. 61(3).

Reasons

Those persons who comprise the applicant are named at the commencement of the application and an address for service is provided with the application at Part B.

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

A native title determination application, or a compensation application, that persons in a native title claim group or a compensation claim group authorise the applicant to make must:

(a) name the persons; or

(b) otherwise describe the persons sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.

Result

The application **meets** the requirement under s. 61(4).

Reasons

Schedule A, asserts the claim group is 'comprised of all persons descended from the Yirendali ancestors' and then identifies those ancestors by name. I am of the view that s. 61(4)(a) is met and so this condition is met.

Application in prescribed form: s. 61(5)

The application must:

(a) be in the prescribed form; and

(b) be filed in the Federal Court; and

(c) contain such information in relation to the matters sought to be determined as is prescribed; and

(d) be accompanied by any prescribed documents and any prescribed fee.

Result

The application **meets** the requirement under s. 61(5).

Reasons

The application is in the prescribed form, thereby satisfying s. 61(5)(a) and s. 61(5)(b). For all of the reasons outlined under s. 190C(2), I am satisfied that the application contains the information prescribed by ss. 61 and 62, and so s. 61(5)(c) is also satisfied. I am also satisfied that the application meets the requirement of s. 61(5)(d) and refer to my reasons under s. 62(1)(a).

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

(1) A claimant application (see section 253):

(a) must be accompanied by an affidavit sworn by the applicant:

(i) the applicant believes the native title rights and interests claimed by the native title claim group have not been extinguished in relation to any part of the area covered by the application, and

(ii) the applicant believes that none of the area covered by the application is also covered by an entry in the National Native Title Register, and

(iii) the applicant believes all of the statements made in the application are true, and
(iv) the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it, and
(v) stating the basis on which the applicant is authorised as mentioned in subparagraph (iv).

Result

The application **meets** the requirement under s. 62(1)(a).

Reasons

Those persons who comprise the applicant have sworn and properly deposed an affidavit that meets all the requirements set out from s. 62(1)(a) to (v). Those affidavits are included with the application.

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

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

Delegate's comment

Subsection 62(2) contains 8 paragraphs (from (a) to (h)), and I address each of these in turn. My combined result for s. 62(2) is found at page 9 and is the same as the result for s. 62(1)(b).

Result

The application **meets** the requirement under s. 62(1)(b).

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

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

Result

The application **meets** the requirement under s. 62(2)(a).

Reasons

Schedule B of the application is a boundary description that consists of coordinates and directions. Also forming part of Schedule B is a description of those areas within the identified boundary that do not form part of the application.

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

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

Result

The application **meets** the requirement under s. 62(2)(b).

Reasons

A map of the area claimed forms part of the application and is at Attachment C.

Searches: s. 62(2)(c)

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

Result

The application **meets** the requirement under s. 62(2)(c).

Reasons

The application contains no details or results of searches carried out. Schedule D contains the statement that the applicant has not carried out any searches. I am satisfied that this condition is met.

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

> The application must contain a description of native title rights and interests claimed in relation to particular lands and waters (including any activities in exercise of those rights and interests), but not merely consisting of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law.

Result

The application **meets** the requirement under s. 62(2)(d).

Reasons

The application, at Schedule E, contains a description of the native title rights and interests. The claim asserts both exclusive and non-exclusive rights over the claim area. The description states that it relates to land and waters and is more than a mere statement that native title rights and interests, in the applicant's opinion, still exist. The description includes a list of activities - examples of ways the asserted rights and interests are observed. I am satisfied that the description meets this section of the Act.

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

The application must contain a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist, and in particular that:

(i) the native title claim group have, and the predecessors of those persons had, an association with the area, and

(ii) there exist traditional laws and customs that give rise to the claimed native title, and

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

Result

The application **meets** the requirements under s. 62(2)(e).

Reasons

Schedule F is that part of the application relevant to this procedural condition. It is my view that a general description of the factual basis for the assertions required by s. 62(2)(e) is provided.

Activities: s. 62(2)(f)

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

Result

The application **meets** the requirement under s. 62(2)(f).

Reasons

The description of native title rights and interests claimed found at Schedule G refers to the carrying out of a number of activities. The application states that these activities have been and are currently carried out on the claim area. I am satisfied that the description is sufficient.

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

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

Result

The application **meets** the requirement under s. 62(2)(g).

Reasons

The application, at Schedule H states that the claimants are not aware of any other applications that seek a determination of native title in respect of the whole or part of the area covered in their application. There is a notification in Schedule H that, as at 16 August 2005, one Indigenous Land Use Agreement falls within the external boundary. I am satisfied that s. 62(2)(g) is met.

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

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

Result

The application **meets** the requirement under s. 62(2)(h).

Reasons

Schedule I refers to an attachment comprising a list of s. 29 notices, of which the applicant states they are aware. I am of the view that s. 62(2)(h) is met.

Combined result for s. 62(2)

The application **meets** the combined requirements of s. 62(2), because it meets each of the subconditions of ss. 62(2)(a) to (h), as set out above. See also the result for s. 62(1)(b) above.

Combined result for s. 190C(2)

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

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

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

(a) the previous application covered the whole or part of the area covered by the current application, and
(b) the previous application was on the Register of Native Title Claims when the current application was made, and
(c) the entry was made, or not removed, as a result of the previous application being considered for registration under s. 190A.

Result

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

Reasons

For an application to meet this condition, I must be satisfied that no member of the native title claim group is also a member of another application caught by the provisions of s. 190C(3). An expert geospatial assessment, dated 8 January 2007, showed that no previous application, falling within the current application area, appears on the Register of Native Title Claims. I have no reason to doubt the authority or accuracy of that report. It follows then that there are no common claimants in the current native title claim group and any relevant prior application.

Section 190C(4) Authorisation/certification

Under s. 190C(4) the Registrar/delegate must be satisfied either that:

(a) the application has been certified under s. 203BE, or under the former s. 202(4)(d), by each representative Aboriginal/Torres Strait Islander body that could certify the application, or

(b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.

Under s. 203BE(4), certification of a claimant application by a representative body must:

(a) include a statement to the effect that the representative body is of the opinion that the requirements of ss. 203BE(2)(a) and (b) have been met (regarding the representative body being of the opinion that the applicant is authorised and that all reasonable efforts have been made to ensure the application describes or otherwise identifies all the persons in the native title claim group), and

(b) briefly set out the body's reasons for being of that opinion, and

(c) where applicable, briefly set out what the representative body has done to meet the requirements of s. 203BE(3)(regarding overlapping applications).

Under s. 190C(5), if the application has not been certified, the application must:

(a) include a statement to the effect that the requirement in s. 190C(4)(b) above has been met (see s. 251B, which defines the word 'authorise'), and

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

Result & Reasons

I must be satisfied that the circumstances described by either ss. 190C(4)(a) or (b) are the case, in order for the condition of s. 190C(4) to be satisfied. I am satisfied that the circumstances described by s. 190C(4)(a) are met because the application has been certified by the relevant representative (Central Queensland Land Council) and at Attachment R is a certification document that complies in full with s. 203BE(4).

Merit conditions: s. 190B

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

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

Result for s. 190B(2)

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

Reasons

Before I consider whether s. 190B(2) is met, I note this application meets what's required by ss. 62(2)(a) and (b). I must be satisfied that the map, at Attachment C, allows for the identification of the location of the area claimed with reasonable certainty. In order to come to a view as to the certainty of the claim's external boundary and the identification of any areas within that boundary that are not the subject of the native title claim, I rely on an expert geospatial report, dated 8 January 2007.

In relation to the external boundary, the expert geospatial report states that the map at Attachment C, dated 7 December 2006 and prepared by the Central Queensland Land Council Aboriginal Corporation, includes:

- The external boundary of the application area depicted by a thick bold outline;
- Topographic background;
- Scalebar, northpoint, coordinate point; and
- Notes relating to the source of the data shown on the map.
- The expert geospatial report notes at Attachment B the applicant also describes the claim area by metres and bounds and references:
- Coordinate points;
- Topographic features including rivers and creeks;
- Cadastral parcels; and
- Administration boundaries.

Schedule E describes the areas within the external boundary not covered by the application by listing a number of general exclusions. The geospatial assessment considers that the external boundary can be identified with certainty.

In relation to the use of a generic description to identify areas within the external boundary that are not covered by the application, I note the proceedings are at an early stage and that there is no information before me that suggests the applicant could have provided something more than a

generic statement. To conclude, I am satisfied that the information required by s. 62(2)(a) is sufficient for it to be said with reasonable certainty whether the native title rights and interests are claimed in relation to particular areas of land or waters and the requirements of s. 190B(2) are met.

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

The Registrar must be satisfied that:
(a) the persons in the native title claim group are named in the application, or
(b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

Result

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

Reasons

The Yirendali people do not name all of the persons in their claim group. Instead the application, at Schedule A, describes the claim group as being 'comprised of all persons descended from the Yirendali ancestors identified' and then, in a separate paragraph, identifies the Yirendali ancestors by name. It follows, given the claim group description, that s. 190B(3)(b) is relevant to this application. I must determine then whether, in my opinion, the group is 'described sufficiently clearly. I am mindful of the words of the court in *Northern Territory v Doepel* (2003) 133 FCR 112 who, regarded the focus of s. 190B(3) to enable 'the reliable identification of persons in the native title claim group'.

The question then becomes whether the statement that 'all persons descended' from seven people allows for the identification of all Yirendali people. The court in *Western Australia v Native Title Registrar* (1999) 95 FCR 33 said 'it may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described. But that does not mean that the group has not been described sufficiently' at [67]. The claim group description is broad and inclusive. I am of the opinion that to ascertain whether a particular person ought to be included in the native title claim group may require an inquiry, but of the kind described in the above case. I am also of the view that the group is described sufficiently clearly.

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

The Registrar must be satisfied that the description contained in the application as required by s. 61(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.

Result

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

Reasons

If I am to be satisfied that this condition is met, the description of the native title rights and interests claimed, at Schedule F of the application, ought to fit within the definition of native title rights and interests at s. 223, and in addition, be 'readily identifiable'. With regard to the term 'readily identifiable' I am assisted by the court in *Doepel* (supra), at paragraph 99, which considers 'readily identifiable' begged the questions 'are they understandable' and 'do they have meaning'? I am also reminded by the court in *Ward v Registrar, National Native Title Tribunal* (1999) 168 ALR 242, that the rights described must be expressed as rights in relation to land and waters.

The Yirendali people claim both exclusive and non-exclusive native title rights. I will start by considering the expression of exclusive rights. At Schedule E of the application, the following is asserted:

> The rights and interests claimed in relation to
>
> 1) Land and waters where there has been no prior extinguishment of Native Title or where section 238 (the non-extinguishment principle) applies:
>
> The native title rights and interests claimed are the right to possession, occupation, use and enjoyment of the claim area as against the whole world, pursuant to the traditional laws and customs of the claim group but subject to the valid laws of the Commonwealth of Australia and the State of Queensland.

The above assertion fits within the context of s. 223 of the Act. It is an expression of native title rights and interests, in relation to land and waters, pursuant to traditional laws and customs, existing to the extent they can be recognised by the common law of Australia. The expression of exclusive rights and interests held by the Yirendali people is not self-referential. I find the statement understandable and meaningful. I also consider that, although expressed broadly, the rights expressed are identifiable. I am satisfied that the Yirendali people's expression of exclusive rights and interests held satisfies this condition.

Considering now the non-exclusive rights claimed, the Yirendali people assert:

> 2) All remaining land and waters within the claim area the Native Title rights and interests claimed are not to the exclusion of all others and are the rights to use and enjoy the claim area in accordance with the traditional laws acknowledged and customs observed by the Yirendali for the purposes of:
>
> - accessing land and waters;
> - entering and remaining on the land being claimed;
> - hunting;
> - fishing;
> - gathering and using the products of the claim area such as food, medicinal plants, timber, bark, ochres and earths, stone and resin, minerals, and using natural water resources of the area;
> - camping and erecting shelters;
> - engaging in cultural activities;
> - conducting ceremonies and holding meetings;

- teaching the physical and spiritual attributes of locations and sites;
- participating in cultural practices relating to births, marriages and deaths on the claim area; and
- making decisions, pursuant to Aboriginal law and custom about the use and enjoyment of the land by Aborignal people.

The application does not include a claim for exclusive possession over previous non-exclusive possession act areas as defined under section 23F of the Native Title Act 1993 save where the Native Title Act 1993 and/or the common law allows such a claim to the [sic] be part of the a [sic] Native Title Determination application.'

I should note, given that the Yirendali people's expression of non-exclusive rights includes a list of activities, that it is not for me to consider in the context of s. 190B(4), whether the activities listed are recognisable. I will consider the likelihood of the listed activities being established at ss. 190B(5) and 190B(6). My task, in this instance, is to consider whether the non-exclusive rights expressed are identifiable. The rights expressed are in relation to land and waters and pursuant to traditional law and custom. The non-exclusive rights asserted by the Yirendali people are explicit and the list is exhaustive, making them readily identifiable. I am satisfied that the Yirendali people's expression of non-exclusive rights and interests satisfies this condition.

Overall, it is my view that the native title rights and interests described are within the parameters of s. 223 of the Act. It is also my view that the description is clear and understandable, makes sense and accordingly, meets the requirements of this condition.

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

The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:

(a) that the native title claim group have, and the predecessors of those persons had, an association with the area, and

(b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interest, and

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

Delegate's comments

I consider each of the three assertions set out in the three paragraphs of s. 190B(5) in turn and come to a combined result for s. 190B(5) at page 19. Generally, for an application to satisfy this part of the registration test, I have to be satisfied that there is a sufficient factual basis to support the applicant's assertion that the claimed native title rights and interests exist. If I find there is a sufficient factual basis to support s. 190B(5)(a)(b) and (c), I will find that this condition is met. I am guided in my approach to s. 190B(5) by the case of *Doepel* (supra).

In forming a view, I am not limited to the content of the Form 1. I can refer to, and rely upon, additional information provided, however, I am not obliged to undertake a search for relevant

material (*Martin v Native Title Registrar* [2001] FCA 16). Of particular importance when approaching an application in the context of s. 190B(5) is the definition of the term 'native title' at s. 223 of the Act and the High Court decision in Members of the *Yorta Yorta Aboriginal Community v Victoria* (2002) 194 ACR 538 (*Yorta Yorta*).

The Act guides me as to how to construe the term 'native title' and the phrase 'native title rights and interests'. *Yorta Yorta* guides me in the following key ways:

Inherent to the term' traditional law and custom' is a sense of age. They are laws and customs derived from a body of norms or a normative system that was in existence before sovereignty was asserted.

When s. 223 of the Act speaks of native title rights and interests in land and waters being possessed under traditional laws and customs observed by the peoples concerned, this requires that the traditional laws and customs be 'a system that has had a continuous existence and vitality since sovereignty'.

A cessation of that normative system for any period results in any rights and interests owned also ceasing to exist. This is because 'the laws and customs and the society which acknowledges them are inextricably linked'.

Laws and customs will only be recognised in a native title context if the acknowledgment and observance of them has continued substantially uninterrupted since sovereignty. On this, the High Court said:

> it must be shown that the society, under whose laws and customs the native title rights and interests are said to be possessed, has continued to exist throughout that period [i.e. from the assertion of sovereignty to the present] as a body united by its acknowledgment and observance of the laws and customs. [89]

Result re s. 190B(5)(a)

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

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

Information relevant to the association the Yirendali people assert with the claim area is found at Schedules B and F of the application, as well as at Attachment F. Attachment F is an expert anthropological report dated August 2006.

First I will address the material that supports the assertion that predecessors of claim group members had an association with the claim area. The reporting anthropologist relies on work, already carried out by fellow anthropologists, and quotes one who said:

> …Overwhelmingly, the Yirendali, or Yirendali sub groups, are identified, as belonging to the ranges north of Hughendon (sic) and Torrens Creek, and down the headwaters and associated lands of the rivers which flow from them – the upper parts of the Flinders, the Landsborough/Torrens and the headwaters of the Cape River systems (paragraph 8)

The expert report acknowledges the presence of conflicting and inconsistent terms of reference used by early ethnographers when studying the region. In spite of this, the anthropological report

points to archaeological evidence suggesting occupation of at least some parts of the Yirendali claim area well before sovereignty (paragraphs 26 and 27). For example, there is evidence that large ceremonial gatherings took place on Lammermoor station in the late 1800s and noted that such gatherings involved people from various groups (paragraph 27).

The report refers to material that places all of the named apical ancestors in the claim area (paragraphs 20 to 25). It seems that much of the recorded history of the Yirendali claim area relates to Lammermoor station. This station was apparently established by [Person 1 – name deleted] who captured the father of one of the apical ancestors. The birth date of the man captured by [Person 1] is about 1846. His son, a named apical ancestor, was born at Lammermoor station, in about 1863, is said to have married another named apical ancestor who was recorded, in 1938, as being a 'full blood of the Jirandali Tribe' (paragraphs 20 and 21). Another apical ancestor also born at Lammermoor station was recorded, in 1938, as having a 'Ji:randali' territorial association (paragraph 22). A married couple and named apical ancestors are also recorded as having ties to the Torres Creek area and Lammermoor station (paragraph 23). Another male apical ancestor was recorded as being born in Yirendali country in the late 1880s. That apical ancestor's mother was recorded as being from Lammermoor station (paragraph 24). The final named apical ancestor is a male who apparently was born in about 1866 at Torrens Creek and, according to oral history was a Yirendali man (paragraph 25).

The expert report notes that as a result of the forced removals, many of the current claim members reside in places such as Cherbourg and Woorabinda. The report then says 'while it has been difficult for many of these people to maintain a physical connection with the claim area, many assert strong spiritual connections with their traditional country' (paragraph 28). The report goes on to say:

> Even though many people were removed from country around Hughendon (sic) to missions far away, some people also remained on country and currently people…continue to reside on the claim area. (paragraph 33)

I am of the opinion there is a sufficient factual basis for asserting the claim group's predecessors were associated with the area. There is material that places all of the named apical ancestors in the claim area in the mid 1800s. Ethnographic and anthropological data is available that could potentially tie the Yirendali people to the claim area before sovereignty was asserted. There are, however, inconsistencies in the various ethnographic sources in identifying the groups that lived in the claim area and this creates some difficulties for the application. The report also acknowledges the forced removal of Yirendali people from the claim area but does not state that this was the fate of all Yirendali people. It is maintained that at least some claim members remained on country.

> Now, in relation to the claim group currently being associated with the claim area, one claim group member was born in Hughendon (sic) in the 1940's and currently resides in Richmond which lies on the western boundary of the claim area (paragraph 24).

This claim group member also said she is acknowledged as being the child of the country's traditional owners (paragraph 34). The expert report states that:

> …customary and normative forms of authority continue to inform the behaviour of many current claimants today. Seniority remains of central importance and, as a result, matters of importance to the group are deferred to those senior people who hold traditional authority. (paragraph 40)

The report then quotes this particular claim group member who said:

> I am now a well respected elder for my people in the Hughendon (sic) area and other people come to speak to me. People come to me because this is my country. (paragraph 40)

Another claim group member is also featured in the report. This particular Yirendali person also continues to reside within the claim area. This claim group member, along with his brothers are said to have:

> worked on pastoral stations on Yirendali country for many years…through this work...[they] developed a strong knowledge of, and association with, the country around Hughendon (sic). (paragraph 33).

I am satisfied that the information obtained from current claim group members provides a factual basis for asserting that the claim group is currently associated with the claim area. The interviews held with current claim group members suggest an association with the claim area. It follows then that the factual basis on which it is asserted that the native title claim group have, and the predecessors had, an association with the area is sufficient to support that particular assertion. Section 190B(5)(a) is satisfied.

Result re s. 190B(5)(b)

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

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

The forms of traditional law and custom addressed in the anthropological report and asserted as being applicable to the Yirendali people are traditional authority, dreamings, customary use of natural resources and the obligation to care for country.

In relation to traditional authority the expert anthrological report relies on early ethnography relevant to the claim area to comment on the social organisation and kinship history of the Yirendali people. The report provides that early ethnographic studies show societies in the Yirendali claim area and beyond were divided into four sections, with each section belonging to one of two named exogamous moieties (paragraph 30). The continued principle of descent is posed as the Yirendali people's primary means of recruitment. In particular, the Yirendali claim group follow the consanguineal or bloodline principle of descent (paragraph 36). The report asserts a transformation of this law of kinship due to strong missionary influence causing an increase in traditionally 'wrong' marriages (paragraph 31). The current practice is that of 'not marrying too close'. This is said to have come about to avoid intermarrying, given the close familial relationships. The report notes that 'not marrying too close', although different from the

original detailed moiety system is 'an important aspect of the continued role of kinship principles within this group' (paragraph 32).

One claim group member is quoted as saying that when she was growing up on country she experienced acknowledgment and acceptance from others because she was the child of one of the country's traditional owners (paragraph 34). The anthropologist's report relies on another author's material to express the importance of seniority within the groups that occupied the region covered by the Yirendali application (paragraphs 38–40). Support for this assertion is found in the affidavit of one of the claim group members who state:

> I am now a well-respected elder for my people in the Hughendon (sic) area and other people come to speak to me. People come to me because this is my country. (paragraph 40)

Dreamings are also offered as further evidence of there being traditional laws and customs pertinent to and acknowledged by the Yirendali people. Such dreamings include the Duck Dreaming travelling from around Hughenden down the Thompson river and ending up in Birdsville; the Turtle Dreaming near Prairie and the Yellow Belly Dreaming near Prairie.

With regard to customary use of natural resources, a current claim group member is reported as saying the following:

> One of the old ladies in Hughendon (sic)…taught me traditional medicine and how to get food from the bush…I was taught how to hunt goanna, porcupine and kangaroo. I was also taught what foods to eat in the bush. (paragraph 43)

Another Yirendali person asserts 'strong traditional knowledge of plants and animals in Yirendali country and, as a traditional owner, represents his country on several, natural resource bodies' (paragraph 45).

The obligation to care for country is also said to form part of the Yirendali people's traditional law and custom. The claim group asserts its members have a duty to care for country and to protect it from harm. Examples of how current members meet this obligation are:

- acting as consultant to government agencies;
- feeling obliged to care for the emu habitat in accordance with this particular member's totemic affiliation with the emu;
- acknowledging country when entering and leaving in observance of traditional spiritual practices relating to land. (paragraphs 47 and 48)

With the information above in mind I will now turn to what evidence is asked for by s. 190B(5)(b). There are two questions raised by s. 190B(5)(b) that must be answered in the positive in order for this condition to be satisfied. The first, is there a body of law and custom that was acknowledged and observed by the ancestors of the claimants at the time of sovereignty? The second, has the claim group demonstrated, to the degree required by s. 190B(5) that the body of law and custom has had a continued existence and vitality since sovereignty?

The features asserted by the anthropological report as forming the traditional laws and customs observed by the Yirendali ancestors are that of authority (determined by blood descent),

dreamings, using the natural resources in ways that observe custom and an obligation to care for country. There is a factual basis to support that the consanguineal bloodline descent informs membership, seniority and thus authority. The dreamings asserted are relevant to the claim area and I think it is open for the claim group to show that these dreamings formed part of the Yirendali people's traditional laws and customs. Totemic identification is currently recognised and observed by current claim group members. I am satisfied that there is a sufficient factual basis, that if proven, could show there was a body of law and custom acknowledged and observed by ancestors of the claimants at the time of sovereignty.

The next question is whether the identified body of law and custom has continued to exist with vitality since sovereignty? There is evidence to support the continued recruitment and identification of Yirendali people by consanguineal bloodline descent. A number of the claim group members continue to live on country. Traditional law and custom in relation to authority and seniority forms part of the evidence provided by current Yirendali people contained in the anthropological report. It is open to the claim group to prove that the current knowledge of dreamings relevant to the claim area suggests they have been acknowledged and observed and passed down through generations of Yirendali people. Evidence of current acknowledgement and observance by claim group members of totemic identification and obligation to care for country also suggests that the traditional law and custom could be proven to have continued to exist with vitality. It follows then that I am satisfied that the factual basis on which it is asserted that there exist traditional laws acknowledged by, and traditional customs observed by, the Yirendali people that give rise to the claim to native title, is sufficient to support this particular assertion.

Result re s. 190B(5)(c)

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

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

The expert anthropological report asserts that a number of claimants currently reside within the claim area and others periodically return to country, though they do not live there. At least two members of the claim group currently advise government agencies or otherwise represent Yirendali interests on natural resource bodies. All members of the claim group rely on a consinguineal connection to the named apical ancestors in order to determine who should be regarded as Yirendali. The report acknowledges that a number of people were removed from Yirendali country but the group has managed to maintain a connection (both physical and spiritual) to land.

One claim group member states having strong knowledge of Yirendali country, something taught to her by her parents while they worked at various stations. This knowledge includes:

> …traditional medicine and how to get food from the bush…I was taught how to hunt goanna, porcupine and kangaroos. I was also taught what foods to eat in the bush. (paragraph 43)

She is also acknowledged as being the child of the country's traditional owners (paragraph 34). The expert report states that:

> …customary and normative forms of authority continue to inform the behaviour of many current claimants today. Seniority remains of central importance and, as a result, matters of importance to the group are deferred to those senior people who hold traditional authority. (paragraph 40)

The report then quotes the same claim group member to have said:

> I am now a well respected elder for my people in the Hughendon (sic) area and other people come to speak to me. People come to me because this is my country. (paragraph 40)

Then:

> Whenever I visit places in my country I talk to my ancestors as this makes me feel at ease. If I am worried about my ancestors' spirits wanting to take me I talk to them. If I want to stop my ancestors' spirits from following me, I light a smoky fire to keep them from following me. (paragraph 48)

Another claim group member along with his brothers, are said to have:

> worked on pastoral stations on Yirendali country for many years…through this work...[they] developed a strong knowledge of, and association with, the country around Hughendon (sic). (paragraph 33).

The anthropologist reports that this claim group member 'strongly asserts a continued sustainable use of natural resources in accordance with traditional laws and customs' (paragraph 45). The report also states the Yirendali claimants assert that they have a duty to care for country. This second claim group member asserts that in accordance with his:

> totemic affiliation the emu, he looks after emu habitat while Yirendali traditional owners in general continue to care for country. (paragraph 47)

Present in the information above is a factual basis to support, if proven, the following: active involvement in matters concerning the claim area; recognition by others that they are Yirendali persons and have authority; practice of customs that are asserted to have been passed down from Yirendali ancestors and a sense of obligation to care for country in ways that Yirendali ancestors did. I am satisfied that the factual basis on which it is asserted that the claim group have continued to hold the native title in accordance with traditional law and customs, is sufficient to support this condition.

Combined result for s. 190B(5)

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

Section 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.

Result

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

Reasons

My task under this section is to consider whether there is any probative factual material available evidencing the existence of the particular native title rights and interests claimed. As I only need to be satisfied that the claimed rights and interests can be established prima facie, I am not interested in testing the truth of the material before me as that is a matter for the Federal Court. If there is material before me that points to the existence of the asserted native title rights and interests, I will find that this condition is satisfied. I note that I take the requirement that 'at least some' of the native title rights and interests claimed to mean one or more. The definition of the term 'native title rights and interests' at s. 223 of the Act is of key importance when considering an application in the context of this section.

The claimed native title rights and interests claimed are expressed in two ways. The Yirendali people assert exclusive possession over the claim area as well as having non-exclusive rights over the claim area. I will first address whether, prima facie, exclusive possession could be established before considering whether at least some of the non-exclusive rights could be established.

The exclusive right is expressed at Schedule E and is as follows:

> The rights and interests claimed in relation to
> 1. Land and waters where there has been no prior extinguishment of native Title or where section 238 (the extinguishment principle) applies:
>
> The native title rights and interests claimed are the right to possession, occupation, use and enjoyment of the claim area as against the whole world, pursuant to the traditional laws and customs of the claim group but subject to the valid laws of the Commonwealth of Australia and the State of Queensland.

There is no information in the application that provides a factual basis to support the assertion of the right to possession, occupation, use and enjoyment as against the whole world or to the exclusion of others applies to the claim group. I cannot then be satisfied that, prima facie, the right to exclusive possession of the claim area could be established.

The non-exclusive rights, also at Schedule E, are expressed in the following way:

> 2. All remaining land and waters within the claim area are the Native Title rights and interests claimed are not to the exclusion of all others and are the rights to use and enjoy the claim are in accordance with the traditional laws acknowledged and customs observed by the Yirendali for the purposes of:
>
> - accessing land and waters;
> - entering and remaining on the land being claimed;
> - hunting;
> - fishing;
> - gathering and using the products of the claim area such food, medicinal plants, timber, bark, ochres and earths, stone and resin, minerals, and using natural water resources of the area;
> - camping and erecting shelters;
> - engaging in cultural activities;
> - conducting ceremonies and holding meetings;
> - teaching the physical and spiritual attributes of locations and sites;
> - participating in cultural practices relating to births, marriages and deaths on the claim area; and
> - making decisions, pursuant to Aboriginal law and custom about the use and enjoyment of the land by Aboriginal people.
>
> The application does not include a claim for exclusive possession over previous non-exclusive possession act areas as defined under section 23F of the Native Title Act 1993 save where the Native Title Act 1993 and/or the common law allows such a claim to be part of the Native Title Determination application.

In relation to the non-exclusive rights claimed, it should first be noted that clarification was sought from the claim group's legal representative, by letter dated 9 July 2007, which relevantly stated:

> The delegate has advised she has not yet formed a view on how this part of the claim ought to be read. The delegate notes, however, that given the manner in which this part of the claim is structured, your intention when drafting this part of the application is unclear. Please advise whether it is your intention that:
>
> (a) The discreet activities listed each demonstrate an example of a non-exclusive right over the claim area; or,
> (b) The activities are to be considered as a bundle of activities that, together, demonstrate a non-exclusive right to the claim area?

A response was received from the claim group's legal representative on 23 July 2007, in the form of an email addressed to the relevant case manager within the Tribunal. Part of that email stated 'The activities are by way of discrete examples, in other words, (a) was intended'. As a result of that clarification, I will read the non-exclusive rights as being expressed as a disjunctive list and address each of the asserted non-exclusive rights in turn.

Accessing land and waters

The right to access land and waters is expressed as a non-exclusive right. There are claim group members who currently live on country. *Ward* [at 5(b)] is authority for the right to move about the land being a recognised native title right. On the face of the application, I am satisfied this right could be established by the claim group.

Entering and remaining on the land being claimed

For reasons similar to those above, I am of the view that the right to enter and remain on the claim area could also be established. I add that *Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakay Claim Group* [2005] FCAFC 135 states [at 3(b)] that 'the right to live on the land, to camp, to erect shelters and other structures and to travel over and visit any part of the land and waters' is a recognisable native title right.

Hunting and Fishing

The right to hunt and to fish within the claim area are expressed as non-exclusive rights. With regard to hunting, I note the expert anthropological report includes statements from a current claim group member about hunting goanna and kangaroo (paragraph 43). In relation to fishing, reference is made to Yirendali people eating fresh water mussels, fish and crayfish (paragraph 44). The Act, when defining native title at s. 223 states:

> (2) Without limiting subsection (1), rights and interests in that subsection includes hunting, gathering, or fishing rights and interests.

I am of the view that, prima facie, hunting and fishing rights could be established by the claim group.

Gathering and using the products of the claim area such food, medicinal plants, timber, bark, ochres and earths, stone and resin, minerals, and using natural water resources of the area

The gathering and use of the products of the claim area is expressed as a non-exclusive right. The expert anthropological report includes statements made by a current claim group member who said flaura such as cockleberry, yams, pigweed, emu apple, wild cucumber, grass seed, mistletoe and sugarbag are gathered within the claim area (paragraph 44). Certain products of the land are also used for medicinal purposes. Examples of this provided by a current claim group member is a certain gum leaf that can be boiled for medicinal benefit as well as a type of mud that can be used on mosquito bites.

No information in the anthropological report speaks directly to the use of timber, bark, stone or resin. The court in matters such as *De Rose v South Australia* [2002] FCA 1342 and *Ward* did not have a problem recognising the right to use the land's natural resources, provided that the use was not for commercial purposes. I do not find that the claim group's assertion of a right to 'gather and use' resources from the claim area contemplates commercial use. I am satisfied that this native title right could, prima facie, be established.

Camping and erecting shelters

In relation to this right, expressed as non-exclusive by the claim group, a number of current claim group members currently reside within the claim area. *De Rose* is authority for 'the right to live, to camp and to erect shelters on the determination area' [at 3(e)]. I am satisfied that this particular right could, prima facie, be established.

Engaging in cultural activities and conducting ceremonies and holding meetings

Again, expressed as a non-exclusive right by the claim group, the right to engage in cultural activities is well recognised by the court (see *Ward* and *De Rose*). The expert anthropological report includes statements by current claim group members in relation to their practices when entering and leaving country and acknowledging and speaking to the country's ancestors (paragraph 48). I am of the view that, prima facie, this right could be established.

I am, prima facie, satisfied that the claim group could establish, prima facie, the non-exclusive right to access, enter and remain on the claim area. The purposes or intentions of claim group members, when entering and remaining on the claim area are neither identified nor demanded. It follows then that should members of the claim group wish to enter and remain on the claim area for the purpose of engaging in or conducting a cultural activity, ceremony or meet on the claim area, ought to be accepted. Given that I have accepted the right to access, enter and remain, I am of the view that the non-exclusive right to conduct ceremonies and hold meetings can also be, prima facie, established.

Teaching the physical and spiritual attributes of locations and sites

The first comment to be made about the expression of this asserted non-exclusive native title right is that it is broad. To whom would such things be taught and for what purpose? It is unclear whether the intention behind this right is for the benefit of the claim group only or for a commercial purpose. There is no information in the anthropological report that serves to identify what is intended by the claim group when asserting that right. There is little guidance on the matter in current common law and without the matter being squarely addressed by the claim group, I am of the opinion that, prima facie, the right to teach is not a native title right or interest that could be established.

Participating in cultural practices relating to births, marriages and deaths on the claim area

I am of the opinion that this expression of a non-exclusive native title right forms part of the conduct of ceremony and cultural practices that I have already found could be established as native title rights. There is nothing before me that demonstrates how this particular asserted native title right ought to be distinguished from general cultural practices or ceremonies. The court in *De Rose* acknowledged that the 'right to engage and participate in cultural activities on the determination area including those relating to births and death' is a native title right. Even so, I find it is already encompassed in the more broadly stated right. Failing that, I note there is no

information in the application or expert anthropological report that speaks of the Yirendali people in relation to births, marriages and deaths and so I would not consider that it could be, prima facie, established.

Making decisions, pursuant to Aboriginal law and custom about the use and enjoyment of the land by Aboriginal people

The right to make decisions is expressed as a non-exclusive right. It cannot be recognised in that context. A right to make decisions in relation to the claim area can only form part of native title without a right 'against the whole world to possession of land and, it may be greatly doubted that there is any right to…make binding decisions about the use to which it is put' (*Ward* at [52]).

The right to make decisions can only then be recognised where exclusive rights can be prima facie established. I have already found that, in this case and in my opinion, that could not be established. I do not accept that the right to make decisions pursuant to Aboriginal law and custom about the use and enjoyment of the land that is the subject of this claim is a right that, prima facie, could be established.

In conclusion, I am of the opinion that prima facie, at least some of the native title rights and interests claimed in the application can be established.

Section 190B(7)
Traditional physical connection

The Registrar must be satisfied that at least one member of the native title claim group:

(a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application, or

(b) previously had and would reasonably be expected to currently have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to the land or waters) by:

  (i) the Crown in any capacity, or

  (ii) a statutory authority of the Crown in any capacity, or

  (iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease.

Result

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

Reasons

The applicant, at Schedule M, asserts the continued existence of a traditional physical connection with the claim area. The example provided is that 'members have used the land and water covered by the application to reside, to hunt and to enter and travel across' the claim area. Attachment F is an expert anthropological report. That report speaks in specific terms about two claim group members who are said to currently enjoy traditional physical connection to Yirendali country.

Before considering whether I can be satisfied that the nature of their asserted connection to country is of the kind contemplated by the court in *Yorta Yorta*, I will describe the nature of connectedness accounted in the expert anthropological report.

One claim group member that was interviewed by the reporting anthropologist is said to have been born in Hughenden in the 1940s and currently resides in Richmond which lies on the western boundary of the claim area (paragraph 24). This particular Yirendali person is stated as having a strong knowledge of Yirendali country, something taught to her by her parents while they worked at various stations. This knowledge includes:

> …traditional medicine and how to get food from the bush…I was taught how to hunt goanna, porcupine and kangaroos. I was also taught what foods to eat in the bush. (paragraph 43)

This claim group member also mentioned that she is acknowledged as being the child of the country's traditional owners (paragraph 34). The expert report states that:

> …customary and normative forms of authority continue to inform the behaviour of many current claimants today. Seniority remains of central importance and, as a result, matters of importance to the group are deferred to those senior people who hold traditional authority. (paragraph 40)

The report then quotes this particular claim group member who said:

> I am now a well respected elder for my people in the Hughendon (sic) area and other people come to speak to me. People come to me because this is my country.
> (paragraph 40)

The same claim group member also said in interview:

> Whenever I visit places in my country I talk to my ancestors as this makes me feel at ease. If I am worried about my ancestors' spirits wanting to take me I talk to them. If I want to stop my ancestors' spirits from following me, I light a smoky fire to keep them from following me. (paragraph 48)

Another claim group member is also featured in the report. This particular Yirendali person also continues to reside within the claim area. This claim group member, along with his brothers are said to have:

> worked on pastoral stations on Yirendali country for many years…through this work...[they] developed a strong knowledge of, and association with, the country around Hughendon (sic) (paragraph 33).

The anthropologist reports that this claim group member 'strongly asserts a continued sustainable use of natural resources in accordance with traditional laws and customs' (paragraph 45). The report also states the Yirendali claimants assert that they have a duty to care for country. This second claim group member asserts that in accordance with his:

'totemic affiliation the emu, he looks after emu habitat while Yirendali traditional owners in general continue to care for country'
(paragraph 47)

Finally, paragraph 41 of the report speaks about the dreamings pertinent to Yirendali country.

The above information, coupled with my findings pursuant to sections 190B(5) and 190B(6), cause me to be satisfied that there is at least one Yirendali claim group member that has a physical connection with the claim area. It follows then that this condition is met.

Section 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.

Delegate's comments

Section 61A contains four subsections. The first of these, s. 61A(1), stands alone. However, ss. 61A(2) and (3) are each limited by the application of s. 61(4). I consider s 61A(1) first, then s. 61A(2) together with (4), and then s. 61A(3) also together with s. 61A(4). I come to a combined result at page 22.

No approved determination of native title: s. 61A(1)

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

Result

The application **meets** the requirement under s. 61A(1).

Reasons

The expert geospatial report states that as at 8 January 2007, no determinations as per the Native Title Register fall within the external boundary of this application.

No Previous Exclusive Possession Acts (PEPAs): ss. 61A(2) and (4)

Under s. 61A(2), the application must not cover any area in relation to which
(a) a previous exclusive possession act (see s. 23B)) was done, and
(b) either:
    (i) the act was an act attributable to the Commonwealth, or
    (ii) the act was attributable to a state or territory and a law of the state or territory has made provisions as mentioned in s. 23E in relation to the act.

Under s. 61A(4), s. 61A(2) does not apply if:

(a) the only previous exclusive possession act was one whose extinguishment of native title rights and interests would be required by ss. 47, 47A or 47B to be disregarded were the application to be made, and
(b) the application states that ss. 47, 47A or 47, as the case may be, applies to it.

Result

The application **meets** the requirement under s. 61A(2), as limited by s. 61A(4).

Reasons

Schedule B excludes any land covered by a previous exclusive possession act as defined in s.23B. I am therefore satisfied that the application is not made over any such areas.

No exclusive native title claimed where Previous Non-Exclusive Possession Acts (PNEPAs): ss. 61A(3) and (4)

Under s. 61A(3), the application must not claim native title rights and interests that confer possession, occupation, use and enjoyment to the exclusion of all others in an area where:

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

Under s. 61A(4), s. 61A(3) does not apply if:

(a) the only previous non-exclusive possession act was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made, and
(b) the application states that ss. 47, 47A or 47, as the case may be, applies to it.

Result

The application **meets** the requirement under s. 61A(3), as limited by s. 61A(4).

Reasons

The application does not seek exclusive possession over areas the subject of previous non-exclusive possession acts.

Combined result for s. 190B(8)

The application **satisfies** the condition of s. 190B(8), because it **meets** the requirements of s. 61A, as set out in the reasons above.

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

The application and accompanying documents must not disclose, and the Registrar/delegate must not otherwise be aware, that:

(a) a claim is being made to the ownership of minerals, petroleum or gas wholly owned by the Crown in the right of the Commonwealth, a state or territory, or

(b) the native title rights and interests claimed purport to exclude all other rights and interests in relation to offshore waters in the whole or part of any offshore place covered by the application, or

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

Delegate's comments

I consider each sub–condition under s. 190B(9) in turn and I come to a combined result at page 29.

Result re s. 190B(9)(a)

The application **satisfies** the sub–condition of s. 190B(9)(a).

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

Schedule Q of the application states that there is no claim to minerals, petroleum or gas wholly owned by the Crown.

Result re s. 190B(9)(b)

The application **satisfies** the sub–condition of s. 190B(9)(b).

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

The application area does not extend to any offshore places.

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

The application **satisfies** the sub–condition of s. 190B(9)(c).

Reasons re s. 190B(9)(c)

The application and accompanying documents do not disclose, and it is not readily apparent, that the native title rights and interests claimed have otherwise been wholly extinguished.

In addition, Schedule B to the application excludes from the application area any area in relation to which native title rights have otherwise been wholly extinguished.

I am satisfied that the application meets the requirements of this condition.

Combined result for s. 190B(9)

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

Information to be included on the Register of Native Title Claims

Application name:	Yirendali People Core Country Claim
NNTT file no.:	QC06/20
Federal Court of Australia file no.:	QUD495/2006
Date of registration test decision:	17 August 2007

In accordance with ss. 190(1) and 186 of the *Native Title Act 1993* (Cwlth), the following is to be entered on the Register of Native Title Claims for the above application.

Section 186(1): Mandatory information

Application filed/lodged with:

Federal Court of Australia

Date application filed/lodged:

13 December 2006

Date application entered on Register:

17 August 2007

Applicant:

Mr James Hill, Mrs Martina Jacobs, Mr Jeffrey Lammermoor

Applicant's address for service:

C/- Central Queensland Land Council Aboriginal Corporation

56 Gordon Street

MACKAY NSW 4740

Area covered by application:

1. The area covered by this application ('the claim area') includes all the land and waters inside the external boundary of the claim area.

The external boundary of the claim area is shows on the map and marked 'Attachment C', and is also identified by reference to the external boundary description set out in 'Attachment B'.

2. Areas excluded from the claim area are those where:

(i) Subject to (iv), valid acts that occurred on or before 23 December 1996 comprising such of the following that are considered extinguishing acts within the meaning of the Native Title Act 1993 (Cth) as amended, namely:

(a)Category A past acts as defined in s. 228 and s. 229 of the Native Title Act 1993 (Cth) and

(b)Category A intermediate acts as defined in s. 232A and s. 232B of the Native Title Act 1993 (Cth);

(ii) Subject to (iv), any valid previous exclusive possession act(s), as set out in Division 2B of Part 2 of the Native title Act 1993 (Cth) done in relation to the claim area and the act(s) were attributable to the Commonwealth or State;

(iii) Subject to (iv), any areas over which native title has otherwise been extinguished;

(iv) The paragraphs above and below are subject to the provisions of ss. 47, s. 47A and s. 47B of the *Native Title Act (1993)* (Cwlth) as may apply to any part of the claim area. Areas subject to acts referred to in (2)(i), (ii) & (iii), and (3), to which the provisions of ss. 47, s. 47A and s. 47B of the *Native Title Act (1993)* (Cwlth) apply, are not excluded from the claim area.

3. Save that exclusive possession is not claimed over areas that have been subject to valid previous non-exclusive possession act(s), done by the Commonwealth or the State, as set out in Division 2B or Part 2 of the Act.

Persons claiming to hold native title

The native title claim group in relation to the claim area is comprised of all persons descended from the Yirendali ancestors identified in paragraph (2).

The Yirendali ancestors referred to in paragraph (1) are more particularly identified as follows:

- Albert Hill,

- Henry Major Luco,

- Philip and Ida Lammermoor,

- Polly and Kiara (Kyra) (Kara) Christison, and

- Maggie Chermside

Registered native title rights and interests

All remaining land and waters within the claim area are the Native Title rights and interests claimed are not to the exclusion of all others and are the rights to use and enjoy the claim are in accordance with the traditional laws acknowledged and customs observed by the Yirendali for the purposes of:

(a) accessing land and waters;

(b) entering and remaining on the land being claimed;

(c) hunting

(d) fishing;

(e) gathering and using the products of the claim area such food, medicinal plants, timber, bark, ochres and earths, stone and resin, minerals, and using natural water resources of the area;

(f) camping and erecting shelters;

(g) engaging in cultural activities;

(h) conducting ceremonies and holding meetings.

The application does not include a claim for exclusive possession over previous non-exclusive possession act areas as defined under section 23F of the native Title Act 1993 save where the Native Title Act 1993 and/or the common law allows such a claim to be part of the Native Title Determination application.

_____

Linda Blue

Delegate of the Native Title Registrar pursuant to
sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cwlth)

Attachment A
Documents and information considered

The following lists **all** documents and other information that were considered by the delegate in coming to his/her decision about whether or not to accept the application for registration.

Document Name	**Document Date**	**Document Description**
Form 1 – Claimant Application	Filed in Federal Court of Australia, Queensland Registry, 13 December 2006	Completed Form 1 including Attachment 1, and Attachments B, C, F and R.
Email – From Cecilia O'Brien to Louise Casson	23 July 2007	Email clarifying drafting at Schedule E of application. Relevant part of email states: 'The activities are by way of discrete examples, in other words (a) was intended.'
Overlap Analysis generated by GIRO	26 June 2007	Overlap Analysis requested by Linda Blue in relation to application QC06/20.
Geospatial Assessment and Overlap Analysis	8 January 2007	Assessment completed by National Native Title Tribunal Geospatial Services in relation to application QC06/20.