

# *National Native Title Tribunal*

## REGISTRATION TEST

### REASONS FOR DECISION

*[Edited Statement of Reasons for publication on NNTT Website]<sup>1</sup>*

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Delegate:	Justine Vandenberg
Case Manager:	Susan Walsh

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Application Name:	Djabugay People		
Names of Applicants:	Barry Hunter, Ivan Brim, Lloyd Levers, Gerald Hobbler, Melvyn Hunter, Patrick Hastie, Rhonda Brim		
Region:	Far North Queensland	NNTT No.:	QC94/4
Date Application Made:	13/5/94	Federal Court No.:	QG6002/98

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I have considered the application against each of the conditions contained in s.190B and s.190C of the *Native Title Act* 1993 (Cwlth) and I have decided that the application be ACCEPTED for registration for the reasons outlined in the attached decision.

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<sup>1</sup> in some instances individual, family, position description, corporation, native title claim group and native title application names have been deleted to protect privacy of individuals

## REGISTRATION TEST

### EDITED STATEMENT OF REASONS FOR DECISION

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DELEGATE: Justine Vandenbeld

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Application Name: Djabugay People

Names of Applicants: Barry Hunter, Ivan Brim, Lloyd Levers, Gerald Hobbler,  
Melvyn Hunter, Patrick Hastie, Rhonda Brim

Region: Far North Queensland NNTT No.: QC94/4

Date Application Made: 13/5/94 Federal Court No.: QG6002/98

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I have considered the application against each of the conditions contained in s.190B and s.190C of the *Native Title Act* 1993 (Cwlth).

### DECISION

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

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Justine Vandenbeld  
Delegate of the Registrar pursuant to  
sections 190, 190A, 190B, 190C, 190D

Date of Decision:  
16 January 2002

## **Brief History of the Application**

This application was lodged with the Tribunal on 13 May 1998.

A motion to amend the application (together with form of amended application) was filed in the Federal Court, Queensland District Registry on 23 March 2001. On 29 March 2001 Deputy District Registrar Robson of the Federal Court ordered that the application be amended in the form filed 23 March 2001.

## **Information considered when making the Decision**

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

- The National Native Title Tribunal's Working Files, Party Files, Legal Services Files, Notification Files and Registration Testing Files for NNTT file reference QC94/4 (the NNTT file reference for this application).
- Tenure information acquired by the Tribunal in relation to the area covered by this application (if any).
- The National Native Title Tribunal's Working files and related materials for native title applications that overlap the area of this application (if applicable);
- The National Native Title Tribunal Geospatial Database;
- The Register of Native Title Claims
- NNTT Schedule of Native Title Applications;
- The National Native Title Register
- The Register of Indigenous Land Use Agreements

**Note:** Information and materials provided in the context of mediation of this native title determination application 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* unless otherwise specified.

## A. Procedural Conditions

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### 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**

Schedule A of the application states that the native title claim group is known as the Djabugay People. It is said that:

*“The Djabugay comprise those related families who have descended from the indigenous inhabitants of the coastal, rainforest and Tablelands areas to the north and west of the present city of Cairns, and south and to the west of the Mowbray Valley to the south of Port Douglas.”*

A list of 29 people is given. The following further description is then provided:

*“Djabugay People comprises those men, women and children who can demonstrate descent from at least one of the above ancestors.”*

There is no information before me that indicates that this group does not include, or may not include, all the persons who hold native title in the area of the application.

I am satisfied that the group described includes all the persons who, according to their traditional laws and customs, hold the native title claimed.

**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 Part A 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**

Schedule A of the application describes the native title claim group. For the reasons which led to my conclusion (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**

The application is in the form prescribed by Regulation 5(1)(a) of the *Native Title (Federal Court) Regulations* 1998. The application was filed in the Federal Court, as required, pursuant to s.61(5)(b) of the Act.

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 those sections. The application is accompanied by affidavits by the applicants, as prescribed by s.62(1)(a).

The application is accompanied by a map as prescribed by s.62(2)(b). I refer also to my reasons in relation to those sections of the Act.

#### **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**

The application is accompanied by an affidavit by each of the 7 applicants. The affidavits are signed, dated and witnessed by a competent witness. The affidavits 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**

No detail of traditional physical connection is provided in the affidavits. This is not a mandatory requirement.

**Result:** Not 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 map with the application are sufficient to enable the area covered by the application to be identified with reasonable certainty.

**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**

The application is accompanied by a map that shows the external boundaries of the area covered by the application at Attachment C of the application – see my reasons under s.190B(2).

**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**

The amended application indicates at schedule D that there is no change to the details and results of searches carried out over the claim area. The original application provides details/results of searches at items A7 and A8. Item A8 refers to an annexed copy of a Report on Tenure History Investigation. As stated in item A8, a copy of this document is attached to the original application.

**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 found at Schedule E (see my reasons under s.190B(4)).

The description does not merely consist 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: 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 their predecessors had, an association with the area*
- (ii) traditional laws and customs exist that give rise to the claimed native title*
- (iii) the native title claim group has continued to hold native title in accordance with traditional laws and customs*

**Reasons relating to this sub-condition**

Schedules A, F, G and M of the application, and the affidavits that accompanied the application by two of the applicants provide a general description of the factual basis as required by this provision. I refer to my reasons in relation to s190B(5) below.

**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**

Schedule G provides details of activities currently carried out by the native title claim group.

**Result: Requirements met**

*s.62(2)(g) Details of any other application 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 a part of the area covered by the application (and that seek a determination of native title or compensation)*

### **Reasons relating to this sub-condition**

Schedule H states “not applicable” in response to a request for this information. A search of the NNTT Geospatial database reveals that there are no overlapping applications.

**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**

Schedule I states “none known” in response to a request for the above information.

**Result: Requirements met**

### **s. 190C(2) Reasons for the Decision**

For the reasons identified above, I am satisfied that the application contains all details and other information, and is accompanied by the affidavits and other documents, required by sections 61 and 62.

**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**



The application was made on 13 May 1994 when it was lodged with the National Native Title Tribunal.

A search of the Geospatial database and Register of Native Title Claims reveals that there were no applications on the Register of Native Title Claims that cover the area of this application when this application was made or since that time.

**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 application has not been certified pursuant to s. 190C(4)(a). It is therefore necessary to consider whether the requirements of s190C(4)(b) are met.

It is stated at Schedule R of the application that:

*“ The applicants are all members of the group and have been authorised to make this application, and to deal with matters arising in relation to it, by all of the persons in the native title claim group in accordance with their traditions and customs governing decision making for decisions of this kind.”*

In relation to the authorisation process itself the applicants state that:

*“Meetings of the group were held in 1994 before the original application...was lodged. Those meetings were held in accordance with traditional laws and customs of the native title claim group and those meetings authorised the original applicant to make the application and deal with matters arising in relation to it. Meetings of the group have been held on a regular basis since 1994.”*

The authorisation process in relation to the amendment of the application is described as follows:

*“At meetings of the group held at Kowrowa on 8 September and at Kuranda in 9 October 2000, the native title claim group decided, in a manner consistent with their traditional laws and customs, to amend the applicants and to amend the application in accordance with this amended application.”.*

The applicants' s62 affidavits depose that each 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. The basis for these statements is described in terms identical to the information that is provided at Schedule R.

The statements that are in the application and accompanying affidavits meet the requirements of s190C5(a) and (b).

On the basis of the information that is in the application and the accompanying authorisation affidavits, I am satisfied that the applicants are members of the native title claim group and are 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. I am satisfied that the authorisation decision was made pursuant to a traditional decision making process that must be followed by the group (see also s251B(a)).

**Result: Requirements met**

## **B. Merits Conditions**

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### **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**

*Written Description and Map of External Boundaries*

Schedule B provides a written description of the external boundaries of the claim area. This is a claim to the land and waters comprised in the Barron Gorge National Park. The lot and plan reference for this parcel of land is provided in schedule B. A map, described in schedule C of the application as Department of Natural Resources map dated 8/10/96, accompanies the application.

The use of a lot and plan reference clearly identifies the claimed parcel with the State of Queensland's land tenure record system. The map is identified as being produced by the State's Department of Natural Resources, Native Title Services. The map clearly identifies the claim area with green shading. The line work on this map is fine and easy to read. Areas within the boundaries of the national park that are excluded from the claim area are also clearly shown and labelled on this map. The map has a scale and shows the location of adjoining land parcels and nearby roads, towns, suburbs, and the railway line that traverses the national park and the Barron River.

I am satisfied that the information in the application describes the external boundaries of the claim area with reasonable certainty.

It follows that I am also satisfied that the physical description of the external boundaries meets the requirements of s62(2)(a)(i) and that the map shows the boundaries of the claim area as required by s62(2)(c).

*Internal Boundaries*

A description of the areas excluded from the application is also found at Schedule B of the application. It is stated at Schedule B that the claim does not include:

- “1. Former Lots 1,2,3 and 4 on Plan NR 7579*
- 2. Former Lots 21 and 22 on Plan NR 7579*
- 3. The land the subject of Term Lease 0/213315 being Lot D on CP894159, Lot E in strata on CP 891025, Lot F on strata on CP 891027, Lot G in strata CP 894159 and Lot H in strata on CP 894157.*
- 4. Former Portion 164 Parish of Cairns on NR 1735.*
- 5. Former Portion 194 Parish of Cairns on NR 1735.*
- 6. Former Portion 383 Parish of Cairns NR 3594.*
- 7. Former Lengthens Camp Reserves 85, 169 and 171.*
- 8. Any land or waters that are affected by a previous exclusive possession act, as that term is defined in s.23B of the Native Title Act 1993 (Cwth).”*

It is also stated at Schedule B that:

*“The native title claim group do not assert that they possess exclusive possession to any land or waters that are affected by a previous non-exclusive possession act, as that term is defined by s.23F of the Native Title Act 1993 (C’wth).”*

The descriptions provide information that would enable the precise location of the parcels to be made via search of the State’s land tenure record system. The exclusion of lands or waters affected by previous exclusive possession acts (PEPAs) and the restriction of the claim in relation to previous non-exclusive possession acts (PNEPA’s) provides an objective means 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 may require considerable research of tenure data held by the particular custodian of that data, 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 find 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 claim area.

I am satisfied that the application meets the requirements of s190B(2) in relation to the description of areas not covered by the application. It follows that I am also satisfied that the application meets the requirements of s62(a)(ii) in relation to the description of the internal boundaries of the claim area.

**Result: Requirements met**

**s.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.*

### **Reasons for the Decision**

The application does not name all of the persons in the group. I must therefore be 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.

Schedule A states that a person is a member of the native title claim group if that person is descended from one or more of the persons named in that schedule.

I am 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.

Accordingly I find that the requirements of s190B3(b) are satisfied.

**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 be readily identified.*

### **Reasons for the Decision**

The claimed native title rights and interests are described at Schedule E of the application. It is stated that the Djabugay are:

*“entitled as against the whole world to the possession, occupation, use and enjoyment of the claimed area in accordance with valid State and Commonwealth laws. Djabugay People do not claim native title rights and interests that have been extinguished by operation of law.”*

It is stated at Schedule B that:

*“the native title claim group do not assert that they possess exclusive possession to any land or waters that are affected by a previous non-exclusive possession act, as that term is defined in s.23F of the Native Title Act 1993 (Cwth)”*

The claimed rights and interests are also qualified by the statement in Schedule Q that the Djabugay People do not claim ownership of minerals, petroleum or gas where they are wholly owned by the Crown.

I find that the claimed rights 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**

I must be satisfied pursuant to s190B(5) that:

- a description of the native title rights and interests claimed in relation to the area affected by the application is provided in the application.
- a sufficient factual basis is provided to support the assertion that the rights and interests claimed in the application exist.

In particular, I must be satisfied that the factual basis provided to support the assertions that:

- the native title claim group have, and their predecessors had, an association with the area claimed;
- traditional laws and customs, acknowledged and observed by the native title group, exist;
- the native title claim group continue to hold native title in accordance with those traditional laws and customs;

is sufficient to support those assertions: *Martin v Native Title Registrar* [2001] FCA 16.

A description of the claimed native title rights and interests is provided in the application (see Schedule E and my reasons under s190B(4)). A general description of the factual basis for the assertions in s190B(5) is contained in Schedules A, F, G and M of the application, and in the affidavits of [applicant 1] sworn on 17 August 2000 and [applicant 7] sworn on 31 August 2000.

It is stated at Schedule F that the native title rights and interests claimed exist by reason that:

1. *“Djabugay People have, and their predecessors had, an association with the area;*

2. *There exist traditional laws acknowledged by, and customs observed by, Djabugay People, that give rise to the claim to native title rights and interests;*
3. *Djabugay People have continued to hold their native title in accordance with those laws and customs; and*
4. *Most Djabugay People live in the traditional lands that are in the vicinity of and surround the claim area, and continue to use and occupy the claim area."*

**S190B(5)(a)**

**Current Association**

Schedule M states that:

*"Many Djabugay People continue to use and occupy the claim area on a regular basis, including:*

- a) hunting, fishing and gathering in the claim area*
- b) visiting sites of significance in the claim area*
- c) being involved with management of the claim area."*

**[applicant 1]** deposes, at paragraphs 1-2 of his affidavit sworn on 17 August 2000 that:

*"I was born at Mareeba Hospital...I have always lived in Djabugay country."*

And at paragraph 10: *"I continue to visit the Barron Gorge National Park."*

**[applicant 7]** deposes, at paragraphs 1-2 of her affidavit sworn 31 August 2000 that:

*"I was born in Mareeba Hospital..I lived at the old Mona Mona mission, which is located in Djabugay traditional country...My family moved to Oak Forest , which is also in Djabugay country in about 1960..after which we moved to Mantaka, which is also in Djabugay country. I have lived at Mantaka ever since then."*

At paragraph 8 **[applicant 7]** deposes that:

*"I continue to visit the Barron Gorge National Park, which is a small part of the Djabugay People's traditional country."*

I am satisfied on the basis of the above information provided by the applicants that the application satisfies the requirement in relation to current association.

**Past Association**

The application provides information concerning the predecessors of the native title claim group and their association with the claim area. At Schedule A of the application the native title claim group are described as *" those related families who have descended from the indigenous inhabitants of the coastal, rainforest and Tablelands areas to the north and west of the present city of Cairns, and south and to the west of the Mowbray Valley to the south of Port Douglas.."*

**[applicant 7]**, in her affidavit dated 31 August 2000 at paragraph 4 deposes that:

*“My father, who was also a Djabugay person...took me to many Djabugay places..including..Barron Gorge National Park, which is the area under claim.”*

And at paragraph 6:

*“My father and the old people taught me that there are many important story places in and around Barron Gorge National Park.”*

Similarly, [**applicant 1**], at paragraph 7 of his affidavit sworn on 14 August 2000 deposes that:

*“The Barron Gorge...is a sacred place for Djabugay People. Old Djabugay People told me stories about it.”*

I am of the view that the totality of the information provided amounts to a sufficient factual basis for the assertion that the native title claim group’s predecessors had an association with the claim area.

***s190B(5)(b)***

To be satisfied under this limb there must be evidence that supports the assertion that traditional laws and customs exist, those laws and customs are respectively acknowledged and observed by the native title claim group and those laws and customs give rise to the claim to native title rights and interests.

[**applicant 7**], at paragraph 4 of her affidavit referred to above, deposes that:

*“My father, who was also a Djabugay person, taught me a lot about Djabugay People and Djabugay culture and traditions..”*

And at paragraphs 5-6:

*“My father taught me about bush tucker and knowledge of timbers in the Djabugay rainforest...”*

*My father and the other old people taught me that there are many important story places in and around the Barron Gorge National Park.”*

[**applicant 1**], at paragraph 4 of his affidavit referred to above, deposes that:

*“My father, who was a Djabugay person, taught me a lot about Djabugay People and Djabugay culture and traditions..”*

And at paragraphs 7-8:

*“The Barron Gorge..is a sacred place for Djabugay People. Old Djabugay People told me stories about it. I pass these stories on to my children.”*

On the basis of this information I am satisfied that the factual basis provided supports an assertion that there exist traditional laws and customs that give rise to the claimed native title rights and interests.

***s190B(5)(c)***

To be satisfied under this limb there must be evidence that supports the assertion that the claim group continues to hold native title in accordance with their traditional laws and customs.

At Schedule F the applicants state that:

*“Djabugay People continue to hold their native title in accordance with [their] laws and customs..Most Djabugay People live in the traditional lands that are in the vicinity of and surround the claim area, and continue to use and occupy the claim area.”*

At Schedule G of the application the applicants list activities currently carried on in relation to the claim area. The list includes the following:

*“Management of the land..in accordance with [Djabugay ] laws and customs..  
Transmission of information about traditional laws and customs..concerning the claim area, in accordance with those laws and customs.”*

**[applicant 1]**, at paragraph 7 of his affidavit sworn 17 August 2000 deposes that:

*“Old Djabugay people told me stories about [The Barron Gorge]. I pass those stories onto my children.”*

I am satisfied on the basis of the material outlined above that the factual basis provided satisfies the requirements of the provision.

**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**

The claimed native title rights and interests are found at Schedule E of the application. The rights claimed are:

*“Djabugay People are entitled as against the whole world to the possession, occupation, use and enjoyment of the claimed area in accordance with valid State and Commonwealth laws. Djabugay People do not claim native title rights and interests that have been extinguished by operation of law.”*

I note that exclusivity only applies to areas that are not covered by previous non-exclusive possession acts (Schedule B) and that there is no claim to resources wholly owned by the Crown (Schedule Q). These qualifications satisfy me that the native title rights and interests claimed are those recognised at law.

In considering this requirement, I have had regard to the information identified in my reasons under s190B(5), in particular to that set out in the affidavits of **[applicant 1]** sworn on 17 August 2000 and **[applicant 7]** sworn on 31 August 2000 . I refer now to those reasons.

Accordingly, I am of the view that this material is sufficient to satisfy me on a prima facie basis that the native title rights and interests of possession, occupation, use and enjoyment, as claimed by the applicants can be established.

**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**

Schedule M of the application states that :

*“Many Djabugay People continue to use and occupy the claim area on a regular basis, including:*

- a) hunting, fishing and gathering in the claim area*
- b) visiting sites of significance in the claim area*
- c) being involved with management of the claim area.”*

It is stated at Schedule G that activities currently carried on by the native title claim group include:

- 1. “Visitation to sites of significance;*
- 2. Hunting, fishing and gathering in the claim area;*
- 3. Management of the land through the Djabugay Ranger Agency and generally by Djabugay People in accordance with their traditional laws and customs;*
- 4. Transmission of information about traditional laws and customs of Djabugay people concerning the claim area, in accordance with those laws and customs.”*

Both **[applicant 1]** and **[applicant 7]** also depose in their affidavits referred to above, at paragraphs 10 and 8 respectively, that they continue to visit the claim area.

I am therefore satisfied that at least **[applicant 1]** and **[applicant 7]** 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**

**S61A(1)- Native Title Determination**

A search of the National Native Title Register has revealed that there is no determination of native title in relation to the area claimed in this application.

**S61A(2)- Previous Exclusive Possession Acts (“PEPA”)**

It is clear from information in Schedule B that the application does not include areas covered by any PEPAs, as defined in s23B. Schedule B also excludes from the claim area specific parcels of land that are identified in the tenure history investigation report (see annexure to the original application) as being subject to PEPA interests.

**S.61A(3) – Previous Non-Exclusive Possession Acts (“PNEPA”)**

It is clear from the statement to this effect in Schedule B that there is no claim to exclusivity over areas covered by PNEPAs.

**Conclusion**

For the reasons identified above the application and accompanying documents do not disclose and it is not otherwise apparent that because of s61A 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 ‘Djabugay People do not claim ownership of minerals, petroleum or gas where they are wholly owned by the Crown’.

Accordingly I am satisfied that the application fulfils this requirement.

**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:*

- (b) *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

At Schedule P the applicants state that the claimed area does not include any offshore places. It is also apparent from the map and description of the claimed area that it is located inland.

**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

A search of the Register of Indigenous Land Use Agreements shows that there are no registered agreements within the boundaries of the claim area where native title rights and interests have been extinguished by surrender.

The application does not disclose, and I am not otherwise aware that the native title rights and interests have otherwise been extinguished.

**Result: Requirements met**

*End of Document*