

***National Native Title Tribunal***  
**REASONS FOR DECISION COVER SHEET**  
 REGISTRATION TEST

DELEGATE	Simon Nish		
CASE MANAGER	Ann Stokes		
DATE	26 May 2000		
Application Name	Turrbal People		
Name of Applicant	Connie Isaacs		
Region	South Queensland	NNTT No	QC98/26
Date Application Made	13 May 1998	Fed Court No	QG6196/98

**DECISION – Turrbal People QC98/26**

The delegate has considered the application against each of the conditions contained in s190B and 190C of the *Native Title Act* 1993.

**DECISION -**

The application IS ACCEPTED for registration pursuant to s190A of the *Native Title Act* 1993 (“the Act”).

.....  
 Simon Nish  
 Delegate of the Registrar pursuant to  
 sections 190, 190A, 190B, 190C, 190D of the Act.

..... 2000  
 Date of Decision

National Native Title Tribunal

REGISTRATION TEST  
REASONS FOR DECISION

Printed 26 August, 2002

DELEGATE	Simon Nish		
CASE MANAGER	Ann Stokes		
DATE	15 May 2000		
Application Name	Turrbal People		
Name of Applicant	Connie Isaacs		
Region	South Queensland	NNTT No	QC98/26
Date Application Made	13 May 1998	Fed Court No	QG6196/98

I have considered all the information and documents in the following files, databases and other sources:

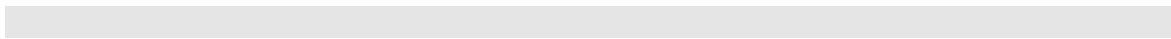
- Tribunal files for application QC98/26;
- Other tenure information acquired by the Tribunal in relation to the area covered by this application;
- Working files and related materials for native title applications that overlap the area of the application;
- The National Native Tribunal Geospatial Database;
- The Register of Native Title Claims;
- The Native Title Register; and
- The Indigenous Land Use Agreements Register.

I note that, pursuant to an order of Deputy District Registrar Robson of 5 May 2000 leave was granted for the subject application to be amended in accordance with the amendment application filed 14 April 2000.

Note: Information and materials provided in the context of mediation have not been considered in making this decision due to the without prejudice nature of those conferences and the public interest in maintaining the inherently confidential nature of such conferences.

Note: The Turrbal application passed the registration test on 5 November 1999. An amended application was filed in the Federal Court on 14 April 2000. The NTA necessitates the re-testing of any amended application.

**A. Procedural Conditions**



<b>190C2</b>	<p><b><i>Information, etc, required by section 61 and section 62:</i></b></p> <p><b><i>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.</i></b></p>
--------------	--

The application passes the condition contained in s190C(2).

**Details required in section 61**

<b>61(3)</b>	<b><i>Name and address for service of applicant(s)</i></b>
--------------	--

Reasons relating to this sub-condition	The application passes the condition
Requirements are met.	

<b>61(4)</b>	<p><b><i>Names persons in native title claim group or otherwise describes the persons so that it can be ascertained whether any particular person is one of those persons</i></b></p>
--------------	---

Reasons relating to this sub-condition	The application passes the condition
Requirements are met.	
For the reasons which led to my conclusion that the requirements for s.190B(3) of the Native Title Act 1993 (“the Act”) 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.	

<b>61(5)</b>	<p><b><i>Application is in the prescribed form, lodged in the Federal Court, contain prescribed information, and accompanied by prescribed documents and fee</i></b></p>
--------------	--

Reasons relating to this sub-condition	The application passes the condition
Requirements are met.	
The amended application is in the form prescribed by Regulation 5(1)(a) of the <i>Native Title (Federal Court) Regulations</i> 1998. The amended application was filed in the Federal Court as required pursuant to s.61(5)(b)of the Act.	

The amended 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.

As required by s.61(5)(d) the application is accompanied by an affidavit as prescribed by s.62(1)(a) and a map as prescribed by s.62(2)(b). I refer to my reasons in relation to those sections of the Act.

I note that s.190C(2) only requires me to consider details, other information and documents required by sections 61 and 62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee to the Federal Court.

For the reasons outlined above, it is my view that the requirements of s.61(5) have been met.

**Details required in section 62(1)**

<b>62(1)(a)</b>	<b><i>Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)</i></b>
Reasons relating to this sub-condition	The application passes the condition
Requirements are met.	
The applicant has sworn an affidavit dated 20 October 1999 which affidavit sets out the basis upon which the applicant is authorised by reference to Attachment R to the amended application.	
I am satisfied that this affidavit satisfactorily addresses the matters required by s.62(1)(a)(i)-(v).	

<b>62(1)(c)</b>	<b><i>Details of physical connection (information not mandatory)</i></b>
Comment on details provided	
Schedule M of the amended application states: <i>“The Turrbal traditional physical connection report will be submitted at a later date when this application comes up for registration under section 190A of the Act”.</i>	
Whilst the applicant has not provided the Tribunal with a specific report in this regard for the purpose of registration testing or otherwise, I am satisfied that the material accompanying the amended application is sufficient to evidence traditional physical connection as required pursuant to s. 190B(9) [Refer my reasons in respect of s.190B(9)].	

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

<b>62(2)(a)(i)</b>	<b><i>Information identifying the boundaries of the area covered</i></b>
Reasons relating to this sub-condition	The application passes the condition
Requirements are met.	
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 contained in the amended application are sufficient to enable the area covered by the application to be identified.	

<b>62(2)(a)(ii)</b>	<b><i>Information identifying any areas within those boundaries which are not covered</i></b>
---------------------	---

Reasons relating to this sub-condition	The application passes the condition
<p>Requirements are met.</p> <p>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 contained in the amended application are sufficient to enable any areas within the external boundaries of the claim area which are not covered by the application to be identified.</p>	

<b>62(2)(b)</b>	<b><i>A map showing the external boundaries of the area covered by the application</i></b>
-----------------	--

Reasons relating to this sub-condition	The application passes the condition
<p>Requirements are met.</p> <p>For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the map contained in the amended application sufficiently identifies the boundaries of the area covered by the application.</p>	

<b>62(2)(c)</b>	<b><i>Details/results of searches carried out to determine the existence of any non-native title rights and interests</i></b>
-----------------	---

Reasons relating to this sub-condition	The application passes the condition
<p>Requirements are met.</p> <p>The requirements of s.62(2)(c) can be read widely to include all searches conducted by any person or body. However, I am of the view that I need only be informed of searches conducted by the applicant in order to be satisfied that the application complies with this condition. It would be unreasonably onerous to expect the applicant to have knowledge of, and obtain details about, all searches carried out by every other person or body.</p> <p>Schedule D of the amended application states: <i>“The Turrbal people have not conducted any searches to determine the existence of non-native title rights and interests in relation to land or waters in the area covered by the application.”</i></p>	

<b>62(2)(d)</b>	<b><i>Description of native title rights and interests claimed</i></b>
-----------------	--

Reasons relating to this sub-condition	The application passes the condition
<p>Requirements are met.</p> <p>An adequate description of the native title rights and interests claimed by the applicant is contained at Schedule E of the amended application. I have outlined these rights and interests in my reasons for decision in respect of s.190B(4).</p>	

<b>62(2)(e)(i)</b>	<b><i>Factual basis – claim group has, and their predecessors had, and association with the area</i></b>
--------------------	--

Reasons relating to this sub-condition	The application passes the condition
<p>Requirements are met.</p> <p>This information is contained at Schedule F of, and Attachment F to, the amended application and in the undated affidavit of the applicant attached to the amended application of (“the evidentiary affidavit”).</p> <p>For the reasons which led to my conclusion that the requirements of s.190B(5)(a) have been met, I am satisfied that there is sufficient factual basis to support the assertion that the native title claim group have, and the predecessors of those persons had, an association with the area.</p>	

<b>62(2)(e)(ii)</b>	<b><i>Factual basis – traditional laws and customs exist that give rise to the claimed native title</i></b>
---------------------	---

Reasons relating to this sub-condition	The application passes the condition
<p>Requirements are met.</p> <p>This information is contained at Schedule E of the amended application and in the evidentiary affidavit.</p> <p>For the reasons which led to my conclusion that the requirements of s.190B(5)(b) have been met, I am satisfied that there is sufficient factual basis to support the assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the native title rights and interests claimed.</p>	

<b>62(2)(e)(iii)</b>	<b><i>Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs</i></b>
----------------------	--

Reasons relating to this sub-condition	The application passes the condition
<p>Requirements are met.</p> <p>This information is contained at Schedule E and F of, and Attachments F and G to, the amended application and in the evidentiary affidavit.</p> <p>For the reasons which led to my conclusion that the requirements of s.190B(5)(c) have been met, I am satisfied that there is sufficient factual basis to support the assertion that the native title claim group have continued to hold the native title in accordance with their traditional laws and customs.</p>	

<b>62(2)(f)</b>	<b><i>If native title claim group currently carry on any activities in relation to the area claimed, details of those activities</i></b>
-----------------	--

Reasons relating to this sub-condition	The application passes the condition
<p>Requirements are met.</p> <p>At Schedule G of and Attachment G to the amended application, the applicant has provided specific examples of activities which the native title claim group has carried out, and continue to carry out, in relation to the area claimed. It is my view that this description of activities is sufficient to comply with the requirements of s.62(2)(f).</p>	

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

Reasons relating to this sub-condition	The application passes the condition
<p>At Schedule H of the amended application, the applicant has stated that she is not aware of any other native title application that seeks a determination of native title or a determination of compensation over the whole or part of the area covered by this application.</p> <p>This sub-condition requires only that the applicant provide details of any other applications of which they are aware. The fact that there are other applications to the Federal Court that have been made in relation to parts of the area covered by the subject application, which other applications have not been noted by the applicant, is not a relevant consideration for this sub-condition.</p>	

<b>62(2)(h)</b>	<b><i>Details of any S29 Notices (or notices given under a corresponding State/Territory law) in relation to the area, and the applicant is aware of</i></b>
-----------------	--

Reasons relating to this sub-condition	The application passes the condition
<p>At Schedule I of the amended application, the applicant states that she is not aware of any notices under section 29 of the Act which have been given and that relate to the whole or a part of the area.</p>	

<b>190C3</b>	<p><b><i>Common claimants in overlapping claims:</i></b></p> <p><b><i>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:</i></b></p> <p><b><i>(a) the previous application covered the whole or part of the area covered by the current application; and</i></b></p> <p><b><i>(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</i></b></p> <p><b><i>(c) the entry was made, or not removed, as a result of consideration of the previous application under section 190A.</i></b></p>
--------------	---

The application passes the condition contained in s190C(3).

### Reasons for Decision

<p>On the basis of a search of the Register of Native Title Claims made on 15 May 2000, there are two applications identified as overlapping this application, namely QG6128/98 (QC98/45) Jinibara People (“Jinibara application”) and Q6034/99 (QC99/35) Gubbi Gubbi People #2 (“Gubbi Gubbi application”).</p> <p>Neither of these applications was lodged prior to the subject application. Accordingly, s.190C(3) does not apply in respect of the subject application.</p> <p>The application passes this condition.</p>
---

--

<p><b>190C4(a)</b> <b>and</b> <b>190C4(b)</b></p>	<p><b><i>Certification and authorisation:</i></b></p> <p><b><i>The Registrar must be satisfied that either of the following is the case:</i></b></p> <p><b><i>(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</i></b></p> <p><b><i>(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.</i></b></p>
---	--

The application passes the condition contained in s190C(4)(b).

**Reasons for Decision**

<p>The application has not been certified pursuant to s. 190C(4)(a).</p> <p>However, I am satisfied that 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 as required pursuant to s.190C(4)(b)..</p> <p>Relevantly, item (v) of the applicant’s affidavit sworn 20 October 1999 and accompanying the amended application (“the s.62 affidavit”) states that she is authorised to make the application and to deal with matters arising in relation to it on the basis stated in Attachment R and on the basis that, under Turrbal law she is “automatically authorised to make the application as the only Turrbal <i>Budulem</i> elder”.</p> <p>Attachment R to the amended application comprises a letter addressed to the Tribunal describing the authorisation process that has taken place for the subject application. The letter states that:</p> <ul style="list-style-type: none"> <li>• a meeting of the native title claim group was held on 18 April 1998 at Cherbourg;</li> <li>• the meeting was held in accordance with tradition and custom of the Turrbal people;</li> <li>• representatives of each family sub-group comprising the native title claim group (“the family representatives”) were invited to, and attended at, the meeting;</li> <li>• the family representatives have authority to make decisions on behalf of members of their respective sub-groups; and</li> <li>• the meeting recognised that the applicant, as the oldest of the Turrbal people, has authority under Turrbal law and custom to make the application and to deal with all matters in relation to it.</li> </ul> <p>Having regard to item (v) of the s.62 affidavit in conjunction with the content of Attachment R to the amended application (which Attachment the applicant has deposed to be true at item (iii) of the s.62 affidavit), and in the absence of any material before me which indicates otherwise, I am satisfied that the applicant is authorised as required pursuant to s.190C(4)(b).</p> <p>Accordingly, it is my view that the amended application sets out sufficient grounds upon which I am satisfied that the application passes this condition.</p>
---



**B. Merits Conditions**

<b>190B2</b>	<p><b>Description of the areas claimed:</b></p> <p><b><i>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 or waters.</i></b></p>
--------------	--

The application passes the condition contained in s190B(2).

**Reasons for Decision**

	<p><b>External boundaries:</b></p> <p>Schedule B of the amended application provides a description of the area the subject of the application by reference to an attachment marked “Schedule B” (“Schedule B”).</p> <p>Schedule B comprises a written metes and bounds description (which was prepared by the Geospatial Analysis and Mapping Branch of the Tribunal at the request of the applicant) of the external boundaries of the area covered by the application. The description also contains references to various coordinate points, which geographic coordinates are referenced to the Australian Geodetic Datum 1996 (AGD66). Schedules B1 – B5 contain Lot on Plan descriptions of the tenures claimed.</p> <p>Attachment C to the amended application comprises a topographic image map (prepared by the Geospatial Analysis and Mapping Branch of the Tribunal at the request of the applicant) showing the external boundaries of the area covered by the application.</p> <p>Note that this amended application includes an amendment to the external boundary which corrects an inadvertent increase in the claim area which occurred as a result of the last amended application filed on 29 September 1999.</p> <p>I am satisfied that the map, which displays a grid of co-ordinates based on AGD66, meets the requirements of s.62(2)(b) as the external boundaries of the areas covered by the application can be clearly identified.</p> <p>Further I am satisfied that the written technical description provided at Schedule B coincides with the map provided and meets the requirements of s.62(2)(a)(i).</p> <p><b>Internal boundaries</b></p> <p>The internal boundaries are described at item (b) of Schedule B to the amended application. In particular the applicant:</p> <ul style="list-style-type: none"> <li>• specifies that native title rights and interests are claimed only in relation to that land and water within the following tenures: Unallocated State Land, State Forests, National Parks and Victoria and Musgrave Parks and those areas are further defined at Schedules B1 – B5 by reference to Lot on Plan numbers;</li> <li>• states: <i>“the area covered by this application does not include any area where native title has been validly extinguished except to the extent that the extinguishment is required to be disregarded under section 47, 47A or 47B”</i>; and</li> </ul>
--	--

- states: *“This application does not include any areas subject to a previous exclusive possession act defined under section 23B of the Native Title Act save where the Act and/or the common law allows those lands to be part of a Native Title Determination Application”;* and
- states: *“The application does not include a claim for exclusive possession over previous non-exclusive possession act areas as defined in section 23F of the Act save where the Act and/or the common law allows such a claim to be part of a Native Title Determination Application.”*

Such class exclusions amount to information that enables the internal boundaries of the area of the application to be adequately identified. Notwithstanding that the exclusion of specific land tenure types from the area of the application by way of class may require considerable research of tenure data held by the State of Queensland, it is nevertheless reasonable to expect that the task can be carried out on the basis of the information provided by the applicant.

In conclusion, I am satisfied that the information and map contained in the application as required by sections 62(2)(a) and (b) are 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.

The requirements of s.190B(2) are met.

<b>190B3</b>	<p><b><i>Identification of the native title claim group:</i></b></p> <p><b><i>The Registrar must be satisfied that:</i></b></p> <p><b><i>(a) the persons in the native title claim group are named in the application; or</i></b></p> <p><b><i>(b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.</i></b></p>
--------------	---

The application passes the condition contained in s190B(3).

### **Reasons for Decision**

To meet this condition, the description of the group must be sufficiently clear so that it can be said with reasonable certainty whether any particular person is a member of the native title claim group.

An exhaustive list of the persons in the native title claim group has not been provided. Accordingly, the requirements of s.190B(3)(a) have not been met.

In the alternative, s.190B(3)(b) requires the Registrar to 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.

Relevantly, Schedule A of the application states as follows:

*“The native title claim group is comprised of all the biological descendants of Turrbal ancestor known as the Duke of York (who died circa 1855).”*

A non-exhaustive list of surviving descendants of the Duke of York is given at Schedule A.

I am satisfied that the description provided by the applicant constitutes an objective means of verifying 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.

<b>190B4</b>	<p><b>Identification of claimed native title:</b></p> <p><b><i>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.</i></b></p>
--------------	---

The application passes the condition contained in s190B(4).

### Reasons for Decision

<p>Under this section I must be satisfied that the native title rights and interests detailed in Schedule E of the application are readily identifiable. It is insufficient to merely state that the native title rights and interests asserted are “all native title rights and interests that may exist, or that have not been extinguished at law”.</p> <p>The description contained in Schedule E of the amended application as required by s.62(2)(d), lists ten claimed rights and is sufficient to allow each of the native title rights and interests claimed to be readily identified.</p> <p>In addition, the first paragraph of Schedule E acknowledges that the traditional native title rights and interests of the Turrbal people have been affected by the valid operation of laws of the Commonwealth and the State of Queensland.</p> <p>The application therefore meets the requirements of s.190B(4).</p>	
--	--

<b>190B5</b>	<p><b>Sufficient factual basis:</b></p> <p><b><i>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:</i></b></p> <ul style="list-style-type: none"> <li><b><i>(a) that the native title claim group have, and the predecessors of those persons had, an association with the area;</i></b></li> <li><b><i>(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;</i></b></li> <li><b><i>(c) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.</i></b></li> </ul>
--------------	--

The application passes the condition contained in s190B(5).

### Reasons for Decision

At Schedule F of the amended application, the applicant makes the following requisite assertions:

- that the native title claim group has, and the predecessors of those persons had, an association with the area;
- there exist traditional laws and customs that give rise to the claimed native title; and
- the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.

For the reasons outlined below, I am satisfied that there is a sufficient factual basis to each of the applicant's above assertions.

The evidence I have found to be probative in making my decision in this regard is from the following sources:

- Schedules E and F of, and Attachment F to, the amended application;
- undated affidavit of the applicant attached to the amended application ("the evidentiary affidavit")(pp.38-40); and
- the applicant's affidavit sworn 20 October 1999 ("the s.62 affidavit").

#### **S.190B(5)(a)**

Relevantly, at Schedule F and Attachment F, the applicant

- quotes Thomas Petrie as follows: '*The Brisbane tribe – "Turrubul" ... extended as far south as the Logan River, and north to the Pine River ...*';
- states that Turrbal people have lived in the areas within the boundaries described in Schedule B from prior to European settlement until this day;
- states that the clan of the Duke of York (the named apical ancestor of the claim group) had their main camp at York's Hollow (being a site near Victoria Park and within the claim area);
- refers to the definitive collection of information regarding the Turrbal people as being found in the work of Constance Petrie entitled, *Reminiscences of Early Queensland 1904* ("the Petrie work"). (This volume is held in the Library of the Brisbane Registry of the Tribunal); and
- lists a range of occasions on which 'Welcome to Country' ceremonies have been conducted by Turrbal people within the claim area.

In addition, the evidentiary affidavit:

- states that in Aboriginal customary law the applicant's Turrbal ancestors were the traditional owners of the area being claimed; and
- specifies places of significance for the Turrbal people within the claim area.

On the basis of the evidentiary affidavit, together with the information provided in Schedule and Attachment F, I am satisfied that the native title claim group have, and the predecessors of those persons had, an association with the claim area.

Accordingly, I am satisfied that the requirements of s.190B(5)(a) have been met.

#### **s.190B(5)(b)**

Relevantly, at Schedule F the applicant refers to the following by reference to the Petrie work:

- that under Aboriginal customary law, each tribe had its own known boundary and invitations were required for others to enter that country;
- the ownership of various natural resources by the whole tribe in general and the ownership of different fruit or flower-trees and shrubs by certain men and women;
- that a man might sometimes own a portion of the river which was a good fishing spot and no-one else could fish there without his permission;
- the belief of the Turrbal people in the curative properties of the dugong; and

- the use of message sticks in the context of ceremonies.

In addition, the evidentiary affidavit:

- makes reference to Turrbal kinship systems;
- describes the customary law which governed movement through country;
- refers to totemic dreaming and the bora ceremony;
- refers to various festivals e.g. Bunya festivals and the dugong festival;
- describes how the applicant's father was trained as Kundri, a worker of magic.

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

I am therefore satisfied that the requirements of s.190B(5)(b) have been met.

#### **s.190B(5)(c)**

As outlined above, I am satisfied that traditional laws and customs exist which give rise to the claim to native title rights and interests by the native title claim group. Section 190B(5)(c) requires that the claim group have continued to hold native title in accordance with those traditional laws and customs.

At Schedule E to the amended application the applicant makes various statements or references of relevance in this regard, including that:

- members of the claimant group are involved in archaeological and land care activities within the claimed area;
- claim group members have used, and continue to use, places within the claimed area for gathering;
- members have used natural resources (such as the Brisbane River, Mt Coot-tha, Kangaroo Point Rocks and Kurilpa Point) in the recording of music video clips for cultural, spiritual, customary and traditional purposes;
- the Turrbal people have exercised their traditional right to refuse access by particular people to particular sites within the claim area;
- the Turrbal people have exchanged message sticks for other goods;
- when the Turrbal people undertake welcome to country ceremony, they sing traditional songs and tell stories of their people and that the Turrbal people maintain their beliefs, practices and institutions through such ceremonies;
- the Turrbal people own and control information comprising and concerning the traditional lore, laws and customs of the Turrbal people in relation to the area;
- the father of a member of the claim group was buried within the claim area in accordance with Turrbal traditions and customs in 1998; and
- Turrbal people continue to live in the claim area

Additional details of relevance to this condition are contained at Schedules F and G of, and Attachment F to, the amended application.

Further, the evidentiary affidavit states that:

- the applicant has been able to continue her culture through the singing of songs, dancing and telling stories to her children and grandchildren;
- the applicant has continued to collect Bunya nuts; and
- the young people bring traditional foods to the applicant to share, in particular echidna, turtle or fish.

On the basis outlined above, I am satisfied that there is a sufficient factual basis to support the assertion that the native title claim group have continued to hold the native title in accordance with their traditional laws and customs.

I am therefore satisfied that the requirements of s.190B(5)(b) have been met.

190B6

**Prima facie case:**

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

The application passes the condition contained in s190B(6).

**Reasons for Decision**

There being sufficient material and information to satisfy me on a prima facie basis that there is a sufficient factual basis to ground a claim for native title, it follows that there is sufficient information and material to ground native title rights and interests which rely upon or are parasitic upon the native title right to land or waters (Ward v WA 159 ALR 483 at 509-510). The activities or practices may be a modern form of the exercise of native title rights and interests that rely upon the native title. It is immaterial that the laws and customs that ground the native title have undergone change since sovereignty, provided that the general nature of the connection between the indigenous people and the land remains.

I have reached the conclusion that the following rights and interests claimed can be prima facie established on the basis of:

- Schedules E & F of, and Attachments F & G to, the amended application;
- the applicant's affidavit pursuant to s.62 ("s.62 affidavit") where she deposes to the contents of the application being true; and
- the undated evidentiary affidavit of the applicant contained in the application ("evidentiary affidavit").

There is no information before me that would impugn or cause me to doubt the contents of any of this material.

- 1) The right to have access to and use of the natural resources in, on and above the area, including the right to:
  - maintain and use the area;
  - conserve the natural resources in, on and above the area;
  - safeguard the natural resources of the area for the benefit of indigenous inhabitants;
  - manage the area for the benefit of the indigenous inhabitants;
  - use the natural resources in, on and above the area for social, cultural, economic, religious, spiritual, customary and traditional purposes;
- 2) The right to determine access rights in relation to entry to the area by others, including the right to grant, deny or impose conditions in relation to entry on the area;
- 3) The right to determine use rights in relation to activities that may be carried out by others on the area, including the right to grant, deny, or impose conditions in relation to activities that may be carried out on the area;
- 4) The right to exercise and carry out economic life (including by way of barter) on the area, including hunting, fishing, creating, growing, producing or harvesting of natural resources;
- 5) The right to discharge cultural, spiritual, traditional and customary rights, duties, obligations and responsibilities on, in relation to, and concerning the area, including to:
  - preserve sites of significance to the Turrbal people and other indigenous people in the area;
  - determine, give effect to, pass on, and expand the knowledge and appreciation of the culture and tradition;
  - regard the area as part of the inalienable affiliation of the Turrbal people and endure that the

	<p>use of the area is consistent with that affiliation;</p> <ul style="list-style-type: none"> <li>• maintain beliefs, practices and institutions through ceremony and proper and appropriate custodianships of the area and special sacred sites;</li> <li>• as a matter of customary law, own and control information comprising and concerning the traditional lore, law and customs of the Turrbal people in relation to the area; and</li> <li>• bury Turrbal dead in the area.</li> </ul> <p>6) The right to inherit, dispose of, or confer rights and interests in relation to the area on others in accordance with custom and tradition;</p> <p>7) The right to decide who was entitled to rights and interests in relation to the area;</p> <p>8) The right to resolve disputes in relation to the area;</p> <p>9) The right to prohibit any unauthorised use, or use inconsistent with Turrbal lore, law or custom, of the area or the resources in, on or above it; and</p> <p>10) The right to live on and establish residences on the area.</p> <p>In so finding that each of the native title rights and interests claimed by the applicants can be established on a prima facie basis, I note that:</p> <ul style="list-style-type: none"> <li>• Attachment B of the amended application states that the application does not include a claim for exclusive possession over areas the subject of previous non-exclusive possession acts as defined in the Act; and</li> <li>• the applicant has acknowledged at paragraph 1 of Schedule E that: <i>“the traditional rights and interests of the Turrbal people have been affected by the valid operation of laws of the Commonwealth and the State of Queensland”</i>.</li> </ul> <p>Having considered the decision in <i>The State of Western Australia-v-Ward</i> [2000] FCA 191, I find that it is not possible to register the following claimed rights and interests:</p> <p>6), 7) and 8).</p> <p>The claimed rights and interests in paragraphs 6, 7 &amp; 8 are neither rights and interests involving physical presence on the claimed land or activities on the land associated with traditional, social and cultural practices and are therefore cannot be registered.</p>
--	---



<p><b>190B7</b></p>	<p><b><i>Traditional physical connection:</i></b></p> <p><b><i>The Registrar must be satisfied that at least one member of the native title claim group:</i></b></p> <p><b><i>(a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or</i></b></p> <p><b><i>(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 land or waters) by:</i></b></p> <p style="padding-left: 20px;"><b><i>(i) the Crown in any capacity; or</i></b></p> <p style="padding-left: 20px;"><b><i>(ii) a statutory authority of the Crown in any capacity; or</i></b></p> <p style="padding-left: 20px;"><b><i>(iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such holder of a lease.</i></b></p>
---------------------	--

The application passes the condition contained in s190B(7).

## Reasons for Decision

Under s.190B(7)(a) I must be satisfied that at least one member of the native title claim group has or previously had a traditional physical connection with any part of the land or waters covered by the application.

Whilst Schedule M states: "*The Turrbal traditional physical connection report will be submitted at a later date when this application comes up for registration under section 190A of the Act*", the applicant has not provided the Tribunal with a specific report in this regard for the purpose of registration testing or otherwise. However, as outlined above in my reasons in respect of s.190B(5), I am satisfied that the application presents evidence of a continuing and/or previous physical connection with the area the subject of the application by members of the claim group. I am further satisfied that much of that connection occurs in accordance with traditional customs and practices.

In particular, I note the following with regard to the applicant:

- that she is the only Turrbal *Budulem* elder [item (v) of s.62 affidavit];
- that she has: "*always had a spiritual and physical connection to the Brisbane area*" [p.2, para 2 evidentiary affidavit];
- that she has resided within the claim area on and off since the late 1930's [ p.3, para 1 evidentiary affidavit];
- that she has been able to continue her culture through the singing of songs, dancing and telling stories to her children [p.3, para 2 evidentiary affidavit];
- that she has been able to continue certain cultural activities (subject to restrictions) , including collecting Bunya nuts within the claim area and partaking of traditional food such as echidna and turtle [p.3, para 2 evidentiary affidavit].

In addition, I note that Schedules F and G of the amended application refer to the performance by claim group member and Turrbal songwoman, [name deleted] of certain traditional songs relating to the claim area. [name deleted] is the daughter of the applicant.

Accordingly, I am satisfied that at least one member of the native title claim group currently has and/or previously had a traditional physical connection with any part of the land or waters covered by the application.

<b>190B8</b>	<p><b><i>No failure to comply with s61A:</i></b></p> <p><b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that, because of s61A (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.</i></b></p>
--------------	--

The application passes the condition contained in s190B(8).

## Reasons for Decision

On review of the amended application and supporting affidavits and material and the Tribunal's relevant files, I have formed the conclusion that there has been compliance with s.61A and the provisions of this section are met.



s.61A(1) – Native Title Determination

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

s.61A(2) – Previous Exclusive Possession Acts

At Schedule B of the amended application the applicant states: *“This application does not include any areas subject to a previous exclusive possession act defined under section 23B of the Native title Act save where the Act and/or the common law allows those lands to be part of a Native Title Determination Application.”*

I am satisfied that the application complies with s.61A(2).

s.61A(3) – Previous Non-Exclusive Possession Acts

At Schedule B of the amended application the applicant states: *“This application does not include a claim for exclusive possession over previous non-exclusive possession act areas as defined in section 23F of the Act save where the Act and/or the common law allows such a claim to be part of a Native title Determination Application.”*

I am satisfied that the applicant is not seeking exclusive possession over the areas the subject of previous non-exclusive possession acts.

s.61A(4) – ss.47,47A,47B

At Schedule B of the amended application the applicant states: *“The area covered by this application does not include any area where native title has been validly extinguished except to the extent that the extinguishment is required to be disregarded under section 47, 47A or 47B.”*

Subsection 61A(4) of the Act provides that an application may be made in these terms. Whether or not the applicants have provided sufficient information to bring any area of land and waters covered by the application within the ambit of sections 47, 47A and 47B of the Act is a matter to be settled in another forum.

I am required to ascertain whether this is an application that should not have been made because of the provisions of s61A. In my opinion, the applicant’s express statements with respect to the provisions of that section are sufficient to meet the requirements of s.190B(8). It follows therefore that the application passes this condition.

<b>190B9</b> <b>(a)</b>	<b><i>Ownership of minerals, petroleum or gas wholly owned by the Crown:</i></b> <b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></b>  <b><i>(a) to the extent that the native title rights and interests claimed consist or include ownership of minerals, petroleum or gas - the Crown in right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;</i></b>
----------------------------	--

The application passes the condition contained in s190B(9)(a).

#### **Reasons for Decision**

At Schedule Q of the amended application, the applicant states that the applicant does not claim ownership of minerals, petroleum or gas wholly owned by the Crown.

I am satisfied that this statement ensures that the application complies with the requirements of s.190B(9)(a).

<b>190B9</b> <b>(b)</b>	<b><i>Exclusive possession of an offshore place:</i></b> <b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></b>  <b><i>(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;</i></b>
----------------------------	---

The application passes the condition contained in s190B(9)(b).

#### **Reasons for Decision**

At Schedule P of the amended application the applicant states that there is no claim to exclusive possession of all or part of an offshore place.

The claim area does not include any offshore place.

<b>190B9 (c)</b>	<p><b><i>Other extinguishment:</i></b></p> <p><b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></b></p> <p><b><i>(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)).</i></b></p>
----------------------	---

The application passes the condition contained in s190B(9)(c).

#### **Reasons for Decision**

The amended application and supporting material, and the relevant Tribunal files do not disclose, and nor am I otherwise aware, that the application contravenes the criteria set out in s.190B(9)(c).

In particular, I have had regard to the statement in Schedule B that “*The area covered by this application does not include any area where native title has been validly extinguished except to the extent that the extinguishment is required to be disregarded under section 47, 47A or 47B*”

Further the applicant has stated in Schedule E [para 1] that “*The native title claimants recognises [stet] that the traditional native title rights and interests of the Turrbal people have been affected by the valid operation of laws of the Commonwealth and the State of Queensland.*”

On this basis, I am satisfied that the applicant is not seeking native title rights and interests which have otherwise been extinguished.

The application passes this condition.

**End of Document**