

Reason

Application Name: The Jinibara People
Application (NNTT) No: QC98/45
Application (Fed Cr) No:

QLD
Region: Queensland
Date Application Made: 29/09/98
Date Registration Test: 18/02/2000
Decision made:
Decision: Accepted

Brief history of the application

The application was filed on 29 September 1998 and amended on 5 October 1999. Further amendments were filed on 25 January 2000.

S190B(2) Identification of area subject to native title Met

190B(2)

Description of the areas claimed:

The Registrar must be satisfied that the information and map contained in the application as required by paragraph 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.

Map and External boundaries:

The application at an attachment to Schedule C provides a map clearly depicting the external boundaries of the claim area. I am satisfied that the map submitted with the application (viewed in conjunction with the written description), meets the requirements of s.62(2)(b).

Written Description

In addition to the provision of a map defining the external boundaries of the claim, the applicants at Attachment B to Schedule B of the second amended application (filed 25 January 2000) have provided a detailed written description of the external boundary. I am satisfied that the physical description of the external boundaries meets the requirements of s62(2)(a)(i) .

Internal boundaries

The internal boundaries are described at Attachment B to Schedule B of the second amended application, as follows:

Description of Land Tenure Included in Area:

All land and waters (including rivers and creeks) within the following tenures:-

- (i) *State Forest (5 ha. or more);*
- (ii) *Timber Reserves (5 ha. or more);*
- (iii) *National Parks (5 ha. or more);*
- (iv) *Reserves being:- camping; conservation; drainage; environment; foreshore; nature; and wildlife reserves (1 ha. or more)*
- (v) *Unallocated State land (1 ha. or more);*
- (vi) *All Deeds of Grant in Trust (DOGIT);*
- (vii) *Plus the following waters:-*
(the list of waters appears at attachment A6/5)

The following class exclusions to the internal boundaries appear at page 5 of attachment B to Schedule B:

The following areas are also excluded areas affected by category A past acts (s229) and category A immediate(sic) period acts (s232B) and any areas in relation to which a previous exclusive possession act (s23B) was done, either attributable to the Commonwealth or State of Queensland when it has made provision for that pursuant to s23E Native Title Act.

Class exclusions in the manner of those stated in Attachment B of the amended application amount to information that enables the internal boundaries of the area of the application to be adequately identified. Notwithstanding that the internal boundaries of the area claimed are not marked on the map, information on historical tenure (which is available on public record) can be obtained in respect of each of the allotments the subject of the application. In some instances the extraction of this information from the archives or land tenure records of the Commonwealth, States or Territories can take a long time. I am of the view that it would be onerous, and in some instances impossible, for applicants to obtain lot specific information as to internal boundaries. It is appropriate that internal boundaries described by sufficiently precise class exclusions of tenure be regarded as sufficient for it to be said with reasonable certainty whether native title rights and interests are being claimed in relation to particular land and waters.

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 the particular areas of land or waters.

The application passes this condition.

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.*

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 amended application states as follows:

“By following the matrilineal line all the claimants groups are descendants of Fanny Mason who was a Dala woman and her daughter Lily McKenzie who was a Dala woman of the Jinibara tribe.”

In conclusion, 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.

The application passes this condition.

S190B(4) Identification of claimed native title Met

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.

Schedule E (Attachment E) of the amended application particularises twenty-two (22) rights and interests claimed by the applicants. I am satisfied that this description, as required by s.62(2)(d), is sufficient to allow the native title rights and interests claimed to be readily identified.

The application passes this condition.

S190B(5) Factual basis for claimed native title Met

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.*

Schedule F of the amended application states:

“(a) The Native Title Claim Group has, and the predecessors of those persons had an association with the area. This association has been through the handing down of Jinibara traditions, songs, dance and stories of our traditional lands. We have also continued to hunt and fish on our land in the traditional manner of our people.

(b) Members of the Native Title Claim Group still maintain a close cultural connection with our traditional country. We still practice traditional laws such as never killing animals without the permission of our Elders during the breeding season of the animals. We also never go on any other clan areas without first getting permission of the Elders of that clan, in particular the clan member of the same totem. Permission must be obtained from our Elders before other clan members can come onto our traditional lands.

(c) The Native Title Claim group has continued to hold the native title in accordance with those traditional laws and customs.”

I am satisfied that Schedule F of the amended application contains each of the assertions required pursuant to s.190B(5).

For the reasons outlined below, I am satisfied that there is a sufficient factual basis to support each of the above assertions. The evidence I have found to be probative in making my decision in this regard is from the following sources:

- affidavits of [Applicant 1] sworn 4 and 5 October 1999 (“the [Applicant 1] affidavits”);
- affidavits of [Applicant 2] sworn 4 and 5 October 1999, and 3 August 1999 (“the [Applicant 2] affidavits”);
- Item 3 of the Connection Report entitled “History of Jinibara Claimants” by [Historian – name deleted] (“the Historical Report”)

S.190B(5)(a)

There is a view that the factual basis upon which it is asserted the native title claim group had and have an association with an area must be proved to the satisfaction of the Registrar, or delegate, in respect of each particular parcel or area of the land and waters claimed. The contention is that it is insufficient for the native title claim group to demonstrate that it previously had and still has connection to land or waters in a broader area of traditional country. (It is of course necessary for the area claimed in the application to be within the area asserted to be the broader traditional country.)

Must the native title claim group be able to prove connection to the particular area claimed in the application in order to satisfy this part of the registration test? Or is it sufficient for there to be proven connection to land or waters within the area asserted to be the broader traditional country of the native title claim group (providing that the area claimed in the application falls within the broader traditional country)?

The following views of Mr Justice Lee in *Ward v WA* 159 ALR 483 are pertinent to this issue:

1. At the time sovereignty was asserted by the Crown the radical title in the land of a colony thereby obtained by the Crown was burdened by any native title that existed prior to sovereignty (499).
2. Native title may be extinguished by the Crown but continues until the Crown takes such action by legislature or executive as reveals a clear and plain intention to extinguish it (499).
3. Ancillary to a power to extinguish native title is a power to regulate the exercise of rights that flow from native title and regulation may involve curtailment or suspension of those rights, but not extinguishment (500, 508).
3. At common law native title will exist at sovereignty if an indigenous community had an entitlement to use or occupy at that time. That entitlement arises from local recognition that the presence of the community on the land reflected a particular relationship, or connection, between that community and the land. Use or occupation of the land sufficient to ground native title is adjudged looking at whether the degree of presence on the land is consistent with the needs of a community pursuing traditional practices, habits, customs and usages that form the way of life of the community (500).
4. The survival of a society, and particularly one which was nomadic, may depend on occupation that is sparse and wide-ranging, but the changing locale of a nomadic group is not inconsistent with occupation sufficient to ground native title (501).
5. Where native title has not been extinguished, either by the Crown or by the extinguishment of the group that possessed it, it will continue where connection with the land is substantially maintained by a community which acknowledges and observes, so far as practicable laws and customs based on the traditional practices of its predecessors (501).
6. The activities or practices may be a modern form of exercise of those laws and customs, and the laws and customs may have changed since sovereignty provided that the general nature of the connection between the indigenous people and the land remains (502).
7. Native title at common law is a communal right to land arising from the significant connection of an indigenous society with land under its customs and culture. It is not a mere ‘bundle of rights’ (508).
8. It is under the native title right to land that other native title rights are enjoyed and those other rights are parasitic upon or rely upon the native title (508, 510).
9. Skill and knowledge regarding medicines or food, and the practices of hunting and fishing can be strong evidence of a physical connection and the maintenance of connection generally to the land (538).
10. Where native title is extinguished, rights that are parasitic or dependent upon it also fall with that extinguishment (510).
11. If native title to land is not extinguished, there is no extinguishment of rights that are parasitic or dependent upon it, but the extent to

S190B(6)

Prima facie case

Met

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.

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 native title have undergone change since sovereignty, provided that the general nature of the connection between the indigenous people and the land remains.

Accordingly, it is my view that some of the native title rights and interests claimed by the applicants at Schedule E of the amended application are, prima facie, established.

In deciding which native title rights and interests claimed can prima facie be established, I have relied upon the information contained in the following:

- Affidavits of [Applicant 2] dated 5 October 1999 and 3 August 1999 (“[Applicant 2]”);
- Affidavit of [Applicant 1] dated 5 October 1999 (“[Applicant 1]”);
- Confidential Connection Report: Confidential Material Provided in support of the Jinibara People QG6128/1998 (“the Connection Report”).

Those affidavits and report provide sufficient material and information to satisfy me on a prima facie basis that some of the native title rights and interests claimed by the applicants at Schedule E of the application can be established. The Connection Report includes (at item 4) “Gaiarbau’s Story of the Jinibara Tribe of South-East Queensland”. Gaiarbau (also known as Willie McKenzie) is the brother of the applicants’ great-grandmother (as sworn in paragraph 11 of the [Applicant 2] affidavit dated 5 October 1999).

It must be noted that in the application there are specific limitations or exceptions to the native title rights and interests that are claimed, and they are:

- (a) the native title rights or interests are not claimed in respect of any land which is subject to a previous exclusive possession act (Schedule E);
- (b) the native title rights and interests are not claimed in respect of minerals, petroleum or gas which are wholly owned by the Crown (Schedule E);
- (c) the native title rights and interests are not claimed as exclusive rights or interests over areas where State or Commonwealth governments have lawfully abridged or regulated those rights and interests. Exclusive possession is only claimed where there has been no lawful abridgement or regulation affecting the rights and interests of native title holders (Schedule E).

The claimed native title rights and interests which I am satisfied on a prima facie basis have sufficient evidence to support them, are all subject to the above limitations or exceptions:

1. Ongoing rights to exclusive possession of their land, waters and the resources and attributes of the lands and waters (the “resources”), to the exclusion of all others;
2. Ongoing rights to occupation, use and enjoyment and to determine the future of the land, waters and resources, to the exclusion of all others;
3. Further, or in the alternative, the right to:
 - (a) Exclusive possession of the land, water and resources;
 - (b) Occupation of the land, water and resources;
 - (c) use and enjoyment of the land, water and resources;

The affidavits provide sufficient evidence of the members of the native title claim group exercising and/or having these rights and interests, some of which is detailed below:

- [Applicant 2], paras 8, 20, 21 and 25.
 - [Applicant 1], para 6.
 - Item 4 of the Connection Report
- (d) Exclusively own and control information comprising and concerning the traditional laws and customs of the Jinibara People in relation to the land, water and resources;

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 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 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 holder of a lease.***

There is a view that traditional physical connection must be proved to the satisfaction of the Registrar, or delegate, by the native title claim group in respect of each particular parcel or area of land and waters claimed. The contention is that it is insufficient for the native title claim group to demonstrate that at least one of its members currently has or previously had a traditional physical connection to land or waters in broader area of traditional country. (It is of course necessary for the area claimed in the application to be within the area asserted to be the broader traditional country.)

For the reasons which appear earlier in this decision relating to the area over which it is necessary for the applicant native title claim group show an association, it appears to me that native title could continue to be held by a native title group to all the traditional country, subject valid extinguishing legislative or executive acts, where sufficient connection has been maintained to that traditional area. This will not necessarily be dependent on a native title group having to show physical connection to every parcel or tenement or allotment within that broader traditional area.

It therefore seems to me that given the beneficial nature of the Act, its objects and its preamble, that I should take the view that so long as there is sufficient factual material to show that a member of the claim group has or had traditional physical connection to some part of the traditional land or waters of the claimant group then that will be sufficient.

In this regard, I am satisfied that the areas referred to in the affidavits of [Applicant 2] and [Applicant 1] sworn 5 October 1999 are part of the broader traditional area of the native title claim group. (Refer my reasons above in respect of s.190B(5)(a)).

The applicants assert at Schedule M of the amended application that members of the Native Title Claim Group currently have a traditional physical connection with the claim area.

Further evidence of traditional physical connection is contained in the [Applicant 2] affidavit (paras 20, 21 and 25)

I am satisfied that [Applicant 2]'s affidavit presents evidence of [Applicant 2]'s continuing and/or previous physical connection with the subject of the application. I am satisfied that much of that connection occurs in accordance with traditional customs and practices.

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.

The application passes this condition.

S190B(8)

No failure to comply with section 61A

Met

190B(8)

No failure to comply with s61A:

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 determination or exclusive or non-exclusive possession acts), the application should not have been made.

On review of the applications 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 the application.

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

Schedule B, Attachment B of the amended application excludes any areas in relation to which a previous exclusive possession act (s23B) was done, either attributable to the Commonwealth or State of Queensland when it has made provision for that pursuant to s23E Native Title Act.

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

I am satisfied that the applicants are not seeking exclusive possession over areas the subject of previous non-exclusive possession acts. In Attachment E the application states that: "To the extent that the State or Commonwealth Governments have lawfully and validly abridged or regulated those rights the applicants accept same. Exclusive possession is claimed over areas where lawful abridgment or regulation has not affected the rights of native title holders."

s.61A(4) – ss.47,47A,47B

The applicants do not claim the benefit of ss.47, 47A and 47B.

In view of these matters, I have formed the conclusion that the requirements of S.190B(8) are met.

S190B(9)

No extinguishment etc. of claimed native title

Met

190B(9)

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

(a)

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 right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;

Schedule Q of the amended application states: “No claim is made for 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).

The application passes this condition.

- 190B(9)** *Exclusive possession of an offshore place:*
- (b) *The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, th*
(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;

The application states at Schedule P that “The Applicants make no claim to exclusive possession of offshore places”.

- 190B(9)** *Other extinguishment:*
- (c) *The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, th*
(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)).

The 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 exclusions at attachment B to Schedule B and Attachment E to Schedule E.

Accordingly, I am satisfied that the applicants are not seeking to claim native title rights and interests which have otherwise been extinguished. The application passes this condition.

S190C(2) Information etc required by sections 61 & 62 Met

- Information, etc, required by section 61 and section 62:*
- 190C(2)** *The Registrar must be satisfied that the application contains all details and other information, and is accompanied any affidavit or other document, required by sections 61 and 62.*

Details required in section 61

- 61(3)** Name and address for service of applicant(s)

Reasons relating to this sub-condition

Requirements are met. Page 1 of the amended application filed 5 October 1999 (“the amended application”) identifies the names of the applicants and the address for service is detailed at Part B of the application.

The application passes this condition.

61(4) 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

Reasons relating to this sub-condition

The persons in the native title claim group are described sufficiently clearly (at Schedule A) so that it can be ascertained whether any particular person is in that group.

The application passes this condition.

61(5) Application is in the prescribed form, lodged in the Federal Court, contain prescribed information, and accompanied by prescribed documents and fee

Reasons relating to this sub-condition

The amended application is in the form prescribed by Regulation 5(1)(a) of the Native Title (Federal Court) Regulations 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 amended application is accompanied by affidavits as prescribed by s.62(2)(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.

The application passes this condition.

Details required in section 62(1)

62(1)(a) Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)

Reasons relating to this sub-condition

The applicants have sworn the following affidavits:

- affidavits of *[Applicant 1 – name deleted]* sworn 4 October 1999 and 5 October 1999 respectively;
- affidavits of *[Applicant 2 – name deleted]* sworn 4 October 1999, 5 October 1999, and 3 August 1999 respectively.

I am satisfied that each of the affidavits sworn 4 October 1999 addresses the matters required by s.62(1)(a)(i)-(v).

The application passes this condition.

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

Comment on details provided

Schedule M of the amended application states that members of the claim group have a traditional physical connection with the area. Details as to the factual basis for that connection are contained in the affidavits of *[Applicant 2]* sworn 4 and 5 October 1999, respectively.

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

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 provided by the applicants are sufficient to enable the area covered by the application to be identified with reasonable certainty.

The application passes this condition.

62(2)(a)(ii) Information identifying any areas within those boundaries which are not 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 contained in the amended application and provided by the applicants is sufficient to enable any areas with the external boundaries of the claim area which are not covered by the application to be identified.

The application passes this condition.

62(2)(b) A map showing the external boundaries of the area 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 map provided by the applicants sufficiently identifies the boundaries of the claim area.

The application passes this condition.

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

Reasons relating to this sub-condition

I am of the view that I need only be informed of searches conducted by the applicants in order to be satisfied that the application complies with this condition.

The application complies with this condition.

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

Reasons relating to this sub-condition

A detailed description of the different specific native title rights and interests claimed by the applicants is contained a Schedule E (Attachment E) of the amended application.

The application passes this condition.

62(2)(e)(i) Factual basis – claim group has, and their predecessors had, an association with the area

Reasons relating to this sub-condition

This information is contained at Schedule F of the amended application and in the affidavits of [*Applicant 2*] sworn 5 October 1999 and 3 August 1999.

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.

The application passes this condition.

62(2)(e)(ii) Factual basis – traditional laws and customs exist that give rise to the claimed native title

Reasons relating to this sub-condition

This information is contained at Schedule F of the amended application and in the affidavits of [Applicant 2] sworn 5 October 1999 and 3 August 1999.

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 traditions customs observed by, the native title claim group that give rise to the native title rights and interests claimed.

The application passes this condition.

62(2)(e)(iii) Factual basis – claim group has continued to hold native title in accordance with traditional laws and custom

Reasons relating to this sub-condition

This information is contained at Schedule F of the amended application and in the affidavits of [Applicant 2] sworn 5 October 1999 and 3 August 1999;

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.

The application passes this condition.

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 of the amended application states: *“We still practise our traditional hunting, fishing and gathering of food as taught by our Elders. We still tell the stories of our significant and sacred sites and maintain traditional laws and customs for the area.”*

Further detail as to these activities is contained in the affidavits of [Applicant 2] sworn 5 October 1999 and 3 August 1999.

The application passes this condition.

62(2)(g) 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)

Reasons relating to this sub-condition

Requirements are met. Details are provided at Schedule H of the amended application.

The application passes this condition.

62(2)(h) 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

Reasons relating to this sub-condition

Schedule I of the amended application states that the applicants are not aware of details of any such notices (indicated by the wording “not applicable”).

The application passes this condition.

For the reasons outlined above, it is my decision that the requirements of s.190C(2) are met.

S190C(3) No previous overlapping claim groups Met

Common claimants in overlapping claims:

190C(3) *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 190*

If all three conditions nominated at section 190C(3) apply, I must consider whether any person included in the native title claim group was member of the native title claim group(s) for any previous application(s).

There are four other claimant applications which incorporate parts of the area subject to this application (being QG6083/98, QG6129/98, QG6004/99 and QG6196/98).

Condition (a) of s.190C(3) is that the previous application covered the whole or a part of the area covered by the current application.

Condition (b) of s.190C(3) is that an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made.

Condition (c) of s.190C(3) requires that potential previous application(s) must have been entered onto (or not removed from) the Register a result of consideration under s.190A (the Registration Test).

At the time the current application was made, (taken to be 30 September, 1998), none of the abovementioned applications were on the register as a result of consideration of that application under section 190A.

Further, there is no evidence before me that establishes that there is, or reasonably suggests that there may be, common claimants between subject application and any of the application numbers QG6083/98, QG6129/98, QG6004/99 and QG6196/98.

Accordingly, s.190C (3) does not apply in respect of the subject application.

The application passes this condition.

S190C(4) Identity of claimed native title holders Met

Certification and authorisation:

190C(4)(a) ***The Registrar must be satisfied that either of the following is the case:***

and ***(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***

190C(4)(b) ***(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.***

The application has not been certified pursuant to s. 190C(4)(a).

However, for the reasons stated below in respect of s.190C(5), I am satisfied that each of the applicants are properly authorised to make the application and to deal with matters arising in relation to it.

Commentary on s190C(5)

Schedule R (2) of the application and the affidavits of *[Applicant 2]* and *[Applicant 1]* sworn 4 October 1999, and 5 October 1999 (including attachment KM1) contain this information, and:

- include statements to the effect that each respective 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; and
- set out sufficient grounds upon which I am satisfied that each of the applicants 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 in accordance with a traditional decision making process used by the group.

The application passes this condition.