National Native Title Tribunal

Registration test decision

Application name	Combined Mandingalbay Yidinji-Gunggandji
Name of applicant	Les Murgha, Charles Garling, Stewart Harris and Vincent Mundraby
State/territory/region	Queensland
NNTT file no.	QC99/39
Federal Court of Australia file no.	QUD6016/01
Date application made	25 September 1998 (pre-combined applications)
Date application last amended	25 October 2001

Name of delegate Kate Portus

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

For the reasons attached, I do not accept this claim for registration pursuant to s. 190A of the *Native Title Act 1993* (Cwlth).

For the purposes of s. 190D, my opinion is that the claim does not satisfy all of the conditions in s. 190B.

Date of decision: 21 April 2008

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Kate Portus

Delegate of the Native Title Registrar of his powers under sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cwlth) pursuant to Delegation Instrument dated 27 September 2007

Reasons for decision

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Introduction

The Combined Mandingalbay Yidinji-Gunggandji (QC99/39) application (the application) has been re-tested because of item 90 of the transitional provisions of the *Native Title Amendment Act 2007* (the Amendment Act). That item stipulates that any native title claimant application made before 30 September 1998 and not on the Register of Native Title Claims (the Register) when the Amendment Act commenced, must be re-tested by the Native Title Registrar (the Registrar). The pre-combined applications that resulted in this combined application were made on 25 September 1998, and the application is not currently on the Register.

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

A summary of the result for each condition is provided at Attachment A.

Note: All references in these reasons to legislative sections refer to the *Native Title Act 1993* (Cwlth) (the Act), as in force on 1 September 2007, unless otherwise specified. Please refer to the Act for the exact wording of each condition. For ease of reading, sections, subsections and paragraphs of the Act are denoted with 's.' in headings and elsewhere.

Application overview

The application was:

- first lodged with the Tribunal on 25 September 1998 (that is, the pre-combined applications QC98/40 and QC98/41);
- combined into the application as it stands now after leave was granted to amend and combine the applications on 3 December 1999;
- first tested and accepted for registration by the Registrar on 4 September 2000;
- further amended and re-filed with the Federal Court on 9 February 2001 after leave was granted by the Court. The application was then given its current name;
- preliminarily assessed on 21 June 2001;
- was tested and not accepted for registration by the Registrar on 26 March 2003;
- subject to a s. 66B application that sought to remove one of the persons constituting the applicant—[Claimant 1]. The application was successful and [Claimant 1] was replaced by Charles Garling. [Claimant 1] appealed the decision but it was upheld.

A number of requests for the deferral of the registration test have been received in relation to this application. Requests were made on: 17 December 2002 (granted); 3 March 2003 (not granted); 25 October 2007 (granted) and 28 November 2007 (granted). The latter two extensions of time were granted by me. In relation to the final extension of time, I extended the deadline for testing the application until 31 March 2008 so that an amended application, or additional information, could be provided to the Tribunal. I am testing the application now as the Tribunal neither received additional information nor an amended application from the applicant.

Information considered when making the decision

Subsection 190A(3) directs me to have regard to certain information when testing an application for registration; there is certain information that I *must* have regard to, but I *may* have regard to other information, as I consider appropriate.

However, given that the registration test has in this instance been triggered by item 90 of the transitional provisions of the Amendment Act, I must also abide by item 90(4). This requires me to apply the registration test under s. 190A as if the conditions in ss. 190B and 190C that require the application to be accompanied by certain information or other things, or to be certified or have other things done, also allowed the information or other things to be provided, and the certification or other things to be done, by the applicant or another person *after* the application *was made*.

Attachment B of these reasons lists all of the information and documents that I have considered in reaching my decision.

Procedural fairness steps

As a delegate of the Registrar and as a Commonwealth Officer, when I make my decision about whether or not to accept this application for registration I am bound by the principles of administrative law, including the rules of procedural fairness, which seek to ensure that decisions are made in a fair, just and unbiased way. Procedural fairness requires that a person who may be adversely affected by a decision be given the opportunity to put their views to the decision-maker before that decision is made. They should also be given the opportunity to comment on any material adverse to their interests that is before the decision-maker. The steps that I and other officers of the Tribunal have undertaken to ensure procedural fairness is observed are as follows:

- on 23 April 2007 a letter was sent to the applicant advising of changes to the Act and the need to registration test the application again;
- on 15 May 2007 a letter was sent to the applicant advising of the timeframe for the registration test and opportunity was offered to provide additional information further to the application and/or to amend the application;
- on 4 February 2008, after the final deferral of the registration test to 31 March 2008, a letter was sent to the applicant with a reminder that any additional material was to be provided to the Tribunal, or any finalised amendments were to be filed with the Court, before 18 February 2008. None were received by the Tribunal or the Federal Court.

Procedural and other conditions: s. 190C

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

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

Delegate's comment

I address each of the requirements under ss. 61 and 62 in turn and I come to a combined result for s. 190C(2) at page 11.

I note that I am considering this claim against the requirements of s. 62 as it stood prior to the commencement of the *Native Title Amendment (Technical Amendments) Act 2007* (the Technical Amendments Act) on 1 September 2007. This legislation made some minor technical amendments to s. 62 which only apply to claims made from the date of commencement of the act on 1 September 2007 onwards, and the claim before me is not such a claim.

In the case of *Attorney General of Northern Territory v Doepel* (2003) 133 FCR 112 (*Doepel*) Mansfield J stated that 'section 190C(2) is confined to ensuring the application, and accompanying affidavits or other materials, contains what is required by ss 61 and 62'— at [16]. His Honour also said in relation to the requirements of s. 190C(2): '...I hold the view that, for the purposes of the requirements of s 190C(2), the Registrar may not go beyond the information in the application itself'—at [39].

I am of the view that *Doepel* is authority for the proposition that when considering the application against the requirements in s. 190C(2), I am not to undertake any qualitative or merit assessment of the prescribed information or documents, except in the sense of ensuring that what is found in or with the application are the details, information or documents prescribed by ss. 61 and 62.

Native title claim group: s. 61(1)

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

Result and reasons

The application **meets** the requirement under s. 61(1). In light of s. 190C(2), I must be satisfied that the application contains all the information required by s. 61(1). If the description of the native title claim group in the application indicates that not all persons in the native title group were included, or that it was, in fact, a subgroup of the native title group, then the requirements of s. 61(1) under s. 190C(2) would not be met and the claim could not be accepted for registration. This reasoning is drawn from *Doepel* at [36].

This consideration does not require me to look beyond the information contained in the application and prescribed accompanying affidavits. It also does not require me to undertake some

form of merit assessment of the material to determine whether I am satisfied that the native title claim group has been correctly described: *Doepel* at [36] to [37].

The description of the persons in the native title claim group is found in Schedule A of the application and is as follows:

> The application is made jointly on behalf of the Gungandji people and the Mandingalbay Yidinji people.
>
> The Gungandji people are made up of persons descended from:-
>
> Albert Underwood
> Billy Brown
> Billy Church/Goondor
> Kari, father of George Christian
> Kutubi/Bertie Harris
> Djarradjoen
> Jinny Katchewan of Cape Grafton
> Maggie 1
> Maggie 2
> Nora
> Mandi Tjapir
> Mary Ann
> Menmuny
> King John Barlow
> Merumanai
> Nego
> Nellie married to Loui
> Mandekala and Njemnga/Njewnga of Cape Grafton
> Rosie of Buddabadoo
> Tonkobulo of Kings Beach
> Paddy of Jilji
> Billy of Buddabadoo
> Harry Myngha
>
> And the Mandingalbay Yidinji people are made up of persons descended from Jabulum Mandingalpai (aka Jimmy)
>
> noting that descent can be traced either through patrifilial or matrifilial links, and including those persons who have been adopted into the Gungandji or Mandingalbay Yidinji in accordance with their traditions and customs.

I am satisfied that this description is sufficient for the purposes of s. 61(1). There is no indication from the rest of the application that not all persons in the native title group are included, or that it is, in fact, a subgroup of the native title group.

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

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

Result and reasons

The application **meets** the requirement under s. 61(3). The names of the persons who jointly comprise the applicant are listed at Part A of the application and an address for service of those persons is found at Part B of the application.

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

The application must:

(a) name the persons in the native title claim group, or

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

Result and reasons

The application **meets** the requirement under s. 61(4). Schedule A of the application does not name the persons in the native title claim group but a description of the native title claim group has been provided instead. A qualitative assessment of the sufficiency of the description provided is found in my reasons under s. 190B(3).

Application in prescribed form: s. 61(5)

The application must:

(a) be in the prescribed form,

(b) be filed in the Federal Court,

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

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

Result and reasons

The application **does not meet** the requirements under s. 61(5). The application is in the prescribed form and has been filed in the Federal Court. However it is not accompanied by affidavits properly deposed by the four persons comprising the applicant. Although three of the four required affidavits are attached to the application filed on 9 February 2001, there is no affidavit from Charles Garling attached to the application. It therefore does not contain all the information prescribed in ss. 61 and 62, which is a condition of s. 61(5)(c).

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

The application must be accompanied by an affidavit sworn by the applicant that:

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

(ii) the applicant believes that none of the area covered by the application is also covered by an entry in the National Native Title Register, and
(iii) the applicant believes all of the statements made in the application are true, and
(iv) the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it, and
(v) stating the basis on which the applicant is authorised as mentioned in (iv).

Result and reasons

The application **does not meet** the requirements under s. 62(1)(a). To satisfy the requirements of s. 62(1)(a) the persons comprising the applicant may jointly swear/affirm an affidavit; alternatively each of those persons may swear/affirm an individual affidavit. Individual affidavits sworn by three of the persons jointly comprising the applicant are attached to the application and they address each of the criteria stipulated in s. 62(1)(a)(i) to (v). However, there is no affidavit provided from Charles Garling who also jointly comprises the applicant.

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

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

Delegate's comment

My decision regarding this requirement is the combined result I come to for s. 62(2) at page 11.

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

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

Result and reasons

The application **meets** the requirement under s. 62(2)(a). The information at Schedule B of the application, prima facie, enables the boundaries of the application area and the areas not covered by the application to be identified.

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

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

Result and reasons

The application **meets** the requirement under s. 62(2)(b). Schedule C directs me to the maps contained at Attachment C. These maps show the boundaries of application area in accordance with s. 62(2)(b).

Searches: s. 62(2)(c)

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

Result and reasons

The application **meets** the requirement under s. 62(2)(c). At Schedule D of the application it is stated that 'the Applicants have not conducted any searches'. On this basis, no details and results can be expected to be provided here.

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

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

Result and reasons

The application **meets** the requirement under s. 62(2)(d). A description of the claimed native title rights and interests is contained at Schedule E of the application. I am satisfied that it is not merely a statement to the effect that all rights and interests that may exist or have not been extinguished are claimed.

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

> The application must contain a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist, and in particular that:
> (i) the native title claim group have, and the predecessors of those persons had, an association with the area, and
> (ii) there exist traditional laws and customs that give rise to the claimed native title, and
> (iii) the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

Result and reasons

The application **meets** the requirements under s. 62(2)(e). For s. 62(2)(e) to be satisfied the information in the application needs to be more than a mere recitation of the section, having regard to the authority in *Queensland v Hutchison* [2001] FCA 416 (*Hutchison)* at [17] to [23]. The information contained at Schedule F of the application addresses the requirements of s. 62(2)(e) and it is not a mere recitation of the legislation.

Activities: s. 62(2)(f)

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

Result and reasons

The application **meets** the requirement under s. 62(2)(f). At Schedule G of the application there is information about the activities that the native title claim group 'currently' carry out in relation to the application area.

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

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

Result and reasons

The application **meets** the requirement under s. 62(2)(g). At Schedule H of the application it is stated that there are no known details of other applications and I am satisfied that this meets the requirement that the applicant provide details of any other native title determination or compensation applications of which it is aware.

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

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

Result and reasons

The application **meets** the requirement under s. 62(2)(h). At Schedule I of the application it is stated that there are no known s. 29 notices and I am satisfied that this indicates that the applicant is not aware of any other s. 29 notices and that therefore enough detail has been provided.

Combined result for s. 62(2)

The application **meets** the combined requirements of s. 62(2), because it meets each of the subrequirements of ss. 62(2)(a) to (h), as set out above.

Combined result for s. 190C(2)

The application **does not satisfy** the condition of s. 190C(2), because it **does not** contain all of the details and other information and documents required by ss. 61 and 62, as set out in the reasons above.

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

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

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

(b) the previous application was on the Register of Native Title Claims when the current application was made, and

(c) the entry was made, or not removed, as a result of the previous application being considered for registration under s. 190A.

Result and reasons

The application **satisfies** the condition of s. 190C(3). The Tribunal's Geospatial Services provided an overlap analysis of the application area on 25 March 2008 (the geospatial assessment). On 31 March 2008 I conducted an overlap analysis of the application area via the Tribunal's Geospatial (GIRO II) database. The result of both these analyses shows no applications on the Register that fall within the external boundary of this application. Therefore there are no 'previous overlapping applications' for the purposes of s. 190C(3) and thus no further inquiry needs to be made here.

s. 190C(4) Authorisation/certification

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

(a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application, or

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

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

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

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

Result and reasons

I must be satisfied that the requirements set out in either ss. 190C(4)(a) or (b) are met, in order for the condition of s. 190C(4) to be satisfied. For the reasons set out below, I am **not satisfied** that the requirements set out in either ss. 190C(4)(a) or (b) are met.

Which of the provisions apply—s. 190C(4)(a) or (b)?

The application is not certified pursuant to s. 203BE. I must therefore be 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 pursuant to s. 190C(4)(b).

Are the requirements of s. 190C(5) met?

The application is not certified by the North Queensland Land Council Aboriginal Corporation (NQLC), which is the only recognised Aboriginal and Torres Strait Islander representative body for the application area. Pursuant to s. 190C(5), the application must then include a statement to the effect that the requirement in s. 190C(4)(b) has been met and must briefly set out the grounds on which the Registrar should consider that the requirement in s. 190C(4)(b) above has been met. The application contains the requisite statement and briefly sets out the grounds as required by this section in Part A of the application. On the basis of this information I am satisfied that the application complies with the requirements in s. 190C(5).

Who must authorise the applicant to make the application and to deal with matters arising in relation to it?

The courts have said that the requirement set out in the legislation that the applicant be authorised by 'all the persons' in the native title claim group does not necessarily mean that each and every member of the claim group must authorise the applicant.

In *Moran v Minister for Land and Water Conservation for NSW* [1999] FCA 1637 it was stated that this requirement 'may be satisfied otherwise than by proving the making of individual decisions by all or most of the members of the group; it would be enough if there was a decision by a representative or other collective body, that exercises authority on behalf of the group under customary law'—at [34].

Further, O'Loughlin J in *Quall v Risk* [2001] FCA 378 said:

> I have some difficulty with the use of the word **all** [in s. 61(1)]. It cannot mean every person in the group for there may be members of the group who are infants or mental defectives and, as such, incapable of giving their authorisation. The whereabouts of other members of the group may not be known. I cannot see how the failure to obtain authorisation from members whose whereabouts are unknown could prevent an otherwise legitimate claim for native title from proceeding—at [33].

I have also considered the decision of French J in *Bolton v Western Australia* [2004] FCA 760. Although His Honour considered the requirements of s. 251B as they apply to the requirements of s. 66B (that is, when seeking to remove and replace an applicant previously authorised), it is my view that his comments as to the operation of the section are equally applicable to the task of the Registrar under s. 190C(4)(b). His Honour said the following about the two decision-making processes provided in s. 251B:

> Provided that the decision is made by a representative or other collective body exercising authority on behalf of the group under customary law or, absent applicable and mandatory customary law, by an agreed process, that will suffice to prove the decision-making process required by s. 66B—at [42].
>
> If, as may well be the case, there is no relevant and mandatory traditional decision-making process applicable to the making and conduct of a native title determination application then a process 'agreed to and adopted by the persons in the native title claim group' will suffice as the source of authority for applicants representing members of the group. That is no light requirement. It means that the authorisation process must be able to be traced to a decision of the native title claim group who adopt that process. The conferring and withdrawal of authority for the purposes of a s 66B application must be shown as flowing from the relevant native title claim group—at [44]

In *Lawson on behalf of the 'Pooncarie' Barkandji (Paakantyi) People v Minister for Land and Water Conservation for the State of New South Wales* [2002] FCA 1517, Stone J said:

> If there is no traditional process of decision-making 'in relation to authorising things of that kind' then, in accordance with s251B(b), authorisation in accordance with a process of decision-making 'agreed to and adopted, by the persons in the native title claim group' is sufficient. In s251B(b) there is no mention of 'all' and…the subsection does not require that 'all' the members of the relevant claim Group must be involved in making the decision. Still less does it require that the vote be a unanimous vote of every member…It is sufficient if a decision is made once the members of the claim group are given every reasonable opportunity to participate in the decision-making process—at [25].
>
> Given that [there was a] well-attended meeting [that] was appropriately advertised and that there was no dissent from any of the resolutions that were passed, it can safely be assumed that the resolutions approved by meeting have been approved by the Claim Group. As there was no dissent from the motions put to the meeting…it is not necessary for me to decide here whether a decision is valid if it is made in the face of some dissent—at [27].

What is the process that must be used to authorise the applicant?

Section 251B defines the term 'authorise' and provides that an applicant's authority to make an application must be given by the rest of the native title claim group in one of two ways, those being the alternative processes described in paragraphs 251B(a) and (b):

> (a) in accordance with any traditional process mandated for authorising 'things of this kind' (i.e. authorising an applicant to make a native title determination application), where one exists; or
>
> (b) in any other case, by an agreed or adopted process in relation to authorising things of that kind.

In other words, the second of the two processes under s. 251B may only be employed where there is no traditional process mandated for authorising things of that kind: *Evans v Native Title Registrar* [2004] FCA 1070 at [7] and [52].

Am I satisfied that the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it?

As can be seen from this case law, proper authorisation of a native title determination application is significant to the prospects of the application and is 'no light requirement'. This case law also raises the fundamental issues of authorisation—the necessity for the members of a properly constituted native title claim group (but not necessarily all of them) to authorise one or more persons, through a decision-making process that is mandated by traditional law and custom, or an agreed and adopted contemporary process of decision-making, to make the application and make other important decisions with respect to the application.

In *Ward v Northern Territory* 2002 FCA 171, O'Loughlin J considered material that suggested an authorisation meeting of a claim group had taken place. His Honour raised the following questions when considering the quality of that material:

> There is no information about that meeting. Who convened it and why was it convened? To whom was notice given and how was it given? What was the agenda for the meeting? Who attended the meeting? What was the authority of those who attended? Who chaired the meeting or otherwise controlled the proceedings of the meeting? By what right did that person have control of the meeting? Was there a list of attendees compiled, and if so by whom and when? Was the list verified by a second person? What resolutions were passed or decisions made? Were they unanimous, and if not, what was the voting for and against a particular resolution? Were there any apologies recorded?—[24].
>
> It may not be essential that these questions be answered on any formal basis such as in terms of the convening and conducting of a meeting in a commercial atmosphere, but the substance of those questions must be addressed—[25].

The application

At Schedule R it is said that the statement that the applicants are authorised to bring the claim is contained within the application panel on page 2 of the application. It is also stated that the information on authorisation of the applicants to bring the claim is as set out in Part A, section 2 on page 3 of the application. Additionally, the applicant asserts that:

> The Native Title Group also set up Working Groups which include the Applicants and to which the Native Title Claim Group gave the authority to make decisions about the claim and its progress. The Applicants and the working group have, under their authority to act on behalf of the Native Title Claim Group agreed to these amendments to the claim.

The statement at page 2 that the applicants are authorised is nothing more than that. The statement set out in section 2 of Part A of the application is as follows:

> Persons authorised by the native title claimant group for the purpose of a Federal Court Case Management Conference held in Cairns on 12 October 2000 at which conference were present persons within the native title claimant group who, in accordance with the native title claimant group's tradition and custom, had authorised them to act as representatives of the native title claimant group and make decisions about the progress of the matter including the making of this application and the nomination of the persons mentioned above as applicants.
>
> The authority provided for the purposes of the meeting of 12 October 2000 was subsequently confirmed and ratified at a meeting of the native title claimant group held at Yarrabah in December 2000 which confirmation and ratification was carried out in accordance with the native title claimant group's tradition and custom.

I am also provided with affidavits from three of the four persons who jointly comprise the applicant. These affidavits satisfy the requirements of s. 62(1)(a), including ss. 62(1)(a)(iv) and (vi), which are relevant to authorisation.

This is the extent of the material with respect to the authorisation process that I am provided with. As stated already, proper authorisation of a native title determination application is significant to the prospects of the application. The relevant case law shows that there must be a properly constituted claim group, the members of which (but not all) must authorise one or more persons, through a decision-making process that is mandated by traditional law and custom or an agreed

and adopted contemporary process of decision-making, to make the application and make other important decisions with respect to the application. In my view, the material before me relating to authorisation is too brief—it does not contain the required detail of the authorisation process to satisfy these requirements. For example, there is limited information provided with respect to the authorisation process itself—it is not stated anywhere in the application whether the authorisation process used was a traditional decision-making process or an agreed and adopted process. There is no information provided about the content of either the working group meetings or the 12 October 2000 meeting where authorisation is said to have taken place. The information provided is too brief for me to be satisfied that the applicant 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.

Merit conditions: s. 190B

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

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

Result and reasons

The application **satisfies** the condition of s. 190B(2). A description of the application area is contained at Schedule B of the application, which satisfies s. 62(2)(a). This information enables the boundaries of the application area and the areas not covered by the application to be identified. Specifically, at part (1) of that Schedule there is reference to Attachments B1-CMYG, B2-CMYG and B3-CMYG for the purpose of definitions of areas included with the application description. Parts (2) and (3) of Schedule B provide definitions of the general exclusions from the application area. The areas with the external boundary of the application area are described using parcels and part parcels. Decimal geographic coordinates are used to define boundaries of the part parcels and Lots on plan numbers are used to describe the parcels.

The attachments referred to above describe those parts of Lot 207 on Plan NR7310 (one parcel of Yarrabah DOGIT) and Lot 785 on Plan FTY1422 (Timber reserve TR785) included in the application area, using land parcel boundaries, topographic features and decimal geographic coordinates. The description states that the coordinates have been referenced to the AGD84 datum. The notes included in Attachments B2 and B3 state the source of the data and that the coordinates representing cadastral boundaries or topographic features are intended as a guide only.

A map of the application area is referred to in Schedule C, which then directs me to Attachments C1-CMYG to C10-CMYG. Attachment C1 is a monochrome A4 copy of a map prepared by "C&B Group" in July 2001. The map includes the following:

- application areas depicted with dark shading and identified by Lot on plan numbers (north of southern boundary of Lot 27 on Plan NR7310);
- a list of those parts of the application area outside the map, identified by island name and by lot on plan number;
- a table of coordinates of the lines defining the two part parcels;
- references to cadastral parcel boundaries and topographic feature names.

Attachments C2-CMYG to C10-CMYG are monochrome copies of A4 Blinmaps prepared by DNR (Qld) providing greater detail. These maps include the following:

- application area parcels depicted with a bold outline and diagonal hachuring identified by Lot on plan number;
- references to cadastral and topographic feature names;
- scale bar, datum reference, source and currency date notes.

A geospatial assessment and overlap analysis was provided by the Tribunal's Geospatial Services on 10 June 2002. The geospatial analysis, based on the material contained in the application, confirms that the description and maps are consistent and clearly identify the amended (combined) application area with reasonable certainty. I accept this expert advice.
It follows that I am satisfied that it can be said with reasonable certainty, because of the information and map provided, that native title rights and interests are claimed in relation to the particular land and waters described in the application.

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.

Result and reasons

The application **does not satisfy** the condition of s. 190B(3). In *Doepel* , Mansfield J stated that:

> The focus of s. 190B(3)(b) is whether the application enables the reliable identification of persons in the native title claim group. Section 190B(3) has two alternatives. Either the persons in the native title claim group are named in the application: subs 3(a). Or they are described sufficiently clearly so it can be ascertained whether any particular person is in that group: subs (3)(b). Although subs (3)(b) does not expressly refer to the application itself, as a matter of construction, particularly having regard to subs (3)(a), it is intended to do so–at [51].

At [37] His Honour states that the focus of s. 190B(3) is not 'upon the correctness of the description of the native title claim group, but upon its adequacy so that the members of [*sic*] any particular person in the identified native title claim group can be ascertained'.

As the application does not name all native title claim group members individually, s. 190B(3)(a) is not applicable.

My consideration must then turn to whether the description in the application meets the requirement in s. 190B(3)(b). This section requires me 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.

A description that necessitates a further factual inquiry to ascertain whether a person is in the group may still be sufficient for the purposes of s. 190B(3). In *State of Western Australia v Native Title Registrar* (1999) 95 FCR 93; [1999] FCA 1591 Carr J at [64] considered a claim group described as:

> 1. The biological descendants of the unions between certain named people;
> 2. Persons adopted by the named people and by the biological descendants of the named people; and
> 3. The biological descendants of the adopted people referred to in paragraph 2 above.

His Honour referred to this method of identification as 'the Three Rules' and stated:

> The question is whether the application of the Three Rules describes the native title claim group sufficiently clearly so that it can be ascertained whether any particular person is in that group. In my view it does. The starting point is a particular person. It is then necessary to ask whether

> that particular person, as a matter of fact, sits within one or other of the three descriptions in the Three Rules. I think that the native title claim group is described sufficiently clearly. In some cases the application of the Three Rules may be easy. In other cases it may be more difficult. Much the same can be said about some of the categories of land which were used to exclude areas from the claim. It may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described. But that does not mean that the group has not been described sufficiently. It is more likely to result from the effects of the passage of time and the movement of people from one place to another. The Act is clearly remedial in character and should be construed beneficially: *Kanak v National Native Title Tribunal* (1995) 61 FCR 103 at 124. In my opinion, the views expressed by French J in Strickland at para 55…in relation to definition of areas, apply equally to the issue of sufficient description of the native title group–at [67].

The passage of French J in *Strickland v Native Title Registrar* (1999) 168 ALR 242; [1999] FCA 1530 was also referred to, where it was said:

> The Act is to be construed in a way that renders it workable in the advancement of its main objects as set out in s 3, which include providing for the recognition and protection of native title. The requirements of the registration test are stringent. It is not necessary to elevate them to the impossible. As to their practical application to a particular case, subject to the constraints imposed by the law, that is a matter for the Registrar and his delegates and not for the Court–[55].

In my view, s. 190B(3)(b) requires that the description contain an objective method of determining who is in the claim group.

Description of the claim group in the application

The description of the claim group is contained at Schedule A of the application and has been reproduced in my reasons at s. 61(1) above. It is evident that this description requires a further factual inquiry to establish if any particular person is in the group, but this does not affect the sufficiency of the description. The description refers to the claim group being made up of those people who are descended from the specifically listed people. As the case law demonstrates, this approach to a claim group description is within the bounds of the 'Three Rules' test—I am provided with a starting point, that is, the names of the listed ancestors, and from there it is possible, with a further factual inquiry, to work out who is descended from those ancestors and thus who is in the claim group. However, the description goes on to state that the claim group includes 'those persons who have been adopted into the Gungandji or Mandingalbay Yidinji in accordance with their traditions and customs'. I am not provided with any more information about the traditions and customs pursuant to which adoption takes place, which makes my inquiry here difficult. I have not been given sufficient information to establish, objectively, how someone is able to be adopted into this group. As such, I am not satisfied that the claim group has been described sufficiently clearly so that it can be ascertained whether any particular person, that is, in this case an adoptee of the group, is in the claim group.

s. 190B(4) Native title rights and interests identifiable

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

Result and reasons

The application **satisfies** the condition of s. 190B(4). Schedule E of the application contains a description of the rights and interests claimed, satisfying s. 62(2)(d). I must now turn my mind to whether these rights and interests have been described sufficiently to allow them to be readily identified.

In *Doepel* at [16] Mansfield J finds that the inquiry to be carried out under s. 190B(4) appears to be limited to a consideration of the terms of the application and not beyond. In my opinion, this section requires that the native title rights and interests must be able to be identified without reference to material outside the application; that is, they must be identifiable in and of themselves. To expand on this, when rights and interests are described in an application, they must be 'understandable and have meaning', which is an approach confirmed in *Doepel* at [99].

The description in an application of the rights and interests claimed must also provide a certain level of definiteness. In *Western Australia v Ward* (2002) 213 CLR 3; (2002) 191 ALR 1 at [51], the majority of the High Court said:

> A determination of native title must comply with the requirements of s 225. In particular, it must state the nature and extent of the native title rights and interests in relation to the determination area. Where, as was the case here in relation to some parts of the claim area, native title rights and interests that are found to exist do not amount to a right, as against the whole world, to possession, occupation, use and enjoyment of land or waters, it will seldom be appropriate, or sufficient, to express the nature and extent of the relevant native title rights and interests by using those terms.

Further, in *Attorney-General of the Northern Territory v Ward* [2003] FCAFC 283 (the subsequent determination hearing) the Court referred to the passage above and said:

> The argument for an exhaustive, rather than inclusive, list of the incidents of the entitlement is based on para (b) of s 225 of the Act. That paragraph requires 'a determination of ... the nature and extent of the native title rights and interests in relation to the determination area'–at [18].
>
> There must be a specification of the content of the relevant rights and interests. That is why the parties included sub-clauses (a) to (e). It is to those sub-clauses that a reader may look in considering the effect of the determination. They must exhaustively indicate the determined incidents of the right to use and enjoy–at [21].

The information contained at Schedule E of the application outlines native title rights and interests being claimed by the group. The description states that 'the native title rights and interests claimed are the right to exclusive possession, occupation, use and enjoyment of the claimed area as against the whole world, pursuant to the traditional laws and customs of the claim group'. It is then stated that this claim is subject to the valid laws of the Commonwealth and Queensland and to any area covered by a previous non-exclusive possession act. I am satisfied that these exclusive possession rights and interests are understandable and have meaning in and of themselves.

s. 190B(5) Factual basis for claimed native title

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

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

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

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

Delegate's comments

I consider each of the three assertions set out in the three paragraphs of s. 190B(5) in turn and come to combined result for s. 190B(5) at page 24. In coming to my decision on whether each of the requirements of s. 190B(5) have been met, I am to consider the application itself and subject to s. 190A(3), I must also have regard to relevant information that is not contained in the application. The provision of material disclosing a factual basis for the claimed native title rights and interests is the responsibility of the applicant. It is not a requirement that I undertake a search for such material. The authority for this is drawn from *Martin v Native Title Registrar* [2001] FCA 16 at [23].

In *Hutchison* at [25], Kiefel J said that regard may be had to additional information if 'such evidence goes beyond what was required to be set out in the application…section 190B(5) may require more [than what is required for s. 62(2)(e)], for the Registrar is required to be satisfied that the factual basis asserted is sufficient to support the assertion. This tends to assert a wider consideration of the evidence itself, and not of some summary of it'.

In *Doepel*, Mansfield J stated that:

> Section 190B(5) is carefully expressed. It requires the Registrar to consider whether the 'factual basis on which it is asserted' that the claimed native title rights and interests exist 'is sufficient to support the assertion'. That requires the Registrar to address the quality of the asserted factual basis for those claimed rights and interests; but only in the sense of ensuring that, if they are true, they can support the existence of those claimed rights and interests. In other words, the Registrar is required to determine whether the asserted facts can support the claimed conclusions. The role is not to test whether the asserted facts will or may be proved at the hearing, or to assess the strength of the evidence which may ultimately be adduced to establish the asserted facts–at [17].

I now turn to the three requirements in s. 190B(5). In so doing, I will have regard to the information contained in the application, in particular, Schedules F, G and M.

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

I am **not satisfied** that the factual basis provided is sufficient to support the assertion described by s. 190B(5)(a). The first limb of the s. 190B(5) inquiry requires a delegate to be satisfied that the factual basis provided in the application supports the assertion that the claim group *as a whole* has an association with the claim area. This requirement does not, however, extend to a requirement that all members of that claim group have an association with the area at all times. The facts provided must also show that predecessors of the whole claim group had such an association with

the area since sovereignty. The reasoning behind my view that these requirements exist is drawn from *Gudjala People 2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala*) at [51]—[52].

At Schedule F of the application I am provided with generic statements that do not assist me here. These statements include: '[m]embers of the claim group continue to have a close association, including a spiritual connection with the claim area according to their traditional law and custom' and '[m]embers of the claim group continue to use the claim area for traditional hunting and fishing and for the gathering of traditional bush medicines and other materials'—Schedule F at (i) and (iii).

At Schedule G details of the activities said to be currently carried out by the native title claim group are listed. Such activities include residing within the claim area, preservation of special sites and story places and performance of traditional dances and ceremonies. Information of a similar substance, that is, the activities carried out by the claim group on the application area, is contained at Schedule M.

This is the extent of the information I am provided with regarding the association of the claim group and their ancestors with the application area. I am not satisfied that this information is sufficiently fulsome for me to be satisfied that the predecessors of the whole claim group had an association with the claim area since sovereignty. There is simply no information in the application which provides a sufficient factual basis to support this assertion, as required by *Gudjala.*

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

I am **not satisfied** that the factual basis provided is sufficient to support the assertion described by s. 190B(5)(b). The second limb of the s. 190B(5) inquiry requires a delegate to be satisfied that the native title rights and interests of the claim group exist because of the traditional laws and customs acknowledged and observed by that group. In *Gudjala*, Dowsett J paid specific attention to the inquiry to be undertaken at s. 190B(5). His Honour, referring to an application before him which used an apical ancestor model to describe a native title claim group, stated:

> There can be no relevant traditional laws and customs unless there was, at sovereignty, a society defined by recognition of laws and customs from which such traditional laws and customs are derived. The starting point must be identification of an indigenous society at the time of sovereignty… The apical ancestors are used only to define the claim group. However…at some point the applicant must explain the link between the claim group and the claim area. That process will certainly involve the identification of some link between the apical ancestors and any society existing at sovereignty, even if the link arose at a later stage—at [66].

Dowsett J further stated that the application must explain, by reference to traditional laws and customs presently acknowledged and observed, why the claim group is limited to the descendants of the identified apical ancestors. His Honour also held at [81] that there must be a proper basis for inferring that the apparent traditional laws and customs, did in fact, originate in a pre-sovereignty society and are not just laws and customs that have been handed down through two or more generations.

In *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 194 ALR 538 (*Yorta Yorta*) at [79], the High Court held that '"traditional" does not mean only that which is transferred by word of mouth from generation to generation, it reflects the fundamental nature of the native title rights

and interests with which the Act deals as rights and interests rooted in pre-sovereignty traditional laws and customs'.

Once again, I have turned my mind to the statements contained at Schedule F of the application. It is said that 'there exist traditional laws and customs that give rise to native title rights and interests claimed…' Further, there are statements such as '[m]embers of the claim group continue to pass on to their descendants [*sic*] traditional laws and customs stories and beliefs concerning their traditional country including the claim area' and '[m]embers of the claim group continue to exercise a body of traditional laws and customs which has been passed down to them from generation to generation by their forbears and predecessors'.

At Schedule G of the application the applicant asserts that the claim group continue to exercise a body of traditional laws and customs which includes caring for country, controlling access to country, the holding of ceremonies on traditional country, and the use and care for traditional country.

The information provided here is too brief and too generic to be considered a sufficient factual basis to support the assertion under s. 190B(5)(b). There is no identification of a normative society that existed at sovereignty and there is no explanation as to why the current claim group is made up of the members it is said to be, with reference to traditional law and custom. I am not satisfied that there is a sufficient factual basis here to support the assertion that these laws and customs are 'traditional' and that they give rise to the native title rights and interests claimed.

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

I am **not satisfied** that the factual basis provided is sufficient to support the assertion described by s. 190B(5)(c). The third limb of the s. 190B(5) inquiry requires the delegate to be satisfied that the native title claim group has continued to hold their native title rights and interests by acknowledging and observing *traditional* laws and customs in a substantially uninterrupted way. Inherent in this inquiry is that a delegate must be satisfied s. 190B(5)(b) is met. In *Yorta Yorta,* the High Court held that:

> [A]cknowledgment and observance of those laws and customs must have continued substantially uninterrupted since sovereignty. Were that not so, the laws and customs acknowledged and observed now could not properly be described as the traditional laws and customs of the peoples concerned. That would be so because they would not have been transmitted from generation to generation of the society for which they constituted a normative system giving rise to rights and interests in land as the body of laws and customs which, for each of those generations of that society, was the body of laws and customs which in fact regulated and defined the rights and interests which those peoples had and could exercise in relation to the land or waters concerned. They would be a body of laws and customs originating in the common acceptance by or agreement of a new society of indigenous peoples to acknowledge and observe laws and customs of content similar to, perhaps even identical with, those of an earlier and different society—at [87].

As I have formed the view that there is no sufficient factual basis to support the assertion under s. 190B(5)(b), it follows I cannot be satisfied that the requirement of s. 190B(5)(c) has been met. To elucidate, as I am not satisfied that there is a sufficient factual basis to support the assertion that there exist *traditional* laws and customs that give rise to the native title rights and interests claimed, I cannot be satisfied that the claim group have continued to acknowledge and observe those rights

and interests in a substantially uninterrupted manner. It is the substantially uninterrupted acknowledgement and observance of these laws and customs that contributes to their 'traditional' quality.

Combined result for s. 190B(5)

The application **does not satisfy** the condition of s. 190B(5) because the factual basis provided is **not sufficient** to support each of the particularised assertions in s. 190B(5), as set out in my reasons above.

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.

Result and reasons

The application **does not satisfy** the condition of s. 190B(6). As I am of the view that a sufficient factual basis has not been provided to satisfy the requirements of s. 190B(5), it follows that I consider that none of the claimed native title rights and interests can be established prima facie. The reasoning that an application that fails the merit condition at s. 190B(5) must then fail the condition at s. 190B(6) is supported by the decision in *Gudjala* at [87].

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 be expected to currently have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to the land or waters) by:
> (i) the Crown in any capacity, or
> (ii) a statutory authority of the Crown in any capacity, or
> (iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease.

Result and reasons

The application **does not satisfy** the condition of s. 190B(7). Traditional physical connection is not defined in the Act. I have taken this phrase to mean that physical connection should be in accordance with the particular traditional laws and customs relevant to the claim group—'traditional' in the *Yorta Yorta* sense. At [29.19] of the explanatory memorandum to the Act, it is explained that this 'connection must amount to more than a transitory access or intermittent non-native title access'.

Following from my decision at ss. 190B(5), I cannot be satisfied that at least one member of the claim group has a 'traditional' physical connection with the application area. I draw support from my reasoning here from *Gudjala* at [89].

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.

Delegate's comments

Section 61A contains four subsections. The first of these, s. 61A(1), stands alone. However, ss. 61A(2) and (3) are each limited by the application of s. 61(4). Therefore, I consider s. 61A(1) first, then s. 61A(2) together with (4), and then s. 61A(3) also together with s. 61A(4). I come to a combined result at page 26.

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

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

Result and reasons

The application **meets** the requirement under s. 61A(1). On 31 March 2008 I carried out a search of the Register, which confirmed that there are no approved determinations of native title in the application area. The geospatial assessment of 25 March 2008 confirms the same result and I accept this expert advice.

No previous exclusive possession acts (PEPAs): ss. 61A(2) and (4)

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

Under s. 61A(4), s. 61A(2) does not apply if:
(a) the only previous exclusive possession act was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made, and
(b) the application states that ss. 47, 47A or 47, as the case may be, applies to it.

Result and reasons

The application **meets** the requirement under s. 61A(2), as limited by s. 61A(4). Schedule B of the application excludes from the application area any area covered by previous exclusive possession acts as defined in s. 23B. I note that a claim to the benefit of s. 47B is also made in Schedule B such that it is asserted that extinguishment must be disregarded where such claims are made. Section 61A(4) does not prevent an application in these terms.

No exclusive native title claimed where previous non-exclusive possession acts (PNEPAs): ss. 61A(3) and (4)

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

(a) a previous non-exclusive possession act (see s. 23F) was done, and

(b) either:

(i) the act was an act attributable to the Commonwealth, or

(ii) the act was attributable to a state or territory and a law of the state or territory has made provisions as mentioned in s. 23I in relation to the act.

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

(a) the only previous non-exclusive possession act was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made, and

(b) the application states that ss. 47, 47A or 47, as the case may be, applies to it.

Result and reasons

The application **meets** the requirement under s. 61A(3), as limited by s. 61A(4). The application does not claim exclusive native title where previous non-exclusive possession acts were done.

Combined result for s. 190B(8)

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

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

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

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

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

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

Delegate's comments

I consider each subcondition under s. 190B(9) in turn and I come to a combined result at page 27.

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

The application **satisfies** the subcondition of s. 190B(9)(a). At Schedule Q of the application it is stated that the native title claim group 'does not claim ownership of minerals, petroleum or gas where they are wholly owned by the Crown in a manner which is inconsistent with continuing native title rights residing in those substances'.

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

The application **satisfies** the subcondition of s. 190B(9)(b). The application area does not include any offshore waters or place.

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

The application **satisfies** the subcondition of s. 190B(9)(c). Nowhere in the application or in the accompanying documents is it disclosed that the native title rights and interests claimed have otherwise been extinguished, except to the extent that the extinguishment is required to be disregarded under ss. 47, 47A or 47B.

Combined result for s. 190B(9)

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

[End of reasons]

Attachment A
Summary of registration test result

Application name:	Combined Mandingalbay Yidinji Gunggandji
NNTT file no.:	QC99/39
Federal Court of Australia file no.:	QUD6016/01
Date of registration test decision:	21 April 2008

Test condition (see ss.190B and C of the Native Title Act 1993)	Subcondition/requirement	Result
s. 190C(2)		Combined result: Met
	re s. 61(1)	Met
	re s. 61(3)	Met
	re s. 61(4)	Met
	re s. 61(5)	Not met
	re s. 62(1)(a)	Not met
	re s. 62(1)(b)	Met
	re s. 62(2)(a)	Met
	re s. 62(2)(b)	Met
	re s. 62(2)(c)	Met
	re s. 62(2)(d)	Met
	re s. 62(2)(e)	Met
	re s. 62(2)(f)	Met

	re s. 62(2)(g)	Met
	re s. 62(2)(h)	Met
s. 190C(3)		Met
s. 190C(4)		Not met
s. 190B(2)		Met
s. 190B(3)		Not met
s. 190B(4)		Met
s. 190B(5)		Combined result: Not met
	re s. 190B(5)(a)	Not met
	re s. 190B(5)(b)	Not met
	re s. 190B(5)(c)	Not met
s. 190B(6)		Not met
s. 190B(7)		Not met
s. 190B(8)		Combined result: Met
	re s. 61A(1)	Met
	re ss. 61A(2) and (4)	Met
	re ss. 61A(3) and (4)	Met
s. 190B(9)		Combined result: Met
	re s. 190B(9)(a)	Met
	re s. 190B(9)(b)	Met
	re s. 190B(9)(c)	Met

Attachment B
Documents and information considered

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

- all documents in the National Native Title Tribunal's registration test file for this application, including the Combined Mandingalbay Yidinji Gunggandji (QC99/39) native title determination application;
- the National Native Title Tribunal Geospatial (GIRO) database;
- the Tribunal's Geospatial Services assessment and overlap analyses dated 10 June 2002 and 25 March 2008;
- the Register of Native Title Claims;
- the Schedule of Native Title Applications; and
- the National Native Title Register.