

National Native Title Tribunal

REASONS FOR DECISION COVER SHEET

REGISTRATION TEST

(Edited for public disclosure)

DELEGATE :	Jennifer Whyte
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APPLICATION NAME :	Nukunu
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NAME(S) OF APPLICANT(S) :

James Alexander Bramfield, Margaret Elizabeth Smith, Douglas John Graham, Lindsay John Thomas, Rosalie Elizabeth Turner
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NNTT NO	SC96/05
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FEDERAL COURT NO	SG 6012 of 1998
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REGION :	South Australia
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DATE APPLICATION MADE :	10 April 1996
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The delegate has considered the application against each of the conditions contained in s190B and s190C of the *Native Title Act* 1993.

DECISION

The application is ACCEPTED for registration pursuant to s190A of the *Native Title Act* 1993.

Jennifer Whyte
DELEGATE

DATE: 17 January 2000

Brief History of the Application

The Nukunu Native Title Determination Application was lodged with the National Native Title Tribunal on 10 April 1996.

Through their legal representative, Dittons, the Applicants to the Nukunu application, located in the Southern Flinders Ranges region of South Australia, filed amendments to the application in the Federal Court. Leave to amend the application was granted by the Federal Court on 12 March 1999.

All references to “the application” or “amended application” in this decision, unless otherwise stated, refer to the application as most recently amended.

Information considered in making the decision

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

- ◆ The Working Files, Registration Test Files, Legal Services Files and Federal Court Application and Amendment Files for SC96/5;
- ◆ Working Files and related materials for native title applications overlapping the area of the Nukunu application;
- ◆ The National Native Title Tribunal's Geospatial Database;
- ◆ The Register of Native Title Claims;
- ◆ The Native Title Register;
- ◆ Determination of Representative ATSI Bodies; their gazetted boundaries;
- ◆ Affidavits provided to the Tribunal by the Applicants for the purpose of the registration test;
- ◆ Anthropological and heritage studies

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

A. Procedural Conditions

190C2

Information, etc, required by section 61 and section 62:

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

Reasons for Decision

I refer to the individual reasons for decision in relation to sections 61 and 62, set out below. For the reasons outlined I find that the procedural requirements of sections 61 and 62 have been met. Accordingly, I find that the application meets the requirements of s190C(2).

Details required in section 61**61(3)**

Name and address for service of applicant(s)

Reasons relating to this sub-condition

Application **passes** the condition

The Federal Court Form 1 has been completed and sets out details of the applicants, their legal representative and address for service.

I am satisfied there has been compliance with the procedural requirements of s61(3).

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

Application **passes** the condition

An exhaustive list of names of the persons in the native title claim group has not been provided so the requirements of s61(4)(a) are not met.

However, I find that the requirements of 61(4)(b) have been met. The description at Schedule A, and continued at Attachment A, of the application describes 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. Refer also to these reasons for decision in relation to s190B(3).

I am satisfied there has been compliance with the procedural requirements of s61(4).

61(5)	<i>Application is in the prescribed form¹, lodged in the Federal Court, contain prescribed information², and accompanied by prescribed documents and fee</i>
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Reasons relating to this sub-condition	Application passes the condition
<p>s61(5)(a) As required, the application is in the form prescribed by Regulation 5(1)(a) Native Title (Federal Court) Regulations 1998.</p> <p>s61(5)(b) As required, the amended application was filed in the Federal Court. The pre-amended application was given to the Native Title Registrar, as mentioned in s61 of the (unamended) Act and is therefore taken to have been made to the Federal Court in accordance with Table A (Application, Savings or Transitional Provisions), Schedule 5, Part 3, item 6, case 3.</p> <p>s61(5)(c) The application meets the requirements and contains all the information as prescribed in s62. I refer to my reasons for decision in relation to those sections.</p> <p>s61(5)(d) As required, the application is accompanied by the prescribed documents, being:</p> <ul style="list-style-type: none"> • affidavits, as prescribed by s62(1)(a); and • a map, as prescribed by s62(1)(b). <p>I refer to my reasons for decision in relation to those sections.</p> <p>I note that s190C(2) only requires me to consider details, other information and documents required by s61 and s62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee to the Federal Court.</p> <p>I am satisfied there has been compliance with the procedural requirements of s61(5).</p>	

Details required in section 62(1)

62(1)(a)	<i>Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)</i>
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Reasons relating to this sub-condition	Application passes the condition
<p>Each of the five applicants have sworn an affidavit, identical in content, in order to address the matters required by s62(1)(a)(i) – s62(1)(a)(v).</p> <p>The affidavits identify the deponents by name, address and occupation. All have been dated, signed by the deponent and witnessed by a person qualified to do so.</p>	

¹ Note that in applications made before 30 September 1998, the application does not need to be in the prescribed form as required by the amended NTA. Note also that such applications are deemed to have been lodged in the Federal Court.

² Note also that the “prescribed information” is that required by s62 as set out in the text of this document under “Details required in section 62(1)”.

The affidavits meet all the requirements of s62(1)(a)(i) to s62(1)(a)(v) at paragraphs (a) to (e) respectively.

I am satisfied there has been compliance with the procedural requirements of s62(1)(a).

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

Comment on details provided

It is not a mandatory requirement that details of traditional physical connection are contained in the application for the purpose of s62(1)(c).

However, some details have been provided in the application at Schedules G and M.

There is also additional information, provided by way of further information, from members of the native title claim group which outlines aspects of traditional physical connection.

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

Application **passes** the condition

A written description of the external boundary of the area claimed has been included at Schedule B. A map of the area claimed, depicting the external boundary, is also included in the amended application at Attachment C.

For the reasons set out in relation to s190B(2) I am satisfied that this information is sufficient to meet the requirements of s62(2)(a)(i).

I am satisfied there has been compliance with the procedural requirements of s62(2)(a)(i).

62(2)(a)(ii)***Information identifying any areas within those boundaries which are not covered***

Reasons relating to this sub-condition

Application **passes** the condition

At Schedule B and Attachment B the applicants have provided a written description, identifying the areas within the external boundary of the area claimed that are not covered by the application.

Attachment B describes, by way of formula, land tenure specifically excluded from the claim area.

For the reasons set out in relation to s190B(2) I am satisfied that this information is sufficient to meet the requirements of s62(2)(a)(ii).

I am satisfied there has been compliance with the procedural requirements of s62(2)(a)(ii).

62(2)(b)	<i>A map showing the external boundaries of the area covered by the application</i>
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Reasons relating to this sub-condition	Application passes the condition
<p>A map clearly depicting the external boundary of the area claimed is attached to the application at Attachment C.</p> <p>For the reasons set out in relation to s190B(2) I am satisfied that the map is sufficient to meet the requirements of s62(2)(b).</p> <p>I am satisfied there has been compliance with the procedural requirements of s62(2)(b).</p>	

62(2)(c)	<i>Details/results of searches carried out to determine the existence of any non-native title rights and interests</i>
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Reasons relating to this sub-condition	Application passes the condition
<p>The requirements of s62(2)(c) can be read widely to include all searches conducted by any person or body. However, I am of the view that I need only be informed of searches conducted by the applicants, in order to be satisfied that the application complies with this condition. It would be unreasonably onerous to expect applicants to have knowledge of and obtain details about all searches carried out by every other person or body.</p> <p>Schedule D, in conjunction with Attachment D, of the application sets out details of searches conducted by the applicants.</p> <p>There is no information to which I must have regard that contradicts the information provided by the applicants.</p> <p>I am satisfied there has been compliance with the procedural requirements of s62(2)(c).</p>	

62(2)(d)	<i>Description of native title rights and interests claimed</i>
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Reasons relating to this sub-condition	Application passes the condition
<p>The condition requires the application to contain:</p> <ol style="list-style-type: none"> 1. a description of the native title rights and interests claimed; and 2. details of any activities carried out by members of the native title claim group in exercise of those rights and interests. <p>Further, this section requires the description to not merely consist of a statement to the effect that the native title rights and interests are all those that may exist or that have not been extinguished at law.</p> <p>A description of the native title rights and interests claimed is provided at Schedule E of the</p>	

application. The contents of Schedule E are included under s190B(4) and s190B(6) of this decision. The description includes a list of nine particularised rights and interests. I interpret this to be a complete list rather than a non-exhaustive list of particulars of some larger right.

In accordance with the requirements of s62(2)(d) the rights and interests claimed do not merely consist of a statement to the effect that the rights and interests are all those that may exist or that have not been extinguished at common law.

In my view the rights and interests specified by the applicants are defined in a sufficiently clear manner so as to be readily identifiable.

Additionally, Attachment G identifies some of the activities members of the Nukunu native title claim group continue to undertake in relation to the land and waters within the claim area. (Refer also to these reasons for decision in relation to s62(2)(f)) These activities constitute a general description of activities in exercise of the rights and interests claimed by the applicants.

I am satisfied there has been compliance with the procedural requirements of s62(2)(d).

62(2)(e)

Application contains a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist

Reasons relating to this sub-section

Application **passes** the condition

This section requires satisfaction that the application contains a description of the factual basis on which it is asserted that the native title rights and interests exist. The description must include each of the three elements identified in the sub-sections 62(2)(e)(i), (ii) and (iii). A consideration of the extent or sufficiency of the description is not required. That inquiry is conducted in relation to s190B(5).

I find that there is a general description of the factual basis set out in Schedule F of the application. I note further that some details of activities carried out by members of the Nukunu native title claim group are provided at Attachment G to the application and this information supplements the general description at Schedule F.

I refer to the separate reasons set out below in relation to each of the particular facts identified in each of s62(2)(e)(i), (ii) and (iii). As set out below, I find that each of the particular facts required are included in the general description of the factual basis set out in the application.

I am satisfied there has been compliance with the procedural requirements of s62(2)(e).

62(2)(e)(i)

Factual basis – claim group has, and their predecessors had, and association with the area

Reasons relating to this sub-condition

Application **passes** the condition

The factual basis for the assertion that the native title claim group has, and their predecessors had, an association with the area is outlined at Schedule F of the application. I have detailed the contents of Schedule F in this decision in relation to s190B(5). Further information supporting this assertion is contained at Schedules A, G and M of the application.

I am satisfied that the application sets out a general description of the factual basis on which the asserted native title rights and interests claimed exist.

I am satisfied there has been compliance with the procedural requirements of s62(2)(e)(ii).

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

Application **passes** the condition

The factual basis for the assertion that traditional laws and customs exist that give rise to the claimed native title is outlined at Schedule F of the application. I have detailed the contents of Schedule F in this decision in relation to s190B(5). Further information supporting this assertion is also contained at Schedule A, G and M of the application.

I am satisfied that the application sets out a general description of the factual basis on which the asserted native title rights and interests claimed exist.

I am satisfied there has been compliance with the procedural requirements of s62(2)(e)(ii).

62(2)(e)(iii)

Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs

Reasons relating to this sub-condition

Application **passes** the condition

The factual basis for the assertion that the native title claim group has continued to hold native title in accordance with traditional laws and customs is outlined at Schedule F of the application. I have detailed the contents of Schedule F in this decision in relation to s190B(5). Further information supporting this assertion is also contained at Schedule A, G and M of the application.

I am satisfied that the application sets out a general description of the factual basis on which the asserted native title rights and interests claimed exist.

I am satisfied there has been compliance with the procedural requirements of s62(2)(e)(iii).

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	Application passes the condition
<p>The application provides general details of activities that the Nukunu native title claim group undertake in relation to the area claimed. Schedule G refers to Attachment G which states:</p> <p><i>Members of the Nukunu Native Title Claim Group remain in occupation and possession. The following are merely a sample of the activities they currently enjoy and the use they currently make of the Nukunu land and waters focussing on the Applicants as a subset of the Nukunu Native Title Claim Group:</i></p> <p><i>Access and reside on Nukunu land and waters,</i></p> <ul style="list-style-type: none"> <i>Residing on Nukunu land</i> <i>Visiting and travelling through Nukunu land and waters</i> <p><i>Enjoy the resources of the Nukunu land and waters;</i></p> <ul style="list-style-type: none"> <i>Hunting, gathering bush foods, fishing, crabbing</i> <i>Preparing and cooking food from the land and waters</i> <i>Utilising sources of fresh water</i> <p><i>Make decisions about the use and enjoyment of the Nukunu land and waters;</i></p> <ul style="list-style-type: none"> <i>Managing the resources</i> <i>Maintaining, protecting and rehabilitating the natural environment</i> <i>Managing, protecting, preserving and interpreting their heritage, cultural and intellectual property</i> <i>Negotiating with Department of Environment Heritage and Aboriginal Affairs about future management arrangements within Mount Remarkable National Park and other Conversation Parks on Nukunu land</i> <p><i>Control the access of others to and conduct on the Nukunu land and waters;</i></p> <ul style="list-style-type: none"> <i>Giving, refusing permission or placing conditions on access to Nukunu land and waters</i> <i>Undertaking work area clearances</i> <i>Membership of South Australian Aboriginal Heritage Committee for the area covering Nukunu land and waters</i> <i>Pursuing this Application for recognition of Nukunu Native Title rights and interests</i> <p><i>Control the use and enjoyment of others of the resources of the Nukunu land and waters;</i></p> <ul style="list-style-type: none"> <i>Undertaking work area clearances</i> <i>Membership of South Australian Aboriginal Heritage Committee for the area covering the Nukunu land and waters</i> <i>Pursuing this Application for recognition of Nukunu Native Title rights and interests</i> <i>Negotiating with Department of Environment Heritage and Aboriginal Affairs about future management arrangements within Mount Remarkable National Park and other Conservation Parks on Nukunu land</i> 	

Maintain and protect sites and areas of importance within Nukunu land and waters according to traditional laws and customs;

- *Protecting places and objects of significance to the Nukunu Native Title Claim Group*
- *Protecting and sustaining spiritual aspects of Nukunu sites and areas of significance*
- *Recording sites of significance and implementing physical protective and/or rehabilitation programmes*
- *Negotiating with Department of Environment Heritage and Aboriginal Affairs about the protection of sites within Mount Remarkable National Park and other Conservation Parks on Nukunu land*
- *Seeking support from the Aboriginal Legal Rights Movement, the Representative Body to take action over pollution of Nukunu waters*

Control, maintain, protect and prevent the dissemination and misuse of cultural knowledge of members of the Nukunu Native Title Claim Group;

- *Requiring anthropologists and other consultants to enter into contracts requiring Nukunu cultural information to be kept confidential*
- *Senior members of the group instruct junior members of the group about the Nukunu traditional laws and customs about the protection of cultural information*

Transmit knowledge and information concerning Nukunu land and waters to those in younger generations according to Nukunu traditional laws and customs;

- *Educating their children and others in Nukunu culture and traditions associated with the Nukunu land and waters*

Carry out and maintain mortuary practices according to Nukunu traditional law and custom

- *Carrying out ritual activities following the death of a member of the Nukunu Native Title Claim Group*

There is also additional information contained in affidavit evidence (discussed in relation to s190B(5), s190B(6) and s190B(7)).

This section requires details of current activities. I do not regard this as requiring an exhaustive or minute description of activities. Rather, I find a general description that traditional law business and customary activities are carried out, together with the (non-exhaustive) particulars of these activities, to constitute sufficient detail.

I consider that the identified activities of the group in relation to the claim area are described in general terms by Attachment G.

I am satisfied there has been compliance with the procedural requirements of s62(2)(f).

62(2)(g)	<i>Details of any other applications to the High Court, Federal Court or a recognised State/Territory body the applicant is aware of (and where the application seeks a determination of native title or compensation)</i>
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Reasons relating to this sub-condition	Application passes the condition
<p>Details are provided at Schedule H of the amended application.</p> <p>Three applications are listed as overlapping the Nukunu application, these being:</p> <ul style="list-style-type: none"> • SG 6001/98 Adnyamathanha People (SC99/1) • SG 6004/98 Kuyani #2 (SC95/4) • SG 6011/98 Barngarla (SC96/4) <p>I have also referred to a list of native title applications that currently overlap the Nukunu application, obtained from the Tribunal's Geospatial Database. This list was current at the time of making this decision.</p> <p>According to the Tribunal's Geospatial Database, SG 6013/98 Kokatha (SC99/2) is also an overlapping application. However, the Tribunal's Geospatial Unit has analysed the apparent overlap and has been confirmed that this is not a true overlap. Rather, it is a technical issue arising where the boundaries coincide.</p> <p>I am satisfied there has been compliance with the procedural requirements of s62(2)(g).</p>	

62(2)(h)	<i>Details of any S29 Notices (or notices given under a corresponding State/Territory law) in relation to the area, and the applicant is aware of</i>
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Reasons relating to this sub-condition	Application passes the condition
<p>Section 62(2)(h) requires the application to contain the details of any notices given under s29 (or State law equivalent) of which the applicants are aware.</p> <p>Schedule I of the application provides details of the notices that have been given since 30 September 1998 and which relate to the whole or part of the area of the application. The details are consistent with the knowledge of this Tribunal.</p> <p>I am satisfied there has been compliance with the procedural requirements of s62(2)(h).</p>	

190C3	<p>Common claimants in overlapping claims:</p> <p>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:</p> <ul style="list-style-type: none"> (a) the previous application covered the whole or part of the area covered by the current application; and (b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and (c) the entry was made, or not removed, as a result of consideration of the previous application under section 190A.
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I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

In assessing the Nukunu application against this condition I have relied primarily upon information obtained from the Tribunal's Geospatial Unit. I also rely upon his Honour French J's decision in *Strickland v Native Title Registrar* [1999] FCA 1530.

At the time of making this decision there were three applications overlapping with the Nukunu application, these being:

- SG 6001/98 Adnyamathanha People (SC99/1);
- SG 6004/98 Kuyani #2 (SC95/4); and
- SG 6011/98 Barngarla (SC96/4)

In the case where there is a person who is included in the native title claim group and who is also a member of the claim group for an overlapping application, the current application will fail to meet the conditions of s190C(3) if:

- (a) the previous application covered the whole or part of the area covered by the application and
- (b) an entry relating to the claim in the previous application was on the Register of Native Title Claims at the time the application was made and
- (c) the entry was made or not removed as a result of passing the registration test

Each of these pre-conditions must be met before an application will fail this condition. In respect of the overlapping applications detailed above, all three preconditions are not so met.

The Nukunu application was lodged with the Tribunal on 10 April 1996. Pursuant to *Strickland v Native Title Registrar*, Nukunu is deemed to have been made on 30 September 1998.

Adnyamathanha People

This is a combined application. Each of the pre-combination applications were made under the provisions of the unamended Act; that is, prior to 30 September 1998. The combined application was found to comply with the requirements of the registration test on 26 March 1999. The combined application was therefore not on the Register of Native Title Claims at the time Nukunu was made.

Kuyani #2

This application was also made under the unamended Act. However, on 30 June 1999 the application was found not to comply with the requirements of the registration test and was subsequently removed from the Register.

Barngarla

Again, this application was made under the unamended Act. The application has not yet been considered pursuant to s190A. Therefore, there was no entry relating to this application on the Register at the time that Nukunu was made.

In any event, an analysis of the Register of Native Title Claims and s190A Register does not reveal any names common to Nukunu and any of the above named applications. Further, the applicants, at Schedule O of the application, stipulate that there are no common people to the Nukunu native title claim group and overlapping claim groups.

Conclusion

The application passes this requirement of the test.

190C4(a) and 190C4(b)	<p>Certification and authorisation:</p> <p><i>The Registrar must be satisfied that either of the following is the case:</i></p> <p>(a) <i>the application has been certified under paragraph 202(4)(d) by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; or</i></p> <p>(b) <i>the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.</i></p>
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I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

In applying this condition I have had regard to the certificate provided by the applicants, attached to the application as Attachment R, and the gazetted representative body boundaries.

The applicants seek to rely upon certification of the application, pursuant to s190C(4)(a), by the Aboriginal Legal Rights Movement Inc (hereafter referred to as “the ALRM”). The certificate is dated 4 March 1999 and has been signed by the Director of the ALRM.

In accordance with the requirements of s202(5) the certificate states that, on behalf of all the persons in the Nukunu native title claim group, the applicants have the authority to make the application and deal with matters arising in relation to it. The certificate also states that all reasonable efforts have been made to ensure the application describes or otherwise identifies all the other persons in the native title claim group. The certificate outlines the reasons through which the ALRM has reached these conclusions.

The certificate also details what the representative body has done to meet the requirements of s202(6).

In meeting the requirements of s202(5) and s202(6) the certificate meets all the requirements of s202(7).

The ALRM has determined representative body status for the whole of the State of South Australia, except for those areas determined as Anangu Pitjantjatjara or Maralinga Tjarutja. I note that the Nukunu application does not extend into either of these areas. As such, I find that the ALRM certificate is sufficient to comply with the requirements of the condition contained in s190C(4)(a).

Conclusion

The certificate provided by the ALRM meets the requirements of s190C(4)(a).

There is no other information before me, to which I must have regard, that contradicts the certification.

I am satisfied the application meets this condition.

190C5

Evidence of authorisation:

If the application has not been certified as mentioned in paragraph (4)(a), the Registrar cannot be satisfied that the condition in subsection (4) has been satisfied unless the application:

- (a) includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met; and***
- (b) briefly sets out the grounds on which the Registrar should consider that it has been met.***

I have not considered the application against this condition and set out my reasoning as follows:

Reasons for the Decision

The application has been certified by the ALRM in accordance with the requirements of s190C(4)(a). Consequently, I am not required to consider this condition.

B. Merits Conditions

190B2

Description of the areas claimed:

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

I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

In applying this condition I have given primary consideration to the Nukunu application and the prescribed accompanying map.

In order for the application to meet the requirements of this section I must be satisfied that the information and map contained in the application, as required by s62(2)(a) and s62(2)(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.

At Schedule B the application contains the following:

Map and External Boundary Description

Information identifying the area covered by the application is provided at Schedule B and Attachment C.

A written description of the application's external boundaries is provided in the application at Schedule B. The description references recognised land marks and towns. The description is consistent with the map attached to the application as Attachment C. For clarity, Schedule B stipulates that the coordinates of the external boundary are those shown on the map.

In addition, I note that Schedule B also makes provision for the event of any inconsistency identified between the written description and that map. Schedule B states should an inconsistency be identified, the map and associated coordinates shall prevail.

I am satisfied that the description and map meet the requirements of s62(2)(a)(i).

The map attached to the application at Attachment C, showing the external boundary of the application, was produced by the Tribunal's Geospatial Information Unit on 5 March 1999 as part of approved s78 Assistance to Applicants. The map includes latitude and longitude points, based on Australian Geodetic Datum 1966. All line work on the map is finely drawn and easy to follow, the external boundary of the application being depicted by a fine blue line. Recognised land marks, including towns and National Parks are also discernible.

I am satisfied the map meets the requirements of s62(2)(b).

I am satisfied the requirements of s62(2)(a)(i) have been met in that the application contains information, by physical description and otherwise, enabling the boundaries of the area covered by the application to be identified. I am similarly satisfied the requirements of s62(2)(b) have been met in that the map shows the boundaries of the area mentioned in s62(2)(a)(i).

Internal Boundary Description

The internal boundaries of the application are detailed at Schedule B through Attachment B. At Attachment B the applicants set out, by way of formula, the areas within the external boundaries that are not covered by the application.

The applicants have not identified, parcel by parcel, the areas of land and waters that are excluded from the claim area. In my view that is not necessary to satisfy the requirements of s62(2)(a)(ii) or s190B(2).

The internal boundaries are described by way of identifying classes of land tenure that are not covered by the application. The description of areas excluded can be objectively applied to establish whether any particular area of land or waters within the external boundary of the application is within the claim area or not. This may require considerable research in relation to tenure data held by the particular custodian of that data. Nevertheless, it is reasonable to assume that the task can be done on the basis of the information provided by the applicants.

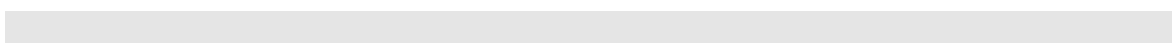
Whether the exclusions identified by this formula are sufficient to meet the conditions at s190B(8) and s190B(9) is not considered here. I refer to my reasons for decision with respect to those sections.

I am satisfied the requirements of s62(2)(a)(ii) have been met in that the application contains information enabling the identification of any areas within the boundaries, as mentioned in s62(2)(a)(i), that are not covered by the application.

Conclusion

I am satisfied that, taken together, the information and map contained in the application, as required by s62(2)(a) and s62(2)(b), are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed with respect to a particular area.

It is my view that the application meets the requirements of this condition.



190B3	<p>Identification of the native title claim group:</p> <p>The Registrar must be satisfied that:</p> <p>(a) <i>the persons in the native title claim group are named in the application; or</i></p> <p>(b) <i>the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.</i></p>
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I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

An exhaustive list of names of the persons in the native title claim group has not been provided and so the requirements of s190B(3)(a) are not met.

In the alternative, pursuant to s190B(3)(b), the application must describe the persons in native title claim group sufficiently clearly so that it can be ascertained whether any particular person is in that group.

Schedule A of the application sets out the description of the Nukunu native title claim group and is continued at Attachment A.

Essentially, membership of the Nukunu native title claim group is derived from two means:

1. biological descent from named ancestors; or
2. incorporation, in accordance with traditional Nukunu law and custom.

The description at Attachment A, paragraphs (1) and (2), specifically names the group's antecedents and their biological descendants. I note that where one of those persons has been known by more than one name, the aliases have been provided. I therefore consider the names provided sufficient to identify the relevant person and that, with minimal inquiry, it is possible to ascertain whether a person is descended from one of those named. I am satisfied this limb of the description is sufficient.

Schedule A also includes a description, at paragraph (3), of the traditional Nukunu principles of incorporation. Paragraph (4) identifies two of the named applicants as having specific authority

to determine whether any particular person is incorporated into the claim group. Paragraph (5) then identifies those persons incorporated into the Nukunu native title claim group through a custom other than biological descent.

Finally, paragraph (6) of the description identifies those persons who are specifically excluded from the claim group. The description acknowledges the potential for particular persons who “would otherwise be members of the group according to the principle of biological descent but who may [also] be members of an overlapping claim” and makes provision for their exclusion while the overlap remains. Those persons excluded are identified.

In considering this condition I have also had regard to the following affidavits:

- James Alexander Bramfield, sworn 3 March 1999; and
- Margaret Elizabeth Smith, sworn 3 March 1999.

Both deponents identify those persons, named at Schedule A, from whom they are descended. I note the information contained in the affidavits is consistent with the details contained in Schedule A.

Conclusion

In my view there is no information to which I must have regard pursuant to s190A(3) of the Act that indicates the description is deficient in any way. Thus, I consider the description provides a sound mechanism through which it can be ascertained whether any particular person is a member of the Nukunu native title claim group.

The requirements of this condition are met.

190B4

Identification of the native title rights and interests claimed:

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

I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

In applying this condition I have had regard to the amended Nukunu application.

Schedule E of the application contains a description of native title rights and interests as follows:

Under the traditional laws and customs of the Nukunu Native Title Claim Group and observed by the applicants they possess the following rights and interests in the Nukunu claim area (“the Nukunu land and waters”), and the applicants seek a determination that:

(1) The native title rights and interests claimed are the common law rights to possession, occupation, use and enjoyment of the Nukunu Claim area to the

exclusion of all others, in particular the right to:

- *Access and reside on Nukunu land and waters,*
- *Enjoy the resources of the Nukunu land and waters,*
- *Make decisions about the use and enjoyment of the Nukunu land and waters;*
- *Control the access of others to and conduct on the Nukunu land waters;*
- *Control the use and enjoyment of others of the resources of the Nukunu land and waters*
- *Maintain and protect and prevent the dissemination and misuse of cultural knowledge of members of the Nukunu Native Title Claim Group;*
- *Transmit knowledge and information concerning Nukunu land and waters to those in younger generations according to Nukunu traditional laws and customs;*
- *Carry out and maintain mortuary practices according to Nukunu traditional laws and custom.*

(2) The native title rights and interests claimed above are subject to the effect of the rights validly granted by the Crown to others pursuant to statute to possess, occupy, use or enjoy all or any part of the Nukunu land and waters.

Explanatory note:

The resources of the Nukunu land and waters includes, but is not limited to, birds, animals, plants, fish, marine animals, shellfish, timber, ochre, stone, minerals and subsurface minerals.

I refer to my reasons for decision in relation to s62(2)(d). In accordance with the requirements of that section the rights and interests claimed are not merely a statement to the effect that they are all those rights and interests that may exist or that have not been extinguished at law. Each of the native title rights and interests claimed is readily identifiable.

I note that the right to possession, occupation, use and enjoyment are rights identified in *Mabo v Queensland (No 2)* (1992) 175 CLR 1. These rights are known to the law and have been regarded by the High Court of Australia as capable of identification.

In addition, I note that the applicants have sought to limit the claimed native title rights and interests. Specific tenures have been excluded from the application by virtue of the internal boundary description at Schedule B. The applicants further qualify the rights and interests claimed by stating that the claimed rights and interests are subject to the effect of other rights validly granted by the Crown in respect of any part of the land and waters covered by the application.

Further, Schedule Q of the application states that:

[t]o the extent that any minerals, petroleum or gas within the area of the claim area wholly owned by the Crown under valid laws of the Commonwealth or State they are not claimed by the applicants.

Essentially, these limitations qualify the applicants' claim to exclusive possession of the claim area where such a claim cannot be made; the effect of this being that the claimed rights and interests are not inconsistent with the validly granted rights and interests of others with respect to the claim area.

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

190B5	<p>Sufficient factual basis:</p> <p><i>The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:</i></p> <ul style="list-style-type: none"> <i>(a) that the native title claim group have, and the predecessors of those persons had, an association with the area;</i> <i>(b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests;</i> <i>(c) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.</i>
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I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

In making this decision I have had specific regard to affidavits and anthropological papers, provided to the Tribunal by the applicants as further information to address the conditions of the registration test, and the amended Nukunu application.

Schedule F of the application consists of three statements which seek to address the assertions set out in s190B(5):

The factual basis of the claim is:

- 1. The Nukunu Native Title Claim Group and their ancestors have, since prior to British sovereignty being asserted over Nukunu Native land and waters, possessed, occupied, used and enjoyed the Nukunu land and waters; and*
- 2. There exist traditional laws and customs that give rise to the claimed native title; and*
- 3. The Nukunu Native Title Claim Group has continued to hold the claimed native title in accordance with those traditional laws and customs.*

Schedule G, through Attachment G, also contains details of activities currently carried out by members of the native title claim group in relation to the claim area. (Refer to these reasons for decision at s62(2)(f))

Under s190B(5) I am not restricted to considering information contained only in the application. Consequently, I have also had regard to the following, provided under cover of a submission from the applicants' representative, Dittons, dated 5 March 1999:

- Affidavit of James Alexander Bramfield, sworn 3 March 1999;
- Affidavit of Margaret Elizabeth Smith, sworn 3 March 1999; and

Note: The affidavits have been signed on each page by both the deponent and witness, in both instances, a Commissioner for Oaths.

- Various anthropological papers

This section requires that I be satisfied that there is sufficient factual basis to support three specific assertions. They are considered in turn.

s190B(5)(a) – the native title claim group have, and the predecessors of those persons had, an association with the area

To be satisfied of this criterion it must be evident that the native title claim group have and their predecessors had an association with the area which was and remains communal, that is, shared by members of the native title claim group.

The statements contained at Schedule F of the application assert an association with the application area as required. Further, Schedule G provides details of activities members of the native title claim group currently carry out in relation to the land and waters subject of the claim including residing, hunting, gathering bush foods, fishing, utilising fresh water, using, maintaining and preserving the natural environment.

The applicants also assert that the members of the claim group protect and preserve Nukunu culture through conducting meetings and gatherings, the education of children and others and the care of sites.

In addition, at Schedule M the applicants assert that members of the claim group currently have, and have continuously maintained, a traditional physical connection with the claim area.

These assertions are supported by the aforementioned affidavits.

Both deponents identify as people of Nukunu descent and depose to their relationship with some of the named ancestors at Schedule A.

The affidavit evidence provides details of association across the area of the application. Both deponents refer to having resided in and travelled throughout Nukunu country during their lives with their forebears and descendants and to having been taught about the traditional boundaries of the Nukunu country.

I note also that both deponents refer to one of the named ancestors has having acknowledged authority within the Nukunu community.

Further, the anthropological studies also provide evidence of the native title claim group having a continued association with the area. Anderson (1988) (*Solid Town: The History of Port Augusta*) includes diagrams showing the approximate country of the Nukunu people which I note coincides with the claimed area. Hercus (1992) (*A Nukunu Dictionary*) includes photographs of some of the named ancestors at places within the area of the application and similarly reproduces a sketch of the country occupied by the Nukunu people.

On the basis of the above considerations I find that the factual basis upon which it is asserted that the native title claim group have, and their predecessors had, an association with the area is sufficient to support the assertion.

The requirements of s190B(5)(a) are met.

s190B(5)(b) – 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.

To be satisfied of this criterion it must be evident that traditional laws and customs exist, that those laws and customs are acknowledged and observed by the native title claim group and that those laws give rise to the claim to native title rights and interests.

The information contained at Schedules F and G of the amended application asserts the

existence, acknowledgment and observation of traditional laws and customs as required and provides general details of activities undertaken by members of the Nukunu native title claim group in exercise of those laws and customs. These activities are, in turn, linked to the claimed native title rights and interests.

Further evidence supporting the assertion is contained in the affidavits and anthropological papers, referred to above.

Both deponents refer to a body of traditional laws and customs that exist and which are duly acknowledged and observed by the native title claim group. As mentioned above, the deponents state that their knowledge about features of the application area has been passed to them by their forebears, along with the associated spiritual meanings of those places.

The affidavit evidence suggests that Nukunu laws and customs impact on all aspects of life for members of the native title claim group. The deponents' affidavits include several examples of the traditional laws and customs informing all activities, including the collection and preparation of foods, access to particular areas and in the performance of certain ceremonies. The affidavit evidence clearly establishes that the deponents and other members of the Nukunu native title claim group acknowledge and observe traditional laws and customs.

Both deponents also refer to a particular ceremony performed by senior members of the Nukunu native title claim group which allows others access to Nukunu country, particularly sites of significance. The deponents state that very few people are permitted to perform this ceremony and that currently only themselves and an elderly uncle have the authority to perform this ceremony. I note that both deponents recount having themselves gone through this ceremony on several occasions during their lives.

In addition, both deponents refer to having been taught about the collection and preparation of foods in accordance with traditional laws and customs and to having similarly passed on this information to their own children and other younger members of the native title claim group.

On the basis of the above considerations I find that the factual basis on which it is asserted that there exist traditional laws and customs, acknowledged and observed by the native title claim group, that give rise to the claim to native title rights and interests is sufficient to support the assertion.

The requirements of s190B(5)(b) are met.

s190B(5)(c) – the native title claim group have continued to hold the native in accordance with those traditional laws and customs.

To be satisfied of this criterion it must be evident that the native title claim group have continued to hold native title in accordance with their traditional laws and customs.

The information contained at Schedules F, G and M of the amended application assert the continuing practice of activities in relation to the area of the application according to the doctrines of traditional laws and customs.

Further evidence supporting the assertion is contained in the affidavits and anthropological papers referred to above.

The deponents refer to activities undertaken, in accordance with traditional law and custom, with younger members of the native title claim group, through which knowledge of the country is passed on.

On the basis of the above considerations I find that the factual basis upon which it is asserted that the native title claim group have continued to hold the native title in accordance with their traditional laws and customs is sufficient to support the assertion.

The requirements of s190B(5)(c) are met.

Conclusion

For the reasons set out above I am satisfied that the factual basis upon which the three assertions contained at s190B(5) are made is sufficient to support the assertions.

The requirements of this section are met.

190B6

Prima facie case:

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

I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

In applying this condition I have had specific regard to the Nukunu application and the affidavits and anthropological studies referred to in relation to s190B(5). I have also had regard to a submission received from the applicants' representative, Dittons, dated 5 March 1999.

Native title rights and interests are defined at s223 of the Act. The definition specifically attaches rights and interests to land and waters and requires that:

- a) the rights and interests be linked to traditional laws and customs;
- b) those claiming the rights and interests have a connection with the relevant land and waters; and
- c) the rights and interests be recognised under the common law of Australia.

The definition is closely aligned with the issues I have considered in relation to s190B(5). I will therefore draw on conclusions made under that section here.

Under s190B(6) I must be satisfied that, prima facie, at least some of the rights and interests claimed can be established.

The term 'prima facie' was considered in *North Ganalanja Aboriginal Corporation v Qld* 185 CLR 595 by their Honours Brennan CJ, Dawson, Toohey, Gaudron and Gummow JJ who noted:

The phrase can have various shades of meaning in particular statutory contexts but the ordinary meaning of the phrase "prima facie" is: "At first sight, on the face of it; as it appears at first sight without investigation." [Citing the Oxford English Dictionary (2nd ed 1989)]

I have adopted the ordinary meaning referred to by their Honours when considering this application.

The native title rights and interests claimed are described at Schedule E of the application. I note that an aspect of this description is the limitation of the claimed native title rights and interests, subject to the validly granted rights and interests of others. This qualification is significant when

considering the prima facie establishment of the claimed native title rights and interests. I am satisfied that the rights and interests claimed are not inconsistent with the rights and interests granted to others with respect to the area of the application.

Schedule G, through Attachment G, contains details of activities undertaken by the Nukunu native title claim group in relation to the application area which also relate to the claimed rights and interests. I note that Attachment G does not include specific instances where members of the native title claim group have carried out these activities. Whilst the information is useful I do not consider it sufficient evidence for the prima facie establishment of the specific native title rights and interests claimed.

However, further information addressing the prima facie establishment of the claimed native title rights and interests is located in the affidavits, anthropological studies and submission, referred to above. It is this information upon which I have relied in deciding which rights and interests can be established.

As I have noted previously, I am satisfied that both deponents are members of the Nukunu native title claim group.

Under the traditional laws and customs of the Nukunu Native Title Claim Group and observed by the applicants they possess the following rights to possession, occupation, use and enjoyment of the Nukunu Claim area to the exclusion of all others, in particular the right to:

- ***Access and reside on Nukunu land and waters***

In the application and affidavits referred to above, reference is made to members of the native title claim group residing within the area and conducting activities, including, the hunting and collection of foods and the maintenance of significant sites and the land generally. In addition, the affidavits provide examples of the deponent's forebears undertaking similar activities.

I note that both deponents were raised and continue to reside within the area of the Nukunu application.

Both depose to having been taught about sites of significance within the claim area by their forebears.

I am satisfied by the information before me that the right can be established prima facie.

- ***Enjoy the resources of the Nukunu land and waters***

At Schedule G, through Attachment G, the applicants state that the Nukunu native title claim group enjoy the resources of the claim area by:

*Hunting, gathering bush foods, fishing, crabbing;
Preparing and cooking food from the land and waters;
Utilising sources of fresh water*

The deponents each provide several examples of members of the native title claim group making use of and enjoying resources obtained from the land and waters of the application area. According to the affidavit evidence the use of resources includes each of those activities

mentioned above.

I am satisfied by the information before me that the right can be established prima facie.

- ***Make decisions about the use and enjoyment of the Nukunu land and waters***

At Attachment G, the applicants provide examples of the ways in which the Nukunu native title claim group make decisions about the use and enjoyment of Nukunu land and waters. These examples are elaborated upon in the affidavits of James Bramfield and Margaret Smith.

I am satisfied by the information before me that the right can be established prima facie.

- ***Control the access of others to and conduct on the Nukunu land and waters***

Both deponents provide accounts of the means through which Nukunu People have controlled the access of others to and the conduct of others on the land and waters subject of the application.

I am satisfied by the information before me that the right can be established prima facie.

- ***Control the use and enjoyment of others of the resources of the Nukunu land and waters***

I refer to the affidavits of James Bramfield and Margaret Smith and to the material discussed in relation to the previous right. I am of the view that the information upon which I relied in respect to that right is equally persuasive in relation to this right.

As I have previously noted the deponents assert that according to traditional Nukunu law and custom access to the area of the application is dependant upon permission being sought and granted from the appropriate persons. Further, the deponents assert that access to particular areas within the application area and the associated knowledge is restricted to certain members of the claim group.

I am satisfied by the information before me that the right can be established prima facie.

- ***Maintain and protect sites and areas of importance within Nukunu land and waters according to traditional laws and customs***

Both deponents make specific reference to the ways in which they and other members of the Nukunu native title claim group maintain and protect areas of importance in accordance with traditional law and custom.

I am satisfied by the information before me that the right can be established prima facie.

- ***Control, maintain, protect and prevent the dissemination and misuse of cultural knowledge of members of the Nukunu Native Title Claim Group***

Both Mr Bramfield and Ms Smith depose to the actions they take in ensuring the control, maintenance, protection and prevention of the dissemination and misuse of the cultural knowledge of the Nukunu people.

I am satisfied by the information before me that the right can be established prima facie.

- *Transmit knowledge and information concerning Nukunu land and waters to those in younger generations according to Nukunu traditional laws and customs*

I refer to the affidavits of James Bramfield and Margaret Smith and to the material discussed in relation to the previous right. I consider the above information one example that demonstrates how younger generations of Nukunu people are given knowledge and information about the land and waters claimed in accordance with Nukunu law and custom.

I am satisfied by the information before me that the right can be established prima facie.

- *Carry out and maintain mortuary practices according to Nukunu traditional law and custom*

Margaret Smith deposes to the continuing practice of mortuary rituals in accordance with Nukunu law and custom.

I am satisfied by the information before me that the right can be established prima facie.

Conclusion

Section 190B(6) requires I be satisfied that at least some of the claimed native title rights and interests can be established on a prima facie basis. I am satisfied that each of the rights and interests claimed can be established on a prima facie basis.

The requirements of this condition are met.



190B7	<p>Traditional physical connection:</p> <p>The Registrar must be satisfied that at least one member of the native title claim group:</p> <ul style="list-style-type: none"> (a) <i>currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or</i> (b) <i>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> <ul style="list-style-type: none"> (i) <i>the Crown in any capacity; or</i> (ii) <i>a statutory authority of the Crown in any capacity; or</i> (iii) <i>any holder of a lease over any of the land or waters, or any person acting on behalf of such holder of a lease.</i>
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I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

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The requirements of this section are such that I must be satisfied that at least one member of the Nukunu native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application.

In applying this condition I have had regard to the affidavits and anthropological studies referred to in relation to s190B(5) and s190B(6), in addition to information contained in the application itself.

As I have noted previously, I am satisfied that both deponents are members of the native title claim group.

I have not quoted from any of the above mentioned documents here as I have already done so extensively with respect to the aforementioned conditions. I contend that those quotations and references are as persuasive in respect of this condition.

I therefore summarise as follows:

The application and affidavits of the deponents satisfy me that they have had and continue to maintain a traditional physical connection with the Nukunu application area. The deponents demonstrate knowledge of the application area and provide details of the exercise of traditional laws and customs. Furthermore, the deponents state that they and other members of the native title claim group continue to visit areas of significance within the claim area where they conduct activities in accordance with traditional laws and customs. These activities include:

- the hunting, collection and preparation of foods using traditional methods;
- visiting and maintaining places of cultural significance;
- teaching younger members of the Nukunu claim group about features within the claim area, their spiritual meaning and traditional laws and customs.

The traditional physical connection of the Nukunu native title claim group is supported by the anthropological studies.

I am satisfied that the deponents and other members of the native title claim group have the requisite connection required by this section.

I therefore find that the application meets the condition contained in s190B(7).

190B8

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

I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

For the reasons that follow I have reached the conclusion that there has been compliance with s61A and that the conditions of this section are met.

s61A(1) – Native Title Determination

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

s61A(2) – Previous Exclusive Possession Acts

Schedule B, through Attachment B, confirms that the application excludes any areas subject to:

Category A past acts, as defined in s229 of the Act, including any previous non-exclusive possession acts which are also a Category A past act; and

Grants or vestings which are “previous exclusive possession acts” (as defined in s23B of the Act) or “Category A intermediate period acts” (as defined in s232B of the Act) attributable to the Commonwealth and such grants or vestings which are attributable to the State where the State has made provision as mentioned in s23E and s22F of the Act in relation to these acts.

For the avoidance of doubt, the following acts which occurred on or before 23 December 1996, where valid (including because of Division 2 or 2A of Part 2 of the Act) are included or, for present purposes, are to be treated as included in the definition of “previous exclusive possession acts”, unless excluded from the definition by subsections 23B(9), (9A), (9B), (9C) or (10)

[a series of tenures are then specified]

I am satisfied this exclusion clause meets the requirements of s61A(2).

s61A(3) – Previous Non-Exclusive Possession Acts

Schedule B, through Attachment B, makes provision for the exclusion of “Category A past acts, as defined in s229 of the Act, including any previous non-exclusive possession acts which are also a Category A past act”.

Further, Schedule E stipulates:

The native title rights and interests claimed...are subject to the effect of the rights validly granted by the Crown to others pursuant to statute to possess, occupy, use or enjoy all or any part of the Nukunu land and waters.

I am satisfied that the applicants are not seeking exclusive possession over areas the subject of previous non-exclusive possession acts. The application therefore complies with s61A(3).

s61A(4) – s47, s47A, s47B

The application also states at Attachment B:

The applicants exclude from the area covered by the Application any area over which native title has been extinguished at Common Law or by statute save and except for those areas of land or waters over which prior extinguishment may be disregarded in accordance with the provisions of either s47, s47A or s47B of the Native Title Act 1993.

At Schedule L and through Attachment D the applicants provide details of any such areas.

I am required to ascertain whether this is an application that should not have been made because of the provisions of s61A. In my opinion, the applicants' express statements with respect to the provisions of that section are sufficient to meet the requirements of s190B(8). Subsection 61A(4) of the Act provides that an application may be made in these terms. Whether the applicants have provided sufficient information to bring any area of land and waters covered by the application within the ambit of s47, 47A or s47B is a matter to be settled in another forum.

The application satisfies this condition.

Conclusion

The application complies with s61A. The requirements of s190B(8) are thus met.

<p>190B9</p> <p>(a)</p>	<p>Ownership of minerals, petroleum or gas wholly owned by the Crown:</p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></p> <p><i>(a) to the extent that the native title rights and interests claimed consist or include ownership of minerals, petroleum or gas - the Crown in right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;</i></p>
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I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

In applying this condition I have relied upon information contained at Schedule Q of the Nukunu application.

Schedule Q states:

To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown under valid laws of the Commonwealth or State they are not claimed by the Applicants.

I am satisfied this statement adequately addresses the requirements of s190B(9)(a).

The limitation of the claim contained in the application, as set out in Schedule Q, is not contradicted by any other information or other documents.

The requirements of this section are met.



<p>190B9</p> <p>(b)</p>	<p><i>Exclusive possession of an offshore place:</i></p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></p> <p><i>(b) to the extent that the native title rights and interests claimed relate to waters in an offshore place - those rights and interests purport to exclude all other rights and interests in relation to the whole or part of the offshore place;</i></p>
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I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

At Schedule P of the Nukunu application the applicants state that “[t]he waters within the Nukunu Native Title Claim Area are not offshore places”.

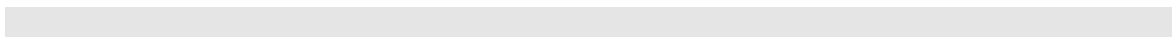
Reference to the map attached to the application at Attachment C shows that the application includes an area of waters in the northern region of Spencer Gulf, between Blanche Harbour and to the north of Port Broughton.

Section 253 of the Act defines an offshore place as “any land or waters to which this Act extends, other than land or waters in an onshore place”. An onshore place is then defined as “land or waters within the limits of a State or Territory to which this Act extends”.

An examination of Australia’s territorial sea baseline indicates that the northern region of Spencer Gulf falls within the territorial limits of the State of South Australia. Consequently, this portion of the application does not represent an offshore place, as defined in the *Native Title Act* 1993 (as amended).

I concur with the applicants in that no claim is being made to an offshore place.

The requirements of this section are met.



<p>190B9</p> <p>(c)</p>	<p><i>Other extinguishment:</i></p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></p> <p><i>(c) in any case - the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2)).</i></p>
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I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

In applying this condition I have had regard to the amended Nukunu application.

This condition requires the consideration of whether there are any native title rights and interests claimed by the applicants that have been otherwise extinguished.

At Schedule B, through Attachment B, the applicants specifically provide for the exclusion of “any area over which native title has been extinguished at Common Law or by statute”.

The applicants then provide a formula for the exclusion of areas where native title rights and interests have been extinguished. In particular, the description at points (1) and (2) of Attachment B effectively excludes from the area of the application all other areas where native title rights and interests have been extinguished. The exclusion clause covers extinguishing acts such as public works and freehold.

The application and accompanying documents do not disclose and I am not aware of any additional extinguishment of native title rights and interests in the area claimed.

There is no need for me to consider what may be disclosed in any other material, in particular, tenure information obtained by the Tribunal or provided to it by parties to the application. It appears that even if areas of the type prohibited by s190B(9)(c) are located within the external boundary of the area of the application, such areas will be excluded by virtue of Schedule B, Attachment B.

I am satisfied the requirements of this section have been met.

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