

National Native Title Tribunal

REGISTRATION TEST REASONS FOR RECOMMENDATIONS

DELEGATE	Simon Nish
CASE MANAGER	Chris Uren
DATE	7 October 1999

Application Name	Yankunytjatjara / Antakirinja Native Title Claim		
Name(s) of Applicant(s)	Paddy Jones, Jean Wood, Tilly Waye, Sadie Singer, Lallie Lennon and Johnny Cullinan		
Region	SA	NNTT No	SC97/9
Date Application Made	21/11/97	Fed Court No	SG6022/98

The case manager has considered all the information and documents in the following files, databases and other sources:

SC97/9 Working File.	NNTT working files for SC97/9 volume 1.
SC97/9 Registration Test File.	Volume 1

The information the case manager considers to be relevant to the application of the Registration Test is identified under each condition or sub-condition in this Reasons for Recommendation.

A. Procedural Conditions

190C2	<i>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.</i>
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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		
2	11/8/99	Affidavit of Sadie Singer		
3	11/8/99	Affidavit of Johnny Cullinan		
4	11/8/99	Affidavit of Yami James Lester		
5		“Learning from the Land” book by Yami Lester.		
6		“Cooper Pedylanguru Tjukurpa” book compiled by Janet Skewes		
7		“Women of the Centre” book edited by Adele Pring		
8		“Aboriginal Artists in South Australia” book by Adele Pring		
9		“Outback Central & South Australia, Ed 2” map from Landsmap.		
10	16/8/99	Certification letter from ALRM		
11	7/10/99	Output from Geospatial		
12	20/11/97	Original Form 1		
13	18/8/99	Federal Court papers		
14	6/10/99	Federal Court papers		

Details required in section 61

61(3)	<i>Name and address for service of applicant(s)</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
The application identifies the name and the address for service of each applicant in their affidavits.	

61(4)	<i>Names persons in native title claim group or otherwise describes the persons so that it can be ascertained whether any particular person is one of those persons</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
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The application describes the native title claim group as comprising named or identified antecedents, their biological descendants, and those persons adopted into the group according to traditional law and custom. I have reached this view for the reasons contained in my decision at s.190B3.

61(5)	<i>Application is in the prescribed form, lodged in the Federal Court¹, contains prescribed information², and is accompanied by any prescribed documents</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
<p>s.61(5)(a) The application is in the form prescribed by Regulation 5(1)(a) Native Title (Federal Court) Regulations 1998.</p> <p>s. 61(5)(b) As required under section 61(5)(b), the amended application was filed in the Federal Court.</p> <p>s.61(5)(c) The application meets the requirements of section 61(5)(c) and contains all information as prescribed in section 62. I refer to my reasons in relation to section 62 below.</p> <p>s.61(5)(d) As required by section 61(5)(d) the application is accompanied by the prescribed documents, being:</p> <ul style="list-style-type: none"> • affidavits, as prescribed by s. 62(1)(a), and • a map, as prescribed by s. 62(1)(b) <p>I refer to my reasons for decision in relation to s.62(1)(a) and (b) below. I note that section 190C(2) only requires me to consider details, other information, and documents required by section 61 and 62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee to the Federal Court. For the reasons outlined above, it is my view that the requirements of s.61(5) are met.</p>	

Details required in section 62(1)

62(1)(a)	<i>Affidavits address matters required by s.62(1)(a)(i) – s.62(1)(a)(v)</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
<p>Affidavits have been received from each applicant. Competent witnesses have witnessed these affidavits. I am satisfied that they address the matters required by s. 62(1)(a)(i) - (v). The Affidavits state the basis on which the applicants are authorised and are in the first person, as required by the Act.</p>	

62(1)(c)	<i>Details of traditional physical connection (information not mandatory)</i>
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Comment on details provided	
<p>The applicants assert at Schedule M that “members of the native title claim group, including specifically each of the named applicants, have had and some continue to have a traditional physical connection with parts of the claim area”.</p>	

¹ Note that pre 30.09.98 applications are deemed to have been filed in the Federal Court.

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

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

62(2)(a)(i)	<i>Information identifying the boundaries of the area covered</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
<p>At Schedule B and Attachment C the applicants have provided detailed information identifying the external boundary of the claimed area. See also my reasons for decision provided under s.190B (2).</p>	

62(2)(a)(ii)	<i>Information identifying any areas within those boundaries which are not covered by the application</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
<p>At Schedule B, the applicants have provided information identifying the internal boundaries of the claimed area, being all areas within the areas the subject of the external boundaries, excluding the road corridor where the area is traversed by the Stuart Highway and the railway corridor where the area covered is traversed by the Central Australia Railway. I am satisfied that the information provided in the application identifies the areas within the external boundary that are not covered by the application. See also my reasons for decision in relation to test conditions contained at 190B2.</p>	

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-section	Recommend application complies with the sub-section
<p>The applicants have provided a map at Attachment C. See also reasons provided under s190B2.</p>	

62(2)(c)	<i>Details/results of searches carried out by the applicant to determine the existence of any non-native title rights and interests</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
<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 under this condition I need only be informed of searches conducted by the applicant in order to be satisfied that the application complies with this condition. It would be unreasonably onerous to expect applicants to have knowledge of, and obtain details about all searches carried out by every other person or body. The application states at Schedule D the searches carried out by the applicants and provides the results of those searches at Attachment D.</p>	

62(2)(d)	<i>Description of native title rights and interests claimed</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
<p>The native title rights and interests claimed by the applicants are particularised at Schedule E. In accordance with section 62(2)(d), the rights and interests claimed do not merely consist of a statement to the effect that the native title rights and interests that</p>	

may exist or that have not been extinguished at common law. The description is a list of individually identifiable rights and interests.
I have outlined these rights and interests claimed in my reasons for decision in relation to s.190B4.

62(2)(e)(i)	<i>Factual basis – claim group has, and their predecessors had, an association with the area</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
<p>The applicants assert at Schedule F in the application that they have, and their predecessors had, an association with the area. A factual basis for this assertion is provided at Attachment A and Schedules E, F, G and M of the application. Further information is provided in folios 2-8. For an assessment of the sufficiency of the factual basis provided by the applicants, refer to my reasons in relation to s. 190B(5)(a).</p>	

62(2)(e)(ii)	<i>Factual basis – traditional laws and customs exist that give rise to the claimed native title</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
<p>The applicants assert at Schedule F of the application that there exist traditional laws and customs that give rise to the claimed native title. A factual basis for this assertion is provided at Attachment A and Schedules E, F, G and M of the application. Further information is provided in folios 2-8. For an assessment of the sufficiency of the factual basis provided by the applicants, refer to my reasons in relation to s. 190B(5)(b).</p>	

62(2)(e)(iii)	<i>Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
<p>The applicants assert at Schedule F of the application that the native title claim group has continued to hold the native title in accordance with traditional laws and customs. A factual basis for this assertion is provided at Schedules A, E, F, G and M of the application. Further information is provided in folios 2-8. For an assessment of the sufficiency of the factual basis provided by the applicants, refer to my reasons in relation to s. 190B(5)(c).</p>	

62(2)(f)	<i>If native title claim group currently carry on any activities in relation to the area claimed, details of those activities</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
<p>At Schedule G the application provides (general) details of activities that the native title claim group carries out in relation to the area claimed. In my view the description of activities is sufficient to comply with the requirements of 62(2)(f).</p>	

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</i>
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	<i>determination of native title or compensation)</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
Details of any other relevant applications are provided at Schedule H.	

62(2)(h)	<i>Details of any s.29 notices given pursuant to the amended Act (or notices given under a corresponding State/Territory law) in relation to the area, which the applicant is aware of</i>
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Reasons relating to this sub-section	Recommend application complies with the sub-section
The applicants have set out details of section 63M notices at Schedule I.	

The case manager considers that the application **passes** the conditions contained in s.190C(2).

Reasons for the Recommendation

The application meets the requirements of s 190C(2), for the reasons detailed above.
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190C3	<p><i>Common claimants in overlapping claims:</i></p> <p><i>The Registrar must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:</i></p> <p><i>(a) the previous application covered the whole or part of the area covered by the current application; and</i></p> <p><i>(b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and</i></p> <p><i>(c) the entry was made, or not removed, as a result of consideration of the previous application under section 190A.</i></p>
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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		
11	7/10/99	Output from Geospatial		



The case manager considers that the application **passes** the condition contained in s.190C(3).

Reasons for the Recommendation

<p>The current application does not overlap with any other applications, as described in Schedule H. Folio 11 confirms this.</p> <p>The application passes this condition.</p>	
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<p>190C4(a) or 190C4(b)</p>	<p><i>Certification and authorisation:</i></p> <p><i>The Registrar must be satisfied that either of the following is the case:</i></p> <p><i>(a) the application has been certified under paragraph 202(4)(d) by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; or</i></p> <p><i>(b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.</i></p> <p><i>Note: s.190C(5) – Evidence of authorisation:</i></p> <p><i>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:</i></p> <p><i>(a) includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met; and</i></p> <p><i>(b) briefly set out the grounds on which the Registrar should consider that it has been met.</i></p>
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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		
10	16/8/99	Certification letter from ALRM		

The case manager considers that the application **passes** the condition contained in s.190C(4).

Reasons for the Recommendation

<p>The relevant representative Aboriginal/Torres Strait Islander body has certified the application. I note that the certificate (folio 10) has been signed by the Director, Aboriginal Legal Rights Movement, who would have the proper authority to sign such a document. I am satisfied that the certification fulfils the requirements of s.190C (4) of the Act.</p> <p>The application passes this condition.</p>	
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B. Merits Conditions

190B2	<p><i>Description of the areas claimed:</i></p> <p><i>The Registrar must be satisfied that the information and map contained in the application as required by paragraphs 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.</i></p>
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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		
14	6/10/99	Federal Court papers		

The case manager considers that the application **passes** the condition contained in s.190B(2).

Reasons for the Recommendation

Map and External Boundaries

The application at Attachment C provides a map depicting the external boundaries of the claim area that has a locality diagram and clearly marked grid references.

I am satisfied that the map submitted with the application meets the requirements of s62 (2)(b) as the boundaries of the areas covered by the application can be identified.

Written description

In addition to the provision of a map defining the external boundaries of the claim, the applicants at Schedule B have provided a written description of the external boundary. I am satisfied that the reliance in the description upon known cadastres or boundaries that can be identified with some exactitude from the State land tenure system, and taking into account that the description is to be read in conjunction with the map provided, that the applicants have provided a sufficient description of the external boundaries.

I am satisfied that the physical description of the external boundaries meets the requirements of s62 (2)(a)(i).

Internal Boundaries

At Schedule B, the applicants have provided information identifying the internal boundaries of the claimed area. I note that at Attachment D the applicants provide the results of their tenure searches, including a list of freehold tenures within the external boundaries. These are specifically excluded in Attachment B.

The application **passes** this condition.

190B3	<p><i>Identification of the native title claim group:</i></p> <p><i>The Registrar must be satisfied that:</i></p> <p><i>(a) the persons in the native title claim group are named in the application; or</i></p> <p><i>(b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group</i></p>
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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		

The case manager considers that the application **passes** the condition contained in s.190B(3).

Reasons for the Recommendation

To meet this condition of the registration test the description of the group must be sufficiently clear so that it can be ascertained whether any particular person is a member of the native title claim group.

Attachment A defines the claim group as comprising:

- Named or identified apical ancestors,
- Sets of siblings, and
- Their biological descendants.

The Attachment also sets out the principles of incorporation into the group according to traditional law and custom.

In my view the description of the claim group is sufficiently precise so that it can be ascertained whether any particular person is a member of the native title claim group.

Further, I am satisfied that there is a set of rules, embodied in the traditional laws and customs of the native title claim group, that can be objectively referred to in order to determine whether a person has been incorporated into the native title claim group.

The application **passes** this condition.

190B4	<p><i>Identification of claimed native title</i></p> <p><i>The Registrar must be satisfied that the description contained in the application as required by paragraph 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.</i></p>
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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		

The case manager considers that the application **passes** the condition contained in s.190B(4).

Reasons for the Recommendation

<p>Schedule E of application particularises a set of specific native title rights and interests claimed by the applicants.</p> <p>These rights and interests are subject to all non- native title rights and interests, and laws of South Australia made in accordance with sections 19, 22F, 23F, 23E or 231 of the Native Title Act 1993.</p> <p>At Schedule Q the rights and interests claimed are further qualified: no claim is being made to any native title rights and interests consisting of or including ownership of minerals, petroleum or gas owned by the Crown under valid laws of the Commonwealth, or State.</p> <p>By particularising the rights and interests claimed into a list of specific rights and interests which are comprehensible, I consider that this condition has been met.</p> <p>The application passes the condition.</p>

190B5	<p><i>Sufficient factual basis:</i></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> <p><i>(a) that the native title claim group have, and the predecessors of those persons had, an association with the area;</i></p> <p><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></p> <p><i>(c) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.</i></p>
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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		
2	11/8/99	Affidavit of Sadie Singer		
3	11/8/99	Affidavit of Johnny Cullinan		
4	11/8/99	Affidavit of Yami James Lester		
5		“Learning from the Land” book by Yami Lester.		
6		“Cooper Pedylanguru Tjukurpa” book compiled by Janet Skewes		
7		“Women of the Centre” book edited by Adele Pring		
8		“Aboriginal Artists in South Australia” book by Adele Pring		

The case manager considers that the application **passes** the condition contained in s.190B(4).

Reasons for the Recommendation

<p>There are three criteria to consider in determining over all whether or not I am satisfied that there is a sufficient factual basis to support the applicants’ assertion about the existence of the native title rights and interests listed at Schedule F of this application.</p> <p>(a) An association with the area;</p> <p>To be satisfied under this criterion, it must be evident that the association with the area is shared by a number of members of the native title claim group and was shared by their predecessors.</p>
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In considering this condition, I have had regard to the affidavits of Sadie Singer and Johnny Cullinan (two of the applicants) and Yami James Lester (a member of the native title claim group). On the basis of their affidavits (folios 2-4) and the information provided in folios 5-8, it is clear that these people have an association with the claim area and are the descendants of some members of the native title claim antecedent group who also had an association with the claim area:

190B(5)(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.

This subsection requires me to be satisfied that traditional laws and customs exist; that those laws and customs are respectively acknowledged and observed by the native title claim group, and that those laws and customs give rise to the claim to native title rights and interests.

I have had regard to the affidavits of two of the applicants: *Sadie Singer* (folio 2) and *Johnny Cullinan* (folio 3); and a member of the native title claim group *Yami Lester* (folio 4). On the basis of their affidavits it is clear that there exist traditional laws and customs observed by the native title claim group that give rise to the claim to native title rights and interests.

190B(5)(c) - that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

Under this criterion, I must be satisfied that the native title claim group continues to hold native title in accordance with their traditional laws and customs.

For the reasons set out in 190B(5)(b) and having regard to the same affidavit material I am satisfied that there is a factual basis for the claim group continuing to hold native title in accordance with those traditional laws and customs.

The application **passes** this condition.

190B6	<i>Prima facie case:</i> <i>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>
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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		
2	11/8/99	Affidavit of Sadie Singer		
3	11/8/99	Affidavit of Johnny Cullinan		
4	11/8/99	Affidavit of Yami Lester		

The case manager considers that the application **passes** the condition contained in s.190B(6).

Reasons for the Recommendation

In considering this condition I have had particular regard to the affidavits of Sadie Singer, Johnny Cullinan and Yami Lester. Those affidavits provide sufficient material and information to satisfy me on a prima facie basis that each of the native title rights and interests claimed by the applicants at Schedule E of the application can be established.

The deponents of the affidavits have provided me with specific evidence addressing each of those rights and interests, as follows:

The native title rights and interests claimed are the rights and interests of common law holders of native title derived from and exercisable by reason of the existence of native title, in particular:

1. The generic aspects of the Yankunytjatjara/Antakirinja proprietary and beneficial rights and interests;
 - 1.1 full beneficial ownership of the claim area including possession, occupation, use and enjoyment as of right;
 - 1.2 carriage of responsibility for the care and maintenance of the claim area;
 - 1.3 the right to hold the claim area as cultural property and source of the native title group and its identity;
 - 1.4 the capacity to transmit ownership of and identification with the claim area, for example, to descendants.

2. Rights which flow from the property and beneficial rights.

2.1 Occupation and economic

2.1.1 the right to access and occupy the claim area, including to live on and erect residences on the land;

2.1.2 the right to take, use, enjoy and develop the natural resources of the claim area;

2.1.3 the right to make a living and derive economic benefit from the claim area, including to dispose of the resources or products of the claim area by commerce or exchange;

2.1.4 the right to a share of the benefit of resources taken on the claim area by others.

2.2 Control and Management

2.2.1 the right to make decisions over, manage and conserve the claim area and its natural resources;

2.2.2 the requirement to be asked for and to control access, occupation, use and enjoyment of the claim area and its resources by others;

2.2.3 the right to control the marking and changing of the land of the claim area.

2.3 Cultural Property

2.3.1 The right to speak for, protect and control access to the Aboriginal cultural estate pertaining to the claim area including places of special significance, subject to any level of cultural authority shared by elders of neighbouring groups under Aboriginal traditional law and custom;

2.3.2 The right to maintain, manage, develop and transmit the cultural estate pertaining to the claim area;

2.3.3 The right to conduct social, cultural and religious activities including burials on the claim area

2.4 Membership and dispute settlement

2.4.1 The right to resolve ambiguities or disputes concerning the claim area or the membership of the Yankunytjatjara/Antakirinja native title claim group, subject to any right or authority to participate held by the neighbouring groups under Aboriginal traditional law and custom.

The native title rights and interests claimed are also subject to the effect of:-

- all existing non-native title rights and interests (see, for example, those referred to in Schedule D); and

- all laws of South Australia made in accordance with section 19, 22F, 23E or 231 of the *Native Title Act*,
to the extent that these are valid and applicable.

The application **passes** the condition.

190B7	<p><i>Traditional physical connection:</i></p> <p><i>The Registrar must be satisfied that at least one member of the native title claim group:</i></p> <p><i>(a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or</i></p> <p><i>(b) previously had and would reasonably have been expected currently to have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to land or waters) by:</i></p> <p><i>(i) the Crown in any capacity; or</i></p> <p><i>(ii) a statutory authority of the Crown in any capacity; or</i></p> <p><i>(iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such holder of a lease.</i></p>
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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		
2	11/8/99	Affidavit of Sadie Singer		
3	11/8/99	Affidavit of Johnny Cullinan		
4	11/8/99	Affidavit of Yami Lester		

The case manager considers that the application **passes** the condition contained in s.190B(7).

Reasons for the Recommendation

Under s 190B(7)(a) I must be satisfied that at least one member of the 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.

The affidavit material provided by the applicants satisfies me that a number of members of the native title claim group currently have and have had traditional physical connection to parts of the claim area.

The application **passes** this condition

190B8	<p><i>No failure to comply with s.61A:</i></p> <p><i>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.</i></p>
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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		

The case manager considers that the application **passes** the condition contained in s.190B(8).

Reasons for the Recommendation

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

S61A(1) – Native Title Determination

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

S61A(2) – Previous Exclusive Possession Acts

Schedule B, including Attachment B, confirms that the application does not include any lands subject to a Category A past act (as defined in s.229) or a previous exclusive possession act as defined under s.23B of the Act save where the Act allows those lands to be part of a native title determination application.

This exclusion clause meets the requirement of this subsection.

S61A(3) – Previous Non-Exclusive Possession Acts

Schedule E confirms that native title rights and interests claimed are also subject to the effect of:

- all existing non – native title rights and interests (see, for example, those referred to in Schedule D); and
 - all laws in South Australia made in accordance with sections 19, 22F, 23E or 23I of the Native Title Act 1993;
- to the extent these are valid and applicable.

The application **passes** this condition.

190B9(a)	<p><i>Ownership of minerals, petroleum or gas wholly owned by the Crown:</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>(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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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		

The case manager considers that the application **passes** the condition contained in s.190B(9)(a).

Reasons for the Recommendation

At Schedule E of the application the applicants have asserted a right to natural resources – including the right to take, use, enjoy and develop the natural resources of the claim area, and the right to control and use and enjoyment of others of natural resources of the area.

However, at Schedule Q of the application, the applicants state that no claim is being made to any native title rights and interests consisting of or including ownership of minerals, petroleum or gas wholly owned by the Crown under the valid laws of the Commonwealth or State.

190B9(b)	<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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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		

The case manager considers that the application **passes** the condition contained in s.190B(9)(b).

Reasons for the Recommendation

<p>The area claimed does not include any offshore area. It is therefore not necessary for me to consider this section further as it is not relevant.</p>
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190B9(c)	<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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The following relevant documents have been extracted from the File Index(es) of material that has been reviewed for this application.

Fol	Date	Description	Cat	Probity, Weight
1	16/8/99	Amended Form 1		

The case manager considers that the application **passes** the condition contained in s.190B(9)(c).

Reasons for the Recommendation

<p>The application and accompanying documents do not disclose, nor am I otherwise aware, that the application contravenes the criteria set out in s.190B (9)(c).</p> <p>I refer to my reasons in relation to 190 B (2).</p>
