

Reason

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Decision: Accepted

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

190B(2) *Description of the areas claimed:
The Registrar must be satisfied that the information and map contained in the application as required by paragraph 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.*

The following relevant documents have been reviewed for this application.

Fol	Date	Description
C	15/1/99	Attachment C, Map of Application external boundary
B	25/1/99	Schedule B, Identification of boundaries
B(1)	25/1/99	Attachment B(1), List of Coordinates defining external boundary of the application
B(2)	25/1/99	Attachment B(2), Areas within external boundaries not covered by the application
	12/2/99	Letter from applicants' representative clarifying Attachment B(2)
	9/3/99	Facsimile "Kuyani submission in response to the proposed amalgamation of so called Adnyamuthanha Claim"

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

190B(2) Reasons for the Decision

The applicants have provided a map at Attachment C (amended application 15/1/99), produced by the Government of South Australia, and entitled *Native Title Claimant Applicant SC94/01 Adnyamathanha SG6001/98*. It shows the external boundary of the application in a fine black outline. The map has coordinates and a north point, and displays land tenure as at December 1998 at a scale of 1:450,000.

This map meets the requirements of s62(2)(b).

Schedule B of the amended application, describes the external boundary of the application and is consistent with the map provided as Attachment C. In addition the applicants have provided at Attachment B(1) a list of coordinates of the external boundary of the area covered by the application, sourced from the Department of Environment Heritage and Aboriginal Affairs and prepared by the Geospatial Unit of the NNTT.

The applicants state in Schedule B that to the extent of any inconsistency between the coordinates and the description, the coordinates shall prevail. The list of coordinates provides a greater level of precision than the description provided in Schedule B, however no inconsistency is discernible.

The information provided in Schedule B, B(1) and Attachment C meet the requirements of s62 (2)(a)(i).

Schedule B(2) of the amended application describes the areas within the external boundary that are not covered by the application.

- The applicants have provided a list of grants, vestings or acts at points (i) to (ix), that exclude a variety of tenure classes from the areas of the application, to the extent that they validly took place on or before 23 December 1996.

- The applicants have at point (vii) specifically excluded leases (other than mining) that confer rights of exclusive possession and at point (ix) have excluded any areas where a right of exclusive possession is conferred under State legislation.

- Paragraph 2 states that acts that are not previous exclusive possession acts, by virtue of ss23B(9), 9(A), 9(B), (9)C and 9(10), are excluded from the points (i) to (ix).

- Paragraph 3 states that the exclusions in points (i) to (ix) do not include State legislation referred to in s22F or s23E of the *Native Title Act* 1993. [At the time of making this decision, the State of South Australia has not passed legislation referred to at s23E or s23F.]

- Paragraph 4 also clarifies that points (i) to (ix) are subject to the provisions of s47, s47A, and s47B. In addition, the applicants' representative has provided a letter of 12/2/99 as clarification of expressions used in the second and third paragraphs in relation to exclusion from the exclusion statements of (i)-(ix). (The applicants' representative has sent copies of this letter to the Crown Solicitor of the State of South Australia and to the Federal Court, Adelaide Registry. No submissions have been received in response disputing this clarification). The exclusions of discrete classes of land tenures outlined at Attachment B(2) can be readily identified.

The information provided meets the requirements of s62(2)(a)(ii).

Note

A submission received from Mr John Bannon representing the Kuyani Association states, at point 4, that the external boundaries of this application are not accurate according to Aboriginal Law. However the issue to be determined under this section is whether the external boundaries of the *Adnyamathanha* claim are clearly defined consistent with the map provided at Attachment C and whether the areas excluded are readily discernible.

The description, information and map contained in the application as required by s62(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.

The requirements are met.

S190B(3) Identification of native title claim groups Met

190B(3) *Identification of the native title claim group:
The Registrar must be satisfied that:*
(a) *the persons in the native title claim group are named in the application; or*
(b) *the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.*

The following relevant documents have been reviewed for this application.

Fol	Date	Description
A	25/2/99	Schedule A: Native Title Claim Group

E 25/2/99 Schedule E: Description of Native Title Rights and Interests

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

Reasons for the Decision

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

- a) *the right to possess, occupy, use and enjoy the area;*
- b) *the right to make decisions about the use and enjoyment of the area;*
- c) *the right of access to the area;*
- d) *the right to control the access of others to the area;*
- e) *the right to use and enjoy resources of the area;*
- f) *the right to control the use and enjoyment of others of the area;*
- g) *the right to trade in resources of the area;*
- h) *the right to receive a portion of any resources taken by others from the area;*
- i) *the right to maintain and protect places of importance under traditional laws, customs and practices in the area;*
- j) *the right to carry out and maintain burials of deceased members of the claim group within the area;*
- k) *the right to control, maintain, protect, and prevent the dissemination and misuse of, cultural knowledge associated with the area*

As such, Schedule E of the amended application contains a description of native title rights and interests as required by s62(2)(d), sufficient to allow those rights and interests claimed to be readily identified.

Schedule E also clarifies that these native title rights and interests claimed are subject to the effect of all existing non-native title rights and interests (referred to in Schedule D) and all laws of South Australia (in accordance with s19, 22F, 23E or 23I) that are valid and applicable.

These rights and interests are further clarified at Schedule Q, where the applicant’s state that they do not claim any ownership of minerals, petroleum or gas wholly owned by the Crown under valid laws of the Commonwealth or State.

The requirements are met. Detailed reasons are described in 190B(6) below.

S190B(5) Factual basis for claimed native title Met

190B(5) *Sufficient factual basis:
The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:*

- (a) *that the native title claim group have, and the predecessors of those persons had, an association with the area*
- (b) *that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests;*
- (c) *that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.*

The following relevant documents have been reviewed for this application.

Fol	Date	Description
	25/1/99	Amended Application
	25/1/99	Letter from applicants’ representative re: additional information
6	29/8/98	Advertiser, Revival of land’s flora and fauna, p38

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7	6/10/98	<i>Advertiser</i> , Scars run deep after sacred site burn-off, p11
8	6/1/98	<i>Advertiser</i> , How this scared land made history, np.
9	1985	Brock, P, <i>Yura and Udnya – A History of the Adnyamathanha of the North Flinders Ranges</i> .
10	1992	Education Dept. of SA, <i>The Adnyamathanha People of the Flinders Ranges</i> .
11	1994	Dept. Environment and Natural Resources (DENR), <i>Interpreting Rock Art of the Flinders Ranges</i> .
12		Dept. Environment and Natural Resources (DENR), <i>Gammon Ranges National Park (brochure)</i> .
13	1980-1986	Dept. Environment and Planning, <i>The Flinders Ranges – An Aboriginal View</i>
14	1996	Dept. Environment and Planning, <i>Draft Management Plan – Gammon Ranges National Park (excerpts)</i>
15	1986	McEntee, J (with Pearl and John McKenzie), <i>Witi – Ita – Nanalpila Plants and Birds of the Northern Flinders Ranges and Adjacent Plains with Aboriginal Names</i> , Control Services, Glenelg, SA.
16	1988	Mattingley, C & Hampton, K (eds) <i>Survival in Our Own Land, Chapter 28, Nepabunna</i> . Wakefield Press Adelaide, SA.
17	1989	Tunbridge, D <i>Flinders Ranges – A Creation Story</i> . Habitat Australia.
18	1988	Tunbridge, D Languages Heritage: Flora In Place Names, <i>Journal of Anthropological Society of SA</i> Vol. 23 pp3-15.
19	1988	Tunbridge, D <i>Flinders Ranges Dreaming</i> . Aboriginal Studies Press, pvii.

190B(5) Relevant documents (continued)

20	21/1/99	Affidavit of Vincent Coulthard
21	22/1/99	Affidavit of Angelina Stuart
22	22/1/99	Affidavit of Beverley Patterson
	1/9/95	“ <i>The Genealogy</i> ”
	15/3/99	Facsimile from Pamela Ditton, Nukunu representative, re submission for registration test enclosing Statut Declaration of Gordon Coulthard.

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

190B(5) Reasons for the Decision

190B(5)(a) - association with the area

Schedule F of the amended application asserts that the claim group have, and their ancestors had, prior to and since British sovereignty was asserted, an association with the area comprising of the right to use possess and enjoy the area the subject of the claim.

The applicants assert in Schedule G that members of the claim group use and enjoy the area including living, erecting structures, using, trading, maintaining and preserving the natural environment, and that these uses derive from the laws and customs of their predecessors.

They further assert that the claim group members protect and preserve *Adnyamathanha* culture through conducting meetings and gatherings, education of children and others, and care of sites and burying deceased members of the group in the area.

The truth of this assertion is deposed to by the applicants in the affidavits filed with the application.

In further support of these assertions the applicants have provided a number of documents enclosed with their letter of 25/1/99 and listed as folios 6-22 above. The applicants assert in this letter that while takeover of their land by white settlers severely affected the *Adnyamathanha*, they were able to continue living on the land and many *Adnyamathanha* still continue to live on their traditional lands for example at Nepabunna, Nantawarrina, Mount Serle, Copley, Beltana and Hawker. Of particular note are affidavits of applicants Angelina Stuart and Beverley Patterson deposed on 22 January 1999.

All eight applicants are named in the *Genealogy*, identifying them as members of the claim group.

The *Genealogy* also charts the relationship of the applicants and other members of the claim group to their predecessors. This material is supported by photographs, reprinted in the *Genealogy*, from collections held in State Library of SA showing members of the claim group and their predecessors living and conducting a variety of activities within the claim area dating to the time of early European settlement.

From the details in the *Genealogy* (pp2,4,10) Angelina Stuart (nee McKenzie) is able to show a genealogical link to her apical ancestor **Mount Serle Bob**. Mt Serle Bob is further mentioned in recollections of an early European settler, W. Rodgers (as reprinted in folio 10 p130-133) as having an association with the area from the time of the first European exploration by Edward John Eyre in 1840.

190B(5) Reasons for the Decision (continued)

190B(5)(a) - association with the area (continued)

In addition, named applicant Gertie Johnson is shown in a photograph at p106 of the *Genealogy*, purporting to be taken at Nepabunna in the 1930's. Ms Johnson's current address, as recorded at Part B in the amended application, is also listed as the Nepabunna Community, which is further supported by her sworn affidavit accompanying the application.

In the letter of 25/1/99 the applicants point out that a great amount of the material presented in support of the application is in the public domain. The applicants assert that this includes documents published by the State Government which acknowledge and accept the traditional and continuing exercise of rights and interests by *Adnyamathanha* People in the area of the application.

Of note is the publication by Peggy Brock, Yura and Udnya, *A History of the Adnyamathanha of the North Flinders Ranges*, published by Wakefield Press in association with the Aboriginal Heritage Branch of the State Government.

Extracts from this book were supplied by the applicants as folio 9, however a complete copy is in the Tribunal's possession and has been sighted. The book outlines the *Adnyamathanha* history from 1840 to the operation of the Nepabunna Mission from 1931 to 1973, and provides brief biographical sketches and photographs of *Adnyamathanha* ancestors, also listed in the *Genealogy*, that detail association of those people with the claim area.

The publication *The Flinders Ranges – An Aboriginal View*, (folio 13) published by the Aboriginal Heritage Branch of the State Government (1980, amended and reprinted 1986) states at p2:

"The association of the Adnyamathanha people with the Ranges and in particular the area around Mt Serle and Angepena is still very strong, and it remains uncommon to find group members living any great distance from the Ranges area.

There are perhaps some seven hundred people who identify themselves as Adnyamathanha. Nepabunna township, formerly a mission settlement located within their traditional territory, continues to exert strong emotional ties upon its former residents...It has a fluctuating population of up to one hundred people."

190B(5)(b) - laws and customs that give rise to the claim to native title rights and interests

Schedule F of the amended application also asserts that:

· the rights of use, occupation and possession derive from, and are held in accordance with, traditional laws and customs acknowledged and observed by the group.

· the claim group has held and continues to hold native title in accordance with those traditional laws and customs.

Also, at Schedule G, the factual basis is provided in support of the assertions made by the applicants that the claim group members protect and preserve the *Adnyamathanha* culture and heritage through conducting meetings and gatherings, education of children and others, care of sites through burying deceased members of the group in the area.

The truth of these facts is deposed to by the applicants in the affidavits filed with the application.

The additional affidavits of authorised applicants Angelina Stuart and Beverley Patterson deposed on 22 January 1999 (folios 21 and 22) and Mr Vincent Coulthard, deposed 21 January 1999 (folio 20), further support these assertions.

Mr Coulthard's affidavit sets out facts in relation to his role in aspects of traditional law relating to access, use and control of the area over the last twenty years.

190B(5) Reasons for the Decision (continued)

In addition, the applicants have presented material from the public domain in support of the application. As noted previously, the applicants assert this includes documents published by agencies of the State Government which acknowledge and accept the traditional and continuing exercise of rights and interests by *Adnyamathanha* People in the area of the application (folios 6-19 above).

Of particular note is a pamphlet entitled *Interpreting Rock Art of the Flinders Ranges*, published by the National Parks and Wildlife and compiled by Vincent Coulthard (folio 11). The pamphlet acknowledges that the symbols found in paintings relate to rituals and ceremonies of the *Adnyamathanha* people and were renewed during ceremonies held in the 1940's. It also notes that *Adnyamathanha* people involved in those ceremonies learned the meaning of those paintings and have supplied information about them to the National Parks authorities.

Also of note is folio 10, *The Adnyamathanha People: Aboriginal People of the Flinders Ranges; An Aboriginal studies course for secondary students*, published by the Education Department of SA. At pp68-70, it quotes a number of *Adnyamathanha* identified in the *Genealogy*, including applicant Gordon Coulthard and Vincent Coulthard discussing the application and relationship of the *Adnyamathanha* law, customs and dreaming as applied by their ancestors and themselves.

When considered as a whole, the above affidavits and other supporting material provide sufficient factual basis to support the assertions that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group to support the assertions in Schedule F and Schedule G.

190B(5)(c) - the native title claim group has continued to hold the native title

The Nukunu People (SC96/5, SC6012/98) who overlap the SC94/1 application in the southern portion of the claim area, have submitted evidence, on the basis of which they assert that the *Adnyamathanha* do not have sufficient factual basis to establish an association over the disputed overlap area.

This evidence is in the form of a Statutory Declaration by Gordon Coulthard, also an *Adnyamathanha* applicant. While this document purports to be signed by Mr Gordon Coulthard, I note that it has not been affirmed or witnessed in accordance with the *Oaths Act* (1936).

Notwithstanding the above comments, the document states at point 5 that while the *Adnyamathanha* are not the traditional owners of the overlap area, it acknowledges that they do have certain traditional connections within the overlap area. Again at point 6 it confirms that if any re-alignment of traditional boundaries was to occur it would be dependent on the recognition of any traditional *Adnyamathanha* connections within the overlap area.

These comments are consistent with the general description of the rights and interests claimed and do not appear to dispute the factual basis asserted for the claim. In particular, the purported declaration acknowledges certain traditional *Adnyamathanha* connections exist to the area, even though it also acknowledges traditional rights of ownership of an overlapping group. It is not necessary to examine the primacy of *Adnyamathanha* rights within an area, but simply to establish that there is factual basis for those rights.

Ms Beverley Patterson's affidavit sets out not only her association with the area, but the role of herself and her husband, Stewart Patterson, in the teaching of *Adnyamathanha* customs and laws within the Beltana area.

Ms Angelina Stuart's affidavit sets out facts relating to her association with the area including her role in the protection of sites and transmission of oral stories relating to sites at a number of areas in the Flinders Ranges including Arkaroola, Balcanoona and Orraparrina.

On the basis of this material the requirements of s190B(5)(a) – (c) have been met.

S190B(6)

Prima facie case

Met

190B(6) *Prima facie case:*
The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.

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The following relevant documents have been reviewed for this application.

Fol	Date	Description
	25/1/99	Amended Application
	25/1/99	Letter from applicants' representative re: additional information
6	29/8/98	<i>Advertiser</i> , Revival of land's flora and fauna, p38
7	6/10/98	<i>Advertiser</i> , Scars run deep after sacred site burn-off, p11
8	6/1/98	<i>Advertiser</i> , How this scared land made history, np.
9	1985	Brock, P, <i>Yura and Udnya – A History of the Adnyamathanha of the North Flinders Ranges</i> .
10	1992	Education Dept. of SA, <i>The Adnyamathanha People of the Flinders Ranges</i> .
11	1994	Dept. Environment and Natural Resources (DERN), <i>Interpreting Rock Art of the Flinders Ranges</i> .
12		Dept. Environment and Natural Resources (DERN), <i>Gammon Ranges National Park (brochure)</i> .
13	1980-1986	Dept. Environment and Planning, <i>The Flinders Ranges – An Aboriginal View</i>
14	1996	Dept. Environment and Planning, <i>Draft Management Plan – Gammon Ranges National Park (excerpts)</i>
15	1986	McEntee, J (with Pearl and John McKenzie), <i>Witi – Ita – Nanalpila Plants and Birds of the Northern Flinders Ranges and Adjacent Plains with Aboriginal Names</i> , Control Services, Glenelg, SA.
16	1988	Mattingley, C & Hampton, K (eds) <i>Survival in Our Own Land, Chapter 28, Nepabunna</i> . Wakefield Press, Adelaide, SA.
17	1989	Tunbridge, D <i>Flinders Ranges – A Creation Story</i> . Habitat Australia.
18	1988	Tunbridge, D Languages Heritage: Flora In Place Names, <i>Journal of Anthropological Society of SA</i> Vol. 23(8), pp3-15.
19	1988	Tunbridge, D <i>Flinders Ranges Dreaming</i> . Aboriginal Studies Press, pvii.
20	21/1/99	Affidavit of Vincent Coulthard
21	22/1/99	Affidavit of Angelina Stuart
22	22/1/99	Affidavit of Beverley Patterson
	1/9/95	“ <i>The Genealogy</i> ”

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

190B(6) Reasons for the Decision

The applicants' representative has presented in a letter (dated 25 January 1999) a series of enclosures that they requested be reviewed in support of the native title rights and interests claimed. These enclosures are listed above in s190B(5) at folio numbers 6 to 22.

Further, the application has clearly set out the land tenure types and other classes of acts (eg, no claim to ownership of minerals wholly owned by the Crown) which regulate and (possibly limit) the native title rights and interests claimed.

Therefore each of the following native title rights and interests are qualified in a general manner by the exclusions identified in the application and supporting documents.

· **the right to possess, occupy, use and enjoy the area;**

The applicants assert in their letter of 25/1/99 that the *Adnyamathanha* possessed, occupied, used and enjoyed the claim area prior to first European contact and continue to exercise their native title rights and interests in the claim area.

In support of this they refer to folio 10, and the *Genealogy*, in establishing a link between the claim group and an apical ancestor, **Mt Serle Bob**, who is described in the recollections of an early settler as being in occupation of the area at the time of the first sightings of Eyre's exploration party into the Flinders Ranges in 1840.

The applicants assert that while the European takeover of their land severely affected the *Adnyamathanha*, they were able to continue living on the land and many *Adnyamathanha* still continue to live on their traditional lands – for example at Nepabunna, Nantawarrina, Mount Serle, Copley, Beltana and Hawker (discussed in more detail at 190B(5) above).

Of particular note are affidavits of named applicants Vincent Coulthard, Angelina Stuart and Beverley Patterson deposed on 21 and 22 January 1999 (folios 20-22) that outline some of the uses and enjoyment of the area by themselves and other *Adnyamathanha* (discussed in more detail below).

· **the right to make decisions about the use and enjoyment of the area;**

The applicants assert in their letter of 25/1/99 that the *Adnyamathanha* continue to be involved in decision-making about the use and enjoyment of the area, particularly in their work with Government authorities to record stories and locations of sites.

The recording of these sites and the roles of *Adnyamathanha* in the decision making about development in the vicinity of these are discussed at folio 10, pp231, 234.

In addition it is asserted (letter 25/1/99) that *Adnyamathanha* people have been employed as rangers in National Parks and their expertise has assisted in decision making about the use, enjoyment and protection of rock engravings and significant sights, and preventing damage to native flora and fauna.

In support, enclosure 11, a pamphlet prepared by DENR and compiled by Vincent Coulthard discusses interpreting and protecting rock art of the Flinders Ranges. Folio 16 pictures a number of identified *Adnyamathanha* men, including Vincent Coulthard, in their employment as National Park Rangers in 1983, and discusses, amongst other things, their roles in site management and protection.

Folio 14 (a Draft Management Plan: Gammon Ranges National Park, prepared by the National Parks and Wildlife Service) discusses the *Adnyamathanha* involvement in the management of the Gammon Ranges National Park (pp67-69) and involvement in inspection of development areas to prevent disturbance of burial sites (p64).

· **the right of access to the area;**

The affidavits of Mr Vincent Coulthard, Ms Angelina Stuart and Ms Beverley Patterson (enclosures 20-22) attest to their right of access to the area for a range of purposes including hunting, gathering native flora, meeting and teaching children and others about the general care for the area and communicating Dreamtime stories.

190B(6) Reasons for the Decision (continued)

· **the right to control the access of others to the area;**

The affidavits of Mr Vincent Coulthard and Ms Beverley Patterson (enclosures 20 and 22) refer to their rights to control access of both Aboriginal and non-Aboriginal people to the area.

Mr Coulthard's affidavit sets out facts in relation to his role in aspects of traditional law relating to control of use and access to the area over the last twenty years.

Ms Patterson's affidavit outlines her and Mr Patterson's roles in relating knowledge of sites, in protection of places of significance, in giving permission for access to sites and in transmitting customs and laws related to those sites to *Adnyamathanha* children.

· **the right to use and enjoy resources of the area;**

The affidavits of Vincent Coulthard, Angelina Stuart and Beverley Patterson (enclosures 20-22) refer to their right to use and enjoy the resources of the area including to hunt, gather native flora, and to hold meetings.

This is further supported by enclosures 6 and 10 (in particular, pp231ff).

· **the right to control the use and enjoyment of others of resources of the area;**

The affidavits of Vincent Coulthard and Beverley Patterson (enclosures 20 and 22) refer to their right to control the use and enjoyment of others of resources, particularly where this may impact on resources of cultural concern. This is further supported by enclosure 7 where applicant Geraldine Anderson is pictured and quoted in *The Advertiser* (Adelaide) as asserting her right to be consulted to prevent damage to sites of significance and native flora.

The applicants in their letter of 25/1/99, assert that *Adnyamathanha* people have been employed as rangers in National Parks and their expertise has assisted in preserving rock engravings and significant sights, and preventing damage to native

flora and fauna. In support, enclosure 11, a pamphlet prepared by DENR and compiled by Vincent Coulthard discusses interpreting rock art of the Flinders Ranges. While enclosure 12, a National Parks pamphlet of the Gammon Ranges, acknowledges the *Adnyamathanha* and role of Aboriginal Rangers in the Park. Folio 16 pictures a number of identified *Adnyamathanha* men in their employment as National Park Rangers in 1983, and discuss, amongst other things, their roles in site management and protection.

Folio 14, discusses *Adnyamathanha* involvement in the management of the Gammon Ranges National Park (pp67-69) and involvement in inspection of development areas to prevent disturbance of burial sites (p64).

· **the right to trade in resources of the area;**

At p7 of their letter of 25/1/99 the applicant's assert that the *Adnyamathanha* people have traded in materials such as ochre, grindstones, tobacco, handicrafts and other articles.

In support they refer to folio 10, published by the Education Department of SA, that details and quotes at pp103-107, a number of sources from early settlers recollections to recent academic research, the role of the *Adnyamathanha* in trade historically and currently, lists items of trade, and provides a map of trade routes through the Flinders Ranges to other parts of South Australia and beyond, as at 1836.

Folio 14, quotes at pp62-63 a variety of sources outlining the historic trade between Aboriginal groups focusing on ochre deposits and the "tobacco" plant Pituri (*Duboisia hopwoodii*) in the central Flinders Ranges.

190B(6) Reasons for the Decision (continued)

The applicants also assert at p7 of their letter of 25/1/99 that the *Adnyamathanha* continue to engage in the trade of resources from the area such as artefacts made from local resources and carved emu eggs.

· **the right to receive a portion of any resources taken by others from the area;**

In his affidavit of 21/1/99 (folio 20) Mr Vincent Coulthard attests that other Aboriginal people have asked his permission to take resources (kangaroo) from the area and that he has given this permission, prepared the food in traditional manner and shared in the consumption of that resource.

In support, the applicants refer to folio 10 where at page 121 Les Wilton (identified in *The Genealogy* p138), is quoted in 1989 describing the taking and cooking of kangaroo and other meat. He states after preparation and cooking, the meat was shared out in accordance with food taboo rules. "It's shared when its cooked a certain time, it all depends on the man, or woman, or old people..."

· **the right to maintain and protect places of importance under traditional laws, customs and practices in the area;**

The affidavits of Mr Vincent Coulthard, Ms Angelina Stuart and Ms Beverley Patterson (enclosures 20 and 22) refer to their right to maintain and protect sites of importance, including rock carvings and grave sites. They detail their liaison with local progress associations and government agencies in protecting or maintaining sites of significance.

This is further supported by folio 7 where applicant Geraldine Anderson is pictured and quoted in *The Advertiser* of 16/10/99 as asserting her right to be consulted – to prevent damage to sites of significance and native flora.

The applicants in their letter of 25/1/99, assert that *Adnyamathanha* people have been employed as rangers in National Parks and their expertise has assisted in preserving rock engravings and significant sights, and preventing damage to native flora and fauna.

In support, folio 11, a pamphlet prepared by DENR and compiled by Vincent Coulthard discusses interpreting and protecting rock art of the Flinders Ranges. Folio 16 pictures a number of identified *Adnyamathanha* men in their employment as National Park Rangers in 1983, and discuss, amongst other things, their roles in site management and protection. Folio 14, discusses *Adnyamathanha* involvement in the management of the Gammon Ranges National Park (pp67-69) and particularly involvement in the inspection of development areas to prevent disturbance of burial sites (p64).

· **the right to carry out and maintain burials of deceased members of the claim group within the area; and**

Ms Beverley Patterson, attests in her affidavit of 22/1/99 (folio 22), that she visits grave sites of *Adnyamathanha* people in the area around Beltana and passes on customs and stories relating to these sites to *Adnyamathanha* children.

In support, folio 14, outlines *Adnyamathanha* involvement in inspection of development areas to prevent disturbance of burial sites (p64).

190B(6) Reasons for the Decision (continued)

· **the right to control, maintain, protect and prevent the dissemination and misuse of cultural knowledge associated with the area.**

The applicants assert in their letter of 25/1/99 that the *Adnyamathanha* have a strong involvement in maintaining the cultural knowledge associated with the area.

The affidavits of Mr Vincent Coulthard, Ms Angelina Stuart and Ms Beverley Patterson (enclosures 20 and 22) refer to their rights to maintain and protect and disseminate cultural knowledge associated with significant sites or areas through the

telling of stories and reinforcement of customary behaviour to *Adnyamathanha* people and others.

In support, the applicants refer to folio 17, a copy of an article by linguist Dorothy Tunbridge, in *Habitat Australia* of February 1989, that details her experiences visiting sites of significance with an Annie Coulthard (an *Adnyamathanha* elder, now deceased) and relates stories Ms Coulthard passed on to younger *Adnyamathanha* at Mount Chambers and other sites within the claim area.

Folio 10, outlines the cooperation of number of senior *Adnyamathanha* people with Dorothy Tunbridge and state that “The production of books about aspects of *Adnyamathanha* culture and heritage has been one major way in which heritage has been kept alive and taught.

The applicants in their letter of 25/1/99, assert that *Adnyamathanha* people have been employed as rangers in National Parks and their expertise has assisted in preserving rock engravings and significant sights, and preventing damage to native flora and fauna.

Folio 11, a pamphlet prepared by DENR and compiled by Vincent Coulthard discusses interpreting and protecting rock art of the Flinders Ranges. Folio 16 pictures a number of identified *Adnyamathanha* men in their employment as National Park Rangers in 1983, and discuss, amongst other things, their roles in site management and protection. Folio 14, discusses *Adnyamathanha* involvement in the management of the Gammon Ranges National Park (pp67-69) and particularly involvement in the inspection of development areas to prevent disturbance of sites (p64).

The requirements for s190B(6) have been met. Each of the native title rights and interests claimed by the applicants can be established on a prima facie basis.

S190B(7) Physical connection Met

- 190B(7)** ***Traditional physical connection:***
The Registrar must be satisfied that at least one member of the native title claim group:
- (a) currently has or previously had a traditional physical connection with any part of the land or waters covered the application; or***
 - (b) previously had and would reasonably have been expected currently to have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to land or waters) by:***
 - (i) the Crown in any capacity; or***
 - (ii) a statutory authority of the Crown in any capacity; or***
 - (iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such holder of a lease.***

The following relevant documents have been reviewed for this application.

Fol	Date	Description
21	22/1/99	Affidavit of Angelina Stuart
22	22/1/99	Affidavit of Beverley Patterson
	1/9/95	“The Genealogy”

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

Reasons for the Decision

The applicants assert, in their letter of 25/1/99, that while takeover of their land by white settlers severely affected the *Adnyamathanha*, they were able to continue living on the land and many *Adnyamathanha* still continue to live on their traditional lands for example at Nepabunna, Nantawarrina, Mount Serle, Copley, Beltana and Hawker.

Of particular note are affidavits of named applicants Angelina Stuart and Beverley Patterson deposed on 22 January 1999.

Ms Beverley Patterson's affidavit sets out her and her husband, applicant Stewart Patterson's physical connection with the Beltana area, a role in the transmission of *Adnyamathanha* customs and laws within the area.

Ms Angelina Stuart's affidavit also sets out facts relating to her physical connection with the land.

Applicant Ms Gertie Johnson is shown in a photograph at p106 of the *Genealogy*, purporting to be taken at Nepabunna in the 1930's. Ms Johnson's current address, as recorded at Part B in the amended application, is also listed as the Nepabunna Community, which is further supported by her sworn affidavit accompanying the application.

On the basis of this information, it can be established that at least each of the applicants named above currently has or previously had the requisite physical connection. The requirements have been met.

S190B(8) No failure to comply with section 61A Met

190B(8) *No failure to comply with s61A:
The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.*

The following relevant documents have been reviewed for this application.

Fol	Date	Description
B(2)	25/1/99	Attachment B(2), Areas within external boundaries that are not covered by the application
E	25/1/99	Schedule E : Description of Native Title Rights and Interests

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

190B(8) Reasons for the Decision

S61A(1) – Native Title Determination

Each of the applicants have sworn an affidavit stating that they believed that none of the area of the application is covered by an entry in the Native Title Register. A search of the Native Title Register as at the date of making this decision, indicates there are no approved determinations of native title over the area of the application on the Register.

S61A(2) – Previous Exclusive Possession Acts

The applicants have provided a list of grants, vestings or acts at points (i) to (ix) of Attachment B(2), that exclude a variety of tenure classes from the area of the application, to the extent that they validly took place on or before 23 December 1996.

The applicants have explicitly excluded:

- (i) *Scheduled interests*
- (ii) *Freehold estate*
- (iii) *Commercial leases (that are neither agricultural nor pastoral)*
- (iv) *Residential leases*
- (v) *Community Purpose leases*
- (vi) *Leases dissected from a mining lease (by virtue of s245(3))*
- (vii) *Leases (other than mining) that confer rights of exclusive possession*
- (viii) *Public works that commenced to be constructed or established on or before 23 December 1996*
- (ix) *Any areas where a right of exclusive possession is conferred under State legislation.*

At the time of this decision there is no South Australian legislation under s19, s2F, s23E or 23I in respect of the validation of past and intermediate period acts and confirming extinguishment of certain grants and acts, and therefore only previous exclusive possession acts attributable to the Commonwealth needed to have been excluded to meet the condition.

For the reasons provided in s190B(2), the exclusions detailed in Attachment B(2) are sufficient for it to be said with reasonable certainty that the application does not seek to claim tenure to which an exclusive possession act, as defined in s23E applies.

190B(8) Reasons for the Decision (continued)

S61A(3) – Previous Non-Exclusive Possession Acts

P 25/1/99 Schedule P: Claims for Exclusive Possession of Offshore Places

The condition contained in s190B(9)(b) is not applicable, as the application does not claim any offshore areas.

Reasons for the Decision

Schedule P of the amended application states that this is not applicable to the application.

An examination of Attachment C, the map of the applications external boundaries with an inset smaller locality map, indicates that the application boundaries do not cover any part of an offshore area.

The application does not lay claim to any offshore areas. The requirements do not need to be considered further.

190B(9) *Other extinguishment:*
(c) *The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that in any case - the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2)).*

The following relevant documents have been reviewed for this application.

Fol	Date	Description
B2		Attachment B2
E		Schedule E: Description of Native Title Rights

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

Reasons for the Decision

At Schedule E of the amended application the applicants state that the native title rights claimed are subject to the effect of;

- all existing non-native title rights and interests, and
- all laws of South Australia (in accordance with ss19, 22F, 23E or 23I of the NTA) to the extent that they are valid and applicable.

This statement, read in conjunction with Attachment B(2) listing tenure excluded from the application, establish that the applicants do not intend to claim rights and interests over areas where those rights and interests have been validly extinguished.

Specifically points (vii), (viii), and (xi) of Attachment B(2) can be read to exclude any extinguishment at common law, eg, by actions such as acts of adverse dominion and dedication of roads. See more detailed reasoning under 190B(2) and s190B(8).

Neither the application nor any accompanying documents disclose anything which would indicate that the native title rights and interests claimed have otherwise been extinguished. Further, there is no evidence to show that the native title rights and interests claimed have been extinguished, pursuant to any agreement made between the native title claim group and any other party.

The requirements are met.

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

190C(2) *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 any affidavit or other document, required by sections 61 and 62.

The following relevant documents have reviewed for this application.

Fol	Date	Description
1 SC94/1	6/10/94	Original Application and amendments (prior to 30/9/98)
1 SC95/3	19/1/95	Original Application and amendments (prior to 30/9/98)
1 SC95/6	13/10/95	Original Application and amendments (prior to 30/9/98)
1 SC97/1	6/2/97	Original Application and amendments (prior to 30/9/98)
1 SC97/2	25/7/97	Original Application and amendments (prior to 30/9/98)
	15/1/99	Amended Application (SC94/1)
	25/1/99	Amended Application (SC94/1) plus supplementary material listed below:
1	15/1/99	Federal Court Order
2	25/1/99	Amended Application (SC94/1)
3	25/1/99	“Gammon Ranges NP/Wooltana Stn Native Title Claim SC94/1”
4	5/11/96	Explanatory Memorandum
5	15/1/99	External Boundary Coordinates of SC97/1
		<i>Published material provided by applicant (7-16):</i>
7	16/10/99	<i>Advertiser</i> article “Scars run deep after site burn off” p11
9	1985	P Brock <i>Yura and Udnya – A History of the Adnyamathanha of the North Flinders Ranges, Cha 3, Wakefield Press, Adelaide SA</i>
10	1992	Education Department of SA, <i>The Adnyamathanha People – Aboriginal People of the Flinders Ranges.</i>
13	1980/1986	Department of Environment and Planning, <i>The Flinders Ranges – An Aboriginal View.</i>
16	1988	Mattingly, C. & Hampton, K (eds) <i>Survival in our own Land</i> , Wakefield Press, Adelaide, SA
20	21/1/99	Affidavit of Vincent Coulthard
21	22/1/99	Affidavit of Angelina Stuart
22	22/1/99	Affidavit of Beverley Patterson
	25/1/99	Letter from applicants’ representative re: registration test conditions
	1/9/95	“ <i>Adnyamathanha Genealogy</i> ”, September 1985 (“ <i>the Genealogy</i> ”)
	12/2/99	Letter from applicants’ representative re: clarification of Attachment B(2)
	10/3/99	Letter from applicants’ representative re: Licence information

Native Title Representative Bodies – Gazetted Boundaries Map

Note:

Reference to the **amended application** in the text is taken to be amendments filed on 25/1/99, unless otherwise stated.

Details required in section 61

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

Reasons relating to this sub-condition

The name and address for service of the applicants' representative is provided in Part B of the amended application filed on 25 January 1999.

In addition, attached to Part B, is a statement that the application is filed on behalf of the eight named applicants, with the address for each of those eight named applicants provided.

The requirements are met.

Application **passes** the condition

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

Reasons relating to this sub-condition

The amended application provides a description of the native title claim group in Schedule A as all those *Adnyamathanha* people presently alive who are named in the *Genealogy*, provided as Attachment A(1), or the biological and adopted descendants of those named. All those adopted, including those adopted under traditional laws and customs, who are considered part of the claim group, are named in the *Genealogy*.

(The *Adnyamathanha Genealogy* was published in September 1985 by the Aboriginal Heritage Branch of the SA Department of Environment and Heritage.)

Procedural requirements are met, and refer to s190B(3) for further details of substantive requirements.

Application **passes** the condition

61(5) Application is in the prescribed form Note that in applications made before 30 September 1998, the application do 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.

, lodged in the Federal Court, contain prescribed information Note 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)".

, and accompanied by prescribed documents and fee Note that under the requirements of the Registration Test, the issue of payment of fees need not be considered.

Reasons relating to this sub-condition

The amended application was filed in the Federal Court on **15 January 1999** with leave granted for further amendment filed on **25 January 1999**.

The amended application in the prescribed form, as required by Regulation 5(1)(a) *Native Title (Federal Court) Regulations 1998*.

The amended application contains the prescribed s62 information. See reasons under s62.

The amended application was accompanied by the prescribed affidavits and a map as required by s.62(1)(b). See s62(1)(a) for additional details.

The requirements are met.

Application **passes** the condition

Details required in section 62(1)

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

Reasons relating to this sub-condition

Each of the eight applicants have sworn an affidavit, appended it to the amended application and each addresses the matters required by s62(1)(a)(i) – s62(1)(a)(v).

The affidavits are signed by a qualified witness (Graham Harbord, Commissioner for taking affidavits in the Supreme Court of South Australia) and are dated 21 January 1999, with the exception of the affidavit of Thathy (Geraldine) Anderson, dated 22 January 1999.

The requirements are met.

Application **passes** the condition

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

Comment on details provided

Schedule M of the amended application provides details of traditional physical connection.

It is asserted that each of the named applicants and other members of the claim group have (and always have had) a physical connection with the claim area or parts of it. Gertie Johnson is mentioned as residing within the area at Nepabunna and Beverley and Stewart Patterson at Beltana.

The truth of these statements is attested to by the applicant's affidavits that accompany the amended application.

Additional affidavits by Vincent Coulthard, Angelina Stuart and Beverley Patterson (enclosures 20-22) also attest to traditional physical connection of those applicants.

The procedural requirements are met. See also s190B(5), s190B(6), S190B(7) regarding the substantive requirements.

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

Schedule B of the amended application, describes the external boundary of the application and is consistent with the map provided as Attachment C. In addition the applicants have provided at Attachment B(1) a list of coordinates of external boundary of the area covered by the application, sourced from the Department of Environment Heritage and Aboriginal Affairs and prepared by the Geospatial Unit of the NNTT.
The procedural requirements are met. See additional reasons provided under s190B(2).

Application **passes** the condition

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

Reasons relating to this sub-condition

Schedule B(2) of the amended application describes the areas within the external boundary that are not covered by the application.

- The applicants have provided a list of grants, vestings or acts at points (i) to (ix), that exclude a variety of tenu classes from the area of the application, to the extent that they validly took place on or before 23 December 1996.

- The applicants have at point (vii) specifically excluded leases (other than mining) that confer rights of exclusive possession and at point (ix) have excluded any areas where a right of exclusive possession is conferred under State legislation.

- Paragraph 2 states that acts that are not previous exclusive possession acts, by virtue of ss23B(9), 9(A), 9(B), (9)C and 9(10), are excluded from the points (i) to (ix).

- Paragraph 3 states that the exclusions in points (i) to (ix) do not include State legislation referred to in s22F or s23E of the *Native Title Act* 1993. [At the time of making this decision, the State of South Australia has not passed legislation referred to at s23E or s23F.]

- Paragraph 4 also clarifies that points (i) to (ix) are subject to the provisions of s47, s47A, and s47B. In addition the applicants' representative has provided a letter of 12/2/99 as clarification of expressions used in the second and third paragraphs in relation to exclusions from the exclusion statements of (i)-(ix). (The applicants' representative has sent copies of this letter to the Crown Solicitor of the State of South Australia and to the Federal Court, Adelaide Registry. No submissions have been received in response disputing this clarification).

The exclusions of land tenures outlined at Attachment B(2) can be readily identified. The information provided meets the requirements of s62(2)(a)(ii), and see also reasons provided under s190B(2).

Application **passes** the condition

62(2)(b) A map showing the external boundaries of the area covered by the application

Reasons relating to this sub-condition

The applicants have provided a map at Attachment C (amended application 15/1/99), produced by the Government of South Australia, and entitled *Native Title Claimant Applicant SC94/01 Adnyamathanha SG6001/98*. It shows the external boundary of the application in a fine blue outline. The map has coordinates and a north point, and displays land tenure as at December 1998 at a scale of 1:450,000.

The procedural requirements are met. See additional reasons provided under s190B(2).

Application **passes** the condition

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

Reasons relating to this sub-condition

Schedule D, of the amended application, states that various searches have been carried out in relation to areas subject claim.

The applicants' solicitors, Johnston Withers, state that they have in their possession photocopies of a number of lease licences, proclamations and other documents that determine the existence of non-native title rights and interests. In Schedule D these tenures are described by reference to property names and class.

This information is further clarified at Attachment D that lists the relevant lease numbers. In addition the applicants' representative has submitted a letter (dated 10 March 1999) that provides the relevant licence numbers in relation to searches undertaken.

The applicants have provided details of searches undertaken to determine the existence of any non-native title rights and interests that enables those areas to be readily identified by reference to their lease or licence number held on register of the State Government

The requirements are met.

Application **passes** the condition

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

Reasons relating to this sub-condition

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

- a) *the right to possess, occupy, use and enjoy the area;*
- b) *the right to make decisions about the use and enjoyment of the area;*
- c) *the right of access to the area;*
- d) *the right to control the access of others to the area;*
- e) *the right to use and enjoy resources of the area;*
- f) *the right to control the use and enjoyment of others of the area;*
- g) *the right to trade in resources of the area;*
- h) *the right to receive a portion of any resources taken by others from the area;*
- i) *the right to maintain and protect places of importance under traditional laws, customs and practices in the area;*
- j) *the right to carry out and maintain burials of deceased members of the claim group within the area;*
- k) *the right to control, maintain, protect, and prevent the dissemination and misuse of, cultural knowledge associated with the area.*

As such, Schedule E of the amended application contains a description of native title rights and interests as required by s62(2)(d), sufficient to allow those rights and interests claimed to be readily identified.

See additional reasons provided under s190B(4).

Application **passes** the condition

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

Reasons relating to this sub-condition

Schedule F of the amended application asserts that the claim group have, and their ancestors had, since British sovereignty was asserted, an association with the area comprising of the right to use possess and enjoy the area the subject of the claim.

The applicants assert in Schedule G that members of the claim group use and enjoy the area including living, erecting structures, using, trading, maintaining and preserving the natural environment, and that these uses derive from the law and customs of their predecessors.

They further assert that the claim group members protect and preserve *Adnyamathanha* culture through conducting meetings and gatherings, education of children and others, and care of sites and burying deceased members of the group in the area.

The truth of this assertion is deposed to by the applicants in the affidavits filed with the application.

The procedural requirements are met. See detailed reasons provided under s190B(5).

Application **passes** the condition

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

Reasons relating to this sub-condition

Schedule F of the amended application asserts that:

- the rights of use, occupation and possession derive from, and are held in accordance with, traditional laws and customs acknowledged and observed by the group.

- the claim group has held and continues to hold native title in accordance with those traditional laws and customs.

Also, at Schedule G, the factual basis is provided in support of the assertions made by the applicants that the claim group members protect and preserve the *Adnyamathanha* culture and heritage through conduct-ing meetings and gatherings, education of children and others, care of sites and burying deceased members of the group in the area.

The truth of these facts is deposed to by the applicants in the affidavits filed with the application.

The procedural requirements are met. See detailed reasons provided under s190B(5).

Application **passes** the condition

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

Reasons relating to this sub-condition

Mr Vincent Coulthard's affidavit sets out facts in relation to his role in aspects of traditional law relating to access, use and control of the area over the last twenty years.

In addition, the applicants have presented material from the public domain in support of the application. As noted previously, the applicants assert this includes documents published by agencies of the State Government which acknowledge and accept the traditional and continuing exercise of rights and interests by *Adnyamathanha* People in the area of the application (folios 6-19 above).

The procedural requirements are met. See detailed reasons provided under s190B(5).

Application **passes** the condition

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

Reasons relating to this sub-condition

Schedule G of the amended application states that members of the native title claim group remain in “possession and occupation” and thereby use and enjoy the area. The Schedule goes on to describe a (non-exhaustive) number of activities relating to that use and enjoyment, carried out by the claim group in the area. The requirements are met.

Application **passes** the condition

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

Reasons relating to this sub-condition

Schedule H of the amended application provides details of other native title determination applications, including those combined with SC94/1. The requirements are met.

Application **passes** the condition

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

Reasons relating to this sub-condition

Schedule I and Attachment I of the amended application provide details of notices given under s63M of Part 9B of the *Mining Act 1971 (SA)*, a notice equivalent to a s29 Notice under a corresponding law of the State of South Australia. The details of such notices include those issued prior to commencement of the amended Native Title Act. The procedural requirements are met.

Application **passes** the condition

The application meets the requirements of s190C(2). All the procedural requirements of s.61 and s.62 have been met, for the reasons detailed under s.61 and s.62 above.

S190C(3) No previous overlapping claim groups Met

- 190C(3)** *Common claimants in overlapping claims:*
The Registrar must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:
- (a) the previous application covered the whole or part of the area covered by the current application; and*
 - (b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and*
 - (c) the entry was made, or not removed, as a result of consideration of the previous application under section 190C(3).*

The following relevant documents have been reviewed for this application.

Fol	Date	Description
		Register of Native Title Claims
O	25/1/99	Schedule O: Membership of other native title groups

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

Reasons for the Decision

Schedule O of the amended application states that, following the combination of the application on 15/1/99 and 25/1/99, none of the applicants are members of another native title claim group overlapping the area of this application.

In Schedule O, the applicants state that they are aware of assertions by the applicant for the Kuyani Native Title Applications SC95/1(SG6002/98) and SC95/4(SG6004/98) that a number of members of the SC94/1 claim group are also members of the SC95/1 and SC95/4 claim groups. In reply, the applicants state that an entry for this application, SC94/1, was on the Register of Native Title Claims before entries were made in relation to either applications SC95/1(SG6002/98) or SC95/4(SG6004/98).

A search of the Register of Native Title Claims has shown that SC94/1(SG6001/98) was lodged on 6/10/94, and accepted for registration on 8/5/95, (and was later amended on 15 and 25 January 1999). The Kuyani application SC95/1 (SG6002/98) was lodged on 9/1/95 and registered on 8/9/95 while SC95/4 (SG6004/98) was lodged and registered on 19/9/95.

Following the search of the Register of Native Title Claims applications were identified as overlapping all or part of the *Adnyamathanha* Peoples application SC94/1 and are listed below with their registration dates:

- SC95/1 (SG6002/98) registered 08/09/95
- SC95/2 (SG6003/98) registered 08/09/95
- SC95/4 (SG6004/98) registered 19/09/95
- SC96/4 (SG6011/98) registered 04/04/96
- SC96/5 (SG6012/98) registered 10/04/96
- SC97/4 (SG6017/98) registered 22/08/97
- SC98/2 (SG6025/98) registered 22/01/98

As there were no previous applications on the Register of Native Title Claims in relation to a whole or part of the area of the application at the time the current application was made, whether any member of the native title claim group is a member for any previous application is not relevant.

The requirements are met.

S190C(4) **Identity of claimed native title holders** **Met**

190C(4)(a) *Certification and authorisation:*
and *The Registrar must be satisfied that either of the following is the case:*
190C(4)(b) *(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*
 (b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.

The following relevant documents have been reviewed for this application.

Fol	Date	Description
R	20/1/99	Attachment R: Recommendation for Certification of the <i>Adnyamathanha</i> Native Title Claimants – Aboriginal Land Rights Movement (ALRM).

Native Title Representative Bodies Gazetted Boundaries Map

9/3/99 Facsimile "Kuyani submission in response to the proposed amalgamation of so-called Adnyamuthanha Claim"

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

Reasons for the Decision

An inspection of the Native Title Representative Bodies (NTRB) gazetted boundaries has shown that the area of the application is wholly within the Aboriginal Legal Rights Movement (ALRM) gazetted area.

The applicants have provided, as Attachment R to the amended application, a document certifying that, in the opinion of the Aboriginal Legal Rights Movement (ALRM), the claim satisfies the requirements of s202(5)(a) and (b), and s202(6)(a)(b).

The certification document from ALRM contains the reasons for the body being of the opinion to certify, and briefly sets out the actions of the NTRB in regard to achieving agreement and minimising overlapping applications for determinations of native title.

The ALRM Certification therefore complies with s202(7)(a) – s202(7)(c).

A submission of 9 March 1999 was received from Mr John Bannon, representing the Kuyani applicants for SC95/1 and SC95/4, both overlapping with this application. Mr Bannon submits that, by the authority of initiated men, exclusively authorised to speak on matters of land within the boundary according to Wilaru Law, that: (point 2) those who should have been included in the claim group, had it been properly constructed, have not been consulted or given their assent to the claim or amalgamation.

By these assertions, Mr Bannon appears to be challenging the authority of the *Adnyamathanha* applicants and implying that additional names should have been included in the claim group. However, this section only requires that either s190C(4)(a) in regard to certification, or s190C(4)(b) in regard to authorisation, need to be satisfied, not both.

Accordingly, for the reasons outlined above, the requirements of s190C(4)(a) have been met and the applicants are not further required to demonstrate that they authorised under s190C(4)(b). The issue of the adequacy of the description of the claim group is more properly dealt with at s190B(3).

Mr Bannon also asserts at point 8 that the details of the conduct of community meetings outlined by the ALRM in the certification document, Attachment R, are not consistent with the "broader facts". While it is unclear what Mr Bannon is asserting in relation to those meetings, s202(6) dealing with the actions by the NTRB in relation to overlapping applications, states that a failure of the NTRB to comply with this section does not invalidate any certification by the NTRB.

The requirements for certification are met.