

*NATIONAL NATIVE TITLE TRIBUNAL*

**REGISTRATION TEST**

**REASONS FOR DECISION**

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DELEGATE: Mia Zlamal

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Application Name: Wiluna #2

Names of Applicant(s): Billy Patch, Tilly Stevens, Ken Clause, Benny Campbell and Betty Anderson.

Region: Central Desert

NNTT No.: WC04/7

Federal Court No.: W 241/04

Date Application Made: 28 October 2004

Application Amended: N/A

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The application is **NOT ACCEPTED** for registration pursuant to s.190A of the *Native Title Act 1993* (Cth).

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Mia Zlamal  
**Delegate of the Registrar pursuant to  
sections 190, 190A, 190B, 190C, 190D**

5 May 2005  
Date of Decision

## **Information considered when making the Decision**

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

- the National Native Title Tribunal's Registration Testing files and Legal Services files for this application
- the National Native Title Tribunal Geospatial Database
- the Register of Native Title Claims and Schedule of Native Title Applications
- the Native Title Register
- Geospatial assessment and overlap analysis 16 November 2004

**Note:** I have not considered any information and materials provided in the context of mediation of the native title claim group's native title applications. This is due to the 'without prejudice' nature of mediation communications and the public interest in maintaining the inherently confidential nature of the mediation process.

All references to legislative sections refer to the *Native Title Act 1993* (Cth) ('the Act') unless otherwise specified.

### **Delegation Pursuant to Section 99 of the *Native Title Act 1993* (Cth)**

On 22 November 2004, Christopher Doepel, Native Title Registrar, delegated to members of the staff of the Tribunal including myself all of the powers given to the Registrar under sections 190, 190A, 190B, 190C and 190D of the Act.

This delegation has not been revoked as at this date.

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### **NOTE TO APPLICANT:**

To be placed on the Register of Native Title Claims, the application must satisfy *all* the conditions in sections 190B and 190C of the *Native Title Act*.

In the following decision, I have tested the application only against the condition in s.190C(3). For the reasons outlined below under 'Brief History of the Application' I have determined that in the particular circumstances of this application it is unnecessary to provide an assessment against each of the conditions in sections 190B and 190C of the Act.

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## **Brief History of the Application**

1. On 28 October 2004 the applicant's representative, the Ngaanyatjarra Council ('Ngaanyatjarra'), filed the Native Title determination application known as Wiluna #2 (W 241/04).
2. Subsequent to the filing of the application, Tribunal staff and I provided assistance to the applicants, through Ngaanyatjarra, including:
  - a. Preliminary assessment dated 24 January 2005 in which section 190C(3) was identified as being a condition which may prevent the application from being accepted for registration; and
  - b. Provision of some mapping assistance and geospatial information, including an assessment of the area as described in Schedule B and in the map which appears at Schedule C, Attachment C. This assessment identified inconsistencies within the technical description and map.
3. Following the provision of the preliminary assessment of the application, Tribunal staff wrote to Ngaanyatjarra indicating that pursuant to section 29 of the Act a notice covering the application area had been issued. The correspondence highlighted the Registrar's obligation under section 190A(2) that he or his delegate use best endeavours to finish considering the claim prior to the end of this four month notification period. In this instance the relevant date is 13 May 2005.
4. This correspondence also sought confirmation from Ngaanyatjarra as to their intention in regards to amendment of the application. The letter suggested that an abbreviated decision may be appropriate depending on the further intentions of the applicant with regards to amendment.
5. Ngaanyatjarra responded via email that:
  - a. Amendment was likely, although it would not occur immediately;
  - b. They had no objection to the immediate application of the registration test; and
  - c. An abbreviated decision would be satisfactory.
6. On the basis that:
  - a. the application is affected by a section 29 notice;
  - b. therefore the Registrar must now use best endeavours to consider the application against the conditions of the registration test prior to the end of the section 29 notification period, which in this case is 13 May 2005;
  - c. no attempt to amend the application in order to rectify the deficiencies for registration is likely to be made in the immediate future; and
  - d. the applicant's representative is in agreement with an abbreviated decision;

I do not intend to undertake an assessment of each condition of the registration test. Rather, I limit my considerations to the requirements of section 190C(3).

7. I will now consider the application.

### **Common claimants in overlapping claims: S190C(3)**

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

- (a) the previous application covered the whole or part of the area covered by the current application; and*
- (b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made: and*
- (c) the entry was made, or not removed, as a result of consideration of the previous application under section 190A.*

#### **Reasons relating to this condition**

***(a) Does the previous application cover the whole or a part of the area covered by the application?***

Schedule H to the application references one determination application (WAG 6164 of 1998) that has been made in relation to the whole of the area covered by the Wiluna #2 application. Schedule O to the application also includes this information, listing the overlapping application as Federal Court matter WAG 6164 of 1998. A report from the Tribunal's Geospatial Unit dated 16 November 2004 confirms this overlap and lists the relevantly overlapping claim as Wiluna (WC99/24, WAG 6164/98).

The Wiluna application was made prior to 28 October 2004, being the date that the current application was made.

***(b) Was an entry relating to the claim made in the previous application on the Register of Native Title Claims when the current application was made?***

Applying the principle established in *Western Australia v Strickland* [2000] FCA 652, the date the current application (Wiluna #2) was made is 28 October 2004. The overlapping Wiluna application was entered on the Register of Native Title Claims on 24 September 1999 and was thus on the Register on the date the current application was made.

***(c) Was an entry made, or not removed, as a result of consideration of the previous application under section 190A?***

The Wiluna application was considered under section 190A and as a result of that consideration was entered on the Register of Native Title Claims on 24 September 1999. It has not been removed from the Register since that date.

***(d) Are there common claimants between the current application and the application listed in paragraph (c)?***

Schedule O of the application states:

“All members of the native title group are members of a native title claim group for another application WAG 6164 of 1998 that has been made in relation to the whole of the area covered by this application.”

This is also confirmed by comparing the persons named as applicant for the two overlapping claims. Billy Patch’s name appears on both applications as a person comprising the applicant.

Common claimants are also evident when comparing membership of the respective claim groups, each of which is described by way of an exhaustive list of names. All except three of the names appearing in the Wiluna #2 application also appear as claimants in the Wiluna application.

For the above reasons, I cannot be satisfied that the application meets the requirements of section 190C(3).

**Result:            Requirements not met**

For the reasons outlined above I am of the view that the Wiluna #2 native title determination application does not meet the requirements of s.190C(3). Accordingly, pursuant to s.190A(6) it must not be accepted for registration.

*[End of document]*