

Application Name: Mantjintjarra Ngalia Peoples  
Application (NNTT) No: WC96/20  
Application (Fed Crt) No: WAG6069/98  
State: WA  
Region: Goldfields  
Date Application Made: 11/03/96  
Date Registration Test: 23/04/99  
Decision made:  
Decision: Not Accepted  
Decision Type: Abbreviated Decision

### Information Relevant to the Decision

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

- .. The Working Files, Registration Test Files, and Federal Court Application and Amendment Files for application for determination of native title WC96/20
- .. The Register of Native Title Claims;
- .. Determination of Representative ATSI Bodies: their gazetted boundaries.

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

### Reasons for Decision

1. The application has not been amended in relation to the registration test. The applicants did file an application to amend the principle application in the Federal Court on 16 March 1999. However this application was dismissed by the Federal Court at it's first return date on 16 April 1999.
2. A copy of the proposed amendments was provided to NNTT staff on 17 March 1999 as the as advance notice to the Tribunal of these. As the application to amend the principle application was dismissed, I am unable to consider the information in this document either as information contained in a document provided by the applicant (section 190A(3)(a)), or as later information provided in accordance with transitional provisions (Schedule 5 item 11(8)).
3. On 17 March 1999 the applicants also provided the Tribunal with affidavits of each of each of **[deponent's name deleted]**, **[deponent's name deleted]** and **[deponent's name deleted]** (all sworn on 13 January 1999), as further information addressing continuous physical connection. I am satisfied that I am obliged to have regard to this further information. However for the reasons set out below I have limited my consideration of this information to sections 190C(2) and 190C(4) of the Act.
4. The Tribunal wrote to the applicants individually on 1 October 1998 advising that any information to be considered by the Registrar for the purposes of registration should be provided by no later than 1 January 1999.
5. On 19 November 1998, the Tribunal wrote to the applicants individually advising them that further communication would be with their legal representative, Principal Legal Officer, Goldfields Land Council.

6. On 25 November 1998, the Tribunal wrote to the applicants individually and to their legal representative (Principal Legal Officer, Goldfields Land Council) advising that a new section 29 notice effecting their application issued on 25 November 1998. The letter gave notice that the Registrar must use his best endeavours to conclude consideration of the application under section 190A within 4 months from that date. It was requested that further information or amendments be made by 8 January 1999 and responses to any subsequent third party submissions be made by the 3rd week of January 1999.

7. During the course of December 1998 and January 1999, the agent then appointed to act for the Goldfields Land Council of behalf of the applicants was provided with copies of potentially relevant and adverse material located on the application files, summary lists of potentially relevant documents located on related Future Act files held by the Tribunal, and tenure information held by the Tribunal. Section 78 assistance was approved and provided by production of maps and application area boundary (prepared by the WA Land Claims Mapping Unit) by 17 March 1999.

8. The Notice of Motion and proposed amended Form 1 filed in the Federal Court was not accompanied by the required affidavits and these were not subsequently filed prior to the first return date, when the Notice of Motion was dismissed.

9. On 16 March 1999, the agent for the applicant's representative, Mr Rynne, confirmed that he had no instructions to renew an application to amend the principle application. He confirmed his understanding that this application would therefore proceed to an abbreviated registration test decision. These two issues were re-confirmed with Tribunal officers on 23 April 1999.

10. A notice under s29 was given on 25 November, 1998 in relation to an act affecting part of the land covered by this claim. Under the transitional provisions of the Act [Notes Table A Part 4 s11(6)] the Registrar must use his best endeavours to finish considering the claim under s190A by the end of 4 months after the notice is given. Consequently I will consider this application now, notwithstanding the applicants' failure to amend the application as the four month period has now elapsed.

11. The application is not accompanied by affidavits as specified in 62(1)(a) and as required for the satisfaction of 190C(2). I do not accept that the affidavits lodged with the original application nor those lodged when the new named applicants were added up to 30 September 1998, satisfy the full substantive requirements of s62(1)(a)(i) to s62(1)(a)(v).

12. The further affidavits of each of [deponent's name deleted], [deponent's name deleted] and [deponent's name deleted] (each sworn 13/02/99) were provided as further information for the consideration of the Registrar in relation to traditional physical connection to the area of the application. The final paragraph of each affidavit states in identical terms the deponent's authority to make the application. As only 3 of the 8 applicants have sworn to issues relating to authorisation, it is not necessary for me to consider whether these should be read together with the earlier affidavits filed.

13. Five of the 8 named applicants have provided no affidavit material dealing with the matters required in section 62(1)(a)(iv) and (v). Consequently it is also unnecessary to consider whether the statements in the final paragraph of the affidavits of [deponent's name deleted], [deponent's name deleted] and [deponent's name deleted] are sufficient to meet the requirements of section 62(1)(a)(iv) and (v).

14. The application provides a description of the other persons on whose behalf native title is claimed (at A5 of the form). The description at A5 of the native title claim group is insufficient to meet the requirements of section 61(4).

15. The description does not name all of the persons on behalf of whom native title is claimed so does not constitute a description in accordance with section 61(4)(a). The description states that the application is made "on behalf of Mantjintjarra and Ngalia peoples including .." No definition is provided as to the people who are Mantjintjarra and Ngalia people. The non-exhaustive list of families that follows leaves open inclusion in the group of further unknown individuals.

16. The description of persons included in the group is also inadequate in that it consists of named persons and their families. No definition of what may be encompassed by the notion of family is provided. This may be very wide and therefore further definition of the term "family" would be required to satisfy the requirements of section 61(4)(b).

17. For the reasons set out in paragraphs 11 to 16 above I find that the application does not comply with section 190C(2).

18. The applicant has not provided evidence that the application has been certified by a representative Aboriginal /Torres Strait Islander body that could certify the application as required pursuant to s.190C(4)(a) of the Act.
19. To meet the requirements of the alternative provision, s.190C(4)(b), the applicants must have (pursuant to s.190C(5)) supplied a statement to the effect that the requirement set out in s.190C(4)(b) has been met, and also set out the grounds on which the Delegate should consider that it has been met.
20. No such statement is set out in the application. The final paragraph of the affidavits of **[deponent's name deleted]**, **[deponent's name deleted]** and **[deponent's name deleted]** (each sworn 13/02/99) contains a statement to the effect that the deponent has been authorised as an applicant. The paragraph also sets out some information on the method of that authorisation and includes a statement that the deponent was appointed "to speak on behalf of the claim group together with others who were nominated as applicants" at meeting on 13 January 1999.
21. I am not informed who those other applicants were. I am required to assume that the nominees are same applicants as those currently listed on the application. I am not satisfied that I can do this.
22. Five of the eight applicants have not provided any evidence that they are members of the native title claim group and duly authorised to make the application and to deal with matters arising in relation to it. For this reason alone, I am not satisfied that the condition in subsection 190C(4). However, for completeness I note that the information provided in relation to the authorisation process is insufficient to meet the requirements of s.190C(5)(b).
23. Given the failure by the applicant to comply with s.190C(2) and s.190C(4), I have not considered it necessary to apply the test in respect to the merits requirements contained in s.190B of the Act.