

National Native Title Tribunal

**REASONS FOR DECISION COVER SHEET
REGISTRATION TEST**

DELEGATE	Lillian Maher
APPLICATION NAME	Ngarrawanji
NAMES OF APPLICANTS	Connie Jugari, Doris Fletcher, Monty Hale, Josephine Farrer, Ethel Walalgie, Mavis Wallaby, Benny Duncan, Gladys Ngarnkal, Effie Williams, Eileen Cox and Felicity Smith
NNTT No	WC96/75
FEDERAL COURT No	WAG6107/98
REGION	North WA
DATE APPLICATION MADE	Original Application lodged 25 June 1996, Application amended in the Federal Court on 7 September 1999 and 22 September 1999

DECISION

The delegate has considered the application against each of the conditions contained in s190B and 190C of the *Native Title Act* 1993.

The application IS ACCEPTED/NOT ACCEPTED for registration pursuant to s190A of the *Native Title Act* 1993.

Lillian Maher
DELEGATE

DATE

Brief History of the application

Introduction

The Ngarrawanji application for determination of native title was lodged with the National Native Title Tribunal on 25 June 1996 prior to the commencement of the *Native Title Amendment Act 1998* on 30 September 1998. The application was registered on 25 June 1996 and remains on the Register pending a registration test decision under s190A of the current Act. The applicants are represented by the Kimberley Land Council and have been since lodgment on 25 June 1996.

The State of Western Australia issued a section 29 notice under the current Act on 10 March 1999. As a result the Registrar or his delegate was required to use his or her best endeavours to finish considering this application for registration by the end of four months after 10 March 1999, otherwise as soon as reasonably practicable. The four month period expired on 10 July 1999. As this date fell on a Saturday, the Tribunal took Monday 12 July as the end of the four month period.

Prior to the Delegate making a decision on this application under s190A of the *Native Title Act 1993*, as amended (“the Act”), the applicants applied to the Federal Court on 4 August 1999 for leave to amend the application. The application to amend was listed for hearing on 25 August 1999 and subsequently adjourned to 7 September 1999. The application to amend was accepted by the Court on 7 September 1999.

Prior to the Delegate making a decision under s190A of the Act in relation to the application as amended on 7 September 1999, the applicants applied to the Federal Court on 10 September 1999 for leave to further amend the application. The application to amend was listed for hearing on 22 September 1999. The application to amend was accepted by the Court on 22 September 1999.

The application as amended by the Court on 22 September 1999 is the application which I now consider under s190A of the Act.

The original application and amendments under the old Act

The original application was lodged by *[names removed to protect privacy of individuals]* as applicants on behalf of:

“The applicants and others as claimants, all of whom are connected to the claim area according to their acknowledged laws and customs, and who describe the area claimed as Ngarrawanji.”

The application area was described as the land contained within the boundaries of Moola Bulla Pastoral Lease No 3114/1101, Water Reserve Nos. 1592 and 1595 (being formerly Crown lands) contained within the boundaries of that lease and a portion of vacant Crown land on the southern boundary of Moola Bulla pastoral lease. The applicants listed several native title rights and interests possessed under traditional laws and customs.

The original application was accompanied by affidavits from each of the named applicants sworn 7 May 1996. Each affidavit was in the same form and contained statements that the deponent believed that:

- native title had not been extinguished in relation to any part of the area covered by the application;
- none of the area covered by the application was covered by an entry in the National Native title Register;
- all the statements made in the application were true.

On 15 January 1998 the Application was amended to alter the determination sought in paragraph A14 from an exclusive possession claim to a claim to those rights consistent with the operation of the pastoral lease and the laws of general application.

First Amendment by the Federal Court – 7 September 1999

On 4 August 1999 the applicants applied to the Federal Court to amend the application. On this date the Court wrote to the Registrar of the Tribunal advising that the applicants had applied to amend the application. The application to amend was listed for hearing on 25 August 1999 and subsequently adjourned at the request of the claimants to 7 September 1999. On 7 September 1999 the amendments were accepted by the Court and on 9 September 1999 the Tribunal received a copy of the amended application from the Federal Court.

The amendments to the application were substantial, indicating a clear intention on the part of the applicants to comply with the requirements for registration.

The amended application is made by *[names removed to protect privacy of individuals]*

[Name removed to protect privacy of individual] is the only applicant who did not appear on the original application.

The amended application is accompanied by affidavits from each of the 11 applicants and a map of the claim area prepared by the Land Claims Mapping Unit dated 8/7/1999.

Further Amendment by the Federal Court - 22 September 1999

On 10 September 1999 the applicants applied to the Federal Court for leave to further amend the application. The only amendment sought by the applicants related to Schedule I of the application, namely, details of section 29 notices issued post commencement. The notice of motion to further amend was listed for hearing on 22 September 1999. On 22 September the amendments were accepted by the Court and on 30 September 1999 the Tribunal received a copy of the amended application from the Federal Court.

Current interest searches/tenure information

At the time of lodging the original application with the Tribunal on 25 June 1996, the applicants provided current and historical land tenure information in relation to the area the subject of the native title determination application.

On 3 September 1996 the Tribunal forwarded a request to the Land Claims Mapping Unit (LCMU) for current land tenure and a current land tenure plan for the claim area.

On 11 September 1996 the Land Claims Mapping Unit supplied the following information:

- Spreadsheet of current land tenure (and address details) as at September 1996 which included pastoral lease 3114/1101 and reserves 1592, 1595, 39512, 39513, 41018 and 41019
- Current land tenure plan dated 11.9.96
- Tenure search documentation (for the pastoral lease and 6 reserves)

On 11 September 1998 LCMU wrote to the Tribunal, requesting clarification as to whether the applicants intended reserves 39512, 39513, 41018 and 41019 to be claimed. This query was raised by LCMU in September 1996 but was not resolved. With this request for information, LCMU provided an updated current land tenure plan of the claim area (dated 3.9.98). The map appears to be identical to the current land tenure plan of the claim area dated 11.9.96. The issue of whether the four reserves are claimed has been addressed in the further amended application at Schedule B.

Relevant Documents

There are numerous documents on Tribunal files relevant to the re-amended application. Section 190A(3) provides that the Registrar must have regard to any documents provided by the applicant, any results of tenure searches undertaken by the Registrar and, to the extent practicable, any information supplied by the Commonwealth or State governments which is relevant to the s190B and s190C conditions.

I have had access to all documents in Tribunal working files other than documents submitted for the purposes of mediation (or prepared for the conduct of and in the course of mediation) which, if disclosed to the Delegate or other persons for the purposes of or in relation to the outcome of the registration test, may prejudice the mediation of this application.

Documents which I have considered include the following:

- The Working Files & the Registration Test File
- Documents received from the Federal Court
- Tenure information acquired by the Tribunal in relation to the area covered by this application;
- The National Native Title Tribunal Geospatial Database;
- The Register of Native Title Claims;
- The National Native Title Register;
- The Tribunal's Social and Land Use Research Background File
- Determination of Representative ATSI Bodies: their gazetted boundaries;
- Affidavits submitted confidentially to the Registrar of the National Native Title Tribunal
- Information on Future Act Files (where the future act matters relate to the area covered by this application); and
- Submissions from the Western Australian State Government in relation to the application.

State's Submissions

On 23 December 1999 the State of Western Australia provided submissions to the Tribunal identifying conditions in sections 190B and 190C which the State considered were not satisfied in relation to the claim.

The State's submissions relate to the content of the original application lodged in June 1996. As the application has now been amended, the submissions are no longer relevant. In my opinion, the deficiencies highlighted by the State have been remedied by the applicants in the amended application.

In my reasons, where applicable, I will refer to particular documents which I have taken into account when considering each aspect of the registration test.

Consideration of the application under s190A

I shall now consider the application as amended on 22 September 1999 for registration pursuant to section 190A of the 1998 Act, first considering formal requirements under s190C and then the merits of the application under s190B. For my reasons I shall refer to the further amended application as "the application".

If I need to refer to a version of the application which preceded the further amended application I shall make that clear in my reasons.

REASONS FOR DECISION

A. Procedural Conditions

190C2	<p>Information, etc, required by section 61 and section 62:</p> <p><i>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></p>
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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	Application complies with the sub-section
<p>The application provides the names of the applicants as Connie Jugari, Doris Fletcher, Monty Hale, Josephine Farrer, Ethel Walalgie, Mavis Wallaby, Benny Duncan, Gladys Ngarnkal, Effie Williams, Eileen Cox and Felicity Smith.</p> <p>The application is filed by Dwyer Durack on behalf of the Kimberley Land Council and an address for service is provided.</p> <p>The application satisfies the requirements of this condition.</p>	

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	Application complies with the sub-section
<p>An exhaustive list of names of the persons in the native title claim group has not been provided and so the requirements of s.61(4)(a) of the Act are not met.</p> <p>In the alternative, pursuant to s.61(4)(b), the application must otherwise describe the persons in the native title claim group sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.</p> <p>Schedule A of the application provides that:</p> <p style="padding-left: 40px;"><i>The claim is brought on behalf of those Aboriginal people who hold in common the body of traditional laws and customs concerning the claim area. Those people are the biological descendants of :</i></p> <p style="padding-left: 40px;"><i>[Names removed to protect privacy of individuals]</i></p> <p>In order 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.</p> <p>Section 61(4) does not require that at the time of consideration for registration the Registrar (or delegate) be able to identify every person who belongs to the native title claim group. However, the application must describe the persons in the native title claim group sufficiently clearly so that it can be ascertained whether any particular person is one of those persons (s61(4)(b)).</p>	

As the application provides a list of the occupants of the area at the time of sovereignty it is possible to determine whether a particular person is a biological descendent of one of those occupants and is therefore a member of the claim group.

I am satisfied that the description is sufficiently clear so that it can be ascertained whether any particular person is a member of the claim group.

The application satisfies this condition of the registration test.

See also my reasons under section 190B(3).

61(5)

Application is in the prescribed form¹; lodged in the Federal Court, contains prescribed information², and accompanied by prescribed documents and fee

Reasons relating to this sub-section

Application **complies** with the sub-section

Prescribed form

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

Filed in the Federal Court

As required under section 61(5)(b), the application was filed in the Federal Court.

Prescribed information

The application meets the requirements of section 61(5)(c) in that it contains all information as prescribed by section 62. I refer to my reasons for decision in relation to those sections.

Accompanied by prescribed documents

The application is accompanied by affidavits sworn by each of the applicants as prescribed by section 62(1)(a). I refer to my reasons for decision in relation to that section of the Act. A map has also been provided as prescribed by section 62(1)(b). I refer to my reasons for decision in relation to section 62(2)(b) of the Act.

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.

The requirements of s.61(5) are met.

¹ Note that in relation to pre 30.09.98 applications, the application does not need to be in the prescribed form as required by the amended *Act*. Note also that pre 30.09.98 applications are deemed to have been filed in the Federal Court.

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

Details required in section 62(1)

62(1)(a)	<i>Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)</i>
Reasons relating to this sub-section	Application complies with the sub-section
<p>An affidavit has been provided by each of the applicants sworn on dates in April and May 1999 containing the information prescribed by s62(1) of the Act. The affidavits have been witnessed by a Justice of the Peace.</p> <p>Each of the applicants provide that:</p> <ul style="list-style-type: none"> • They are members of the native title claim group; • They believe that the native title rights and interests claimed by the claim group have not been extinguished in relation to any part of the area covered by the application; • They believe that none of the area covered by the application is also covered by an entry in the National Native Title Register; and • That they are authorised by all the persons in the native title claim group to make the application and deal with matters arising in relation to the application. <p>The applicants also provide a statement outlining the basis on which they are authorised to make the application and deal with matters arising in relation to it, namely, that they are authorised pursuant to a process of decision making that:</p> <ul style="list-style-type: none"> • under the traditional laws and customs of the native title claim group, must be complied with in relation to authorising things of that kind; and/or • the persons in the native title claim group have also agreed to and adopted in relation to authorising the making of the application and dealing with matters and in relation to doing things of that kind. <p>I am satisfied that the application complies with the requirements of s62(1)(a) of the Act.</p>	

62(1)(c)	<i>Details of traditional physical connection (information not mandatory)</i>
Comment on details provided	
<p>It is not a mandatory requirement that details of traditional physical connection are contained in the application for the purposes of 62(1)(c). However, details of the activities currently undertaken by the claim group are provided in Schedule G of the application.</p> <p>Further information in relation to traditional physical connection is provided by two of the applicants, <i>[name removed to protect privacy of individual]</i> and <i>[name removed to protect privacy of individual]</i>, in affidavits sworn <i>[date removed]</i> and <i>[date removed]</i>, submitted directly to the Tribunal for the purposes of the Registration test.</p> <p>The adequacy of the information provided is assessed at s.190B(7).</p>	

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	Application complies with the sub-section
<p>Schedule B of the application describes the external boundaries of the claim by reference to the boundaries indicated on the map attached to the application (Attachment "C") and the description in Attachment "B".</p> <p>The map marks the external boundary of the claim area and includes geographic coordinates. All line work is finely drawn and easy to follow. The map provides a scale enabling the area of the claim to be ascertained.</p> <p>The applicants also provide a description of the external boundary at Attachment B. The external boundary follows the boundary of various land tenure parcels within the claim area and adjacent to the claim area and geospatial co-ordinates are provided.</p> <p>The description at Attachment B matches the external boundary drawn on the map.</p> <p>I am satisfied that the external boundary of the claim area can be clearly identified. The application meets the requirements of this condition.</p> <p>See also my reasons for decision provided under s190B2.</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	Application complies with the sub-section
<p>Schedule B of the application describes the internal boundaries of the claim area.</p> <p>Paragraphs 5, 6 and 7 of Schedule B refer to specific land tenures parcels which are included in the claim area. In addition, the internal boundary description identifies general "classes" of land tenure which are excluded from the area covered by the application.</p> <p>At the hearing to amend the application on 7 September 1999 the applicants removed the reference to Reserve 41018 from the list of areas claimed. However the applicants have not specifically excluded it from the claim area.</p> <p>My interpretation of schedule B is that the applicants claim the area within the external boundary as marked on the map and described at Attachment "B" except those areas which are excluded as set out in items (1) to (3) of Schedule B and Schedule B1. If Reserve 41018 falls into any of the general exclusions in items (1) – (3) of Schedule B or items listed in Schedule B1, then the Reserve is not subject to claim. I do not have to consider whether Reserve 41018 is excluded under Schedule B or Schedule B1 under this condition. All that is required under this condition is that the description of areas excluded can be objectively applied to establish whether any particular area of land or waters within the external boundary of the application is within the claim area or not. I consider that the information in Schedule B provides a reasonable level of certainty.</p> <p>I am satisfied that the information provided in the application satisfies this condition.</p> <p>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	Application complies with the sub-section
<p>A map showing the external boundaries of the area covered by the application is attached at Attachment "C".</p> <p>I am satisfied that the requirements of this subsection are met.</p> <p>See also my reasons for decision under s.62(2)(a)(i) and s190B2.</p>	

62(2)(c)	<i>Details/results of searches carried out to determine the existence of any non-native title rights and interests</i>
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Reasons relating to this sub-section	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 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.</p> <p>The applicants provide at Schedule D of the application that:</p> <p style="padding-left: 40px;"><i>“The searches that the Applicants are aware of that have been carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application are as follows and are in the possession of the National Native Title Tribunal at the date of this application:</i></p> <ul style="list-style-type: none"> • <i>Pastoral Lease No 3114/1101</i> • <i>Gazettal notices concerning reserves 1592 and 1595</i> • <i>Reserve Nos 39512, 39513, 41018 and 41019”</i> <p>In Paragraph A8 of the original application, the applicants refer to title searches conducted by the Department of Land Administration. Copies of those title searches were attached to the original application when it was lodged with the Tribunal in June 1996. The searches contained both current and historical land tenure documentation.</p> <p>I am satisfied that it is sufficient for the applicants to provide the results of current land tenure searches for the area covered by the application, as above, and to refer to material already provided to the Tribunal in relation to those searches.</p> <p>I am satisfied that the requirements of this condition are met.</p>	

62(2)(d)	<i>Description of native title rights and interests claimed</i>
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Reasons relating to this sub-section	Application complies with the sub-section
<p>Schedule E of the application contains a description of the native title rights and interests claimed. The description goes beyond a mere statement that the applicants claim native title rights and interests which have not been extinguished.</p> <p>The applicants claim the right to possession, occupation, use and enjoyment as against the whole world (subject to any native title rights and interests which may be shared with any others who establish that they are native title holders) of the area <i>and</i> subject to various acts set out in Schedule E which limit the applicants’ claim to possession, occupation, use and enjoyment as against the whole world.</p> <p>The description also includes a list of 10 particularised rights and interests which comprise the right to possession, occupation, use and enjoyment.</p> <p>The rights and interests claimed are each claimed in relation to “the area”. My interpretation is that it is the whole area the subject of the application which is being referred to.</p> <p>I am satisfied that the application describes that native title rights and interests claimed in relation to the area the subject of the application. The application complies with this condition.</p> <p>The question of whether the description is sufficient to allow native title rights and interests described to be readily identified is addressed in relation to s190B(4).</p>	

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	Application complies with the sub-section
<p>The factual basis for the assertion that the native title claim group has and their predecessors had, an association with the area, is provided at items (1), (2) and (5) of Schedule F of the application. Specifically, these items set out possession, occupation, use and enjoyment of the area by the group and its ancestors, inheritance of the area by descent, conception and birth in the area and the passage of traditional knowledge of the area, and continuing connection of the claim group to the area.</p> <p>I also refer to Schedule G which contains assertions about current activities which the claim group undertake in relation to the land and waters within the area of the claim.</p> <p>Each of the applicants depose as to the truth of the statements made in the application in their affidavits addressing the factors in s62(1).</p> <p>I am satisfied that the application sets out a general description of the factual basis on which it is asserted that the claim group has, and they and their predecessors had, an association with the area.</p> <p>See also my reasons for decision in relation to s190B(5) for a more detailed inquiry into whether the factual basis described is sufficient to support that assertion.</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	Application complies with the sub-section
<p>The factual basis for the assertion that traditional laws and customs exist that give rise to the claimed native title is provided in items (2), (3), (4) and (5) of Schedule F of the application. Specifically, these items set out the existence, transmission and acknowledgment of traditional laws and customs in relation to the area.</p> <p>I also refer to Schedule G which identifies activities which the claim group currently undertake in relation to the land and waters within the area of the claim, particularly those relating to conducting ceremonies, visiting and protecting sites and passing on of knowledge of country and traditional law and custom.</p> <p>Each of the applicants depose as to the truth of the statements made in the application in their affidavits addressing the factors in s62(1).</p> <p>I am satisfied that the application sets out a general description of the factual basis on which it is asserted that there are traditional laws and customs that give rise to the claimed native title.</p> <p>See also my reasons for decision in relation to s190B(5) for a more detailed inquiry into whether the factual basis described is sufficient to support that assertion.</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	Application complies with the sub-section
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The factual basis for the assertion that the claim group has continued to hold native title in accordance with traditional laws and customs is provided in items (1), (2), (3), (4) and (5) of Schedule F of the application. Specifically, these items set out the facts of existence, transmission and acknowledgment of traditional laws and customs in relation to the area, and a continuing connection to the land by these traditional laws and customs.

I also refer to Schedule G which identifies activities which the claim group currently undertake in relation to the land and waters within the area of the claim, particularly those relating to conducting ceremonies, visiting and protecting sites and passing on of knowledge of country and traditional law and custom.

Each of the applicants depose as to the truth of the statements made in the application in their affidavits addressing the factors in s62(1).

I am satisfied that the application sets out a general description of the factual basis on which it is asserted that the native title claim group have continued to hold the native title in accordance with traditional laws and customs.

See also my reasons for decision in relation to s190B(5) for a more detailed inquiry into whether the factual basis described is sufficient to support that assertion.

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	Application complies with the sub-section
<p>A list of the activities currently carried on within the area by the native title claim group is provided in Schedule G of the application. Schedule G provides that:</p> <p style="text-align: center;"><i>Members of the native title claim group have continuously carried out activities on the land and waters within the area of the claim and have possessed, occupied, used and enjoyed the area, including by way of:</i></p> <ul style="list-style-type: none"> • <i>Camping and living and building structures;</i> • <i>Moving freely about and having access to the claim area;</i> • <i>Hunting and gathering and fishing;</i> • <i>Taking and using the resources of the area, including forest products, water, minerals and other resources from the land and waters;</i> • <i>Manufacturing tools and weapons from the resources of the land and waters;</i> • <i>Disposing of the products of the land and waters or manufactured from the products of the land and waters by trade or exchange;</i> • <i>Managing, conserving and caring for the land and waters and controlling access to the land and waters;</i> • <i>Conducting and taking part in ceremonies;</i> • <i>Visiting and protecting sites;</i> • <i>Passing on the knowledge of the country and of the traditional law and custom;</i> <p style="text-align: center;"><i>In accordance with custom and tradition.</i></p> <p>The wording of Schedule G implies that this is not an exhaustive list of the activities carried out by the claim group within the claim area. Further, the activities listed are described in general terms.</p> <p>However, I am of the opinion that the section does not require exhaustive or minute descriptions of activities, nor the places, times and events of when and where they were carried out. I therefore find that the general description of possession, occupation, use and enjoyment of the claim area with some particulars of the types of activities that are carried out, constitute sufficient detail to meet the requirements of this condition.</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 determination of native title or compensation)</i>
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Reasons relating to this sub-section	Application complies with the sub-section
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In Schedule H of the application the applicants state that:

“There have been two other applications to the High Court, Federal Court or recognised State/Territory body that have been made in relation to the whole or a part of any area covered by this application and that seek a determination of native title or compensation in relation to native title.

*WC98/28 – WAG6224 of 1998
WC97/22 – WAG6157 of 1998”*

A search of the Tribunal's Geospatial database as per the *Schedule of Native Title Claims* indicates that the application also overlaps native title determination application WAG6026/99 (Scotty Birrel & Ors) WC99/22. The area of overlap of WC99/22 with WC96/75 is 0.002 square kilometres.

I refer to my reasons under s190C(3) in relation to overlapping applications.

This condition requires that the applicants provide details of applications *of which the applicants are aware*. I consider that the applicants have provided those details.

I consider that s62(2)(g) has been met.

62(2)(h)	<i>Details of any S29 Notices (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	Application complies with the sub-section
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Schedule I of the application provides as follows:

“Details of any notices under section 29 of the Act, issued since 30 September 1998, of which the applicants are aware, that have been given and that relate to the whole or a part of the area are those to which an objection has been made are as follows:

E80/2444 issued on 10 March 1999.

Section 62(2)(h) requires that the application must contain the details of any notices under section 29 that the applicants are aware of.

Advice from the Tribunal's Geospatial Unit on 30 August 1999 confirms that the only section 29 notice which has been issued post commencement is E80/2444 (notice issued 10.3.99)

I consider that s62(2)(h) has been met.

190C3	<p>Common claimants in overlapping claims:</p> <p>The Registrar must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:</p> <p>(a) <i>the previous application covered the whole or part of the area covered by the current application; and</i></p> <p>(b) <i>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>(c) <i>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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I am satisfied that the application meets this condition and set out my reasoning as follows.

Reasons for the Decision

Overlapping Applications

A search of the Tribunal's Geospatial databases indicates that the application overlaps with the following native title determination applications:

- WAG6244/98 (Frank Sampi & Nancy Ethel Lee) WC98/28 (area of overlap 2.598 sq km)
- WAG6157/98 (Yununu People) WC97/22 (area of overlap 3.901 sq km)
- WAG6026/99 (Scotty Birrel & Ors) WC99/22 (area of overlap 0.002 sq km)

WC98/28

In a letter to the Tribunal dated 27 August 1999 the Kimberley Land Council requested the Tribunal to prepare a map of WC98/28 reducing its area so it does not overlap with the Ngarrawanji WC96/75 application. The KLC subsequently filed an application to combine WC98/28 into a country claim. The application to combine was accepted by the Federal Court on 24 September 1999. The map and description of the combined claim area indicate that there is no longer an overlap with WC96/75.

WC97/22

The original application for WC97/22 described the claim area as "that portion of the area contained within the boundaries of proposed exploration license No E80/2199 applied for by PMA Gold Pty Ltd which is situated within the boundaries of Pastoral Lease No 3114/923 ("Koongie Park"). This description was consistent with the map lodged with the application.

It was on this basis that WC97/22 was accepted for mediation on 21 March 1997. Subsequently arrangements were made for another map to be produced by the Land Claims Mapping Unit (LCMU). This map was produced on 8 April 1997. This map included an area of Vacant Crown Land being the area of overlap with WC96/75. This map was not consistent with the application as it was lodged and accepted previously. It would appear that the map produced by LCMU was in error. LCMU have subsequently confirmed that they are in the process of amending the plans to exclude the area of Vacant Crown Land from WC97/22. Accordingly, the overlap with WC96/75 is unintentional and can be disregarded.

WC99/22

The Tribunal's geospatial department has confirmed that the area of overlap with WC99/22 is unintentional and is likely to be the result of data inconsistency. Accordingly, the area of overlap between WC96/75 and WC99/22 can be disregarded on the basis of the "de minimus" principle.

As there are 'in effect' no overlapping applications (which do not arise out of an unintentional geospatial data error) I do not need to consider this condition further. I should add however, that none of the above applications are on the Register of Native Title Claims as a result of passing the Registration Test under s190A of the Act.

I am satisfied that the requirements of s190C(3) are met.

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

The application has been certified pursuant to s190C(4)(a).

An inspection of the NTRB gazetted boundaries establishes that the claim area is wholly within both the Aboriginal Legal Service of WA (Inc) gazetted area and the Kimberley Land Council gazetted area.

Section 190C(4)(a) requires certification by each representative Aboriginal/Torres Strait Islander body that could certify the application. Section 190C(6) qualifies this requirement, stating that certification is not required by all the representative bodies if the application has been certified by a body whose area includes all of the area of land or waters to which the application relates. In this case, the area of the application is entirely within the area of both the Kimberley Land Council and the Aboriginal Legal Service of WA (Inc). Therefore, certification by one of these representative bodies would be sufficient.

The Kimberley Land Council (KLC) has certified the application. A copy of the certification form, signed by the Chairman of the KLC on 22 July 1999, was submitted to the Tribunal on 4 August 1999.

Section 202(7) of the Act sets out the statements to be included in certification of an application for determination of native title. The KLC certificate meets the requirements of s202(7)(a) in that it includes a statement to the effect that the KLC is of the opinion that the requirements of s202(5)(a) and (b) have been met. Specifically, the certificate states that the KLC certifies that it is of the opinion that:

- a) *the Applicants have the authority to make the application and to deal with matters arising in relation to it, on behalf of all the other persons in the native title claim group; and*
- b) *all reasonable efforts have been made to ensure the application describes or otherwise identifies all the persons in the native title claim group*

The requirements of s202(7)(b) are also met, as the certificate briefly sets out the KLC's reasons for being satisfied that the requirements of paragraph 202(5)(a) and (b) have been met, as follows:

- a) *the KLC through its staff and contracted consultants has undertaken extensive research and community consultation in the preparation of the application, with a view to ensuring that the application describes or otherwise identifies all the other persons in the native title claim group.*
- b) *the KLC through its staff and contracted consultants has attended a series of community meetings with claimants from across the claim area and has observed that the Applicants are authorised by the claim group.*

The requirements of s202(7)(c) are not applicable as the area covered by the application is not covered by any other applications (please refer to my reasons for 190C(3) in relation to overlapping applications).

State's submissions

On 23 December 1998 the State provided submissions in relation to s190C(4)(a) and (b). The State argued that as a representative body had not certified the application nor had the claim group authorised the applicants to make the application, the Registrar should find that the application has failed to satisfy this requirement of the Act. The State's submissions related to the content of the original application lodged in June 1996. As the application has now been amended and a certificate provided by the KLC which I consider meets the requirements of s190C(4)(a), the submissions are no longer relevant.

As a result of the above considerations, I am satisfied that the application has been certified by the KLC in accordance with s202(4)(d) as required by s190C(4) of the Act.

As a consequence, I am not required to consider the application against the requirements of s190C(4)(b). The application meets the requirements of s190C(4).

190C5

Evidence of authorisation:

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

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

Reasons for the Decision

Pursuant to s190C(4)(a), the application has been certified under s202(4) by the Kimberley Land Council. Therefore, this requirement is not applicable.

B. Merits Conditions

190B2	<p>Description of the areas claimed:</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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I am satisfied that the application meets this condition and set out my reasoning as follows:-

Reasons for the Decision

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

External Boundaries

Schedule B of the application describes the external boundaries of the claim by reference to the boundaries indicated on the map attached to the application (Attachment "C") and the description in Attachment "B".

The map marks the external boundary of the claim area and includes geographic coordinates. All line work is finely drawn and easy to follow. The map provides a scale enabling the area of the claim to be ascertained.

The applicants also provide a description of the external boundary at Attachment B. The external boundary follows the boundary of various land tenure parcels within the claim area and adjacent to the claim area and geospatial co-ordinates are provided.

The description at Attachment B matches the external boundary drawn on the map.

I am satisfied that the external boundary of the claim area can be clearly identified.

Internal Boundaries

Schedule B of the application also describes the internal boundaries of the claim area:

Internal Boundaries:

(1) *The Applicants exclude from the claim any areas covered by valid acts on or before 23 December 1996 comprising such of the following as are included as extinguishing acts within the NTA, as amended, or Titles Validation Act 1994, as amended, at the time of the Registrar's consideration:*

- a) *Category A past acts, as defined in NTA s228 and s229;*
- b) *Category A intermediate period acts as defined in NTA s232A and s232B.*

(2) *The Applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in s23B of the Native Title Act, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia and a law of that State has made provision as mentioned in section 23E in relation to the act.*

(3) *The Applicants exclude from the claim areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to:*

- a) *an act authorised by legislation which demonstrates the exercise of permanent adverse dominion in relation to native title; or*
- b) *actual use made by the holder of a tenure other than native title which is permanently inconsistent with the continued existence of native title.*

To avoid any uncertainty, the Applicants exclude from the claim area any of the areas

contained within the following descriptions or tenures which have been validly granted, set out in schedule B1.

Schedule B1

B1.1 Any former or current unqualified grant of an estate in fee simple and all other freehold land.

B1.2 A Lease which is currently in force, in respect of an area not exceeding 5,000 square metres; upon which a dwelling house, residence, building or work is constructed; and which comprises:

- 1. A Lease of a Worker's Dwelling under the Workers' Homes Act 1911-1928;*
- 2. A 999 Year Lease under the Land Act 1898;*
- 3. A Lease of a Town Lot or Suburban Lot pursuant to the Land Act 1933 (WA), s117; or*
- 4. A Special Lease under s117 of the Land Act 1933 (WA).*

B1.3 A Conditional Purchase Lease currently in force in the Agricultural Areas of the South West Division under clauses 46 and 47 of the Land Regulations 1887 which includes a condition that the lessee reside on the area of the lease and upon which a residence has been constructed.

B1.4 A Conditional Purchase Lease of cultivable land currently in force under Part V, Division (1) of the Land Act 1933 (WA) in respect of which habitual residence by the lessee is a statutory condition in accordance with the Division and upon which a residence has been constructed.

B1.5 A Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954.

B1.6 A permanent public work and the land or waters on which a public work is constructed, established or situated within the meaning given to that phrase by the Native Title Act 1993 (Cth) s251D;

B1.7 A public road.

(4) Paragraphs (1) – (3) above are subject to such of the provisions of sections 47, 47A and 47B of the Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.

(5) The area also includes Water Reserves Nos 1592 and 1595 contained within the boundaries of the lease

(6) The area also includes Reserves Nos 39512, 39513 and 41019.

(7) The area also includes a portion of vacant crown land on the southern boundary of Moola Bulla pastoral lease (PL3114/1101).

Please note that tenure provided to the Tribunal from the Land Claims Mapping Unit on 11 September 1996 together with the spreadsheet of current land tenure attached to the State's submissions of 23 December 1998, indicate that Reserve No 1595 is a recreation reserve vested in the Shire of Halls Creek and not a 'water' reserve as indicated in paragraph (5) above.

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

The internal boundaries are described by way of identifying a series of classes of land tenure that are not covered by the application. Such class exclusions amount to information that enables the internal boundaries of the application area to be adequately identified. This may require research of tenure data held by the State of Western Australia and other custodians, but nevertheless it is reasonable to expect that the task can be done on the basis of the information

provided by the applicants. Further, the list of specific tenures provided at Schedule B1 of the application provides additional information that assists in establishing which areas of land are included in the application claim area.

On the basis of the tenure information provided to the Tribunal by the LCMU on 11 September 1996 together with the map attached to the application the following land tenure parcels fall within the external boundary:

- Moola Bulla Pastoral Lease 3114/1101
- Vacant Crown Land (to the south of the pastoral lease)
- Reserve 1592 - Watering Place (unvested)
- Reserve 41018 - Satellite Ground Station Site (vested in Airservices Australia)
- Reserve 41019 - Trigonometrical Station (unvested)
- Reserve 39512 - Quarry-Sand (Vested in Shire of Halls Creek)
- Reserve 39513 - Quarry-Sand (Vested in Shire of Halls Creek)
- Reserve 1595 - Recreation (Vested in the Shire of Halls Creek)

At the hearing to amend the application on 7 September 1999 the applicants removed the reference to Reserve 41018 from the list of areas claimed. However the applicants have not specifically excluded it from the claim area.

My interpretation of schedule B is that the applicants claim the area within the external boundary as marked on the map and described at Attachment "B" except those areas which are excluded as set out in items (1) to (3) of Schedule B and Schedule B1. If Reserve 41018 falls into any of the general exclusions in items (1) – (3) of Schedule B or items listed in Schedule B1, then the Reserve is not subject to claim. I do not have to consider whether Reserve 41018 is excluded under Schedule B or Schedule B1 under this condition. My interpretation is that if this parcel of land constitutes a previous exclusive possession act, then it is excluded.

All that is required under this condition is that the description of areas excluded can be objectively applied to establish whether any particular area of land or waters within the external boundary of the application is within the claim area or not. I consider that the information in Schedule B provides a reasonable level of certainty.

I am satisfied that the information provided in the application satisfies this condition.

190B3

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.**

I am satisfied that the application meets this condition because of the following reasons:

Reasons for the Decision

An exhaustive list of names of the persons in the native title claim group has not been provided and so the requirements of s.190B(3)(a) are not met.

In the alternative, pursuant to s.190B(3)(b), the application must otherwise describe the persons in the native title claim group sufficiently clearly so that it can be ascertained whether any particular person is in the claim group.

Schedule A of the application provides that:

The claim is brought on behalf of those Aboriginal people who hold in common the body of traditional laws and customs concerning the claim area. Those people are the biological descendants of :

[names removed to protect privacy of individuals]

In order 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.

As the application provides a list of the occupants of the area at the time of sovereignty it is possible to determine whether a particular person is a biological descendent of one of those occupants and is therefore a member of the claim group.

I am satisfied that the description is sufficiently clear so that it can be ascertained whether any particular person is a member of the claim group.

The application satisfies this condition of the registration test.

190B4

Identification of claimed native title

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

I am satisfied that the application meets this condition because of the following reasons:

Reasons for the Decision

At Schedule E of the application, the native title rights and interests are described as follows:

Schedule E states:

“The native title rights and interests claimed are the rights to the possession, occupation, use and enjoyment as against the whole world (subject to any native title rights and interests which may be shared with any others who establish that they are native title holders) of the area, and in particular comprise :

- rights to possess, occupy, use and enjoy the area;*
- the right to make decisions about the use and enjoyment of the area;*
- the right of access to the area;*
- the right to control the access of others to the area;*
- the right to use and enjoy resources of the area;*
- the right to control the use and enjoyment of others of resources of the area;*
- the right to trade in resources of the area;*
- the right to receive a portion of any resources taken by others from the area;*
- the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and*
- the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area”.*

The rights and interests claimed are subject to the following:

- “To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.*
- The claim area does not include any offshore place.*
- The applicants do not make a claim to native title rights and interests which confer possession, occupation, use and enjoyment to the exclusion of all others in respect of any areas in relation to which a previous non-exclusive possession act, as defined in section 23F of the NTA, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia and a law of that State has made provision as mentioned in section 231 in relation to the act;*
- Paragraph (iii) above is subject to such of the provisions of sections 47, 47A and 47B of the Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing.*
- The said native title rights and interests are not claimed to the exclusion of any other rights or interests validly created by or pursuant to the common law, a law of the State or a law of the Commonwealth”.*

Accordingly, the applicants make a claim for exclusive possession of the claim area, subject to the rights of any other native title holders in the area and subject to the limitations listed above. The description also includes a list of 10 particularised rights and interests which comprise the right to possession, occupation, use and enjoyment.

The right to possession, occupation, use and enjoyment is a right identified in *Mabo v Queensland (No 2)* (1992) 175 CLR 1. It is known to the law and has been regarded by the High Court of Australia as capable of identification.

The rights and interests described in paragraphs (b) to (j) also closely reflect the order of Lee J in *Ward v State of Western Australia* (1998) 159 ALR 483, which found that these rights were known to the law and capable of identification.

I am satisfied on the basis of the findings by their Honours that the definition particularises the rights and interests claimed into an exhaustive list of specific rights and interests that are comprehensible and identifiable.

In addition, the applicants have sought to limit the claimed native title rights and interests. Essentially, the limitations qualify the applicants' claim to exclusive possession of the claim area where such a claim cannot be made at law. The effect of the limitation is that the claimed rights and interests are those not inconsistent with the rights and interests of others with respect to the claim area.

In specifying these limitations, the applicants have referred to classes of tenure – as in Schedule B. As reasoned in relation to s190B(2), I am of the view that such class exclusions allow the identification of the areas where native title rights and interests are impaired, and the extent of the impairment. Research of tenure data held by the State of WA and other custodians may be required in order to identify the specific rights and interests claimed in relation to particular area; but it is reasonable to expect that the task can be done on the basis of the information provided in the application.

I am therefore satisfied that the qualifications to the rights and interests claimed are sufficient to allow the particular native title rights and interests claimed to be readily identified in relation to all parts of the claim area.

For the reasons outlined above, I am satisfied that all of the rights and interests claimed can be readily identified.

The application meets the requirements of this condition.

190B5

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.**

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

Reasons for the Decision

The information provided by the applicant which supports the existence of the native title rights and interests claimed and the assertions in s190B(5)(a) – (c) is contained in the following material:

- the application (Schedules F&G)
- Affidavits sworn by *[name removed to protect privacy of individual]* *[date removed]* and *[name removed to protect privacy of individual]* sworn *[date removed]* submitted directly to the Tribunal for the purposes of the registration test
- Evidence in the affidavits of *[name removed to protect privacy of individual]* and *[name removed to protect privacy of individual]* submitted in relation to future act proceedings

(a) Does the information support the assertion that the native title claim group have, and the predecessors of those persons had, an association with the area?

In Schedule F of the application the applicants assert that the native title claim group and their ancestors have, since the assertion of British sovereignty, possessed, occupied, used and enjoyed the claim area and had an association with it.

The affidavits of *[name removed to protect of individual]* and *[name removed to protect of individual]* were provided to the NNTT by the applicants in support of the assertion that the claim group has and their predecessors had, an association with the area:

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

The deponent provides details of *[pronoun removed]* association with the claim area as well as the association of *[pronoun removed]* grandmother and grandfather. *[name removed to protect privacy of individual]* provides that *[pronoun removed]* was born on Moola Bulla and that it is *[pronoun removed]* country. *[name removed to protect privacy of individual]* states:

[information removed to address cultural and customary concerns]

[name removed to protect privacy of individual] provides details about what *[pronoun removed]* used to do with *[pronoun removed]* grandparents and other old people on the country. Details of the activities which *[pronoun removed]* continues to do on the land are also provided:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

The deponent provides details of *[pronoun removed]* country and *[pronoun removed]* mother and father's country:

[information removed to address cultural and customary concerns]

[name removed to protect privacy of individual] provides details about what the "old people for Moola Bulla" used to do on the country and where *[pronoun removed]* used to go with other people from the country. *[pronoun removed]* states:

[information removed to address cultural and customary concerns]

Assertions as to the claimant groups association with the claim area are made in Schedule G including that they have possessed, occupied, used and enjoyed the area by way of:

- camping and living and building structures on the claim area
- conducting and taking part in ceremonies on the land
- hunting and gathering and fishing on the claim area.

(b) Does the information support the assertion 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?

In Schedule F of the application the applicants assert that the possession, occupation, use and enjoyment of the claim area has been pursuant to and possessed under the laws and customs of the claim group, including traditional laws and customs that rights and interests in land and waters vest in members of the native title claim group on the basis of:

- (a) Descent from ancestors connected to the area
- (b) Conception in the area
- (c) Birth in the area
- (d) Traditional religious knowledge of the area
- (e) Traditional knowledge of the geography of the area
- (f) Traditional knowledge of the resources of the area
- (g) Knowledge of traditional ceremonies of the area

The affidavits of *[name removed to protect privacy of individual]* and *[name removed to protect privacy of individual]* were provided to the NNTT by the applicants in support of the assertion that there exist traditional laws and customs that give rise to the claimed native title.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

The deponent provides details of laws and customs relating to the use of ochre:

[information removed to address cultural and customary concerns]

[name removed to protect privacy of individuals] also details traditional laws and customs relating to the introduction of strangers onto the country:

[information removed to address cultural and customary concerns]

[name removed to protect privacy of individuals] also details traditional practices in relation to hunting:

[information removed to address cultural and customary concerns]

The deponent also details traditional laws and customs in relation to exchange practices:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

The deponent provides that *[pronoun removed]* and the "old ladies" would walk around Moola Bulla and *[pronoun removed]* would be told stories for the country by the old people.

The deponent provides details of traditional laws and customs relating to men's business:

[information removed to address cultural and customary concerns]

The deponent provides details of customs relating to bush medicine:

[information removed to address cultural and customary concerns]

The deponent also provides detail of laws and customs relating to the making of spear points:

[information removed to address cultural and customary concerns]

The deponent provides details of laws relating to entry of strangers onto the country:

[information removed to address cultural and customary concerns]

Further details of traditional laws and customs carried on by the claim group are provided in Schedule G including:

- Conducting and taking part in ceremonies on the claim area;
- Hunting and gathering and fishing on the claim area; and
- Managing, conserving and caring for the land and waters and controlling access to the land and waters.

(c) Does the information support the assertion that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs?

In Schedule F of the application the applicants assert that traditional law and custom has been passed by traditional teaching, through the generations preceding the present generations to the present generations of persons comprising the native title claim group. In addition, it is asserted that the native title claim group continues to acknowledge and observe those traditional laws and customs and that by those laws and customs the group have a continuing connection with the land in respect of which the claim is made.

The affidavits of *[name removed to protect privacy of individual]* and *[name removed to protect privacy of individual]* were provided to the NNTT by the applicants in support of the assertion that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

The deponent provides details of traditional laws and customs that the claim group continue to follow. *[name removed to protect privacy of individual]* provides that *[pronoun removed]* continues to use a particular type of tree to make smoke for colds or sickness in the body. *[pronoun removed]* also provides that they continue to do this with their children and grandchildren.

The deponent provides details of laws and customs that are followed when strangers come onto the country:

[information removed to address cultural and customary concerns]

The deponent provides that *[pronoun removed]* continues to go hunting for wallaby and that *[pronoun removed]* shares the food with *[pronoun removed]* family. *[pronoun removed]* also provides that ceremonies are conducted on the country with *[information removed to address cultural and customary concerns]* which they get from Moola Bulla.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

The deponent provides details of laws and customs which *[pronoun removed]* continues to do with *[pronoun removed]* grandchildren:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

The deponent also provides details of laws and customs practiced today in relation to the entry of strangers on the country:

[information removed to address cultural and customary concerns]

The deponent also provides details of laws and customs relating to ceremonies:

[information removed to address cultural and customary concerns]

Further details of traditional laws and customs continuously carried on by the claim group are provided in Schedule G including:

- Conducting and taking part in ceremonies;
- Hunting and gathering and fishing; and
- Visiting and protecting sites.

I am of the opinion that there is sufficient factual basis to support the assertion that the native title rights and interests claimed exist.

The application passes this condition.

190B6

Prima facie case:

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

Reasons for the Decision

Prima facie means “on the face of it”. The Registrar must be satisfied that, taking all relevant material into account, there is sufficient material upon which a court could find that the native title rights and interests claimed exist. It is not necessary for the applicant to prove on the balance of probabilities that native title exists; it is sufficient for the Registrar to be satisfied that a Court could reasonably find native title exists in respect of *at least some* of the native title rights and interests claimed.

The native title rights and interests are claimed subject to other interests validly created by the State or Commonwealth.

In considering whether I am *prima facie* satisfied that at least some of the native title rights and interests can be established I note that I am satisfied that the application contains sufficient factual material to support the general assertions of association, traditional laws and customs and continued connection referred to in s190B(5).

Taking into account the material I referred to in relation to s190B(5) and the additional information referred to below, I find that I am satisfied that *prima facie* the particular native title rights and interests claimed can be established.

(a) Rights to possess, occupy, use and enjoy the area

Several sources of material, establish on the face of it that the applicants have a native title right to possession, occupation, use and enjoyment of the claim area. For example:

- Evidence in the affidavits of [name removed to protect privacy of individual] (sworn [date removed]) and [name removed to protect privacy of individual] (sworn [date removed])
- Assertions contained in the application supported by the affidavits of the 11 named applicants on behalf of the claim group
- Evidence in the affidavit of [name removed to protect privacy of individual] (sworn [date removed]) filed in Tribunal future act proceedings [information removed]
- Evidence in the affidavits of [name removed to protect privacy of individual] (sworn [date removed]) and [name removed to protect privacy of individual] (sworn [date removed]) filed in Tribunal future act proceedings [information removed].

I am of the view that the rights and interests mentioned below constitute a subset of the right to possess, occupy, use and enjoy the area. Thus, the evidence I rely upon with respect to the *prima facie* establishment of the following rights and interests apply equally to the establishment of the right and interest to possess, occupy, use and enjoy the area.

This right is *prima facie* established.

(b) the right to make decisions about the use and enjoyment of the area

Evidence contained in the affidavits of [name removed to protect privacy of individual] (sworn [date removed]), [name removed to protect privacy of individual] (sworn [date removed]), [name removed to protect privacy of individual] (sworn [date removed] and [date removed]) and [name removed to protect privacy of individual] (sworn [date removed]) establishes a *prima facie* right of the native title claim group to make decisions about the use and enjoyment of the area.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraph 11:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] States at paragraphs 24 and 25:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraph 2:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraph 4 and 17:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraph 5:

[information removed to address cultural and customary concerns]

In Schedule G the applicants provide that they continue to:

- Manage, conserve and care for the land and waters and control access to the land and waters
- Visit and protect sites

Also stated in Schedule F is that the native title group continues to acknowledge and observe those traditional laws and customs.

This right is *prima facie* established.

(c) the right of access to the area

Evidence contained in the affidavits of [name removed to protect privacy of individual] (sworn [date removed]), [name removed to protect privacy of individual] (sworn [date removed]), [name removed to protect privacy of individual] (sworn [date removed]) and [name removed to protect privacy of individual] (sworn [date removed]) establishes a prima facie right of the native title claim group to access the area.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraphs 1, 2, 3 & 11:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] States at paragraph 4, 7 and 24:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]
[name removed to protect privacy of individual] states at paragraph 15:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]
[name removed to protect privacy of individual] states at paragraph 2:

[information removed to address cultural and customary concerns]

In Schedule G the applicants provide that they continue to:

- Camp, live and build structures in the area
- Move freely about and have access to the area
- Hunt, gather and fish in the area
- Manage, conserve and care for the land and waters and control access to the land and waters
- Visit and protect sites

This right is *prima facie* established.

(d) the right to control the access of others to the area

Evidence contained in the affidavits of [name removed to protect privacy of individual] (sworn [date removed]), [name removed to protect privacy of individual] (sworn [date removed]), [name removed to protect individual] (sworn [date removed]) and [name removed to protect privacy of individual] (sworn [date removed]) establishes a prima facie right of the native title claim group to control the access of others to the area.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]
[name removed to protect privacy of individual] states at paragraph 11:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]
[name removed to protect privacy of individual] States at paragraph 24:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]
[name removed to protect privacy of individual] states at paragraph 17:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]
[name removed to protect privacy of individual] states at paragraph 5:

[information removed to address cultural and customary concerns]

In Schedule G the applicants provide that they continue to manage, conserve and care for the land and waters and control access to the land and waters.

Also stated in Schedule F is that the native title group continues to acknowledge and observe those traditional laws and customs.

This right is *prima facie* established.

(e) the right to use and enjoy the resources of the area

Evidence contained in the affidavits of [name removed to protect privacy of individual] (sworn [date removed]) and [name removed to protect privacy of individual] (sworn [date removed]) establishes a prima facie right of the native title claim group to use and enjoy the resources of the area.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraphs 6 & 10:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] States at paragraphs 15, 21 & 22:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

In Schedule G the applicants provide that the native title claim group continue to:

- Hunt and gather and fish
- Take and use the resources of the area, including forest products, water, minerals and other resources from the land and waters
- Manufacture tools and weapons from the resources of the land and waters

This right is *prima facie* established

(f) the right to control the use and enjoyment of others of resources of the area

I refer to my comments made with respect to the right to control the access of others to the area. The affidavits of both [name removed to protect privacy of individual] sworn [date removed] and [name removed to protect privacy of individual] sworn [date removed] state it is their country and people who come into their land, must ask permission from them as the traditional owners of the area.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraph 17:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraph 5:

[information removed to address cultural and customary concerns]

In Schedule G the applicants provide that the native title claim group continue to:

- Manage, conserve and care for the land and waters and control access to the land and waters
- Visit and protect sites

This right is *prima facie* established

(g) the right to trade in resources of the area

Evidence contained in the affidavits of [name removed to protect privacy of individual] (sworn [date removed]) and [name removed to protect privacy of individual] (sworn [date removed]) establishes a *prima facie* right of the native title claim group to trade in resources of the area.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraph 13:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] States at paragraph 28:

[information removed to address cultural and customary concerns]

In Schedule G the applicants provide that the native title claim group continue to:

- Take and use the resources of the area, including forest products, water, minerals and other resources from the land and waters
- Dispose of the products of the land and waters or manufactured from the products of the land and waters by trade or exchange.

This right is *prima facie* established

(h) the right to receive a portion of any resources taken by others from the area

Evidence contained in the affidavit of [name removed to protect privacy of individual] (sworn [date removed]) establishes a prima facie right of the native title claim group to receive a portion of any resources taken by others from the area.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] States at paragraph 28:

[information removed to address cultural and customary concerns]

This evidence indicates that a portion of any resources taken from the land and waters must, according to traditional law and practice, be left behind for other people. It follows then, that if resources are taken by others from the area, there is the expectation that a portion of those resources will be left behind for the use and enjoyment of the claim group.

I also refer to my comments with respect to the right to trade in resources of the area. I have formed the view that there is a prima facie case to support the claim that the native title claim group have the right to trade in resources of the area. Following from the right to trade in the resources of the area, it is possible that, in accordance with traditional laws and customs, the group also have the right to receive a portion of any of those resources. There is no evidence before me to suggest that the native title claim group do not have the right to receive a portion of any resources taken by others.

This right is further supported by the prima facie establishment of the right to make decisions about the use and enjoyment of the area, the right to control the access of others to the claim area, the right to use and enjoy the resources of the area and the right to control the use and enjoyment of others of resources of the area.

This right is *prima facie* established

(i) the right to maintain and protect places of importance under traditional law, customs and practices in the area

Evidence contained in the affidavits of [name removed to protect privacy of individual] (sworn [date removed]), [name removed to protect privacy of individual] (sworn [date removed]), [name removed to protect privacy] (sworn [date removed]) and [name removed to protect privacy of individual] (sworn [date removed]) establishes a prima facie right of the native title claim group to maintain and protect places of importance under traditional law, customs and practices in the area.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraph 11:

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] States at paragraphs 24 and 25:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraphs 8 & 11:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] states at paragraphs 5 & 10:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

In Schedule G the applicants provide that they continue to manage, conserve and care for the land and waters and control access to the land and waters and visit and protect sites.

This right is *prima facie* established

(j) the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area

Evidence contained in the affidavits of [name removed to protect privacy of individual] (sworn [date removed]) and [name removed to protect privacy of individual] (sworn [date removed] and [date removed]) establishes a prima facie right of the native title claim group to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

[name removed to protect privacy of individual] talks about men's business. [name removed to protect privacy of individual] states at paragraph 13:

[information removed to address cultural and customary concerns]

[name removed to protect privacy of individual] also provides that [pronoun removed] knows the stories for the country from the old people and that there are traditional practices such as ways to fish in the waterholes that [pronoun removed] teaches [pronoun removed] children and grandchildren like [pronoun removed] grandmother and aunt taught [pronoun removed].

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

In [name removed to protect privacy of individual] affidavit [pronoun removed] gives evidence about Dreamtime stories. [pronoun removed] states at paragraphs 5 & 13:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

[pronoun removed] also states at paragraph 16 that the claim group wants to be able to take their children onto the country; gather bush tucker and teach them to hunt.

Affidavit of [name removed to protect privacy of individual] sworn [date removed]

At paragraph 3 of [name removed to protect privacy of individual] affidavit [pronoun removed] gives evidence about men's business and restricted sites:

[information removed to address cultural and customary concerns]

The applicants also provide in Schedule G that the claim group continues to:

- Conduct and take part in ceremonies;
- Visit and protect sites; and
- Pass on knowledge of the country and of the traditional law and custom in accordance with custom and tradition.

This right is *prima facie* established

Conclusion

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

rights and interests claimed can be established on a prima facie basis.

The application meets the requirements of this 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> <ul style="list-style-type: none"><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><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><ul style="list-style-type: none"><i>(i) the Crown in any capacity; or</i><i>(ii) a statutory authority of the Crown in any capacity; or</i><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>
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I am satisfied that the application meets this condition and set out my reasoning as follows.

Reasons for the Decision

The requirement in the first instance is that at least one member of the claim group currently has or previously had a traditional physical connection with any part of the land or waters covered in the application.

Affidavits of [name removed to protect privacy of individual] (sworn [date removed]) and [name removed to protect privacy of individual] (sworn [date removed])

According to their affidavits, both *[name removed to protect privacy of individual]* and *[name removed to protect privacy of individual]* have a traditional physical connection with the area the subject of the application.

Both assert having been in the claim area at various times throughout their lives, and to have maintained and passed on knowledge about traditional laws and customs which relate to the claim area.

I particularly note paragraphs 1 & 4 of *[name removed to protect privacy of individual]* affidavit in which *[pronoun removed]* states that *[pronoun removed]* was born *[information removed to address cultural and customary concerns]* *[pronoun removed]* provides that *[pronoun removed]* is following this country through *[pronoun removed]* Dad, *[name removed to protect privacy of individual]*.

[pronoun removed] also provides at paragraph 16 that *[pronoun removed]* goes fishing and takes *[pronoun removed]* children. *[pronoun removed]* states:

[information removed to address cultural and customary concerns]

Further evidence to support the assertion that *[name removed to protect privacy of individual]* has a traditional physical connection with a part of the land and waters covered by the claim is found in paragraph 18 and 26 of *[pronoun removed]* affidavit where *[pronoun removed]* states:

[information removed to address cultural and customary concerns]

[information removed to address cultural and customary concerns]

In *[name removed to protect privacy of individual]* affidavit *[pronoun removed]* provides details of *[pronoun removed]* connection to the claim area and that of *[pronoun removed]* grandmother and grandfather. The affidavit indicates *[pronoun removed]* presence in the claim area at various times (paragraphs 2, 3, 4). *[pronoun removed]* provides that *[pronoun removed]* still goes hunting in certain places (paragraph 12) and that *[pronoun removed]* still practices bush medicine with the *[information removed to address cultural and customary concerns]* (paragraph 9).

In addition, in Schedule G of the application, the applicants provide that the claim group continues to possess, occupy, use and enjoy the claim area in accordance with custom and tradition.

On the basis of the information in Schedule G and the evidence in the affidavits described above, the application meets the requirements of s190B(7).

190B8

No failure to comply with s61A:

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that, because of s61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.

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

Reasons for the Decision

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

s61A(1) – No approved determination of native title

I have referred to the National Native Title Register. There are no approved determinations of native title in relation to the area claimed in this application. The application thereby complies with this subsection.

S61A(2) – No previous exclusive possession acts

This subsection provides that the area must not have been subject to a previous exclusive possession act attributable to the Commonwealth, or where there is State legislation, attributable to the State.

In Schedule B of the application the applicants have sought to exclude any areas where there may have been a previous exclusive possession act attributable to the Commonwealth and the State:

“The applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in section 23B of the NTA, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia and a law of that State has made provision as mentioned in section 23E in relation to the act”.

Current Land Tenure provided by LCMU on 11 September 1996 details the following land tenure parcels within the external boundary:

- Pastoral Lease 3114/1101 vested in Purchasers holdings Pty Ltd (CL202/1978)
- Reserve 1592 (Watering Place) Unvested
- Reserve 41018 (Satellite Ground Station Site) Vested in the Australian Telecommunications Commission
- Reserve 41019 (Trigonometrical Station) Unvested
- Reserve 39512 (Quarry – Sand) Shire of Halls Creek
- Reserve 39513 (Quarry – Sand) Shire of Halls Creek
- Reserve 1595 (Recreation Reserve) Vested in the Shire of Halls Creek

The Current land tenure plan supplied by the land claims mapping unit also indicates a portion of vacant crown land to the south of the pastoral lease.

Putting aside Reserve 41018, there is nothing on the face of the tenure documentation before me to indicate that the land tenure parcels claimed constitute previous exclusive possession act areas.

Reserve 1592 and 41019 are unvested and as such, do not constitute previous exclusive

possession act areas under s23B(3) or under the provisions of the *Titles Validations Act 1995 (WA) as amended*, as they are not vested "in any person".

In relation to reserves 1595 and 1592 the State submits in paragraph 4 of its letter to the Tribunal dated 23 December 1998 that:

"Although the State has not conducted an exhaustive check, it is likely that exclusive possession acts have taken place over many of the reserves, eg. Community purpose leases, public works, or other rights of exclusive possession, such as roads and railways.

The State considers that a comprehensive search of the tenure should be undertaken and until all such tenures are identified it is the State's submission that the Registrar should find that the application fails to satisfy the requirements of this section".

In my opinion I do not have to conduct a comprehensive search of the tenure in order to address this section of the test. On the other hand I am required to take into account the tenure documents which I have before me to reach a decision on whether the application contravenes section 61A(2) of the Act. On the face of the tenure documents before me, there is little information on which I might be satisfied that the vesting of reserve 1595 or quarry reserves 39512 and 39513 constitute s23B(3) or State equivalent acts. There is no evidence to indicate that a right of exclusive possession is expressly or impliedly conferred on the Shire of Halls Creek under the provisions of s23B(3) of the Act or under the provisions of the *Titles Validations Act 1995 (WA) as amended*.

In addition, I do not consider that Reserves 39512 or 39513 consist of the establishment of a public work and therefore fall foul of the provisions of s23B(7) or the *Titles Validations Act 1995 (WA) as amended*.

At the hearing to amend the application on 7 September 1999 the applicants removed reference to Reserve 41018 from the list of areas claimed. However the applicants have not specifically excluded it from the claim area.

My interpretation of schedule B is that the applicants claim the area within the external boundary as marked on the map and described at Attachment "B" except those areas which are excluded as set out in items (1) to (3) of Schedule B and Schedule B1. If Reserve 41018 falls into any of the general exclusions in items (1) – (3) of Schedule B or items listed in Schedule B1, then the Reserve is not subject to claim. My interpretation is that if this parcel of land constitutes a previous exclusive possession act, then it is excluded.

I am not aware of any contravention of s61A(2) and I am satisfied that the general exclusion clause meets the requirements of this subsection.

61A(3) – No claim to exclusive possession over areas the subject of previous non exclusive possession acts.

Section 61A(3) provides that the application must not disclose, and I must not otherwise be aware, that the applicants claim exclusive possession of an area which has been the subject of a previous non exclusive possession act attributable to the Commonwealth or the State.

The applicants state that they do not claim exclusive possession of any area which may have been subject to a previous non exclusive possession act on the part of the Commonwealth or the State. Schedule E Part (iii) provides:

"The applicants do not make a claim to native title rights and interest which confer possession, occupation, use and enjoyment to the exclusion of all others in respect of any areas in relation to which a previous non-exclusive possession act, as defined in s23F of the NTA was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia and a law of that State has made provision as mentioned in section 231 in relation to the act".

The applicants also provide in Schedule E Part (v) that the said native title rights and interests

are not claimed to the exclusion of any other rights or interests validly created by or pursuant to the common law, a law of the State or a law of the Commonwealth.

I am satisfied that the applicants are not claiming exclusive possession rights over areas the subject of previous non-exclusive possession acts.

S61A(4) – s47, 47A, 47B

The applicants claim the benefit of ss47, 47A and 47B.

In Schedule B paragraph (4) the applicants provide that the exclusions in items (1) – (3), including the exclusion of previous exclusive possession act areas, are:

“subject to such of the provisions of sections 47, 47A and 47B of the Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L”

In Schedule E paragraph (iv) the applicants provide that any area in relation to which a previous non-exclusive possession act was done is subject to such of the provisions of 47, 47A and 47B of the Act as apply to any part of the area contained within this application.

I note that in Schedule L of the application, the applicants state that they do not have details relating to sections 47, 47A and 47B of the Act.

I am required to ascertain whether the present application should not have been made because of the provisions in s61A. In my view, the applicants' express statements with respect to the provisions of that section are sufficient to meet the requirements of s190B(8). Subsection 61A(4) of the Act provides that an application may be made in these terms. Whether or not the applicants have provided sufficient information to bring any area of land and waters covered by the application within the ambit of sections 47, 47A and 47B is a matter to be settled in another forum. In any event, nothing turns on this as I have already found that the application does not offend s61A.

Conclusion

For the reasons set out above, I find that there has been compliance with s61A and the provisions of this section are met.

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

Reasons for Decision

Schedule E (i) of the application qualifies the rights and interests claimed as follows:

“To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.”

This qualification is not contradicted by any other information in the application or accompanying maps. I therefore find that the application complies with the requirements of S190B(9)(a).

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

Reasons for the Decision

Schedule E(ii) of the application provides that:

“The claim area does include any offshore place”.

This is consistent with the description of the claim area in Schedule B.

The application passes this condition.

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>(c) <i>in any case - the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2)).</i></p>
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I am satisfied that the application meets this condition and set out my reasoning as follows:

Reasons for the Decision

Under the requirements of this section, I must consider whether there are any native title rights and interests claimed by the applicant that have been otherwise extinguished.

In addition to the areas excluded from the claim area as considered in s190B(8), I have listed in my reasons for decision in relation to s190B(2) the internal exclusions as stated at Schedule B and B1 of the application, and, in relation to s190B(4), the qualifications to the native title rights and interests claimed at Schedule E of the application.

I note that in addition to the specific classes of tenure excluded from the claim area, paragraph (3) of Schedule B states that:

The applicants exclude from the claim areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to:

- a) an act authorised by legislation which demonstrates the exercise of permanent adverse dominion in relation to native title; or*
- b) actual use made by the holder of a tenure other than native title which is permanently inconsistent with the continued existence of native title*

This general exclusion clause effectively covers any areas where extinguishment of native title rights and interests has otherwise occurred, which have not been specifically excluded or otherwise removed from the claim area as a result of being listed at Schedule B or Schedule B1.

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

There is no need for me to consider what may be disclosed in any other material. It appears that even if areas of the type prohibited by s190B(9) are located within the external boundary of the area of the amended application, such areas will be excluded by virtue of Schedule B item (3).

I find that the application meets the requirements of this section.