

National Native Title Tribunal
REASONS FOR DECISION COVER SHEET
REGISTRATION TEST

DELEGATE: Lillian Maher

APPLICATION NAME: [Wanjina Wunguurr-Wilinggin](#)

NAME(S) OF APPLICANT(S): Laurie Gowanulli, Paddy Neowarra, Paddy Wama, Scotty Martin, Jimmy Maline, Jack Dann, Jack Dale, Keith Nenowatt, Paul Chapman, Reggie Tataya, Donald Campbell, Pansy Nulgit, Betty Walker, Kathy Oreeri, Mandy Wungundin, Barney U.

NNTT NO: [WC 99/11](#)

FEDERAL COURT NO: [WAG 6015/99](#)

REGION: [North West WA](#)

DATE APPLICATION MADE: [10 June 1999](#)

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

DECISION

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

Registrar's/delegate's signature:

Date of Decision:

National Native Title Tribunal

REGISTRATION TEST

REASONS FOR DECISION

DELEGATE	Lillian Maher		
DATE	9 JULY 1999		
Application Name	Wanjina / Wunggurr-Wilinggin		
Name(s) of Applicant(s)	Laurie Gowanulli, Paddy Neowarra, Paddy Wama, Scotty Martin, Jimmy Maline, Jack Dann, Jack Dale, Keith Nenowatt, Paul Chapman, Reggie Tataya, Donald Campbell, Pansy Nulgit, Betty Walker, Oreeri, Mandy Wungundin, Barney U		
Region	North WA	NNTT No	WC 99/11
Date Application Made	10 June 1999	Fed Court No	WAG 6015/99

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

Registration Test File – WC 99/11	
Affidavit of [name removed] sworn 2/7/1999	
Affidavit of [name removed] sworn 22/5/1999	
Affidavit of [name removed] sworn 25/2/.99	
Affidavit of [name removed] sworn 18/7/1999	
Affidavit of [name removed] Sworn 2/7/1999	
WC 95/39 – Working File	

A. Procedural Conditions

190C2	<p><i>Information, etc, required by section 61 and section 62:</i></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>
--------------	--

Details required in section 61

61(3)	<i>Name and address for service of applicant(s)</i>
--------------	--

Reasons relating to this sub-section	COMPLIES
Applicant's Representative is Kimberley Land Council PO BOX 377 Derby WA 6728	

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>
--------------	--

Reasons relating to this sub-section	COMPLIES
<p>Reasons</p> <p>The native title claim group (the persons on whose behalf the application is made) is described as follows:</p> <p style="padding-left: 40px;"><i>The claimant group comprises those people who hold in common the body of laws and customs derived from beliefs about Wanjina/Wungurr. Those people are:</i></p> <p style="padding-left: 40px;">(a) <i>The descendants of... (a list of 88 names is given);</i></p> <p style="padding-left: 40px;">(b) <i>Together with the descendants of Dalbi who was adopted into the native title claimant group.</i></p> <p>To comply with the requirements of s61(4) the application must either name the persons in the native title claim group or otherwise describe them sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.</p> <p>The details required in s61(4) are the same as those required by 190B.</p> <p>This claim group description identifies the persons in the native title claim group by descent; either by descent from one of more of 88 named individuals or by descent from another individual, Dalbi.</p>	

The claim group description includes another descriptor, “those people who hold in common the body of laws and customs derived from beliefs about Wanjina/Wungurr”. This descriptor alone would not describe the members of the claim group sufficiently clearly for the purposes of s61(4), as it does not give any indication of how it would be ascertained whether a person is one who “holds in common” the body of laws and customs. Neither does it provide any principles of, or guidance in relation to, the laws and customs which are derived from the beliefs. The beliefs are not outlined, described or exemplified. The nature or significance of Wanjina/Wungurr is not explained.

However, this descriptor does not determine who is in the claim group; this is determined by descent from the named persons. It is not therefore necessary for me to understand the meaning of “hold in common the body of laws and customs derived from beliefs about Wanjina/Wungurr” as the claim group is defined by descent from the named persons. The reference to holding a body of laws and customs is a statement by the applicants that the people who are the descendants hold in common the body of laws and customs. The definition of the claim group does not depend on ascertaining who holds in common the body of laws and customs.

If the names of the members of the claim group are not listed the subsection requires that the persons be described “sufficiently clearly so that it *can be* ascertained whether any particular person is one of those persons” (my emphasis). This allows for the ascertainment of members of the claim group at a later date should it be necessary. This does not require the Registrar to ascertain the names of individuals for the purposes of the registration test.

The persons in the group comprise the descendants of one or more of the 89 named individuals. Whilst I do not have genealogical evidence available to me which would identify all members of the group, this material is not necessary, otherwise it would make no sense to have an alternative to naming all the persons in the native title claim group.

I find that the claim group description is sufficient to meet the requirements of the subsection.

61(5)	<i>Application is in the prescribed form¹; lodged in the Federal Court, contains prescribed information², and accompanied by prescribed documents and fee</i>
-------	---

Reasons relating to this sub-section	COMPLIES
Application includes affidavits sworn by all members of the applicant group. The Affidavits are witnessed by a Justice of the Peace. The affidavits meet the requirements of s62(1)(a). The application also includes a map.	

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	COMPLIES
<p>The Affidavits are witnessed by a Justice of the Peace. The affidavits meet the content requirements of s62(1)(a) as follows:</p> <p>All named applicants have each sworn that they:</p> <ul style="list-style-type: none">• believe that the native title rights and interests claimed have not been extinguished in relation to any part of the claim area;• believe that none of the area covered by the application is covered by an entry in the National Native Title Register;• believe that all the statements made in the application are true;• are authorised to make and deal with matters arising in relation to the application pursuant to a process of decision making adopted and agreed to by the members of the native title claim group. <p>These affidavits comply with the formal requirements of s62(1)(a)(i) to (v).</p>	

62(1)(c)	<i>Details of traditional physical connection (information not mandatory)</i>
-----------------	--

Comment on details provided	COMPLIES
Some information provided in schedule G.	

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>
--------------------	--

Reasons relating to this sub-section	COMPLIES
<p>Reasons</p> <p>The application area is described by reference to the claim map, by a written description of the external boundary and by the exclusion of any areas which may be affected by specified types of dealings in land or actions which may have affected the continuation of native title. These exclusions may be described as “class exclusions” as no specific parcels have been excluded.</p> <p>The application contains a detailed external boundary description by providing directional statements and pairs of coordinates (latitudes and longitudes) in Schedule B. The description also refers to pastoral lease boundaries.</p>	

The Tribunal's Geospatial Information Unit has considered the boundary description in Schedule B and the map attached to the application and have confirmed that the boundary definition is consistent with the map.

The area subject to claim is said to be the whole of the area inside the external boundary, unless any of the class exclusions apply. I note that the applicants did not have access to tenure information in spreadsheet form in preparing this application.

The applicants have excluded the following classes of tenure:

- Category A past acts;
- Category A intermediate period acts;
- any areas affected by previous exclusive possession acts;
- any areas in relation to which native title has otherwise been excluded.

The applicants assert that if any areas within the claim area are affected by s47, s47A or s47B then those areas are not excluded.

In Schedule L the applicants give details of any areas within the claim area which they say are affected by s47, S47A or s47B. These areas are Reserves 19751, 21327, 21328, 41921.

The exclusion of any areas affected by certain types of dealings in land which may have extinguished native title appears to be a "safety net" type approach; the applicants are saying that they are not aware of any extinguishing events but if there have been extinguishing events then the areas affected by those extinguishing events are excluded.

In these circumstances, I am satisfied that it is reasonable for the applicants to define any areas not claimed by excluding classes of grants or dealings in land rather than by excluding particular parcels of land.

I am satisfied that the application meets this requirement.

62(2)(a)(ii))	<i>Information identifying any areas within those boundaries which are not covered by the application</i>
---------------------------------	--

Reasons relating to this sub-section	COMPLIES
See section s 190 B (2). Also see above at s.62(2)(i)	

62(2)(b)	<i>A map showing the external boundaries of the area covered by the application</i>
-----------------	--

Reasons relating to this sub-section	COMPLIES
Reasons <p>The application is accompanied by a map dated 10 June 1999. The applicants have complied with this subsection as they have provided a map showing the external boundaries.</p>	

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

Reasons relating to this sub-section	COMPLIES
<p>Schedule D states that searches were requested of the National Native Title Tribunal, but that the results of the searches have not been received and that the applicants are not aware of any other searches carried out.</p>	

62(2)(d)	<i>Description of native title rights and interests claimed</i>
-----------------	--

Reasons relating to this sub-section	COMPLIES
<p>Rights and interests claimed are provided in schedule E. These are particularised and clear. See s190 B(4)</p>	

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

Reasons relating to this sub-section	COMPLIES
<p>Schedule F(a) (i) makes this assertion, thereby satisfying the formal criteria for this section. Material supplied as further information as to the factual basis is discussed in s.190B5.</p>	

62(2)(e)(i)	<i>Factual basis – traditional laws and customs exist that give rise to the claimed native title</i>
--------------------	---

Reasons relating to this sub-section	COMPLIES
<p>Schedule F(a)(ii), (iv), and (v) Make this assertion thereby satisfying the formal criteria for this section. Material supplied as further in formation as to the factual basis, and it's relationship to these assertions is further discussed in the part of these reasons dealing with s190B(5).</p>	

62(2)(e)(ii) i)	<i>Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs</i>
----------------------------	--

Reasons relating to this sub-section	COMPLIES
Schedule F(a)(iii) and (iv) and (v) makes these assertions. Material supplied as further information as to the factual basis, and it's relationship to these assertions ins further discussed in the part of these reasons dealing with s190B(5).	

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>
-----------------	--

Reasons relating to this sub-section	COMPLIES
Details provided at Schedule G.	

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>
-----------------	---

Reasons relating to this sub-section	COMPLIES
<p>Schedule H states that the Applicants are not aware of the details of any other applications to the High Court, Federal Court or recognised State/Territory Body that have been made in relation to the whole or part of the area covered by this application and that seek a determination of native title or compensation in relation to native title.</p> <p>In fact this application overlaps with both the Balangarra and Dambimangarri applications by something less than 4sq km in one case and less than 6sq km in the case of the other. These areas of overlap are not intentional and are the result of imperfections in mapping technique and technology. Taken in the context that the claim under consideration is about 60 000sq km and that the other applications mentioned are also very large, I am satisfied that these areas of overlap are too small to be considered significant, and that in any case the applicants were not aware that these overlaps existed.</p> <p>The application also overlaps the entire area of the WC 95/39 application. A notice of discontinuance for WC 95/39 has been filed in the Federal Court.</p>	

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>
-----------------	--

Reasons relating to this sub-section	COMPLIES
Schedule I contains details of s.29 notices which have been issued.	

The Delegate considers that the application PASSES the conditions contained in s190C(2).

Reasons

I am satisfied that the application meets all the requirements of this section.

190C3	<p><i>Common claimants in overlapping claims:</i></p> <p><i>The Registrar must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:</i></p> <ul style="list-style-type: none"> <i>(a) the previous application covered the whole or part of the area covered by the current application; and</i> <i>(b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and</i> <i>(c) the entry was made, or not removed, as a result of consideration of the previous application under section 190A.</i>
-------	--

The Delegate considers that the application PASSES the condition contained in s190C(3).

Reasons

There are no overlapping claims except WC 95/39, which is not a registered application and is therefore not relevant here, and the very small and unintentional overlaps with Dambimangarri (WC99/7) and Balangarra (WC95/30) applications. The areas of these overlaps are 5.9 Sq Km and 3.5Sq Km respectively. I have discounted these overlaps on the basis of the de minimus principle. In any case I can see no evidence on the face of the documents that there are common claimants.

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

The Delegate considers that the application PASSES the conditions contained in s190C(4)(a) and s190C(4)(b).

Reasons

There are two native title representative bodies for the area affected by this application, the Kimberley Land Council and the Aboriginal Legal Service of W.A. If the application is to be certified by a representative body, it is only necessary that one body certify the application (s190C(6)).

This application was certified by the KLC on 29 June 1999.

The certificate expresses the opinion that:

- the named applicants have the authority to make the application and deal with all matters arising in relation to it; and
- all reasonable efforts have been made to ensure the application describes or otherwise identifies all other persons in the native title claim group.

As required by s202(7) the Certificate provides reasons for the opinion. The opinion is based on the KLC's involvement with the Ngarinyin people in relation to this application. The KLC is satisfied that the Kamali Land Council has performed anthropological and geneological research and observed meetings prior to and after the claim was lodged. KLC staff and consultants have taken instructions from the Ngarinyin people, have seen how instructions have been given and have observed how decisions have been made.

Section 202(7)(c) requires that, where applicable, the representative body set out in the certificate what has been done to meet the requirements of s202(6). In s202(6) there is a requirement that, if the representative body is aware of any overlap, the representative body make all reasonable efforts to achieve agreement between the overlapping claim

groups. The sub-section also provides that a failure by the representative body to comply with the subsection does not invalidate any certificate given by the representative body.

The Certificate does not address the minor overlaps with [WC95/30 – Balangarra](#) and [with WC 99/7 – Dambimangarri](#). However, the applicants' representative has confirmed that these overlaps are unintentional, resulting from the technical difficulty of mapping the claim area. They are also insignificant in size and are I have decided not to take them into account under the de minimus principle.

The Certificate does not address the overlap with WC95/39. However, the Kimberley Land Council, which also acts as the representative for that application has provided written advice that it has instructions to discontinue WC95/39.

In all the circumstances, I am satisfied that the KLC's Certificate substantially and sufficiently complies with the requirements of s202(7).

190C5	<p><i>Evidence of authorisation:</i></p> <p><i>If the application has not been certified as mentioned in paragraph (4)(a), the Registrar cannot be satisfied that the condition in subsection (4) has been satisfied unless the application:</i></p> <p><i>(a) includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met; and</i></p> <p><i>(b) briefly sets out the grounds on which the Registrar should consider that it has been met.</i></p>
-------	--

The case manager considers that the application [passes] [fails] the condition contained in s190C(5).

Reasons

Not applicable – Certification Provided.

B. Merits Conditions

190B2	<i>Description of the areas claimed:</i> <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>
--------------	--

The Delegate considers that the application PASSES the condition contained in s190B(2).

Reasons

Section 62(2) requires that the application include:

- (a) *information, whether by physical description or otherwise, that enables the boundaries of:*
 - (i) *the area covered by the application; and*
 - (ii) *any areas within those boundaries that are not covered by the application; to be identified;*
- (b) *a map showing the boundaries of the area mentioned in subparagraph (a)(i);*

Section 190B(2) requires that I be satisfied that the information and the map provided pursuant to s62(2) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

The map and land description clearly indicate the external boundary of the area covered by the application. The map and description were constructed with the assistance of the Tribunal Geospatial Information Unit as a result of a request under s78 of the Native Title Act. The description includes an extensive list of coordinates.

In Schedule B the applicants seek to address s62(2)(a)(ii) by excluding areas within the external boundary by class, rather than by excluding particular parcels. I note that full tenure information was not available to the claimants in drawing up this application.

In the circumstances of this application I am satisfied that the applicants have complied with s62(2)(a)(ii). I am also satisfied (under s190B(2)) that the information provided pursuant to s62(2) is sufficient for it to be reasonably certain whether native title rights and interests are claimed in relation to particular areas of land.

This leads me to believe that the applicants intend to claim native title in respect of the whole area but nevertheless set up some class exclusions in case there are areas where native title has been extinguished.

In these circumstances, and also because it would be difficult at this stage to ascertain all historical dealings in relation to the area, I am satisfied that it is reasonable for the applicants to define any areas not claimed by excluding classes of grants or dealings in land rather than by excluding particular parcels of land.

190B3	<p><i>Identification of the native title claim group:</i></p> <p><i>The Registrar must be satisfied that:</i></p> <p><i>(a) the persons in the native title claim group are named in the application; or</i></p> <p><i>(b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.</i></p>
-------	---

The Delegate considers that the application PASSES the condition contained in s190B(3).

Reasons

The native title claim group (the persons on whose behalf the application is made) is described as follows:

The claimant group comprises those people who hold in common the body of laws and customs derived from beliefs about Wanjina/Wungurr. Those people are:

- (a) The descendants of... (a list of 88 names is given);*
- (b) Together with the descendants of Dalbi who was adopted into the native title claimant group.*

To comply with the requirements of s61(4) the application must either name the persons in the native title claim group or otherwise describe them sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.

The details required in s61(4) are the same as those required by 190B.

This claim group description identifies the persons in the native title claim group by descent; either by descent from one of more of 88 named individuals or by descent from another individual, Dalbi.

The claim group description includes another descriptor, “those people who hold in common the body of laws and customs derived from beliefs about Wanjina/Wungurr”. This descriptor alone would not describe the members of the claim group sufficiently clearly for the purposes of s61(4), as it does not give any indication of how it would be ascertained whether a person is one who “holds in common” the body of laws and customs. Neither does it provide any principles of, or guidance in relation to, the laws and customs which are derived from the beliefs. The beliefs are not outlined, described or exemplified. The nature or significance of Wanjina/Wungurr is not explained.

However, this descriptor does not determine who is in the claim group; this is determined by descent from the named persons. It is not therefore necessary for me to understand the meaning of “hold in common the body of laws and customs derived from beliefs about Wanjina/Wungurr” as the claim group is defined by descent from the named persons. The reference to holding a body of laws and customs is a statement by the applicants that the people who are the descendants hold in common the body of laws and customs. The definition of the claim group does not depend on ascertaining who holds in common the body of laws and customs.

If the names of the members of the claim group are not listed the subsection requires that the persons be described “sufficiently clearly so that it *can be* ascertained whether any particular person is one of those persons” (my emphasis). This allows for the members of the claim group to be ascertained at a later date should it be necessary. This does not require the Registrar to ascertain the names of individuals for the purposes of the registration test.

The persons in the group comprise the descendants of one or more of the 89 named individuals. Whilst I do not have genealogical evidence available to me which would identify all members of the group, this material is not necessary, otherwise it would make no sense to have an alternative to naming all the persons in the native title claim group.

Although the descent records may be found in oral transmissions through the generations and the memories of the living people I am satisfied that the description provides a sufficiently precise means of identifying, at a later date if necessary, whether any particular person is in the group.

I find that the claim group description is sufficient to meet the requirements of the subsection.

190B4	<p><i>Identification of claimed native title</i></p> <p><i>The Registrar must be satisfied that the description contained in the application as required by paragraph 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.</i></p>
-------	---

The Delegate considers that the application PASSES the condition contained in s190B(4).

Reasons

The application, in 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 others to establish that they are native title holders) of the area and any right or interest included within the same, and in particular, comprise;

and the application proceeds to list the rights and interests claimed in subparagraphs (i) to (x).

The rights and interests are then said to be subject to Crown rights to minerals, petroleum or gas, rights created in offshore places, and rights arising as a result of previous non-exclusive possession acts, except in cases where the applicants have the benefit of s47, 47A and 47B.

The rights and interests are also:

(e) *... not claimed to the exclusion of any other right or interest validly created by or pursuant to the common law, the law of the State or a law of the Commonwealth.*

The particularised native title rights and interests include, for example, rights and interests to possess, occupy, use and enjoy, the right of access, the right to control the use and enjoyment of others of resources of the area and the right to maintain and protect places of importance under traditional laws, customs and practices. Each of the rights and interests set out in (i) to (x) refer to some practice or some interaction with the area which can be readily understood in plain language.

In my view the words “as against the whole world” indicate that, irrespective of who else may possess rights in the area, the rights and interests vested in the native title holders are to be recognised by all others. The recognition of native title rights and interests as against the whole world would not preclude the recognition of concurrent rights and interests in the same area. Furthermore, subparagraph (e) quoted above confirms that native title is not claimed to the exclusion of other valid concurrent rights.

I am satisfied that the description of the native title rights and interests claimed and the extent of the rights claimed is sufficient to allow the native title rights and interests claimed to be readily identified.

190B5	<p><i>Sufficient factual basis:</i></p> <p><i>The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:</i></p> <ul style="list-style-type: none"> <i>(a) that the native title claim group have, and the predecessors of those persons had, an association with the area;</i> <i>(b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests;</i> <i>(c) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.</i>
-------	---

The Delegate considers that the application PASSES the condition contained in s190B(5).

Reasons

Under this subsection I must be satisfied that the factual basis on which it is asserted that native title rights and interests exist is sufficient to support the assertions. S190B(5) requires that the factual basis must support the three assertions forming the basis of a claim that native title exists. Unlike s62(2) the section does not require that the application alone contain sufficient information. I will therefore also consider material supplementary to the application.

The three assertions set out in s62(2)(e) are the same as those referred to in s190B(5) except that assertion (b) in s190B(5), contains some additional words, indicated in italics below.

s190B(5)(b) That there exists traditional laws *acknowledged by*, and *traditional customs, observed by, the native title claim group* that give rise to the claimed native title *rights and interests*;

I do not believe the difference in wording gives any extra guidance about how to apply s190B5. The extra words in s190B5(b) shown in italics make it clear that the native title claim group must acknowledge and observe the laws and customs. It is difficult to see how the laws and customs could “give rise” to the claimed native title unless the claimant group continue to observe and acknowledge them.

I have already found, in considering s62(2)(e), that the application provides a general description of the factual basis on which these assertions are made.

(a) the native title claim group (has), and the predecessors ... had, an association with the area

Schedule F states:

- the native title claim group have and their ancestors had, since the assertion of British sovereignty possessed, occupied, used and enjoyed the claim area;
- the current group and the ancestors have possessed, occupied, used and enjoyed the area according to traditional laws and customs;
- the members of the current claim group are connected to the claim area according to traditional law and custom, including laws about conception in the area, birth in the area and traditional knowledge of the area.

The people living at the time of sovereignty are not now alive and able to give direct evidence of their possession, occupation, use and enjoyment. The predecessors living at the time of sovereignty will not have written down records of their possession, occupation, use and enjoyment. Stories supporting or confirming the possession, occupation and use may have been passed down through the generations orally or by other means of traditional communication, such as through art, artefacts and other traditional items or practices. In some cases the best evidence available of the predecessors' association with the area may be in the stories told to the living descendants.

I do not believe for the purposes of applying the registration test that it is necessary in every case for the applicant to present to the Registrar a body of research supporting prior occupation by the ancestors of the claim group, or supporting other kinds of association with the area. There may be cases where this is desirable and/or necessary to support other aspects of the test, such as the prima facie test for rights and interests.

I refer to the Affidavits sworn by [names removed] supplied in support of the application.

In summary, all of these affidavits describe in considerable detail the association between these persons who are members of the claimant group, and the claim area. It is evident from the statements that all of these persons have associations which go back to their childhood, and which continue into the present.

By way of example I cite the following references.

Affidavit of [name removed].

1. [information removed to address cultural and customary concerns]
3. [information removed to address cultural and customary concerns]

**Affidavit of [name removed]
Paragraphs 1-17**

1. [information removed to address cultural and customary concerns]

2. [information removed to address cultural and customary concerns]
3. [information removed to address cultural and customary concerns]

I also note paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17.

The whole of this affidavit is concerned with the association of [name removed], [pronoun removed] relatives and forebears with the claim area. Numerous places are cited within the claim area which are of particular significance to [name removed] and to other claimants.

**Affidavit of [name removed]
Paragraphs 1-21.**

The 21 paragraphs which comprise the affidavit of [name removed] are all concerned with details of the association of [name removed] and other claimants with the claim area, and particularly with the practice of traditional laws and customs within the claim area. There is reference in paragraphs 18 –21 to the continuance of these practices and the association up to the present.

In order to satisfy this requirement of the registration test, the claimants are required to have a sufficient factual basis to support the assertion that their predecessors had an association with the claim area.

Referring again to the affidavits of [names removed], there is in each case a statement or statements linking one or both parents with the claim area. [name removed] also refers in some detail to his grandfather's association with the area.

I am satisfied that the factual basis outlined is sufficient to support the assertion in relation to association with the area.

(b) 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

Schedule F states that under traditional laws and customs, rights and interests in the land are vested in the members of the native title group. This is according to a set of principles, each of which connects members of the native title group to the area; for example descent from ancestors connected to the area, conception in the area, birth in the area, traditional knowledge of the area and knowledge of traditional ceremonies of the area. This statement outlines the basis of the native title held by the claim group – it is that the members of the claim group are vested with rights and interests because they have the appropriate connection to the area.

I refer to further supporting material below.

Affidavit of [name removed]

The affidavit, supplied to the Tribunal by way of further information contains information at paragraph 4 relating to knowledge of traditional knowledge as expressed in painting. Paragraph 5 refers to the practice of marriage according to skin group.

Affidavit of [name removed]

This Affidavit, supplied to the Tribunal by way of further information comprises 17 paragraphs. All paragraphs contain references to aspects of traditional law and/or custom which have been practiced by [name removed] and other claimants. These practices and observances demonstrate the kind of knowledge and connection which are set out in Schedule F(a) of the application as being the basis on which native title rights are vested in members of the claim group.

By way of example, I refer to the following:

Paragraph: 1. Evidence of birth in the area.

Paragraph: 1 and 2. Evidence of descent from ancestors connected to the area.

Paragraph: 3, 5, 7, 8, 9, 10, 11, 14, 15, 16. Evidence of traditional knowledge of the geography of the area.

Paragraph: 4, 5, 6. Evidence of traditional knowledge of the resources of the area.

Paragraph: 6, 8, 9, 13, 14, 15. Evidence of knowledge of traditional ceremonies of the area.

Paragraph: 1, 3, 9, 13, 14, 17. Evidence of traditional affiliations to and knowledge of and responsibility for the area.

Affidavit of [name removed]

This affidavit, supplied to the Tribunal as further information comprises 21 paragraphs. All paragraphs attest to aspects of law and custom practiced by [name removed] and other claimants. These practices and observances demonstrate the kind of knowledge and connection which are set out in Schedule F of the application as being the basis on which native title rights are vested in members of the claim group.

By way of example, I refer to the following:

Paragraph: 1, 8, 9, 20, 21. Evidence of traditional affiliations to and knowledge of and responsibility for the area.

Paragraph: 1, 2, 3. Evidence of descent from ancestors connected to the area.

Paragraph: 1, 2, 3, 4, 8, 10, 12, 19. Evidence of traditional knowledge of geography of the area.

Paragraph: 6, 7, 12, 13, 15. Evidence of knowledge of resources of the area.

Paragraph 18, 19. Evidence of knowledge of traditional ceremonies of the area.

Affidavit of [name removed]

This affidavit, supplied to the Tribunal as further information comprises 17 paragraphs. All paragraphs attest in some way to aspects of law and culture practiced by [name removed] and other claimants. These practices and observances demonstrate the kind of knowledge and connection which are set out in Schedule F of the application as being the basis on which native title rights are held.

By way of example, I refer to the following:

Paragraph: 1. Evidence of birth in the claim area.

Paragraph: 2, 5. Evidence of descent from persons connected to the claim area.
Paragraph: 10, 13 14, 15, 17. Evidence of traditional religious affiliation to and knowledge of and responsibility for the area.
Paragraph: 4, 6, 10, 13, 15, 16. Evidence of traditional knowledge of geography of the area.
Paragraph: 7, 11. Evidence of traditional knowledge of resources.

I am satisfied that the factual basis is sufficient to support the assertion in s190B(5)(b).

(c) The native title claim group have continued to hold the native title in accordance with those laws and customs

Schedule F of the amended application states that traditional laws and customs have been passed on to the present generation by traditional teaching and that the current group continues to acknowledge and observe those traditional laws and customs. I refer to further supporting material below.

Affidavits of [names removed].

As set out above in the section relating to s190B(5)(b), there is a body of information which attests to the existence of traditional law and custom relating to the claim area. Further, the existence of the affidavit material and the content of the affidavits attest to this knowledge being held by living members of the claimant group.

The affidavits also contain statements that attest to the continued observance of these traditional laws and customs. I refer in particular to the following:

1. Affidavit of [name removed]

Paragraph 17:

[information removed to address cultural and customary concerns]

2. Affidavit of [name removed]

Paragraph: 12:

[information removed to address cultural and customary concerns]

Paragraph 15:

[information removed to address cultural and customary concerns]

Paragraph 18:

[information removed to address cultural and customary concerns]

Paragraph 19

[information removed to address cultural and customary concerns]

Paragraph 20:

[information removed to address cultural and customary concerns]

Affidavit of *[name removed]*

Paragraph 17:

[information removed to address cultural and customary concerns]

I am satisfied that there is sufficient material to support the assertions that there are traditional laws and customs which the claim group observe and which give rise to the native title claimed; and that the group has continued to hold the native title in accordance with those traditional laws and customs.

190B6	<p><i>Prima facie case:</i></p> <p><i>The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.</i></p>
-------	--

The Delegate considers that the application PASSES the condition contained in s190B(6).

Reasons

The native title rights and interests claimed, as set out in Schedule E, are all subject to the following qualifications:

- The native title rights and interests claimed are subject to any native title rights and interests which may be shared with others to establish that they are native title holders;
- The applicants do not claim any minerals, petroleum or gas within the area which are wholly owned by the State or Commonwealth;
- Any offshore native title rights and interests are not claimed to the exclusion of others rights and interests;
- 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 area in relation to which a previous non-exclusive possession act was done in relation to an area, attributable to the State or Commonwealth (except where s47, 47A or 47B apply); and
- the 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, the law of the State or the law of the Commonwealth.

Accordingly, I shall consider whether, prima facie, each of the native title rights and interests claimed is made out, taking into account that the applicants are not seeking to make out a prima facie case for exclusive rights to the area.

(a) rights and interests to possess, occupy, use and enjoy the area;

Schedule F states that ancestors of the native title claim group have occupied, used and enjoyed the claim area since sovereignty through to the present; the native title right to possess, occupy, use and enjoy has been transmitted to the present generations and the preceding generations by the passage of traditional laws and customs.

Schedule G states that 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, used occupied and enjoyed the area, including by way of:

- Camping;
- Living and building structures;
- Moving freely about and having access to the claim area;
- Hunting;

- Gathering and fishing taking and using the resources of the area, including forest; products, water minerals and other resources from the land and waters;
- Manufacturing tools and weapons from the resources of the land and waters;
- Disposing of the products of the land or waters or manufactured from the products of the land or waters by trade or exchange;
- Managing, conserving, and caring for the land and waters and controlling access to the land and waters;
- Conducting and taking part in ceremonies;
- Visiting and protecting sites;
- Passing on the knowledge of the country and the traditional law and custom, in accordance with custom and tradition.

The application is supported by affidavits of named applicants.

As discussed earlier in these reasons affidavit material by [names removed] gives specific examples of current use and occupation by themselves and others. Possession, occupation, use and enjoyment has been in accordance with traditional laws and customs. The affidavits of [names removed] give specific examples of cultural activities involving possession, occupation, use and enjoyment of various parts of the claim area. There are several references to communal or group activities.

I find that prima facie the right has been made out.

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

My comments about Schedule F under (a) above are also relevant.

I refer generally to the affidavits of [names removed], where numerous examples about making decisions related to the use and enjoyment are either stated or necessarily implied through the activities described.

Affidavit of [name removed]

Paragraph 16

[information removed to address cultural and customary concerns]

In view of the above and in the absence of any submissions or evidence to refute the statements that these are traditional practices which have been passed on through the generations, I find that there is a prima facie case for a finding that at least some members of the native title claim group have the right to make decisions about the use and enjoyment of the area.

(c) the right of access to the area;

My comments under (a) and (b) above in relation to possession, use and occupation and the right to speak for country are also relevant here.

The affidavits [names removed] refer to their accessing various parts of the claim area. There is evidence of present day physical connection with the area. There is nothing to indicate that the claim members have been denied access or that access has been broken for any period of time which would have resulted in the extinguishment of native title.

The right is not claimed to the exclusion of other rights of access under the common law or a law of the State or Commonwealth (Schedule E(v)). Previous non-exclusive possession acts, if they have occurred in relation to the area, are also recognised (Schedule E(iii)).

I find that the rights of access to the area is intended to be subject to any other valid rights in relation to the area and that prima facie this right can be established.

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

I refer to the affidavits of [names removed]. In particular I cite the following references as prima facie evidence of the practice of a right to control the access of others within the claim area.

Affidavit of [name removed]

Paragraph 17:

[information removed to address cultural and customary concerns]

Affidavit of [name removed]

Paragraph 10:

[information removed to address cultural and customary concerns]

Paragraph 11:

[information removed to address cultural and customary concerns]

Paragraph 16:

[information removed to address cultural and customary concerns]

Paragraph 21:

[information removed to address cultural and customary concerns]

I find that prima facie, the traditional laws and customs include law and custom in relation to certain members of the claim group having authority to say who can access various parts of the claim area.

The right is “not claimed to the exclusion of any other rights or interests validly created by or pursuant to the common law, the law of the State or the law of the Commonwealth” (Schedule E(2)(e)). Although this may be an unusual way to express it, I read sub-paragraph (e) to mean that concurrent rights, whether pursuant to State or Commonwealth law or common law, are recognised. If any previous non-exclusive possession acts affect the area, these also are recognised (Schedule E(2)(c)).

I am therefore satisfied that the right to control the access of others to the area is claimed subject to other rights of access at common law or by State or Commonwealth law and

that this right has prima facie been established, and that this right can prima facie be established.

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

Schedule G states that 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, used occupied and enjoyed the area, including by way of:

- Camping;
- Living and building structures;
- Moving freely about and having access to the claim area;
- Hunting;
- Gathering and fishing taking and using the resources of the area, including forest; products, water minerals and other resources from the land and waters;
- Manufacturing tools and weapons from the resources of the land and waters;
- Disposing of the products of the land or waters or manufactured from the products of the land or waters by trade or exchange;
- Managing, conserving, and caring for the land and waters and controlling access to the land and waters;
- Conducting and taking part in ceremonies;
- Visiting and protecting sites;
- Passing on the knowledge of the country and the traditional law and custom, in accordance with custom and tradition.

The use and enjoyment of the resources of the area is implicit or explicit in the conduct of the activities set out above. For example, “Hunting” or “Gathering and fishing and using the resources of the area, including forest products, water, minerals, and other resources from the land and waters”, are self evident statements about the active exercise of this right. It is also clearly arguable that the conduct of other activities, such as camping, or building structures, or even ceremonial activity by their nature involve the use of resources.

Evidence for the practice of these activities and therefore of the existence of the native title right to use and enjoy the resources is drawn from the affidavits of [names removed]. I reference the following examples drawn from these affidavits:

Affidavit of [name removed]

Paragraphs: 6, 7, 11, 12, 13, 14, 15, 16, 20.

Affidavit of [name removed]

Paragraphs: 4, 5, 6, 7, 13.

Affidavit of [name removed]

Paragraphs: 7, 11, 16, 17.

The applicants intend that this right be subject to Schedule E (2) (a) which states that the applicants do not claim any minerals, petroleum or gas within the area which are wholly owned by the State or Commonwealth Crown.

I am satisfied that the factual material provided in the application and the affidavit material in relation to use of resources refers to traditional ways of using and enjoying resources. Accordingly I find that prima facie this right can be established.

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

The right flows in part from the right to control the access of others to the area, referred to in (d) above.

The claim to this right must also be read subject to the ownership rights of the State and Commonwealth in relation to minerals, petroleum and gas referred to in E(2)(a) and in offshore waters referred to in E(2) (b) The claim to this right is also subject to rights granted under any previous non-exclusive possession act (E 2(c)) and any other rights or interests under common law or laws of the State or Commonwealth (E(2)(e)). Under E(v) valid rights to mine are not affected by native title.

I refer to the affidavits by [names removed] as follows.

Affidavit of [name removed]

Paragraph: 5, 6.

Affidavit of [name removed]

Paragraph: 11,12,13, 16, 21.

The information in these affidavits does not specifically refer to the right to control the use and enjoyment of others to resources. However, it does refer to the existence of trade and to the control of access of others to areas. By controlling the access of others to an area, there is as a natural consequence, some control over the use and enjoyment of the resources of that area. The material in the affidavit of [name removed] is more extensive in respect of this claimed right.

Affidavit of [name removed]

This affidavit refers to Ngarinyin law and custom which is relevant to this application.

In [pronoun removed] affidavit sworn 25 February 1999 [name removed] states:

5. [information removed to address cultural and customary concerns]

11. [information removed to address cultural and customary concerns]

12. [information removed to address cultural and customary concerns]

13. [information removed to address cultural and customary concerns]

14. [information removed to address cultural and customary concerns]

Some of this evidence appears to refer to control of the use of resources within the group. Other comments relate to, or could relate to, controlling people outside the group.

I am satisfied that this evidence supports, *prima facie*, a right, and a duty, to control the use and enjoyment by others of the resources of the area. I am satisfied that this right (and duty) derives from traditional law and custom.

The evidence of [name removed] in [pronoun removed] affidavit sworn 25 February 1999 is an indication of the existence of rights and responsibilities in relation to managing resources of the area. In this affidavit [name removed] also refers to traditional practices associated with gift giving. There is clearly a set of well established traditional principles in relation to exchange of resources, including rules about who has access to resources or who has authority to authorise other Aborigines to take or use particular resources. The applicants' reference to management of resources is a reference to a holistic system of law and custom relating to management of a range of resources much more extensive than minerals, petroleum or gas.

I am satisfied that *prima facie* this right has been established.

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

In [pronoun removed] affidavit sworn 25 February 1999 [name removed] talks about the traditional system of trade, the *wurnan*. For example:

1. [information removed to address cultural and customary concerns]

3. [information removed to address cultural and customary concerns]

4. [information removed to address cultural and customary concerns]

5. [information removed to address cultural and customary concerns]

6. [information removed to address cultural and customary concerns].

I note also the descriptions of trade in resources set out in some detail in the affidavits of, [name removed] (paragraph 11, 12 13), and [name removed] (paragraph 5, 6).

There is sufficient evidence to satisfy me that *prima facie* this is a continuing right derived from native title, based on traditional law and custom.

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

In [pronoun removed] affidavit sworn 25 February 1999 [name removed] refers to the responsibility to share resources, for example after killing kangaroo or emu (see above re paragraph 11 of the affidavit). There is also a general reference to the responsibility to share in paragraphs 12, 13 and 14 of this affidavit.

I refer also to the affidavit of [name removed], in paragraph 13 where the responsibility to share in resources taken from the area is explicit.

The right that corresponds with the duty to share is a right to receive a portion of any resources taken by others from the area.

I therefore find that this right has also been, prima facie, established.

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

I refer to the affidavit of [name removed] (Paragraphs 10, 11 20, 21), and to the affidavit of [name removed] (paragraphs 6, 8, 13, 14, 15, 17).

These paragraphs all contain material that demonstrates the existence of places of particular importance. They also indicate the existence of practices, and prohibitions and other laws designed to safeguard these places.

I also note the following statements about this aspect of Ngarinyin law and custom made by [name removed].

In [pronoun removed] affidavit sworn 6 January 1999 [name removed] states (paragraph 23):

[information removed to address cultural and customary concerns]

[pronoun removed] further says in paragraph 27:

[information removed to address cultural and customary concerns]

In paragraph 27 [name removed] states:

[information removed to address cultural and customary concerns]

There is sufficient evidence for me to conclude that prima facie the applicants can establish this native title right.

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

The right to maintain, protect and prevent misuse is evidenced by the practices referred to (i) above. With respect to maintaining and protecting places of importance, there is also evidence in the affidavit of [name removed], (see extracts above from paragraphs 19 and 23), and the affidavits of [names removed] (as set out in (I) above).

As previously mentioned there are several references to passing on traditional law and custom in a general sense, but also particular references to teaching particular aspects of law and custom to the children.

I find that there is sufficient material for me to be satisfied that there is, prima facie, a continuing right to maintain, protect and prevent the misuse of cultural knowledge.

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>
-------	---

The Delegate considers that the application PASSES the condition contained in s190B(7).

Reasons

Schedule M contains a statement that at least one member of the claimant group has a traditional physical connection.

This assertion in Schedule M is supported by the Affidavits of [names removed].

The content of these affidavits is explored at length in the section dealing with s190B(5).

It is evident from these affidavits, which were supplied as further information, that the requirements of s190B(7) are met. In my opinion, there is no need to further explore these affidavits for the purpose of this section.

190B8	<p><i>No failure to comply with s61A:</i></p> <p><i>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></p>
-------	--

The Delegate considers that the application PASSES the condition contained in s190B(8).

Reasons

The requirements of s61A are considered in order below.

s61A(1) No previous determination of native title

In order to comply with s61A(1), there must be no previous approved determination of native title.

An “approved determination of native title” is defined in s13. In so far as it is relevant here an approved determination of native title would be one made by the Federal Court or the High Court on an application under the Act, once finally determined.

In the amended application, the applicants advise there has been no approved native title determination over the claimed area. A search of the Register of Native Title Determinations reveals that no determination of native title for the area has been registered..

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 the application the applicants have sought to exclude any areas where there may have been a previous exclusive possession act attributable to the State or Commonwealth. This exclusion is found in Schedule B(b) of the application.

Full current and historical tenure information is not available in respect of the claim area.

I am satisfied that neither the application nor any relevant material discloses that the application area has been affected by a previous exclusive possession act attributable to the Commonwealth or the State.

s61A(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 that *may* have been subject to a previous non exclusive possession act on the part of the Commonwealth or the State. Schedule E of the amended application states:

- (c) *The applicants do not make a claim to native title rights and interests which confer possession, use, occupation 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 State of Western Australia and a law of that State has made provision for that act as described in section 23E NTA 1993.*

In any event, none of the native title rights and interests are claimed to the exclusion of other validly created rights.

Schedule E(2)(e) states:

- (e) *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, the law of the State or a law of the Commonwealth.*

Further, I am not otherwise aware that, because of s61A, the application should not have been made.

Current tenure, as far as I am aware, consists of vacant crown land, reserves and pastoral lease. There are also mining interests in the area. There is no evidence of public works or public roads in the area, but if there are the applicants have made it clear that they recognise extinguishing events and concurrent rights.

In the circumstances I conclude that the application passes this element of the test.

<p>190B9 (a)</p>	<p><i>Ownership of minerals, petroleum or gas wholly owned by the Crown:</i> <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 Common-wealth, a State or Territory wholly owns the minerals, petroleum or gas;</i></p>
------------------------------------	---

The Delegate considers that the application PASSES the condition contained in s190B(9)(a).

Reasons

Schedule E 2(a) sets out that 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.

<p>190B9 (b)</p>	<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>
-----------------------------	---

The case manager considers that the application PASSES the condition contained in s190B(9)(b).

Reasons

No Offshore waters in claim area. There is also a statement at Schedule E 2(b) that would in any case allow compliance with the requirements of this section.

<p>190B9 (c)</p>	<p><i>Other extinguishment:</i></p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></p> <p><i>(c) in any case - the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2)).</i></p>
-----------------------------	---

The case manager considers that the application Passes the condition contained in s190B(9)(c).

Reasons for the Recommendation

In the amended application, the applicants assert that there is nothing to their knowledge that would suggest that their native title rights and interests have been extinguished.

In earlier parts of these reasons I have canvassed the description of the areas within the external boundary claimed, specific exclusions of any areas which may have been subject to previous exclusive possession acts, the statement that there is no claim to exclusive possession in respect of any area which may have been affected by a previous non exclusive possession act and the statement that native title rights and interests are not claimed to the exclusion of common law rights or valid rights under State or Commonwealth law. The applicants have also excluded at Schedule B(c) any areas in relation to which native title rights have otherwise been extinguished.

The application does not disclose and I am not aware of any extinguishing events that would be contrary to the native title claimed by the applicants. There is no other information that would lead me to conclude that any of the native title rights and interests claimed have been extinguished.

I am satisfied that the application meets the requirements of this section.

End of Document