

National Native Title Tribunal

NATIONAL NATIVE TITLE TRIBUNAL

REGISTRATION TEST

REASONS FOR DECISION

DELEGATE: Simon Nish

Application Name: Wulli Wulli People

Names of Applicant(s): Gary Dodd, Thel Gooda, Desmond James Dodd, Lynette May Bligh, Kevin Clancy, Noel Pope

Region: Queensland NNTT No.: QC00/7

Date Application Made: 17/07/00 Federal Court No.: Q6006/00

The delegate has considered the application against each of the conditions contained in s.190B and s.190C of the *Native Title Act 1993* (C'th).

DECISION –Wulli Wulli People

The application IS ACCEPTED for registration pursuant to s.190A of the *Native Title Act 1993* (C'th).

Simon Nish

April 2001
Date of Decision

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

Brief History of the Application

The application was filed in the Federal Court on 17 July 2000. It combined the following applications:

- QG6135/98 (QC97/25) – Wulli Wulli People #1 [lodged with the NNTT 29 July 1997]
- QG6136/98 (QC97/26) – Wulli Wulli People #2 [lodged with the NNTT 29 July 1997]
- Q6146/98 (QC97/38) – Willi Willi People [lodged with the NNTT 22 September 1997]

These three applications were found not to comply with s.190A requirements on 14 October 1999 and removed from the Register of Native Title Claims on 18 October 1999. They will be discontinued following registration of the current application. The notification of interested persons and organisations has not yet commenced.

An amended application was filed in the Federal Court on 2 November 2000 and the Court granted leave to amend in a hearing on 9 November 2000. A further amended application was filed in the Federal Court on 22 March 2001 and the Court granted leave to amend in a hearing on 5 April 2001.

On 2 February 2001 an offer was made to the State of Queensland to receive copies of documents provided by the applicants directly to the NNTT, and to make a submission for consideration by the Delegate in applying the registration test to this application. This was in compliance with the decision in *State of Western Australia v Native Title Registrar & Ors [1999] FCA 1591 – 1594*. On 2 February 2001 the State advised that they wished to receive copies of these documents, which were supplied to the State on 7 February 2001. The State did not make any submissions in regard to this material.

Information considered when making the Decision

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

- The National Native Title Tribunal's Administration Files, Legal Services Files and Registration Testing Files for QC00/7.
- Tenure information acquired by the Tribunal in relation to the area covered by this application (if any).
- The National Native Title Tribunal's Working files and related materials for native title applications that overlap the area of this application;
- The National Native Title Tribunal Geospatial Database;
- The Register of Native Title Claims and Schedule of Native Title Applications;
- The Native Title Register;
- Affidavit of (name deleted) sworn on 21/10/00;
- Affidavit of (name deleted) sworn on 20/10/00;
- Original application filed 17/07/00;
- Amended application filed 02/11/00;
- Amended application filed 22/03/01;
- Amended application for QC97/55 Iman People #2 filed 07/12/00;
- Amended application for QC97/36 Gangulu People filed 25/08/99

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

All references to legislative sections refer to the *Native Title Act 1993* unless otherwise specified. All references to "the application" refer to the amended application of 22 March 2001 unless otherwise specified.

A. Procedural Conditions

s.190C(2)

Information, etc., required by section 61 and section 62:

The Registrar must be satisfied that the application contains all details and other information, and is accompanied by any affidavit or other document, required by sections 61 and 62.

Details required in section 61

s.61(1) The native title claim group includes all the persons who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed.

Reasons relating to this sub-condition

Attachment A of the application provides a description of the native title claim group. There is no information before me that indicates that this group does not include, or may not include, all the persons who hold native title in the area of the application. I am satisfied that the group described includes all the persons who, according to their traditional laws and customs, hold the native title claimed. Refer also to my reasons under s.190C4 below.

Result: Requirements met

s.61(3) Name and address for service of applicants

Reasons relating to this sub-condition

The names of the applicants are at Part A and the address for service for the applicants is at Part B of the application.

Result: Requirements met

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

Reasons relating to this sub-condition

Attachment A of the application describes the native title claim group. For the reasons which led to my conclusion (below), that the requirements for s.190B(3) have been met I am satisfied that the persons in the native title claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

Result: Requirements met

s.61(5) Application is in the prescribed form, lodged with the Federal Court, contains prescribed information, and is accompanied by any prescribed documents

Reasons relating to this sub-condition

s.61(5)(a)

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

s. 61(5)(b)

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

s.61(5)(c)

The application meets the requirements of s. 61(5)(c) and contains all information as prescribed in s. 62. I refer to my reasons in relation to s. 62 below.

s.61(5)(d)

As required by s. 61(5)(d) the application is accompanied by the prescribed documents, being:

- Affidavits as prescribed by s. 62(1)(a) (provided with original application), and
- maps, as prescribed by s. 62(1)(b) (provided with original application and amended application)

I refer to my reasons for decision in relation to s. 62(1)(a) and (b) below. I note that s. 190C(2) only requires me to consider details, other information and documents required by s. 61 and s. 62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee to the Federal Court.

Result: Requirements met

Details required in section 62(1)

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

Reasons relating to this sub-condition

Affidavits in relation to this condition have been received from all applicants (provided with original application). A competent witness (Barrister at Law) has witnessed these affidavits. They are virtually identical in content and I am satisfied that they address the matters required by s. 62(1)(a)(i) - (iv) at paragraphs (1) to (4) of the affidavits respectively.

Paragraphs (5) of the affidavits set out the basis of the applicants' authorisation, and refer to Schedule R of the application. Consequently the requirement of s. 62(1)(a)(v) is satisfied.

Result: Requirements met

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

Comment on details provided

At Schedule M of the application the applicants state that members of the native title claim group demonstrate traditional physical connection by visiting, working, camping and conducting traditional rituals on the area covered by the application. Further information is provided in the affidavits of (name deleted) and (name deleted) sworn on 20 and 21 October 2000 respectively.

Result: Provided

Details required in section 62(2) by section 62(1)(b)

s.62(2)(a)(i) Information identifying the boundaries of the area covered

Reasons relating to this sub-condition

Attachment B1 to Schedule B of the amended application of 22 March 2001 describes the external boundary of the application. A Schedule listing by Lot on Plan number all national parks, unallocated State land, reserves, lands lease and water reserves contained within the external boundary was also provided with the earlier versions of the application.

For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the information and maps provided by the applicant are sufficient to enable the area covered by the application to be identified with reasonable certainty.

Result: Requirements met

s.62(2)(a)(ii) Information identifying any areas within those boundaries which are not covered by the application

Reasons relating to this sub-condition

The applicants have provided information identifying the internal boundaries of the claimed area at Attachment B to Schedule B of the application.

For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the information contained in the application and provided by the applicants is sufficient to enable any areas within the external boundaries of the claim area which are not covered by the application to be identified.

Result: Requirements met

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

Reasons relating to this sub-condition

A map of the claim area, prepared by the Tribunal's Geospatial Unit and dated 8 March 2001, is provided at Attachment C to Schedule C of the amended application of 22 March 2001. This map supersedes the maps previously provided.

For the reasons that led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the maps provided by the applicants sufficiently identify the boundaries of the claim area.

Result: Requirements met

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

Reasons relating to this sub-condition

At Schedule D of the application, the applicants indicate that no searches have been conducted by their representative.

The requirements of s.62(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 the applicant to have knowledge of, and obtain details about all searches carried out by every other person or body.

Result: Requirements met

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

Reasons relating to this sub-condition

The native title rights and interests claimed by the applicants are described at Attachment E of the application. In accordance with s. 62(2)(d), the rights and interests claimed do not merely consist of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished at common law. I have outlined the rights and interests claimed in my reasons for decision in relation to s. 190B4.

Result: Requirements met

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

Reasons relating to this sub-condition

The applicants state at Schedule F of the application that the native title claim group has and the predecessors of those persons had an association with the claim area. Further information is contained in the affidavits of (name deleted) and (name deleted).

It is my view that this information amounts to a general description of the factual basis so as to comply with the requirements of s.62(2)(e)(i). Refer also to the reasons which lead to my conclusion that the requirements of s.190B5(a) have been met.

Result: Requirements met

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

Reasons relating to this sub-condition

The applicants state at Schedule F of the application 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. Further information is contained in the affidavits of (name deleted) and (name deleted).

It is my view that this information amounts to a general description of the factual basis so as to comply with the requirements of s.62(2)(e)(ii). Refer also to the reasons which lead to my conclusion that the requirements of s.190B5(b) have been met

Result: Requirements met

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

Reasons relating to this sub-condition

The applicants state at Schedule F of the application that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs. Further information is contained in the affidavits of (name deleted) and (name deleted).

It is my view that this information amounts to a general description of the factual basis so as to comply with the requirements of s.62(2)(e)(iii). Refer also to the reasons which lead to my conclusion that the requirements of s.190B5(c) have been met

Result: Requirements met

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

Reasons relating to this sub-condition

At Schedule G of the application the applicants state that they carry out the following activities in relation to the area claimed:

1. Conducting traditional rituals on the area covered by the application;
2. Visiting the area covered by the application;
3. Education of members of the claim group and members of the wider community in relation to the native title rights and interests of the native title claim group;
4. Employment of members of the native title claim group on the area claimed;
5. Negotiations with various interest groups and stakeholders in relation to activities on the area covered by the application.

Further information is contained in the affidavits of (name deleted) and (name deleted). It is my view that this description of activities is sufficient to comply with the requirements of s.62(2)(f).

Result: Requirements met

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

Reasons relating to this sub-condition

At Schedule H of the application the applicants list nine other overlapping applications which they are aware of. They note that three of those applications will be discontinued once this application is registered. According to the Tribunal's geospatial data there is one other application overlapping the current application; however this section requires the applicants to list only those applications of which they are aware.

Since the current application was lodged two of these overlapping applications have been withdrawn and one new application has been lodged. The Tribunal's current geospatial data indicate that there are nine applications overlapping this application. Refer to my reasons for decision in respect of s.190C3.

Result: Requirements met

s.62(2)(h) Details of any s.29 notices given pursuant to the amended Act (or notices given under a corresponding State/Territory law) in relation to the area, which the applicant is aware of

Reasons relating to this sub-condition

At Schedule I of the application the applicants state that they are not aware of any section 29 notices that have been given and that relate to the whole or part of the claim area.

Result: Requirements met

Reasons for the Decision

For the reasons identified above the application contains all the details and other information, and is accompanied by the affidavits and other documents, required by ss.61 and 62 of the NTA. I am satisfied that the application meets the requirements of this condition.

Aggregate Result: Requirements met

s.190C(3)

Common claimants in overlapping claims:

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

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

Reasons for the Decision

Section 190C3 requires me to be satisfied that any person who is a member of the Wullli Wullli native title claim group (as defined in this native title determination application - “the Wullli Wullli application”) is not also a member of the native title claim group for any previous native title determination application (“the previous application”), where:

- (a) the previous application overlaps in whole or part the claim area covered by the Wullli Wullli application (cf. s.190C3(a)); and
- (b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the Wullli Wullli application was made (cf. s.190C3(b)); and
- (c) the entry in the Register was made, or not removed, as a result of consideration of the previous application under s.190A (cf. s.190C3(c)).

At Schedule H of the application the applicants list nine applications which overlap the current application:

- QC96/106 Wadja People (QG6110/98)
- QC97/25 Wullli Wullli People (QG6135/98)
- QC97/26 Wullli Wullli People #2 (QG6136/98)
- QC97/36 Gangulu People (QG6144/98)
- QC97/38 Willi Willi (Dodd) (QG6146/98)
- QC97/54 Iman People #1 (QG6161/98)
- QC97/55 Iman People #2 (QG6162/98)
- QC98/47 Wakka Wakka People (QG6129/98)
- QC99/33 Wakka Wakka People #2 (QG6032/99)

The applicants state that once this application is registered notices of discontinuance will be filed for the following applications:

- QC97/25 Wullli Wullli People
- QC97/26 Wullli Wullli People #2
- QC997/38 Willi Willi (Dodd)

On the basis of information provided by the Tribunal’s Geospatial Unit in a settlement memorandum dated 12 March 2001 there were 9 applications overlapping the current application:

- QC97/25 Wullli Wullli People
- QC97/26 Wullli Wullli People #2
- QC97/35 Gooreng Gooreng People
- QC97/36 Gangulu People

QC97/38 Willi Willi (Dodd)
QC97/54 Iman People #1
QC97/55 Iman People #2
QC99/33 Wakka Wakka People #2
QC00/10 Djakunde Jangerie Jangerie People

As this application was filed on 17 July 2000 (under the current Act), for the purpose of this section it was “made” on that day. On this date there were 10 applications covering part of the area also covered by the current application. The particulars of these applications are listed below.

QC96/106 filed 14/11/96. Found not to comply with S.190A on 23/09/99. Withdrawn on 22/11/00

I am not required to consider this application as it is now discontinued.

QC97/25 filed 29/07/97. Found not to comply with S.190A on 14/10/99.

I am not required to consider this application as it is not currently registered.

QC97/26 filed 29/07/97. Found not to comply with S.190A on 14/10/99.

I am not required to consider this application as it is not currently registered.

QC97/35 filed 15/09/97. Found not to comply with S.190A on 15/09/99.

I am not required to consider this application as it is not currently registered.

QC97/36 filed 15/09/97. Found to comply with S.190A on 07/06/00.

I am required to consider this application as it was on the Register at the time the current application was made.

QC97/38 filed 22/09/97. Found not to comply with S.190A on 14/10/99.

I am not required to consider this application as it is not currently registered.

QC97/54 filed 30/10/97. Found not to comply with S.190A on 15/07/99.

I am not required to consider this application as it is not currently registered.

QC97/55 filed 30/10/97. Found not to comply with S.190A on 28/07/99.

I am not required to consider this application as it is not currently registered.

QC98/47 filed 29/09/98. Found not to comply with S.190A on 01/09/00. Withdrawn on 12/12/00.

I am not required to consider this application as it is now discontinued.

QC99/33 filed 18/11/99. Found to comply with S.190A on 13/02/01

I am not required to consider this application as it was not on the Register at the time the current application was made.

Amended applications for the Iman #2 application (QC97/55) were filed in the Federal Court on 22 September 2000 and 7 December 2000, removing from the claim area all overlapping applications on the Register. In the Settlement memorandum of 12 March 2001 a small technical overlap of 0.0009 sq km remains between QC97/55 and the current application.

Since the filing of this application another overlapping application was filed, namely QC00/10 Djakunde Jangerie Jangerie People, filed on 26/09/00. This is yet to be considered under S.190A.

Of the above-mentioned overlapping applications, Gangulu QC97/36 is the only one that was on the Register at the time the current application was made. This is therefore the only application which I need to consider in relation to common claimants.

Gangulu applicants: Colin Gordon Hutchison, Edna Joan Fraser, Valerie Grace Hayes, Viola Tuahine, Karen Lorraine Austin, Lynette Gail Blucher, Robert Kerry Toby (Jnr), Louis Boyd Toby

Gangulu claim group description:

“Descendants of (name deleted) 1st excluding (name deleted) and (name deleted) and their descendants”

The native title claim group description in the current application is “The descendants of (name deleted) who was a Wulli Wulli woman”.

Neither the names of the applicants nor the claim group description would suggest that there are any common claimants between the Gangulu People and the Wulli Wulli People.

Accordingly, the application complies with the provisions of s.190C(3).

Result: Requirements met

s.190C(4)(a) or s.190C(4)(b)

Certification and authorisation:

The Registrar must be satisfied that either of the following is the case:

(a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; or

Note: An application can be certified under section 203BE, or may have been certified under the former paragraph 202(4)(d)

(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.

Note: s.190C(5) - 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 set out the grounds on which the Registrar should consider that it has been met.

Reasons for the Decision

The application has not been certified by the relevant representative Aboriginal/Torres Strait Islander body. Therefore the conditions of s.190C4(a) are not relevant.

Under this section, I am only required to be satisfied that one of these conditions is met. I have therefore limited my consideration to compliance with s.190C(4)(b) – authorisation by the native title claim group.

In *Risk v National Native Title Tribunal [2000] FCA 1589* O’Loughlin J noted that under the Native Title Act applications can only be lodged on behalf of properly constituted groups and that authorisation must come from all the persons who hold the common or group rights and interests. He notes that the applicant does not have to be individually authorised by each member of the claimant group. It is sufficient that the applicant has been authorised to make the claim in accordance with a process of decision making recognised under the traditional laws and customs of the claimant group.

The Act, at s.251B, recognises that applicants may be authorised using a decision making process that is either:

- (a) under traditional laws and customs of the group; or
- (b) agreed to and adopted by the native title claim group.

There are two limbs to s.190C4(b):

1. the applicants must be members of the native title claim group;
2. the applicants must be authorised to make the application and deal with matters arising in relation to it by all other persons in the claim group.

The first limb

At Schedule R of the application the applicants state that “the applicants are members of the native title claim group and are authorised to make this application and deal with the matters that arise in relation to it, by all the other persons in the native title claim group.”

Elsewhere in Schedule R the applicants state:

“A further meeting was held in Bundaberg on 13 July 2000 which was attended by members of the claimant group including elders... it was agreed to authorise named applicants as representatives of lines of descent from Wulli Wulli ancestors to proceed with this application...”

It is implicit from these statements that the applicants are members of the group.

I am therefore satisfied that the requirements of the first limb of s.190B4(b) are met.

The second limb

A prerequisite to compliance with s.190C(5) is provision by the applicants of a:

- statement to the effect that the requirement in s.190C(4)(b) is met; and
- brief statement setting out the grounds on which I should consider that the requirements of s.190C4(b) are met.

Paragraph 4 of the applicants’ affidavits attached to the original application depose that each applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it.

Paragraph 5 of the applicants’ affidavits states:

“I was authorised by all the persons in the Native Title Claim Group to make this application and to deal with matters arising in relation to it in accordance with a decision-making process involving consultation with the members of the native title claim group and approval by those members at a meeting held in Eidsvold on 05 June 2000 as well as at a meeting held at Bundaberg on 13 July 2000, as set out in Schedule R of this application.”

Schedule R of the application usefully describes the group’s decision-making processes as follows:

“The native title claim group has adopted a contemporary traditional process of authorising the application, involving a combination of:

- . Approval of families associated with particular areas within the claim area;
- . Consent of senior members of the native title claim group; and
- . Consensus, through debate and dialogue through all members of the native title group.

Between late June and early July 2000 the Research Assistant employee of the representative body, Gurang Land Council (Aboriginal Corporation), has been undertaking consultation and research with members of the native title claim group.

A mediation meeting of the current members of Wulli Wulli native title claim group was held on 5 June 2000 in Eidsvold to discuss the amalgamation of the existing Wulli Wulli/Willi Willi claims and the form of a new application.

A further meeting was held in Bundaberg on 13 July 2000 which was attended by members of the claimant group including elders. The draft contents of this application were discussed and it was agreed to authorise named applicants as representatives of lines of descent from Wulli Wulli ancestors to proceed with this application for a native title determination and to deal with matters arising from the application on behalf of the native title claim group.

Later in the day, the final draft contents of the application were distributed, discussed and amended as considered appropriate. The authorisation of the named applicants was re-affirmed. The application was then endorsed by all present at the meeting and this endorsement was formalised as a resolution passed at the meeting.

Wulli Wulli People were notified of the meeting details by written invitation wherever possible and also by word of mouth.”

The s.62(1) affidavits by the applicants and the information in Attachment R illustrate that the claim group has utilised a contemporary traditional decision making process to authorise the applicants to make the application and to deal with matters arising in relation to it.

On the basis of the evidence referred to above, I am satisfied that:

1. this group has a process of decision-making that, under the contemporary traditional laws and customs of the persons in the native title group, must be complied with in authorising the applicants;
2. the process involves the group coming to a collective decision through consultation, discussions and consensus, in which representatives from family or descent groups are given authority to speak for their family; the families and their representatives are given the opportunity to be involved in the decision-making; and the final and collective decision is a consensual one involving those accepted by the group as having authority for the families comprised in the group;
3. the contemporary traditional process entails the holding of formal meetings and/or the passing of formal resolutions or voting by those present at formally constituted meetings of the group.
4. the applicants are so authorised by the persons in the group in accordance with this contemporary traditional decision making process.

I am satisfied that the requirements of s.190C5 are met as:

- the statement at Schedule R, and the affidavits of the applicants constitute the requisite statement under s190C5(a);
- the information in Schedule R and in the affidavits attached to the application adequately set out the grounds on which I should consider that s190C4(b) has been met.

Result: Requirements met

B. Merits Conditions

s.190B(2)

Description of the areas claimed:

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 and waters.

Reasons for the Decision

Map and External Boundary Description

External Boundary

Attachment B1 to the amended application of 2 November 2000 describes the external boundary of the claim area by reference to geographic co-ordinates and key geographical features such as Tarramba Creek and the Auburn Range and Banana Range. This description was prepared by the Department of Natural Resources. Given that a description of the external boundary has been provided, together with a map of the external boundary, the list of Lots contained within the claim area provided at Attachment B1 (national parks, State Forests, unallocated State land, reserves, lands lease and water reserves) is not strictly necessary.

The Tribunal's Geospatial Unit identified a number of anomalies in the description of the external boundaries in an assessment dated 6 December 2000. This was forwarded to the applicants' legal representatives. On 29 January 2001 the applicants sought assistance from the NNTT under s.78 in relation to the maps and boundary description. The Tribunal's Geospatial Unit prepared a revised description of the external boundary of the application on 8 March 2001. This describes the external boundary of the application by reference to the boundaries of land parcels described by Lot on Plan number and a series of geographic co-ordinates.

The applicants filed an amended application in the Federal Court on 22 March 2001, with the amended description of the external boundary. This was accepted by the Court in a hearing on 5 April 2001.

On the basis of the revised area description filed by the applicants, I am satisfied that any person could easily ascertain with reasonable certainty the area covered by the application. In my view, this is sufficient to meet the requirements of this section.

Maps

Attachment C to Schedule C of the amended application of 2 November 2000 includes two maps, one a locality map and the other a map of the external boundary of the claim area.

The assessment by the Tribunal's Geospatial Unit dated 6 December 2000 also identified anomalies in the map of the external boundary of the claim area. As part of the assistance provided to the applicants, the Tribunal's Geospatial Unit prepared a revised map of the external boundary of the application on 8 March 2001. This map was lodged with the further amended application filed in the Federal Court on 22 March 2001 and supersedes the maps provided earlier.

On the basis of the revised map filed by the applicants, which is consistent with the written description of the external boundary of the claim area, I am satisfied that the map submitted with the application meets the requirements of s.62(2)(b) as the boundaries of the areas covered by the application can be identified.

Internal Boundaries

At Attachment B to Schedule B of the application, the applicants have provided information identifying the internal boundaries of the claimed area by way of a formula that excludes a variety of tenure classes from the claim area, as follows:

“2. Subject to paragraphs 4 & 5, the area covered by the application exclude any land or waters which is presently or was previously covered by;

- (a) a scheduled interest,
 - (b) a freehold estate (including any right in land or waters taken to be the vesting of a freehold estate by virtue of subsection 23B(3));
 - (c) a commercial lease that is neither an agricultural lease nor a pastoral lease;
 - (d) an exclusive agricultural lease that is neither an agricultural lease nor a pastoral lease; [see note below]
 - (e) a residential lease;
 - (f) a community purpose lease;
 - (g) a lease dissected from a mining lease referred to in subparagraph 23B(2) (c) (vii) of the Native Title Act 1993 (Cth);
 - (h) any lease (other than a mining lease) that confers a right to exclusive possession over particular land or waters;
- which was validly granted or vested on or before 23 December 1996.

3. Subject to paragraphs 4 and 5, the land and waters the subject of the application excludes any area covered by the valid construction or establishment of any public work (as defined by the Native Title Act 1993 (Cth)), where the construction or establishment of any public work (as defined by the Native Title Act 1993 (Cth)), where the construction or establishment of the public work commenced on or before 23 December 1996.

4. Where the act specified in paragraph 2 or 3 falls within the provisions of -

- (a) section 23B (9) - Exclusion of acts benefiting Aboriginal peoples or Torres Strait Islanders
- (b) section 23B (9A) - Establishment of a national park or a state park;
- (c) section 23B(9B) - Acts where legislation provides for non-extinguishment;
- (d) section 23B(9C) - Exclusion of Crown to Crown grants; or
- (e) section 23B(10) - Exclusion by regulation,

the land and waters affected by the act is not excluded from the application.

5. Where an act referred to in paragraph 2 or 3 affects or affected land or waters referred to in -

- (a) section 47 - pastoral leases held by or on behalf of as trustee for any of the members of the native title claim group;
- (b) section 47A - reserves etc. covered by claimant applications; or
- (c) section 47B - vacant Crown land covered by claimant applications,

the land and waters affected by the act is not excluded from the application.”

I note that para 2(d) should read “an exclusive agricultural lease or an exclusive pastoral lease”. I am assuming the intention of the applicants is to exclude previous exclusive possession acts as defined in s.23B of the Native Title Act from the application.

Paragraphs 2 and 3 effectively exclude areas subject to previous exclusive possession acts as defined in s.23B of the Native Title Act from the application. It is my view that the description of areas excluded by class 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. This may require considerable research of tenure data held by the particular custodian of that data, but nevertheless it is reasonable to expect that the task can be done on the basis of the information provided by the applicants. Accordingly I consider that the description provides a reasonable level of certainty in regard to whether native title rights and interests are claimed in relation to particular areas of land or waters within the external boundaries of the area the subject of the application.

I have taken into account Nicholson J's order on 21 May 1999 in matter of *Daniels and Ors, et al v The State of Western Australia* (WAG6017 of 1996), being the only authority available to date on what may satisfy the requirements of s. 62 (2)(a) (i) and (ii) of the Native Title Act 1993. I refer specifically to para 32 of Nicholson J's order in which he states:

"These requirements are to be applied to the state of knowledge of an applicant as it could be expected to be at the time the application or amendment is made. Consequently a class or formula approach could satisfy the requirements of the paragraphs where it was the appropriate specification of detail in those circumstances. For example, at the time of an initial application when the applicants had no tenure information it may be satisfactory compliance with the statutory requirement."

In my view the exclusion clauses contained in Schedule B of the application, in the event that the validity of the grants identified is established in due course, effectively exclude those parts of the lots which were subject to the scheduled tenures. The areas subject to the grants have been surveyed in the past and are readily identifiable.

I am satisfied that the class exclusions used in the application are satisfactory compliance with the statutory requirement.

Conclusion

For the reasons given above, I am satisfied that the information and the maps 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 or interests are claimed in relation to particular areas of land or waters.

Result: Requirements met

s.190B(3)

Identification of the native title claim group:

The Registrar must be satisfied that:

- (a) *the persons in the native title claim group are named in the application; or*
- (b) *the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.*

Reasons for the Decision

To meet this condition of the registration test, I must be satisfied as to either s.190B3(a) or (b).

A list of names of all persons in the claim group is not provided in the application. The requirements of s.190B(3)(a) of the Act are therefore not met.

s.190B(3)(b) requires the Registrar to be satisfied that the persons in the native title claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

The native title claim group is described at Attachment A to Schedule A of the application in the following terms:

“The native title claim group comprises –

1. The descendants of (name deleted) who was a Wulli Wulli woman.”

It is apparent from the information in Attachment A that a person may be reckoned as a member of the native title claim group through being descended by cognatic descent (ie. through one’s father or one’s mother) from the ancestor named in Attachment A.

I am satisfied that the descendants of (name deleted) could be identified with minimal inquiry and as such, ascertained as part of the native title claim group. By referencing the identification of members of the native title claim group as descendants of a named ancestor, it is possible to objectively verify the identity of members of the native title claim group, such that it can be clearly ascertained whether any particular person is in the group.

I have formed the view that s.190B3(b) does not require an exhaustive list of all descendants of the named apical ancestor. What is required under s.190B3 is a sufficiently clear description so that it can be ascertained whether any particular person is in the group.

I find that the information in Attachment A is a sufficiently clear description for the purposes of s.190B3(b).

To conclude I am satisfied that a person could establish their identity as a member of the claim group through the principle of cognatic descent from the group’s ancestor, (name deleted) (as named in Attachment A) and that this is a sufficiently clear description for the purposes of s.190B3(b).

Result: Requirements met

s.190B(4)

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.

Reasons for the Decision

This condition requires me to be satisfied that the native title rights and interests claimed can be readily identified. The description of the native title rights and interests must not merely consist of a statement to the effect that the native title rights and interests are ‘all native title interests that may exist, or that have not been extinguished at law’ ”[see s.62(2)(d) of the Act].

To meet the requirements of s.190B (4), I need only be satisfied that at least one of the rights and interests sought is sufficiently described for it to be readily identified.

Attachment E of the application lists the native title rights and interests claimed by the applicants. These are described as the right to possession, occupation, use and enjoyment of the land and waters covered by the application (the claim area) to the exclusion of all others.

The broad rights and interests are subdivided into eighteen specific rights and interests which are derived from them. These are detailed in my reasons under s.190B6 below.

- (a) The right to hunt, fish, harvest, collect and in general use, take and enjoy natural resources of the claim area.
- (b) The right to use the claim area for all social, ritual and economic purposes including the right to rear, socialise, and educate their children on the claim area.
- (c) The right to control access of non-claimants to the claim area.
- (d) The right to inherit native title rights and interests.
- (e) The right to bestow and acquire native title rights and interests.
- (f) The right to resolve amongst themselves any disputes concerning the claim area.
- (g) The right to own and control information comprising and concerning the traditional law and customs of the native title claim group in relation to the claim area, including artistic designs and performances which are the exclusive property of the native title claim group.
- (h) The right to develop and make adaptations and changes to the distribution and implementation of the responsibilities, laws, lore and customs of the native title claim group as they deem appropriate and will from time to time publicly negotiate through dispute, challenge and debate.
- (i) The right to negotiate, where the members of the native title claim group deem appropriate, joint management arrangements with non-indigenous parties to assist the future care, protection and controlled use of the claim area.
- (j) The right to negotiate, where they deem appropriate, on any other land use proposal, including the proposal to extract resources of any kind, from the claim area.

- (k) The right to move freely about the claim area.
- (l) The right to live on and erect residences and other infrastructures on and in the claim area.
- (m) The right to dig for and take from the claimed area, the natural resources situated on or below the surface of the claim area including quarry materials such as flints, clays, ochres, sand, gravel, rock and similar resources.
- (n) The right to manufacture materials, tools, artefacts, objects and weapons from the natural resources of the claim area.
- (o) The right to dispose of products of the claim area and manufactured products derived from the claim area by trade, exchange or gift.
- (p) The right to manage, conserve and care for the claim area.
- (q) The right to conduct funerals and ceremonies on and in relation to the claim area and to buy members and ancestors of the native title claim group on the claim area.
- (r) The right to visit, protect and manage cultural heritage and other sites of religious, cultural and historic significance to the native title claim group in the claim area.

I note that there are a number of qualifications made to these rights. At Attachment E of the application the applicants state that:

“The native title rights and interests claimed in relation to the land and waters are always subject to and in accordance with:

- (a) the laws of the State and the Commonwealth; and
- (b) the traditional laws acknowledged and traditional customs observed by the native title claim group.

To the extent that any area of the claim area is or has been the subject of a previous non-exclusive possession act, as defined by the *Native Title Act 1993* (Cth), the native title claim group does not claim possession, occupation, use and enjoyment of the area to the exclusion of all others.

The native title claimed –

- (a) does not operate exclusive of the Crown’s valid ownership of any minerals, petroleum or gas;
- (b) is not exclusive rights or interests if they relate to waters in an offshore place; and
- (c) is not claimed by the native title claim group in relation to any part of the Claim Area that have been validly extinguished by operation of the laws of the State or the Commonwealth.”

At Schedule J of the application the applicants state that:

“The relationship between the native title rights described in paragraph 3 and the other interests described in paragraph 4 is that they are concurrent rights and interests to that part of the determination area to which the other interests relate, but by operation of legislation or by the nature and extent of the other interests created by the Crown, regulation, control, curtailment, restriction, suspension or postponement may operate upon the exercise of some of those concurrent rights.”

I am satisfied that this description, as required by s.62(2)(d), is sufficient to allow the native title rights and interests claimed to be readily identified.

Result: Requirements met

s.190B(5)

Sufficient factual basis:

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

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

Reasons for the Decision

There are three criteria to consider in determining over all whether or not I am satisfied that there is a sufficient factual basis to support the applicants' assertion about the existence of the native title rights and interests listed at Schedule E of the application. In considering this condition I have had regard to the affidavits of (name deleted), sworn on 21 October 2000 and (name deleted), sworn on 20 October 2000.

190B(5)(a) - that the native title claim group have, and the predecessors of those persons had, an association with the area.

To be satisfied under this criterion, it must be evident that the association with the area is and was communal, that is, shared by a number of members of the native title claim group and shared by their predecessors.

On the basis of the affidavits provided there is evidence that the native title claim group are biological descendants of the native title claim ancestor group and that there is a factual basis for their, and their predecessors', association with the area that is the subject of this application. Both deponents were born on Camboon Station, in the claim area. They have both lived and worked in the claim area most of their lives.

- (name deleted) affidavit paras 2-11.
- (name deleted) affidavit paras 2-15.

190B(5)(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.

This subsection requires me to be satisfied that: traditional laws and customs exist; that those laws and customs are respectively acknowledged and observed by the native title claim group, and that those laws and customs give rise to the claim to native title rights and interests.

On the basis of the affidavits it is clear that there exist traditional laws and customs observed by the native title claim group that give rise to the claim to native title rights and interests. The affidavits refer to hunting, fishing and collecting bush foods, knowledge and protection of significant sites within the claim area and songs and stories about Wulli Wulli country.

- (name deleted) affidavit paras 2-11.
- (name deleted) affidavit paras 2-15.

190B(5)(c) - that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

Under this criterion, I must be satisfied that the native title claim group continues to hold native title in accordance with their traditional laws and customs.

On the basis of the affidavits it is clear that there exist traditional laws and customs currently observed by the native title claim group that give rise to the claim to native title rights and interests. Refer to my reasons under s.190B5(b) above.

At Schedule G of the application the applicants provide details of activities currently carried out by the native title claim group. These activities include:

1. conducting traditional rituals on the area covered by the application;
2. visiting the area covered by the application;
3. education of members of the native title claim group and members of the wider community in relation to the native title rights and interests of the native title claim group;
4. employment of members of the native title claim group on the area claimed;
5. negotiations with various interest groups and stakeholders in relation to activities on the area covered by the application.

Result: Requirements met

s.190B(6)

Prima facie case:

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

Reasons for the Decision

Under s.190B6 I must consider that, prima facie, at least some of the native title rights and interests claimed can be established.

‘Native title rights and interests’ are defined at s.223 of the Native Title Act. This definition specifically attaches native title rights and interests to land and water, and in summary requires:

- A. the rights and interests to be linked to traditional laws and customs;
- B. those claiming the rights and interests to have a connection with the relevant land and waters;
- and
- C. those rights and interests to be recognised under the common law of Australia.

The definition is closely aligned with all the issues I have already considered under s.190B5. I will draw on the conclusions I made under that section in my consideration of s.190B6.

Under s.190B(6) I must consider that, prima facie, at least some of the rights and interests claimed can be established. The term “prima facie” was considered in *North Ganalanja Aboriginal Corporation v Qld* 185 CLR 595 by their Honours Brennan CJ, Dawson, Toohey, Gaudron and Gummow JJ, who noted:

“The phrase can have various shades of meaning in particular statutory contexts but the ordinary meaning of the phrase “prima facie” is: “At first sight; on the face of it; as it appears at first sight without investigation.” [citing Oxford English Dictionary (2nd ed) 1989].”

I have adopted the ordinary meaning referred to by their Honours in considering this application, in deciding which native title rights and interests claimed can prima facie be established.

In considering this condition against the native title rights and interests listed at Schedule E of the amended application, I have had particular regard to the affidavits of (name deleted) sworn on 20 October 2000 and (name deleted) sworn on 21 October 2000. The affidavits were provided to the NNTT on 23 October 2000. These documents provide sufficient material and information to satisfy me on a prima facie basis that some of the native title rights and interests claimed by the applicants at Schedule E of the amended application can be established.

I have noted the qualifications to which the claimed native title rights and interests are subject in my reasons for s.190B4 above. Subject to these qualifications, the claimed rights and interests are:

“The right to possession, occupation, use and enjoyment of the land and waters covered by the application (the claim area), to the exclusion of all others.”

The affidavits of (name deleted) and (name deleted) provide sufficient prima facie evidence of this principal right and interest for me to find that it is established, subject to the qualifications referred to above. The eighteen other rights and interests sought flow from this principal right, but there is not sufficient evidence to support all eighteen subordinate rights and interests.

The eighteen subordinate rights and interests, together with my reasons, follow.

(a) *The right to hunt, fish, harvest, collect and in general use, take and enjoy natural resources of the claim area.*

Established. The affidavits refer to a range of hunting and food gathering activities carried out in the claim area. These include: hunting animals such as porcupine, goanna, possum, wallaby and snake; fishing; and collecting witchery grub, sugar bag and other bush foods.

affidavit of (name deleted) paras 9, 10

affidavit of (name deleted) paras 10, 11

(b) *The right to use the claim area for all social, ritual and economic purposes including the right to rear, socialise, and educate their children on the claim area.*

Established. The majority in Ward (*The State of Western Australia v Ward* [2000] FCA 191) held that native title rights and interests recognised and protected by the common law are those which involve physical presence on the land, and activities on the land associated with traditional, social and cultural practices. It was held that the common law does not provide for the protection and enforcement of purely religious or spiritual affiliation with the land, divorced from actual physical use of the land. The affidavits refer to the use of the claim area for economic purposes (see a. above).

In their affidavits the deponents also refer to teaching the younger generation traditional ways of living and customs, as taught to them by their elders. These customs include: hunting; fishing; camping; knowledge of country and how to live off the bush. These activities are directly related to physical use of the land.

affidavit of (name deleted) para 10

affidavit of (name deleted) para 10, 11

(c) *The right to control access of non-claimants to the claim area.*

Not established. There is insufficient evidence before me to establish this on a prima facie basis. The majority in Ward overturned Justice Lee's finding at first instance and found that the applicants could not claim a right to control the access of others to the claim area. Further to the decision in Ward, the right to control access of others to the claim area can only be claimed exclusively in relation to areas where ss.47, 47A or 47B are found to apply. As noted in my reasons under s.190B8 below, 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.

(d) *The right to inherit native title rights and interests.*

Established. In *The State of Western Australia v Ward* [2000] FCA 191 it was found that the common law does not provide for the inheritance of cultural knowledge unless that is directly linked to the actual physical use of the land. This link is established. In her affidavit (name deleted) deposes that her grandparents taught her how to find food and that she has taught all her children about bush tucker as taught to her by her elders. In his affidavit (name deleted) deposes that the old people taught him how to work in the bush and bush crafts.

affidavit of (name deleted) paras 9, 10

affidavit of (name deleted) paras 10, 11

(e) *The right to bestow and acquire native title rights and interests.*

Established. In *The State of Western Australia v Ward* [2000] FCA 191 it was found that the common law does not provide for the bestowing/acquiring of cultural rights unless that is directly linked to the actual physical use of the land. This link is established. The evidence in the affidavits of (name deleted) and (name deleted) referred to under (d) above supports this right.

(f) The right to resolve amongst themselves any disputes concerning the claim area.

Established. In my view there is sufficient information in the material before me to satisfy me that this right can prima facie be established. The details of the authorisation process provided at Schedule R refer to how the Wullli Wullli native title claim group make decisions in relation to Wullli Wullli land business, in accordance with their custom and tradition. The native title claim group has adopted a contemporary traditional process of authorising the application, involving a combination of:

- approval of families associated with particular areas within the claim area;
- consent of senior members of the claim group and
- consensus, through debate and dialogue through all members of the native title claim group.

In my view, this decision making process has a sufficient nexus with the use of the land to be established on a prima facie basis.

(g) The right to own and control information comprising and concerning the traditional law and customs of the native title claim group in relation to the claim area, including artistic designs and performances which are the exclusive property of the native title claim group.

Not established. The majority in *The State of Western Australia v Ward* [2000] FCA 191 found that the common law does not provide for the protection or enforcement of culture and tradition unless that is directly linked to the actual physical use of the land. The Court refused recognition to the following right: ‘A right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the determination area.’ There is not a sufficient link between this right and the physical use of the land established. Further, There is insufficient evidence before me to establish this on a prima facie basis.

(h) The right to develop and make adaptations and changes to the distribution and implementation of the responsibilities, laws, lore and customs of the native title claim group as they deem appropriate and will from time to time publicly negotiate through dispute, challenge and debate.

Not established. There is insufficient evidence before me to establish this on a prima facie basis.

(i) The right to negotiate, where the members of the native title claim group deem appropriate, joint management arrangements with non-indigenous parties to assist the future care, protection and controlled use of the claim area.

Not established. There is insufficient evidence before me to establish this on a prima facie basis.

(j) The right to negotiate, where they deem appropriate, on any other land use proposal, including the proposal to extract resources of any kind, from the claim area.

Not established. There is insufficient evidence before me to establish this on a prima facie basis.

(k) The right to move freely about the claim area.

Established. In their affidavits (name deleted) and (name deleted) depose that they, their children and their predecessors travelled across Wullli Wullli country, hunting and food gathering and taking part in cultural heritage work.

affidavit of (name deleted) paras 7, 9, 10

affidavit of (name deleted) paras 5, 6, 10, 12, 14, 15

(l) The right to live on and erect residences and other infrastructures on and in the claim area.
Not established. I take this right to be primarily asserting a right to erect residences and other infrastructures on and in the claim area. While there is ample prima facie evidence to support the right of residence on the claim area, there is insufficient evidence before me to establish the right to erect residences and other infrastructures on and in the claim area. I therefore find that, on the balance, this right cannot be established.

(m.) The right to dig for and take from the claimed area, the natural resources situated on or below the surface of the claim area including quarry materials such as flints, clays, ochres, sand, gravel, rock and similar resources.
Not established. There is insufficient evidence before me to establish this on a prima facie basis. I note that in any case this right is subject to the qualification stated at Schedule Q. The applicants do not claim any minerals, petroleum or gas within the claim area that are wholly owned by the Crown.

(n) The right to manufacture materials, tools, artefacts, objects and weapons from the natural resources of the claim area.
Established. In his affidavit (name deleted) deposes that the old people taught him to work in the bush and bush crafts. In her affidavit (name deleted) refers to the use of snares to catch possum.
affidavit of (name deleted) para 9
affidavit of (name deleted) para 10

(o) The right to dispose of products of the claim area and manufactured products derived from the claim area by trade, exchange or gift.
Not established. There is insufficient evidence before me to establish this on a prima facie basis. The majority in Ward found that this could not be claimed as an exclusive right.

(p) The right to manage, conserve and care for the claim area.
Established. In his affidavit (name deleted) deposes that he took part in cultural heritage work at Cracow, involving site clearance (paras 14 and 15). In her affidavit, (name deleted) refers to her knowledge of areas to avoid and areas that are important for her (para. 11).

(q) The right to conduct funerals and ceremonies on and in relation to the claim area and to buy members and ancestors of the native title claim group on the claim area.
Not established. There is insufficient evidence before me to establish this on a prima facie basis.

(r) The right to visit, protect and manage cultural heritage and other sites of religious, cultural and historic significance to the native title claim group in the claim area.
Established. The affidavits of (name deleted) and (name deleted) refer to important places in the claim area and places which they should stay away from because they could harm you. (Name deleted) deposes that during cultural heritage work clearance at Cracow he was a member of the Wulli Wulli elders who were asked to identify sites of cultural significance which were to be protected.
affidavit of (name deleted) para 11
affidavit of (name deleted) paras 9, 14, 15

Conclusion

In my view, there is sufficient evidence to establish prima facie the principal rights claimed and some of the eighteen subordinate rights claimed. The primary rights and those subsidiary rights established should be included on the Register.

I also note that it is open to the applicants, under s.190(3A) of the NTA, to provide further information for the delegate's consideration to obtain further recognition of the rights not currently registered.

Result: Requirements met

s.190B(7)

Traditional physical connection:

The Registrar must be satisfied that at least one member of the native title claim group:

- (a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or*
- (b) previously had and would reasonably have been expected currently to have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to the land or waters) by:*
 - (i) the Crown in any capacity; or*
 - (ii) a statutory authority of the Crown in any capacity; or*
 - (iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease.*

Reasons for the Decision

Under s.190B(7)(a) I must be satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application. For the reasons given under s.190B5, I am satisfied that there exist traditional laws and customs observed by the claim group sufficient to support traditional physical connection.

I am satisfied based on the information supplied and identified previously that (name deleted) and (name deleted) both currently have a traditional physical connection with part of the land or waters covered by the application.

The affidavits of (name deleted) and (name deleted) depose that they were born on Camboon Station, in the claim area and that they have lived and worked in the claim area most of their lives. (Name deleted) states that she mostly lived along the Dawson River, the heart of Wulli Wulli country (para 7).

affidavit of (name deleted) paras 5, 6, 7, 8

affidavit of (name deleted) paras 5, 10, 11, 12

Result: Requirements met

s.190B(8)

No failure to comply with s.61A:

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s.61A (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.

Reasons for the Decision

For the reasons that follow I have concluded that there has been compliance with s.61A.

S.61A(1) – Native Title Determination

A search of the Native Title Register has revealed that there is no approved determination of native title in relation to the area claimed in this application.

S.61A(2) – Previous Exclusive Possession Acts

In Attachment B to Schedule B of the application, class exclusions are made. For the reasons provided above at s.190B2 these exclusions are sufficiently clear to provide reasonable certainty about all the tenure excluded and include all previous exclusive possession acts.

The exclusion clause meets the requirement of this subsection.

S.61A(3) – Previous Non-Exclusive Possession Acts

Schedule B of the application does not specifically state that the application does not include a claim for exclusive possession over previous non-exclusive possession act areas as defined under s.23F of the Act, save where the Act and/or common law allows such a claim to be part of a native title determination application.

However at Attachment E of the application (para 4) the applicants state that:

“To the extent that any area of the claim area is or has been the subject of a previous non-exclusive possession act, as defined by the Native Title Act 1993 (Cth) the native title claim group does not claim possession, occupation, use and enjoyment of the claim area to the exclusion of all others.”

I am satisfied that the applicants do not claim exclusive possession of areas covered by previous non-exclusive possession acts.

S61A(4) – s47, 47A, 47B

The applicants claim the benefit of ss.47, 47A and 47B at paragraph 5 of Attachment B of the amended application.

I am required to ascertain whether this is an application that should not have been made because of the provisions of s.61A. In my opinion, the applicants’ express statements with respect to the provisions of that section are sufficient to meet the requirements of s.190B(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.

Conclusion

For the reasons identified above the application and accompanying documents do not disclose and it is not otherwise apparent that because of Section 61A the application should not have been made.

Result: Requirements met

s.190B(9)(a)

Ownership of minerals, petroleum or gas wholly owned by the Crown:

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:

- (a) *to the extent that the native title rights and interests claimed consist or include ownership of minerals, petroleum or gas – the Crown in the right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;*

Reasons for the Decision

At Schedule Q of the application, the applicants state that the native title claim group does not claim ownership of minerals, petroleum or gas where they are wholly owned by the Crown.

Result: Requirements met

s.190B(9)(b)

Exclusive possession of an offshore place:

The application and accompanying documents must not disclose, and the Registrar must not be otherwise aware, that:

- (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;*

Reasons for the Decision

The area claimed does not include any offshore area. It is therefore not necessary for me to consider this section further as it is not relevant.

Result: Requirements met

s.190B(9)(c)

Other extinguishment:

The application and accompanying documents must not disclose, and the Registrar must not be otherwise aware, that:

- (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)).*

Reasons for the Decision

The application does not disclose, and I am not otherwise aware of, any other extinguishment of native title rights and interests in the area claimed. I am satisfied that the requirements of this section have been met.

Result: Requirements met

End of Document