

National Native Title Tribunal
REASONS FOR DECISION COVER SHEET

REGISTRATION TEST

DELEGATE	Tony Shelley		
CASE MANAGER	Therese Forde		
DATE	7 JULY 2000		
Application Name	Jangga People		
Name of Applicant	Colin McLennan, Thomas Brown, Dorothy Hustler, Marie McLennan, James Gaston, Paul Butterworth and Tyrone Tiers		
Region	Central Queensland	NNTT No	QC98/10
Date Application Made	2 April 1998	Fed Court No	QG6230/98

DECISION - Jangga People QC98/10

The 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 for registration pursuant to s190A of the *Native Title Act* 1993.

.....
Tony Shelley
Delegate of the Registrar

7 July 2000
Date of Decision

National Native Title Tribunal

REGISTRATION TEST

REASONS

Printed 9 February, 2001

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I have considered all the information and documents in the following files, databases and other sources:

- The Working File and Registration Test File for claim QC98/10;
- Other tenure information acquired by the Tribunal in relation to the area covered by this application;
- Working files and related materials for native title applications that overlap the area of the application;
- The National Native Tribunal Geospatial Database;
- The Register of Native Title Claims;
- The Native Title Register;

Brief History of the Application

The original application was lodged with the National Native Title Tribunal on 2 April 1998. An amended application was filed in the Federal Court on 4 October 1999 and further minor amendments were filed on 17 November 1999.

The information I consider to be of relevance to the application of the Registration Test is identified under each condition or sub-condition in these Reasons for Recommendation.

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>
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Details required in section 61

61(3)	<i>Name and address for service of applicant(s)</i>
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Reasons relating to this sub-condition	
<p>Requirements are met. Page 1 of the amended application identifies the name of the applicant and the address for service is detailed at Part B of the application.</p> <p>The application passes this condition.</p>	

61(4)	<i>Names persons in native title claim group or otherwise describes the persons so that it can be ascertained whether any particular person is one of those persons</i>
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Reasons relating to this sub-condition	
<p>For the reasons which led to my conclusion that the requirements for s.190B(3) of the Native Title Act 1993 (“the Act”) 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.</p> <p>The application passes this condition.</p>	

61(5)	<i>Application is in the prescribed form, lodged in the Federal Court, contain prescribed information, and accompanied by prescribed documents and fee</i>
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Reasons relating to this sub-condition	
<p>The amended application is in the form prescribed by Regulation 5(1)(a) of the <i>Native Title (Federal Court) Regulations</i> 1998. The amended application was filed in the Federal Court as required pursuant to s61(5)(b) of the Act.</p> <p>As required by s.61(5)(d) the application is accompanied by affidavits as prescribed by s.62(2)(a), and maps as prescribed by s.62(2)(b). I refer to my reasons in relation to</p>	

those sections of the Act.

I note that s.190C(2) only requires me to consider details, other information and documents required by sections 61 and 62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee to the Federal Court.

For the reasons outlined above, it is my view that the requirements of s.61(5) have been met.

The application passes this condition.

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-condition	
<p>The applicants have sworn the following affidavits:</p> <ul style="list-style-type: none"> • Affidavit of [Applicant 1 – name deleted] sworn 23 September 1999 and filed in the Federal Court 4 October 1999; • Affidavit of [Applicant 2 – name deleted] sworn 1 October and filed in the Federal Court 11 October 1999; • Affidavit of [Applicant 3 – name deleted] sworn 30 September 1999 and filed in the Federal Court 4 October 1999; • Affidavit of [Applicant 4 – name deleted] sworn 23 September 1999 and filed in the Federal Court 4 October 1999; • Affidavit of [Applicant 5 – name deleted] sworn 22 September 1999 and filed in the Federal Court 4 October 1999; • Affidavit of [Applicant 6 – name deleted] sworn 1 October 1999 and filed in the Federal Court 4 October 1999; and • Affidavit of [Applicant 7 – name deleted] sworn 21 September 1999 and filed in the Federal Court 4 October 1999. <p>I am satisfied that the affidavits satisfactorily address the matters required by s.62(1)(a)(i)-(v).</p> <p>The application passes this condition.</p>	

62(1)(c)	<i>Details of physical connection (information not mandatory)</i>
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Comment on details provided	
<p>Schedules M and G provide details of traditional physical connection with the area for one of the applicants. Details as to the factual basis for that connection are contained in the affidavit of [Applicant 1] sworn 15 August 1999 and provided to the Tribunal on 28 September 1999.</p>	

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

62(2)(a)(i)	<i>Information identifying the boundaries of the area covered</i>
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Reasons relating to this sub-condition	
<p>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.</p> <p>The application passes this condition.</p>	

62(2)(a)(ii)	<i>Information identifying any areas within those boundaries which are not covered</i>
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Reasons relating to this sub-condition	
<p>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 applicant is sufficient to enable any areas within the external boundaries of the claim area which are not covered by the application to be identified.</p> <p>The application passes this condition.</p>	

62(2)(b)	<i>A map showing the external boundaries of the area covered by the application</i>
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Reasons relating to this sub-condition	
<p>For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the maps provided by the applicant sufficiently identify the boundaries of the claim area.</p> <p>The application passes this condition.</p>	

62(2)(c)	<i>Details/results of searches carried out to determine the existence of any non-native title rights and interests</i>
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Reasons relating to this sub-condition	
<p>At Schedule D of the amended application, the applicant refers to tenure searches conducted by the Department of Natural Resources on 20 July 1999. The searches are attached at Attachments D1, D2, D3, D4 and D5.</p> <p>The application complies with this condition.</p>	

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62(2)(d)	Description of native title rights and interests claimed
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Reasons relating to this sub-condition	
<p>An adequate description of the native title rights and interests claimed by the applicant is contained at Schedule E of the amended application. I have outlined these rights and interests in my reasons for decision in respect of s.190B(4). The application passes this condition.</p>	

62(2)(e)(i)	Factual basis – claim group has, and their predecessors had, and association with the area
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Reasons relating to this sub-condition	
<p>This information is contained at Schedule F of the amended application and in the following documents:</p> <ul style="list-style-type: none"> • affidavit of [Applicant 1] sworn 15 August 1999 • Confidential Report to the Registrar of the NNTT regarding the Jangga Native Title Determination Application QC98/10 prepared by [Anthropologist 1 – name deleted], July 1999 (“the anthropological report”). <p>For the reasons which led to my conclusion that the requirements of s.190B(5)(a) have been met, I am satisfied that there is sufficient factual basis to support the assertion that the native title claim group have, and the predecessors of those persons had, an association with the area.</p> <p>The application passes this condition.</p>	

62(2)(e)(ii)	Factual basis – traditional laws and customs exist that give rise to the claimed native title
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Reasons relating to this sub-condition	
<p>This information is contained at Schedule F of the amended application and in the following documents:</p> <ul style="list-style-type: none"> • The [Applicant 1] affidavit • The anthropological report. <p>For the reasons which led to my conclusion that the requirements of s.190B(5)(b) have been met, I am satisfied that there is sufficient factual basis to support the assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the native title rights and interests claimed.</p> <p>The application passes this condition.</p>	

62(2)(e)(iii)	<i>Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs</i>
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Reasons relating to this sub-condition	
<p>This information is contained at Schedule F of the amended application and in the following documents:</p> <ul style="list-style-type: none"> • The [Applicant 1] affidavit • The anthropological report. <p>For the reasons which led to my conclusion that the requirements of s.190B(5)(c) have been met, I am satisfied that there is sufficient factual basis to support the assertion that the native title claim group have continued to hold the native title in accordance with their traditional laws and customs.</p> <p>The application passes this condition.</p>	

62(2)(f)	<i>If native title claim group currently carry on any activities in relation to the area claimed, details of those activities</i>
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Reasons relating to this sub-condition	
<p>Schedule G of the amended application, and the [Applicant 1] affidavit, contain details of current activities carried out in the claim area.</p> <p>The application passes this condition.</p>	

62(2)(g)	<i>Details of any other applications to the High Court, Federal Court or a recognised State/Territory body the applicant is aware of (and where the application seeks a determination of native title or compensation)</i>
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Reasons relating to this sub-condition	
<p>Schedule H of the amended application contains details of overlapping applications of which the applicant is aware.</p> <p>The application passes this condition.</p>	

62(2)(h)	<i>Details of any S29 Notices (or notices given under a corresponding State/Territory law) in relation to the area, and the applicant is aware of</i>
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Reasons relating to this sub-condition	
<p>Schedule I of the amended application states that the applicant is not aware of the issue of any such notices.</p> <p>The application passes this condition.</p>	

The application passes the conditions contained in s190C(2).

For the reasons outlined above, it is my decision that the requirements of s190C(2) are met.

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>
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The following relevant documents have been extracted from the File Indexes of material that has been reviewed for this application.

On the basis of a search of the Register of Native Title Claims made on 26 May 2000, there are three applications identified as overlapping the application:

QC98/5 – “Wiri People #1”

QC98/11 – “Wiri People #2”

QC98/12 – “Birri People”

The overlap with QC98/12 is an inadvertent technical overlap (0.001 sq km), due only to technical difficulties with mapping data, and is therefore disregarded for registration test purposes. There are no common applicants between this application and the remaining two overlaps.

Accordingly, this application does not offend the provisions of S190C(3). The application passes this condition.

<p>190C4(a) and 190C4(b)</p>	<p>Certification and authorisation:</p> <p>The Registrar must be satisfied that either of the following is the case:</p> <p>(a) <i>the application has been certified under paragraph 202(4)(d) by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; or</i></p> <p>(b) <i>the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.</i></p>
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The applicants rely on the second limb of s190C4. Under s190C4(b) I must be satisfied that the applicants are members of the native title claim group and 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.

A prerequisite to compliance with this section is provision by the applicants of:

- a statement to the effect that the requirement in s190C(4)(b) is met; and
- a brief statement setting out the grounds on which I should consider that the requirements of s.190C4(b) are met.

The Act, at s251B, 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.

In the s.62 affidavits of the applicants filed with the application, each of the applicants state:

- each respective 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; and
- the authorisation occurred at a meeting of the Jangga people held on 17 and 18 July 1999 (“the authorisation meeting”).

As a consequence I am treating the authorisation as having been carried out under s251B(b) and am satisfied that the requirements of 190C5 have been met.

The native title claim group consists of all members of the Diwah Aboriginal Corporation.

The authorisation meeting was advertised in The Courier Mail and six local newspapers (Attachment A2). An attendance sheet is included at Attachment 3.

Attachment A4 is the agenda of the meeting which includes “authorisation of claim” at item 4(a).

Attachment A6 is the Rules of the Diwah Aboriginal Corporation. Paragraphs 14 and 15 of those Rules pertain to the calling and conduct of general meetings, and voting at such meetings. Paragraph 14.13 states that no business shall be transacted at a meeting without a quorum – being a minimum of fourteen members in attendance or

25 percent of the total membership, provided that at least two members from each of the family groups referred to in clause 9.1 are present. Paragraph 15.1 states that decisions at general meetings shall be made by consensus or failing consensus, by majority vote of those members present.

The attendance sheet at Attachment 3 shows that there were 27 people in attendance. The agenda at Attachment A4 shows that authorisation was to be discussed at the meeting, and the affidavits of the applicants swear that the meeting of 17 and 18 July authorised them to be applicants. The names on the attendance sheet indicate that the Rules of the Corporation were complied with in respect of family representation. Therefore, the Corporation's rules were adhered to in the decision-making process that authorised the application.

In reaching my decision I have been guided by His Honour Justice Wilcox comments in *Moran v Minister for Land & Water Conservation for the State of NSW* [1999] FCA 1637. In this case his Honour made some general comments about factors that it may be relevant to consider in order to be satisfied that applicants have been authorised. If the decision making process was agreed to and adopted by the group [under 251B(b)] His Honour suggested that "there need not be an authorisation by every individual in the group, but it must appear that the authorising individuals constitute a majority of the members of the group". [para 41]

Having considered all relevant material before me on the Tribunal's files, I am satisfied that each applicant is a member of the native title claim group and is duly authorised by all the other persons in the native title claim group.

The application complies with s.190C(4).

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> <ul style="list-style-type: none"><i>(a) includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met; and</i><i>(b) briefly sets out the grounds on which the Registrar should consider that it has been met.</i>
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The application complies with this condition. Refer my reasons in respect of s.190C(4).

B. Merits Conditions

190B2	<p>Description of the areas claimed:</p> <p><i>The Registrar must be satisfied that the information and map contained in the application as required by paragraphs 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.</i></p>
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External boundaries:

Schedule B of the amended application states that the application covers the following tenures within an external boundary, mapped by a set of co-ordinates at Attachment B.

- all unallocated state land
- all stock routes wider than 300 metres
- all national parks
- all waterways, natural lakes, creeks and river
- all non exclusive pastoral leases as defined by section 248B
- all state forest and timber reserves
- all camping reserves
- all recreational sites
- all reserves for aboriginal purposes

At Attachment C there is a map of the external boundary. I am satisfied that the map together with the co-ordinates meet the requirements of s.62(2)(b) as the external boundaries of the areas covered by the application can be readily identified.

Internal boundaries

The internal boundaries are described at Schedule B by reference to the above list of tenures, with the following exclusions:

Areas that are excluded from the claim area are:

- (i) subject to (iv) valid Acts that occurred on or before the 23rd of December 1996 compromising such of the following that are considered extinguishing acts within the meaning of the Native Title Act (1993) Cth as amended, namely;
 - (a) Category A past acts as defined in s228 and s229 of the Native Title Act (1993) Cth and
 - (b) Category A intermediate acts as defined in s232A and s232B of the Native Title Act (1993) Cth;
- (ii) Subject to (iv), any valid previous exclusive possession act(s), as set out in Division 2B of Part 2 of the Native Title Act (1993) Cth (as amended) done in relation to the area; and the act(s) were attributable to the Commonwealth or

- the State;
- (iii) Subject to (iv) any are over which the native title has otherwise been extinguished
 - (iv) The paragraphs above and below are subject to the provisions of s47, 47A and 47B of the Native Title Act (1993) as may apply to any part of the claim area
 - (v) Save that exclusive possession is not claimed over the areas that have been to valid previous non exclusive possession act(s)
- (c) subject to (b) (iv) exclusive possession is not claimed over areas which have been subject to valid previous non exclusive possession acts(s) as defined by section 23F.

The following specific lots are also excluded:

Tenure reference GHPL 12/2543

Lot 6 County of Sellheim Parish of Acre
County of Sellheim Parish of Bugonunna
County of Sellheim Parish of Carmel
County of Sellheim Parish of Verbena

A lease in perpetuity commencing on the 01/04/1986.

Class exclusions in the manner of those stated at item (b) of Schedule B of the amended application amounts to quite specific information that enables the internal boundaries of the area of the application to be adequately identified.

I am satisfied that the information and maps contained in the application as required by sections 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether the native title rights and interests are claimed in relation to the particular areas of land or waters.

The application passes this condition.

190B3	<p>Identification of the native title claim group:</p> <p>The Registrar must be satisfied that:</p> <p>(a) the persons in the native title claim group are named in the application; or</p> <p>(b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.</p>
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To meet this condition, the description of the group must be sufficiently clear so that it can be said with reasonable certainty whether any particular person is a member of the native title claim group.

An exhaustive list of the persons in the native title claim group has not been provided. Accordingly, the requirements of s.190B(3)(a) have not been met.

In the alternative, 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.

Relevantly, Schedule A of the application states as follows:

“Diwah Aboriginal Corporation is the claimant group.”

Membership of the Diwah Aboriginal Corporation is open to adult traditional owners who are able to establish a genealogical connection to Jangga People according to Aboriginal Law and Custom, or who trace their descent from one of a list of named people or from an ancestor in common with any of these people.

I have noted that:

- item 13.4 of the Rules the Corporation (“the Rules”) (being Attachment A6 to the amended application) provides that a register of members shall be kept by the Public Officer; and
- The Public Officer must ensure that the Register of members is open for inspection to members of the public at all reasonable times.

I am satisfied that the identification of members of the native title claim group on the basis of their membership of the Corporation constitutes an objective means of their identification.

It is my opinion that, as at the date of my decision, or at any given time, the members of the native title claim group may be objectively identified by reference to the register of members of the Corporation.

In conclusion, I am satisfied that the description provided at Schedule A of the amended application constitutes an objective means of verifying 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.

The application passes this condition.

190B4	<p>Identification of claimed native title:</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>
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Schedule E of the amended application states:

“The rights and interests claimed in relation to particular land are those of and flowing from the right to possession, occupation, use and enjoyment of the claim area, pursuant to the traditional laws and customs of the claimant group.”

I note the following qualifications to the claimed rights and interests, outlined in Schedule B:

“exclusive possession is not claimed over areas which have been subject to valid previous non exclusive possession act(s) as defined by section 23F.”

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.

The application passes this condition.

190B5	<p>Sufficient factual basis:</p> <p>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:</p> <ul style="list-style-type: none">(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.
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Schedule F of the amended application makes the assertions required by S190B5 by stating that:

“The Native Title rights and interests are those of and flowing from the right to possession, occupation use and enjoyment of the claim area, pursuant to the Traditional Laws and Customs of the claim group based on the following:

- (i) the native title claim group have, and the predecessors of those persons had, an association with the area;*
- (ii) there exists traditional laws and customs that give rise to the Native Title rights and interests claimed as detailed in Schedule E; and*
- (iii) the Native Title Claim Group have continued to hold the native title in accordance with those traditional laws and customs.”*

I am satisfied that Schedule F of the amended application contains each of the assertions required pursuant to s.190B(5). In relation to the form of assertion required pursuant to s.190B(5)(b), I am satisfied that it can be implied from items (i) and (ii) of Schedule F, and from the supporting material specified below, that the native title claim group acknowledges the traditional laws and observes the traditional customs referred to.

For the reasons outlined below, I am satisfied that there is a sufficient factual basis to support each of the above assertions. The evidence I have found to be probative in making my decision in this regard is from the following sources:

- affidavit of [Applicant 1] sworn 15 August 1999 (“the [Applicant 1] affidavit”);
- Anthropological Report by [Anthropologist 1] dated July 1999 (“the anthropological report”)

Both the [Applicant 1] affidavit and the anthropological report were provided to the Tribunal by CQLC. I am satisfied that I may have regard to the contents of both of these documents in considering the amended application under this condition as s.190B(5) does not require that the information in relation to the factual basis to support the requisite assertions be contained within the application.

S.190B(5)(a)

There is a view that the factual basis upon which it is asserted the native title claim group had and have an association with **an area** must be proved to the satisfaction of the Registrar, or delegate, in respect of each particular parcel or area of the land and waters claimed. The contention is that it is insufficient for the native title claim group to demonstrate that it previously had and still has connection to land or waters in a broader area of traditional country. (It is of course necessary for the area claimed in the application to be within the area asserted to be the broader traditional country.)

It appears to me that native title could continue to be held by a native title group to all the traditional country, subject to valid extinguishing legislative or executive acts, where sufficient connection has been maintained to that traditional area. This may not be dependent on a native title group having to show physical connection to every parcel or tenement or allotment within that broader traditional area. It therefore seems to me that given the beneficial nature of the Act, its objects and its preamble, that I

should take the view that so long as there is sufficient factual material to show that the native title claim group have, and the predecessors of those persons had, connection or association to some part of the traditional land or waters of the claimant group, then that will be sufficient.

I will apply that view to the relevant parts of the registration test accordingly.

[Paragraph deleted due to cultural/customary reasons]

I am satisfied that the areas referred to in the applicant's affidavit fall within the traditional lands or waters of the native title claim group. In particular, I note that the applicant's activities as detailed at paragraphs 5, 7, 10 and 13 of the affidavit relate to places within the claim area.

Supplementary information in relation to association with the area by the native title claim group and their predecessors is contained in the anthropological report.

I am satisfied that there exists evidence of sufficient weight in both the applicant's affidavit and in the additional anthropological material to support the assertion that the native title claim group have, and the predecessors of those persons had, an association with the claim area.

Accordingly, I am satisfied that the requirements of s.190B(5)(a) have been met.

s.190B(5)(b)

Under this criterion, I must 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 native title claim group rights and interests.

Of particular relevance to this criterion, Schedule F of the amended application states: *"The Native Title rights and interests are those of and flowing from the right to possession, occupation use and enjoyment of the claim area, pursuant to the Traditional Laws and customs of the Native Title Claim Group."*

[Paragraph deleted due to cultural/customary reasons]

Supplementary information is contained in the anthropological report.

Having regard to the above, I am satisfied that there is a sufficient factual basis to support the assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the native title rights and interests claimed.

I am therefore satisfied that the requirements of s.190B(5)(b) have been met.

s.190B(5)(c)

As outlined above, I am satisfied that traditional laws and customs exist which give rise to the claim to native title rights and interests by the native title claim group. Section 190B(5) requires that the claim group have continued to hold native title in accordance with those traditional laws and customs.

On the basis of my reasons outlined above in relation to ss.190B(5)(a) & (b), I am satisfied that the [Applicant 1] affidavit, together with the information contained in the anthropological report, evidence a sufficient factual basis to support the assertion that the native title claim group have continued to hold the native title in accordance with their traditional laws and customs.

The application passes this condition.

190B6	<i>Prima facie case:</i> <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>
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At Schedule E of the amended application, the applicant claims: “...*the rights to possession, occupation, use and enjoyment, as against the whole of the world, in relation to the claim area*”.

There being sufficient material and information to satisfy me on a prima facie basis that there is a sufficient factual basis to ground a claim for native title, it follows that there is sufficient information and material to ground native title rights and interests. The activities or practices may be a modern form of the exercise of native title rights and interests that rely upon the native title. It is immaterial that the laws and customs that ground the native title have undergone change since sovereignty, provided that the general nature of the connection between the indigenous people and the land remains.

Accordingly, it is my view that on the material and information previously referred to the native title rights and interests claimed by the applicant at Schedule E of the application are, prima facie, established.

In deciding that the native title rights and interests claimed can prima facie be established, I have relied upon the information contained in the following:

- affidavit of [Applicant 1] sworn 15 August 1999 (“the [Applicant 1] affidavit”);
- The anthropological report.

There is no information before me that would impugn or cause me to doubt the contents of either of the affidavit or the anthropological report.

The application **passes** this condition.

190B7	<p>Traditional physical connection:</p> <p>The Registrar must be satisfied that at least one member of the native title claim group:</p> <ul style="list-style-type: none"> (a) <i>currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or</i> (b) <i>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> (ii) <i>a statutory authority of the Crown in any capacity; or</i> (iii) <i>any holder of a lease over any of the land or waters, or any person acting on behalf of such holder of a lease.</i>
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For the reasons which appear earlier in this decision relating to the area over which it is necessary for the applicant native title claim group to show an association, it appears to me that native title could continue to be held by a native title group to all the traditional country, subject to valid extinguishing legislative or executive acts, where sufficient connection has been maintained to that traditional area. This will not necessarily be dependent on a native title group having to show physical connection to every parcel or tenement or allotment within that broader traditional area.

It therefore seems to me that given the beneficial nature of the Act, its objects and its preamble, that I should take the view that so long as there is sufficient factual material to show that a member of the claim group has or had traditional physical connection to some part of the traditional land or waters of the claimant group then that will be sufficient.

The anthropological report prepared by [Anthropologist 1] dated July 1999 refers to anthropological opinion that the Jangga people maintain a continuous tradition (including a system of customary law and inheritance of rights in land) which links them to Jangga country throughout the region of the claim (item 4.4 in particular).

At Schedule M of the amended application it is asserted that *“The native title Claim Group and in particular [Applicant 1] continue to have a traditional physical connection with the waters and land covered by this application.”* Schedule G states that *“[Applicant 1] regularly goes to the claim area. He was born in Collinsville and grew up in the area around Mt Coolon and in particular, Glen Eva which is also in the claim area, was once owned by his grandmother. As a child he spent much time with her and learnt from her. Glen Eva is a “special place” to him. [Applicant 1] is involved in cultural heritage survives in the area.”*

[Paragraph deleted due to cultural/customary reasons]

I am satisfied that the [Applicant 1] affidavit, together with the anthropological report, present evidence of [Applicant 1]’s continuing and/or previous physical connection

with the area the subject of the application. I am satisfied that much of that connection occurs in accordance with traditional customs and practices.

Accordingly, I am satisfied that at least one member of the native title claim group currently has and/or previously had a traditional physical connection with any part of the land or waters covered by the application.

The application passes this condition.

190B8	<p>No failure to comply with s61A:</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>
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On review of the applications and supporting affidavits and material and the Tribunal's relevant files, I have formed the conclusion that there has been compliance with s.61A and the provisions of this section are met.

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 by this application.

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

In Schedule B of the application, class exclusions are made. For reasons provided above at s190B2 these exclusions are sufficiently clear to provide reasonable certainty about all the tenure excluded and include all previous exclusive possession acts.

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

The applicants are not seeking exclusive possession over areas the subject of previous non-exclusive possession acts. This is stated at Schedule B of the application.

S61A(4) – s47, 47A, 47B

The applicants claim the benefit of ss.47, 47A and 47B at item (b)(iv) of Schedule B of the amended application. Schedule L states that all vacant Crown land included in the application was occupied within the meaning of s47B (Native Title Act 1993) by members of the Native Title claim group. Section 61A(4) provides that an application may be made in these terms.

In view of these matters, I have formed the conclusion that the requirements of S.190B(8) are met.

190B9 (a)	<p><i>Ownership of minerals, petroleum or gas wholly owned by the Crown:</i></p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></p> <p><i>(a) to the extent that the native title rights and interests claimed consist or include ownership of minerals, petroleum or gas - the Crown in right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;</i></p>
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Schedule Q of the amended application states: *“The Native title claim group does not make any claim to the ownership of minerals, petroleum or gas wholly owned by the Crown.”*

I am satisfied that this statement ensures that the application complies with the requirements of s.190B(9)(a).

The application passes this condition.

190B9 (b)	<p><i>Exclusive possession of an offshore place:</i></p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></p> <p><i>(b) to the extent that the native title rights and interests claimed relate to waters in an offshore place - those rights and interests purport to exclude all other rights and interests in relation to the whole or part of the offshore place;</i></p>
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There are no offshore areas covered by the application. Schedule P states that *“The native title claim group does not claim exclusive possession of all or part of an offshore place.”*

Requirements Met.

190B9 (c)	<p><i>Other extinguishment:</i></p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></p> <p><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</i></p>
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disregarded under subsection 47(2), 47A(2) or 47B(2)).

The applications and supporting material, and the relevant Tribunal files do not disclose and nor am I otherwise aware that the application contravenes the criteria set out in s.190B(9)(c).

Accordingly, I am satisfied that the applicant is not seeking to claim native title rights and interests which have otherwise been extinguished. The application passes this condition.

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