

National Native Title Tribunal

**REGISTRATION TEST
REASONS FOR DECISION COVER SHEET**

REGISTRAR'S DELEGATE	Russell Trott
APPLICATION NAME	Gnulli
NAMES OF APPLICANTS	Ronald Crowe, Ruby McIntosh, Sharon Crowe, Sydney Dale, Mary Franklin, Laurence Cooyou, Gwen Cooyou
NNTT NO.	WC97/28
FEDERAL COURT NO.	WG6161/98
NNTT REGION	South West/Pilbara
DATE APPLICATION MADE	14 April 1997

I have 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 (as amended).

Written notice of the decision and the reasons for the decision, are to be provided to the applicants.

Russell Trott

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

20 October 2000

DATE

Brief History of the application

The Gnulli native title determination application was lodged with the National Native Title Tribunal on 14 April 1997.

On 6 July 1999 the Federal Court granted the applicants leave to amend the application. Subsequently on 19 July 1999 the application was accepted for registration pursuant to s190A of the *Native Title Act* 1993 (the "Act").

On 2 August 2000 the Tribunal was advised that Notices of Motion had been filed in the Court's Registry seeking leave to re-amend the Gnulli application and to combine with application number WG 6070/98 (WC96/21). On 6 September 2000 the Federal Court granted the applicants leave to re-amend. However, the motion to combine the Gnulli application with application number WG 6070/98 (WC96/21) was adjourned to a date to be fixed.

A copy of the re-amended application was given to the Tribunal pursuant to s64(4) of the *Native Title Act* 1993 on 6 September 2000. Pursuant to sub-section 190A(1) of the Act the application must again be considered in accordance with s190A.

The State of Western Australia issued a notice under s29 of the *Native Title Act* 1993 affecting land in the area covered by the application on 12 July 2000. As is required by s190A(2) of the Act the Native Title Registrar or his delegate is required to use best endeavours to finish considering this application for registration by the end of four months after 12 July 2000.

Consistent with the decision of the Federal Court (Carr J.) in *State of Western Australia v Native Title Registrar & Ors* [1999] FCA 1591 – 1594, additional information provided by the applicants directly to the Native Title Registrar was provided to the State. This additional information was provided on 18 September 2000. On 21 September 2000 the State advised that it had no comments to make in relation to the additional material.

The re-amended application differs from the amended application in several respects. These are as follows:

- Schedule A - correction of typographical error
- Schedule B - description of the area claimed
- Schedule C – a new map has been provided
- Schedule E – description of native title rights and interests
- Schedule G – amended version
- Schedule H - other native title applications of which the applicants are aware
- Schedule I - details of s29 notices
- Schedule L – amended version

The application is located in the West Gascoyne area of Western Australia. The applicants are represented by the Yamatji Land and Sea Council.

Information considered when making the Decision

In determining this application, where applicable I have considered and reviewed all of the information and documents from the following files, databases and other sources (including information considered previously):

- The Working Files, Registration Test Files, Legal Services Files and Federal Court Application and Amendment Files for this claim: WC97/28 – Gnulli.
- The Working Files, Registration Test Files, Legal Services Files and Federal Court Application and Amendment Files for overlapping claims: WC96/21 – Crowe and WC00/4 – Wajarri Elders.

- Tenure information in relation to the area covered by this application
- The National Native Title Tribunal Geospatial Database
- The Register of Native Title Claims
- The Native Title Register
- Determination of Representative ATSI Bodies: their gazetted boundaries
- Submissions from the Western Australian State Government

Notes:

1. Information and materials provided in the context of mediation have not been considered in making this decision due to the without prejudice nature of those conferences and the public interest in maintaining the inherently confidential nature of such conferences.
2. All references to legislative sections refer to the *Native Title Act* 1993 unless otherwise specified.
3. All references to the 'application' in the present decision, unless otherwise stated, refer to the application as re-amended on 6 September 2000.

A. Procedural Conditions

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

190C2

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

61(3) Name and address for service of applicant(s)

Reasons relating to this sub-section:

The names of the seven applicants are provided at page one of the application.

The address for service is provided at Part B of the application.

I am satisfied there has been compliance with the procedural requirements of s61(3).

Result: Requirements are met

61(4) 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

Reasons relating to this sub-section:

Schedule A describes the native title claim group in terms of the biological descendants of unions between named predecessors.

An exhaustive list of names of the persons in the native title claim group has not been provided so the requirements of s61(4)(a) are not met.

For the reasons set out in my reasons for decision in relation to s190B(3) I am satisfied that the persons in the native title claim group are described sufficiently clearly in Schedule A so that it can be ascertained whether any particular person is one of the persons in the claim group as is required by s61(4)(b).

I am satisfied there has been compliance with the procedural requirements of s61(4).

Result: Requirements are met

61(5) Application is in the prescribed form, lodged in the Federal Court, contain prescribed information, and accompanied by prescribed documents and fee

Reasons relating to this sub-section:

The application meets the requirements of s61(5)(a) in that it is in the form prescribed by Regulation 5(1)(a) of the *Native Title (Federal Court) Regulations 1998*.

As is required by s61(5)(b) a minute of proposed re-amended application was filed in the Federal Court.

The application meets the requirements of s61(5)(c) in that it contains information as prescribed in s62. I refer to my reasons for decision in relation to those sections.

The application is also accompanied by a map as prescribed by s62(1)(b). I refer to my reasons for decision in relation to s62(2)(b) of the Act.

I note that s190C(2) only requires me to consider details, other information, and documents required by s61 and s62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee.

For reasons outlined above, I am satisfied there has been compliance with the procedural requirements of s61(5).

Result: Requirements are met

Details required in section 62(1)

62(1)(a) Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)

Reasons relating to this sub-section:

Copies of the affidavits, which accompanied the application originally amended on 6 July 1999, accompany the re-amended application. I note however that the copies of the affidavits of [names deleted for privacy reasons] that were provided are incomplete. In my consideration of section 62(1) I therefore refer to the original amended application that contains a complete copy of each of the affidavits provided by the applicants.

The issue of whether fresh affidavits are required for each amendment was considered in *Drury and Ors v State of Western Australia* [2000] FCA 132. French J. considered that s62 does not, either expressly or by implication, convey a requirement that fresh affidavits have to be filed on the occasion of every amendment [at para 11]. His Honour held that s62A provides that applicants may deal with all matters arising in relation the application, and that, in His Honour's opinion, such matters include the amendment of the application from time to time [at para 12]. His Honour held that the (further) amendment proposed in this case does not require the filing of fresh affidavits [at para 13].

All of the affidavits provided when the application was previously amended address the matters required by s62(1)(a)(i) – s62(1)(a)(v).

I am satisfied there has been compliance with the procedural requirements of s62(1)(a).

Result: Requirements are met

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

Reasons relating to this sub-section:

It is not a mandatory requirement that details of traditional physical connection be contained in the application.

Result: No specific details provided

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

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

Reasons relating to this sub-section:

A description, sufficient for the area covered by the application to be identified, is referred to in Schedule B and provided at Attachment B of the application.

For the reasons given in my reasons for decision in relation to s190B(2), I am satisfied that the application complies with the procedural requirements of s62(2)(a)(i).

Result: Requirements are met

62(2)(a)(ii) Information identifying any areas within those boundaries which are not covered

Reasons relating to this sub-section:

Schedule B and Schedule B1 of the application contain a written description of the areas within the external boundary of the area claimed which are not covered by the application.

For the reasons given in my reasons for decision in relation to s190B(2), I am satisfied that the application complies with the procedural requirements of s62(2)(a)(ii).

Result: Requirements are met

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

Reasons relating to this sub-section:

At Attachment C of the application is a map showing the external boundaries of the area covered by the application.

For the reasons given in my reasons for decision in relation to s190B(2), I am satisfied that the application complies with the procedural requirements of s62(2)(b).

Result: Requirements are met

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

Reasons relating to this sub-section:

Schedule D of the application refers to Attachment D wherein the details and results of searches carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application are provided in the form of tenure searches conducted by the National Native Title Tribunal and by the Western Australian State Government.

Attachment D includes spreadsheets of Land Act Reserves as at 17/07/1997 (6 pages), Land Act Leases as at 8/5/1997 (2 pages), Mining Interests as at 16/8/1997 (4 pages), Petroleum Tenements as at 21/7/1997 (1 page), Aquaculture Interests as at 18/05/1998 (1 page). As such, it would also appear that the applicants are unaware of the details of any searches conducted by any person or body in respect of the reduced external area of the claim as amended on 6 September 2000.

The requirements of s62(2)(c) can be read widely to include all searches conducted by any person or body. However, in order to be satisfied that the application complies with this condition, I am of the view that I need only be informed of searches conducted by the applicants and other searches of which the applicants are aware. It would be unreasonably onerous to expect applicants to have knowledge of, and obtain details about all searches conducted by every other person.

I am satisfied that the application complies with the procedural requirements of s62(2)(c).

Result: Requirements are met

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

Reasons relating to this sub-section:

A description of the native title rights and interests claimed is provided at Schedule E of the application. I have outlined the description of rights and interests in my reasons for decision in respect of s190B(4).

I am satisfied that there has been compliance with the procedural requirements of s62(2)(d).

Result: Requirements are met

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

Reasons relating to this sub-section:

Schedule F of the application provides a general description of the factual basis on which it is asserted that the claim group has, and their predecessors had, an association with the area.

I am satisfied there has been compliance with the procedural requirements of s62(2)(e)(i).

Result: Requirements are met

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

Reasons relating to this sub-section:

Schedule F of the application provides a general description of the factual basis on which it is asserted that there exist traditional laws and customs that give rise to the claimed native title.

I am satisfied there has been compliance with the procedural requirements of s62(2)(e)(ii).

Result: Requirements met

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-section:

The applicants have provided at Schedule F of the application a general description of the factual basis on which it is asserted that the claim group has continued to hold native title in accordance with traditional laws and customs.

I am satisfied there has been compliance with the procedural requirements of s62(2)(e)(iii).

Result: Requirements are met

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-section:

Schedule G specifies activities that members of the native title claim group have continuously carried out on land and waters within the area of the claim in accordance with custom and tradition.

I am satisfied there has been compliance with the procedural requirements of s62(2)(f).

Result: Requirements are met

62(2)(g) 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)

Reasons relating to this sub-section:

Schedule H of the application contains information on other applications to the High Court, Federal Court or a recognised State/Territory body, in relation to the whole or a part of the area covered by the application. Schedule H refers to these applications as:

Wadjari Elders Combined (WAG6042 of 1999 – WC00/4) - registered
Crowe (WAG 6070 of 1998 – WC96/21) – unregistered
Malgana 2 (WAG 6236 of 1998 – WC98/47) - unregistered

Comparing those applications listed at Schedule H with the list of overlapping claims sourced from the NNTT Geo-spatial database, I note that Malgana 2 (WC 98/42) was withdrawn on 25 July 2000. Otherwise the information is correct.

I am satisfied there has been compliance with the procedural requirements of s62(2)(g).

Result: Requirements are met

62(2)(h) 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

Reasons relating to this sub-section:

Section 62(2)(h) requires that the application must contain details of any notices under section 29 that the applicants are aware of. At Schedule I the Applicants have provided details of section 29 notices lodged in the area between 1 May 2000 and 31 August 2000.

DME: M09/90_20000809 0.561 sq.km

DOLA: Job973748_20000712

A search of the Tribunal's Geo-spatial Database confirms that the information provided relates to section 29 notices issued in the area of the application between 1 May 2000 and 31 August 2000.

I am satisfied there has been compliance with the procedural requirements of s62(2)(h).

Result: Requirements are met

Reasons for the Decision

For the reasons identified above the amended application contains all details and other information, and is accompanied by the affidavits and other documents, required by s61 & s62.

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

190C3

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

For the application to comply with this condition I must be satisfied that no person included in the native title claim group for the current application (ie WC97/28 – Gnulli) was a member of the native title claim group for any previous application in the circumstances set out in ss190C(3)(a) to (c).

The current application was lodged with the Tribunal on 14 July 1997 and registered on that day. A search of the Register reveals that there is one registered native title determination claimant application overlapping the current application, namely WC00/4 (Wajarri Elders). This application is a combined application.

The Wajarri Elders application WC00/4 has been considered under s190A and has been accepted for registration under that section. I note however that only one of the underlying applications combined to form WC00/4 was lodged prior to the current application. This application is WC96/16 Bundiyath Wadjari #2. A search of the Tribunal's working file reveals that WC96/16 was a small polygon application of total area not exceeding 32 square kilometres, located 70kms south west of Meekatharra and, as such, well outside the external boundary of the current application in its present and previous forms.

I am satisfied that s190C3 has no operation in relation to the current application.

Result: Requirements are met

Certification and authorisation:

190C4(a)

and

190C4(b)

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

(a) the application has been certified under Part II 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.

Reasons for the Decision

An application complies with s190C(4)(a) if it is certified under section 203BE or was certified under repealed s202(4)(d).

On 17 June 1999 the previous delegate found that the application met the requirements of s190C(4)(a). To assist in giving my reasons in respect of this condition, I have reproduced below the reasons on which the previous delegate relied in reaching his decision.

1. In my view the applicants have therefore indicated an intention in this application and accompanying material to establish both certification of the application pursuant to s190C (4) (a) and authorisation of the applicants by the claim group pursuant to s190C (4) (b).
2. Under this section, I am only required to be satisfied of one of these. I have therefore limited my consideration to compliance with s190C(4)(a) – certification by a representative Aboriginal/Torres Strait Islander body.
3. An inspection of the Native Title Representative Body gazetted boundaries establishes that the claim area is partially within the gazetted area of the Yamatji Land and Sea Council (YLSC), partially within the gazetted area of the Nanga-Ngoona Moora Joorga Land Council, and wholly within the gazetted area of the Aboriginal Legal Service of Western Australia (ALS).
4. Section 190C(4)(a) requires certification by each representative Aboriginal/Torres Strait Islander body that could certify the application. Section 190C(6) qualifies this requirement, stating that certification is not required by all representative bodies if the application has been certified by a body whose area includes all of the area of land or waters to which the application relates. The ALS is such a body and certification by the ALS has been provided. Certification by YLSC has also been provided.

Certification by the Yamatji Land and Sea Council (YLSC) and Aboriginal Legal Service (ALS)

5. There appears to be no legally required format for certification of a claimant application other than it must be in writing (s.202(4)(d)) and that it must contain the information required under s.202(7).

Compliance with s.202(7)

6. Section 202(7) of the Act sets out the statements to be included in certification of an application for determination of native title in the following terms:

A certification of an application for a determination of native title by a representative body must:

- *Include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (5)(a) and (b) have been met; and*
 - *Briefly set out the body's reasons for being of that opinion; and*
 - *Where applicable, briefly set out what the representative body has done to meet the requirements of subsection (6)*
7. The certificate from YLSC (RT file, folio 48) consists of two pages of statements addressing the requirements of s.202(7) and is signed by [name deleted for privacy reasons], Chairman of Yamatji Barna Baba Maaja Aboriginal Corporation (otherwise known as Yamatji Land and Sea Council).
 8. The certificate from the Aboriginal Legal Service (RT file, folio 48) consists of one page of statements addressing the requirements of s.202(7) and is signed by the CEO of the Aboriginal Legal Service Inc.

9. In my view the certificates provided by the applicant comply with s.202(7).
8. As a result of the above considerations, I am satisfied that the application has been certified by the Yamatji Land and Sea Council and the Aboriginal Legal Service pursuant to s.202(4)(d) and in accordance with s.207(7).
9. The above analysis addresses the submission made by the State of Western Australia in a letter dated 15 December 1998.
10. This certification satisfies the requirements of s.190C(4) of the Act.

On 6 September 2000 the application was re-amended. Schedules B, C, G, H, I, J, K and L were varied. There was a minor amendment to Schedule A to correct a typographical error. It is apparent that the main purpose of re-amending the application was to reduce the area of land or waters covered by the application.

Re-amendment of the application in this way has not altered the membership of the native title claim group. Certification previously provided was made on the basis that the native title claimant group consisted of the descendants of the said apical ancestors. I am of the opinion, based on the above information, that new certificates are not required. I agree with the previous delegate's reasons for deciding that the certificates provided comply with the (former) s202(7).

I am satisfied the application complies with s190C(4).

Result: Requirements are met

Evidence of authorisation:

190C5

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

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

Reasons for the Recommendation

This requirement is not applicable as the application meets the requirements of s190C(4)(a). I refer to my reasons in relation to s190C(4) above.

B. Merits Conditions

Description of the areas claimed:

190B2

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.

Reasons for the Decision

Map and External Boundary Description

A map is supplied at attachment C of the application and shows the external boundaries of the area claimed.

The map was produced by the Land Claims Mapping Unit of the Department of Land Administration. It displays co-ordinates, to enable the position of sites or localities within the claim to be identified. In addition, it shows a scale allowing distances and areas to be ascertained. A locality diagram, which indicates generally the position of the claim within Western Australia, forms part of the map provided. All the line work on the map is finely drawn and easy to follow.

The map meets the requirements of s62(2)(b) as the boundaries of the areas covered by the application can be identified.

Additional information, technically identifying the external boundary of the claim is supplied at Attachment B, of the application.

The Tribunal's Geo-spatial Unit has plotted this information and concludes that the description is internally consistent, fully encloses the claim area and does not discernibly contradict the map accompanying the application.

Internal Boundary Description

The areas excluded from the application are described in the following terms:

1. The applicants exclude from the claim any areas covered by valid acts on or before 23 December 1996 comprising such of the following as are included as extinguishing acts within the Native Title Act 1993, as amended, or Titles Validation Act 1994, as amended, at the time of the Registrar's consideration:
 - Category A past acts, as defined in NTA s.228 and s.229;
 - Category A intermediate period acts, as defined in NTA s.232A and s.232B.
2. The applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in s.23B of the NTA, was done in relation to the area, and either the act was an act attributable to the Commonwealth, or the act was an act attributable to the State of Western Australia and a law of that State has made provision as mentioned in s.23E in relation to the act.
3. The applicants exclude from the claim areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to:
 - a) an act authorised by legislation which demonstrates the exercise of permanent adverse dominion in relation to native title; or
 - b) actual use made by the holder of a tenure other than native title which is permanently inconsistent with the continued existence of native title.
4. Paragraphs (1) to (3) above are subject to such of the provisions of section 47, 47A and 47B of the Act as apply to any part of the area contained within this application, particulars of which will be provided prior to hearing but which include such areas as may be listed in Schedule L.

To avoid any uncertainty, the applicants exclude from the claim area any of the areas contained within the following descriptions or tenures, set out in Schedule B1.

- B1.1 An unqualified grant of an estate in fee simple.
- B1.2 A Lease which is currently in force, in respect of an area not exceeding 5,000 square metres; upon which a dwelling house, residence, building or work is constructed; and which comprises:
 - 1. a Lease of a Worker's Dwelling under the Workers' Homes Act 1911-1928;
 - 2. a 999 Year Lease under the Land Act 1898;
 - 3. a Lease of a Town Lot or Suburban Lot pursuant to the Land Act 1933 (WA), s.117; or
 - 4. a Special Lease under s.117 of the Land Act 1933 (WA).
- B1.3 A Conditional Purchase Lease currently in force in the agricultural areas of the South West Division under clauses 46 and 47 of the Land Regulations 1887, which includes a condition that the lessee reside on the area of the lease and upon which a residence has been constructed.
- B1.4 A Conditional Purchase lease of cultivable land currently in force under Part V, Division 1 of the Land Act 1933 (WA) in respect of which habitual residence by the lessee is a statutory condition in accordance with the Division and upon which a residence has been constructed.
- B1.5 A Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954.
- B1.6 A permanent public work.
- B1.7 An existing public road or street used by the public, or dedicated road.

I interpret the reference to "*Titles Validation Act 1994*" as referring to the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA).

For the requirements of this condition to be met I must be satisfied that the information required by s62(2)(a) is sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to the particular land and waters. It is my view that the description of areas excluded can be objectively applied to establish whether any particular area of land or waters within the external boundary of the application is within the claim area or not.

The description of areas excluded from the claim area at Schedule B, paragraphs 1, and 3(a) refer to land where an act of a State or Commonwealth government has created an interest. The excluded areas of land can be readily identified through searches of relevant Government registers and are therefore described with reasonable certainty.

The description of areas excluded from the claim at schedule B paragraph 2 refers to areas in relation to which a previous exclusive possession act, as defined in s23B of the NTA 1993, was done in relation to the area, and either the act was an act attributable to the Commonwealth, or the act was an act attributable to the State of Western Australia and a law of that State has made provision for that act as described in s23E NTA. Exclusive possession acts attributable to the Commonwealth can be readily identified through searches of the relevant register and are therefore described with reasonable certainty. Exclusive possession acts attributable to the State of Western Australia under legislation of the type described in s23E are likewise readily identified by reference to that legislation and thereafter searches of the relevant registers.

Paragraph 3(b) of Schedule B excludes areas of land where actual use by the holder of a tenure is permanently inconsistent with continued existence of native title. Schedule B1 provides further information on specific areas of land excluded from the claim which may fall into this category. The description in paragraph 3(b) read together with Schedule B1 is sufficient for me to be satisfied that the areas excluded from the application are identified with reasonable certainty.

Comments were received from the State of Western Australia regarding the effect of the majority decision in Ward by way of a general response. The State commented that paragraph 3(a) and (b) of Schedule B constitutes reference to a test formulated by Lee J. at first instance which the majority in the Full Court appeal decision found to be inconsistent with the development of Australian jurisprudence.

In my view, the wording of paragraph 3 makes it plain that the applicants exclude from the claim area any areas in relation to which native title rights and interests have otherwise been extinguished. The description of areas excluded from the claim area is expressed as “including” the areas subject to what is set out in 3(a) and 3(b). As such the listed information in 3(a) and (b) is clearly not intended to be exhaustive. Although not expressly stated it follows that the applicants exclude, for example, any areas covered by pastoral leases or portions thereof that are enclosed or improved where such enclosure or improvement extinguishes native title. Similarly, although again not expressly stated, it follows that the applicants exclude any areas covered by mining or general purpose leases where such leases extinguish native title.

The applicants seek the protection of ss47, 47A and 47B at paragraph 4 of Schedule B. Details of what areas are subject to this legislative protection are provided at Schedule L:

1. Cardabia pastoral lease
2. The following leases and reserves for the benefit of Aboriginal peoples or Torres Strait Islanders that are occupied on or behalf of the members of the native title claim group:
 - Reserve 22313
 - Reserve 27778
 - Reserve 31305
3. All vacant crown land within the claim area

The description at paragraph 4 allows it to be shown objectively, upon the provision of further particulars, whether applicants may have the benefit of these provisions.

Conclusion

For the reasons given above, I am satisfied that the information and map contained in the application as required by s62(2)(a) and (b) is sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

The application complies with s190B(2).

Result: Requirements are met

Identification of the native title claim group:

190B3

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 the requirements of this condition, the description of the claim 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.

The native title claim group is described at Schedule A of the re-amended application in identical terms to Schedule A of the application amended on 6 July 1999.

The application is made on behalf of the Gnulli native title application group which is comprised of the Ingaarda-Teddei, Baiyungu and Talangi peoples who can be identified as the biological descendants of unions between:" [unions listed].

I concur with the reasoning and decision of the previous delegate reproduced below.

I find that the persons in the native title claim group are those people who are biological descendants of the unions listed at Schedule A.

As Schedule A relies on a description other than naming the persons in the claim group, the application does not satisfy s.190B(3)(a). Consequently, the applicants must rely on satisfying s.190B(3)(b).

In my view the description at schedule A provides an objectively verifiable mechanism for ascertaining whether any particular person is in the claim group.

I am therefore 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 application complies with s190B(3)(b).

Result: Requirements are met

Identification of the native title rights and interests:

190B4

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. It is insufficient to merely state that these native title rights and interests are 'all native title interests that may exist, or that have not been extinguished at law'. To meet the requirements of s190B (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

The description of the native title rights and interests claimed in the re-amended application is identical to that provided in the application amended on 6 July 1999. Schedule E of the re-amended application lists the native title rights and interests claimed as follows:

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

- (a) *rights and interests to possess, occupy, use and enjoy the area;*
- (b) *the right to make decisions about the use and enjoyment of the area;*
- (c) *the right of access to the area;*
- (d) *the right to control the access of others to the area;*
- (e) *the right to use and enjoy the resources of the area,*
- (f) *the right to control the use and enjoyment of others of the resources of the area;*
- (g) *the right to trade in resources of the area;*
- (h) *the right to receive a portion of any resources taken by others from the area;*
- (i) *the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and*
- (j) *the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.*

Subject to:

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

In my view the native title rights and interests described at schedule E are readily identifiable. Also, the qualifications listed at items i, ii, iii, and v are clear in their scope and intention, reciting general limitations to the operation of the listed rights and interests, where relevant.

In addition, the qualification in item iv, the saving of exclusive possession rights and interests in areas of previous non-exclusive possession acts where the acts are in favour of native title claimants, is capable of qualifying item iii, and consequently of providing clearly identifiable specific rights and interests.

The description is more than a statement that native title rights and interests are 'all native title interests that may exist, or that have not been extinguished at law'.

I am satisfied that the description in schedule E allows the native title rights and interests claimed to be readily identified. The application complies with s190B(4).

Result: Requirements are met

Sufficient factual basis:

190B5

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

This condition requires me to be satisfied that the factual basis on which it is asserted that there exist native title rights and interests described at schedule E of the amended application is sufficient to support that assertion.

In reaching this decision I must be satisfied that the factual basis supports the 3 criteria identified at s190B5 (a) – (c).

The previous delegate was satisfied that the application met the conditions referred to in s190B5. To assist in giving my reasons in respect of this condition, I have reproduced the previous delegate's reasons in full (italicised).

- 1 *This condition requires me to be satisfied that the factual basis on which it is asserted that there exist native title rights and interests described at schedule E of the amended application is sufficient to support that assertion.*
- 2 *In reaching this decision I must be satisfied that the factual basis supports the 3 criteria identified at s.190B5 (a) – (c).*

Evidence

- 3 *Schedule F of the amended application contains a series of assertions in support of this condition.*
- 4 *Also submitted by the applicants for my consideration are:*
 - *Affidavits by [names deleted for privacy reasons] sworn 8 March 1999 (folio 48, RT file).*
 - *Affidavit by [name deleted for privacy reasons] sworn 4 June 1999 (folio 71, RT File)*

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

- 5 *This criteria requires me to be satisfied that:*
 - *the members of the native title claim group (collectively, communally or individually) have (that is currently have) an association with the area (under claim) and*
 - *the predecessors in title or antecedents of the members of the native title claim group had an association with the area (under claim)*
- 6 *Schedule F of the amended application asserts that the native title claim group and their ancestors have, since the assertion of British sovereignty, possessed occupied, used and enjoyed the area subject to this application. The truthfulness of this assertion is deposed in the accompanying affidavits of each applicant (Attachment D of the amended application).*
- 7 *The information provided in the affidavits of [names deleted for privacy reasons] (both those dated 8 March 1999 and [name deleted for privacy reasons] affidavit of 4 June 1999) links members of the claim group to the claim area surrounds. [Sentence describing details contained in the affidavit deleted for privacy purposes]. Based on this information I am satisfied that current members of the claim group have an association with the area of the application that relates to the mainland and coastal waters based upon the traditional laws and customs of the claim group.*

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.

- 8 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 native title rights and interest claimed
- 9 The amended application at Schedule F asserts that the native title rights and interests claimed by the applicants derive from, and are currently held in accordance with Aboriginal traditional laws and customs including the custom of passing title by descent. The truthfulness of this assertion is deposed in the accompanying affidavits of each applicant.
- 10 I am also able to conclude from the affidavits of [names deleted for privacy purposes] that there exist traditional laws and customs that are acknowledged and observed by the claimant group. The evidence supports the notion that a body of traditional laws and customs gives rise to the claimed native title rights and interests.
- 11 Evidence is also provided on the existence of sites of significance.
- 12 I am satisfied that this criterion is met.

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

- 13 This criteria requires the Registrar to be satisfied that the native title claim group continues to hold native title in accordance with their traditional laws and customs.
- 14 The assertions at schedule F together with consideration of the other information detailed above supports the notion that the native title claim group continue to hold native title in accordance with traditional laws and customs.
- 15 I am satisfied this condition is met.

Summary

- 16 In summary, each applicant has sworn to the truth of the statements contained in the amended application, which contain certain assertions that support the factual basis.
- 17 The accompanying affidavits of [names deleted for privacy purposes] tell a 'story' about the claim group's association with the claim area and of a life governed by traditional laws and custom which in turn give rise to the native title rights and interests claimed.
- 18 Statements are made and information is provided connecting members of the claim group and their predecessors to the area of the claim and to their knowledge and observance of traditional laws and customs.
- 19 [Paragraph referring to details contained in the further affidavits deleted for privacy reasons].

Conclusion

- 20 There is evidence to support the factual basis in each of the 3 criteria identified at s.190B5 (a) – (c). This evidence in turn is sufficient for me to be satisfied that the factual basis on which the assertion of the existence of the native title rights and interests claimed is sufficient to support the assertion.

No additional information has been provided for my consideration. I have considered the information provided to the previous delegate and find myself in agreement with his reasons. In saying this I note that the State has been provided with this information on a confidential basis and that the State has made no comments in relation to such information. I am therefore satisfied that there is sufficient factual basis to support the assertion that the native title rights and interests claimed exist. I am also satisfied that the factual basis supports the assertions as referred to in s190B5(a) –(c).

The application complies with s190B(5).

Prima facie case:

190B6

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 this condition I must consider that, prima facie, at least some of the native title rights and interests claimed can be established. To meet this condition only some of these rights and interests need to be able to be prima facie established, but I will consider all of the rights and interests claimed as this will determine which of these rights and interests are entered on the Register of Native Title Claims. For the reasons given below, I am of the view that some but not all of the rights and interests claimed can be established.

“Native Title Rights and Interests” are defined at s233 of the Act. This definition specifically attaches native title rights and interests to land and water, and in summary requires:

- the rights and interests to be linked to traditional laws and customs;
- those claiming rights and interests to have a connection with the relevant land and waters;
- and
- 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 s190B5. I will draw on the conclusions I made under that section in my consideration of s190B6. I have already outlined at s190B(5) that I am satisfied that the members of the native title claim group have an association with the relevant land and waters and continue to adhere to traditional laws and customs that support the factual basis for the native title rights and interests claimed. I refer to my reasons in relation to that section.

It is necessary to have regard to what rights and interests may be claimed at law as well as what rights and interests can, prima facie, 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 and deciding, prima facie, which native title rights and interests claimed can be established.

The principal barrier at law to a claim for native title rights and interests is that they should not be made over tenures that have been the subject of exclusive possession acts, nor should they involve a claim for exclusive possession over non-exclusive possession act areas (s61A of the Act). For the reasons given at s190B(8) and s190B(9)(c) the Applicant has clearly and unambiguously excluded any area over which an impermissible claim could be made.

In *Western Australia v Ward* [2000] FCA 191; 170ALR 159, Beaumont and von Doussa JJ, by majority, held that some of the rights and interests included in the determination of native title made by Lee J. at first instance were incapable of being recognised at common law, including;

- the right to maintain and prevent misuse of cultural knowledge,
- the right to receive a portion of any resources taken by others from the area
- the right to control the use and enjoyment of others of resources
- the right to control access of others
- the right to trade in resources in the area (but do have a non-exclusive right to use and enjoy traditional resources).

Their Honours held that rights and interests that involve a physical presence on the land or that are associated with traditional, social and cultural practices are capable of recognition under common law but that those involving (only) religious or spiritual relationships with land are not. See *Ward* at [104]. However their Honours also found that where s47 and 47A applied, the applicants in that case were entitled to possession, occupation, use and enjoyment of the area concerned as against the whole world.

The native title rights and interests claimed are those set out in at Schedule E of the application. I note that the native title rights and interests claimed at Schedule E are claimed *subject to any native title rights and interests which may be shared with any others who establish that they are native title holders*. The claim to exclusive possession is further qualified in terms of the five paragraphs set out in Schedule E which state that the claimed native title rights and interests are subject to other validly granted rights and interests.

Before I consider whether each of the individual rights can be claimed at law and prima facie established, I must first be satisfied that native title has not been extinguished over the area claimed.

In the *Ward* decision, the majority found that native title rights and interests are wholly extinguished over areas of WA pastoral leases granted after 1933 which were enclosed or, where there is no enclosure, otherwise improved. The majority also found that native title rights and interests are wholly extinguished over areas of WA pastoral leases granted before 1932 which were improved. However, if s47, 47A or 47B apply, then native title is not extinguished.

Information considered

The information, in addition to that within the amended application that I have considered in relation to this section is:

- Affidavits of [names deleted for privacy reasons] sworn 8 March 1999.
- An affidavit of [name deleted for privacy reasons] sworn 4 June 1999.

No additional information has been provided since the previous delegate made his decision. In some instances, I will only refer to one of the relevant paragraph or page number of the document containing information that I considered pertinent to establishing the prima facie claim. I will not detail information in these reasons or detail every document containing information with information about the specific condition.

The ten rights and interests sought, together with my reasons, follow:

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

In *Ward* this right formed part of the determination made by the their Honours. The information provided supports this general principal right and interest. I note that the rights are not claimed to the exclusion of all others.

I am satisfied that, prima facie, this right can be established as a non-exclusive right, except where s47, s47A or s47B of the Act apply, in which case the right is capable of being recognised as an exclusive right.

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

In *Ward*, this right formed part of the determination made by their Honours. [Sentence referring to contents of further affidavits concerning decision-making is deleted for privacy reason].

I am satisfied that, prima facie, this right can be established as a non-exclusive right, except where s47, s47A or s47B of the Act apply, in which case the right is capable of being recognised as an exclusive right.

(c) the right of access to the area;

In *Ward*, this right formed part of the determination made by their Honours. Schedule G of the amended application gives examples of the claimant's right of access to the area, to camp, to live and build structures, and to move freely about. This is supported by the information contained in the further affidavits of the two claim group members. I further note that this right is not claimed to the exclusion of all others.

I am satisfied that, prima facie, this right can be established as a non-exclusive right, except where s47, s47A or s47B of the Act apply, in which case the right is capable of being recognised as an exclusive right.

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

In *Ward*, the majority declined to include this right in any determination of native title in relation to areas where native title was found to have been partially extinguished. There was no discussion as to why the right was not included in the draft determination.

The application of s47A in that case resulted in the applicants having the right of use, occupation, possession and enjoyment as against the whole world. The majority found this would give rise to rights similar to those available under freehold title, including the right to control the access of others to areas where s47A applies. See para [207] of the decision.

In my opinion this right is expressed in broad terms and without further qualification is unable to be read down as only applying to areas where any of s47, 47A or 47B of the Act may apply.

I am not satisfied that, prima facie, this right can be established.

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

The further affidavits provided by the two claim group members cite numerous examples of using and enjoying what may be categorised as "traditional" resources of the area [reference deleted for privacy reasons]. The evidence before me supports the claimed right to use and enjoy "traditional" resources of the area.

When read with the qualification in Schedule E that "to the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the Applicants", it is clear in my view that the Applicants are not claiming the right to use and enjoy other than traditional resources in the area.

In *Ward* the majority recognised a non-exclusive right to use traditional resources.

I am satisfied that, prima facie, this right can be established as a non-exclusive right, except where s47, 47A or 47B of the Act apply, in which case the right is capable of being recognised as an exclusive right.

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

In *Ward*, the majority declined to include this right in the determination of native title in relation to areas where native title was found to have been partially extinguished. There was no discussion as to why the right was not included in the draft determination.

In my opinion this right is expressed in broad terms and without further qualification is unable to be read down as only applying to areas where any of s47, 47A or 47B of the Act may apply.

I am not satisfied that, prima facie, this right can be established.

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

In *Ward* the majority recognised a non-exclusive right to trade in traditional resources. Schedule E limits what is being claimed so that minerals, petroleum or gas wholly owned by the Crown are not claimed. In my opinion however this limitation does not exclude the right to trade in other “non-traditional” resources. This raises the question whether such a right is recognisable under common law.

I am not satisfied that, prima facie, this right can be established.

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

I note that in *Yarmirr v Northern Territory* [1998] 82 FCR 533 Olney J found that this right was not a right that could form part of a determination of native title. In *Ward v State of Western Australia* [1998]159 ALR 483 Lee J differed from Olney J with respect to this finding. However, Lee J.’s determination was overturned by a majority of the Full Court. In my opinion I am bound to follow the finding by Olney J and I conclude that this right is not recognised under the common law of Australia.

I am not satisfied that this right can be prima facie established.

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

In *Ward*, this right formed part of the determination made by their Honours. Schedule G of the amended application and the detailed affidavits [reference deleted for privacy reasons] refer to and support the exercise of this right.

I am satisfied that, prima facie, this right can be established as a non-exclusive right, except where s47, 47A or 47B of the Act apply, in which case the right is capable of being recognised as an exclusive right.

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

I note that in *Ward* it was found that this right was not “a right in relation to land of the kind that can be the subject of a determination of native title” at para [666]. I further note the submission by the State of Western Australia on 14 April 2000 that “such a right cannot therefore be included on the Register of Native Title Claims and should be excluded from any application in which it is included in Schedule E”.

In *Hayes v Northern Territory of Australia* [2000] FCA 671, Olney J included “the right to manage the spiritual forces and to safeguard the cultural knowledge associated with the land and waters of their respective estates within the determination area” in the formal determination recognising the existence of native title.

This right differs somewhat from that claimed in the present case. In my view the right being claimed in the current application is expressed in identical terms to that considered by their Honours and found not to be a right that can be the subject of a determination of native title.

I am not satisfied that this right can be prima facie established.

Conclusion

I am satisfied the rights and interests claimed above at (a) (b) (c) (e) and (i) are, prima facie, capable of being made out, subject to the following qualifications as set out in Schedule E of the amended application:

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

I am not so satisfied with respect to the rights and interests claimed above at (d) (f) (g) (h) and (j).

Result: Requirements met in part as outlined above.

190B7

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 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 holder of a lease.***

Reasons for the Decision

This section requires me to 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.

Traditional physical connection is not defined in the Act. I am interpreting this phrase to mean that physical connection should be in accordance with the particular traditional laws and customs relevant to the claim group.

For the reasons given at s190B(5), I am satisfied that there exist traditional laws acknowledged by and customs observed by the claim group sufficient to support traditional physical connection.

I am further satisfied from the information supplied, that [names deleted for privacy reasons] currently have a traditional physical connection with the land or waters covered by the application. The application complies with s190B(7).

Result: Requirements are met

190B8

No failure to comply with s61A:

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

Reasons for the Decision

s61A(1) – Native Title Determination

A search of the Native Title Register conducted on 27 September 2000 revealed that there is no approved determination of native title in relation to the area claimed in this application.

S61A(2) – Previous Exclusive Possession Acts

The claim has not been made over tenure to which a previous exclusive possession act, as defined in s23B, applies. [see schedule B]

S61A(3) – Previous Non-Exclusive Possession Acts

The applicants are not seeking exclusive possession over areas the subject of previous non-exclusive possession acts. [See schedule E (iii)]

S61A(4) – s47, 47A, 47B

The applicants have sought to invoke the provisions of s47, 47A or 47B of the Act.

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.

The application complies with s190B(8).

Result: Requirements are met

- 190B9**
- 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)** ***(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;***

Reasons for the Decision

Native title rights and interests are described at schedule E of the amended application.

None of the claimed native title rights described in schedule E claim ownership of resources including minerals, petroleum or gas.

In any event, Schedule Q in the amended application makes the statement that:

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

Consequently, the application and accompanying documents do not disclose, and I am not otherwise aware that the applicant claims ownership of minerals, petroleum or gas that is wholly owned by the Crown.

The application complies with this condition.

Result: Requirements are met

- 190B9**
- Exclusive possession of an offshore place:**
The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:
- (b)** ***(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

Schedule E of the amended application does not make a claim for exclusive possession of an offshore place.

In any event the application qualifies the native title rights identified at schedule E by making them conditional on Schedule P which states:

To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of Western Australia or accorded under international law in relation to the whole or any part of the offshore place.

The application complies with this condition.

Result: Requirements are met

Other extinguishment:

190B9

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

(c)

(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 and accompanying documents do not disclose, and it is not otherwise apparent that the native title rights and interests claimed have otherwise been extinguished by any mechanism, including:

- a break in traditional physical connection;
- non-existence of an identifiable native title claim group;
- by the non-existence of a system of traditional laws and customs linking the group to the area
- an entry on the Register of Indigenous Land Use Agreements.
- Legislative extinguishment

In any event, Schedule B of the application excludes all areas where native title rights and interests have otherwise been extinguished. I am satisfied that because native title rights and interests must relate to land and waters (as per definition in s223 of the Act) the exclusion of particular land and waters is an exclusion of native title rights and interests over those lands and waters.

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

Result: Requirements are met

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