



National
Native Title
Tribunal

Registration Decision

Application name	Banjo Madrill & Ors v Northern Territory of Australia (Huckitta)
Name of applicant	Banjo Madrill, Shirley Neale, Kevin Bloomfield, Raymond Webb, David Blue, Herbie Bloomfield
Federal Court of Australia No.	NTD18/2020
NNTT No.	DC2020/005
Date of Decision	4 December 2020

Claim accepted for registration

I have decided that the claim in the Huckitta application satisfies all of the conditions in ss 190B–190C of the *Native Title Act 1993* (Cth).¹ Therefore the claim must be accepted for registration and entered on the Register of Native Title Claims (**Register**).

Bryn Hughes

Delegate of the Native Title Registrar pursuant to ss 190–190D of the Act under an instrument of delegation dated 27 July 2018 and made pursuant to s 99 of the Act.

¹ A section reference is to the *Native Title Act 1993* (Cth) (**Act**), unless otherwise specified.

Reasons for Decision

CASES CITED

Aplin on behalf of the Waanyi Peoples v Queensland [2010] FCA 625 (**Aplin**)
Corunna v Native Title Registrar [2013] FCA 372 (**Corunna**)
De Rose v State of South Australia (No 2) [2005] FCAFC 110 (**De Rose FC No 2**)
Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People [2019] FCAFC 177 (**Warrie**)
Griffiths v Northern Territory of Australia [2007] FCAFC 178 (**Griffiths FC**)
Gudjala People #2 v Native Title Registrar [2007] FCA 1167 (**Gudjala 2007**)
Gudjala People # 2 v Native Title Registrar (2008) 171 FCR 317; [2008] FCAFC 157 (**Gudjala FC**)
Gudjala People #2 v Native Title Registrar [2009] FCA 1572 (**Gudjala 2009**)
Harrington-Smith on behalf of the Wongatha People v Western Australia (No 5) [2003] FCA 218 (**Harrington-Smith No. 5**)
Harrington-Smith on behalf of the Wongatha People v State of Western Australia (No 9) [2007] FCA 31 (**Harrington-Smith No. 9**)
Martin v Native Title Registrar [2001] FCA 16 (**Martin**)
Members of the Yorta Yorta Aboriginal Community v Victoria (2002) 214 CLR 422; [2002] HCA 58 (**Yorta Yorta**)
Northern Territory of Australia v Doepel (2003) 133 FCR 112; [2003] FCA 1384 (**Doepel**)
Northern Land Council v Quall [2020] HCA 33 (**Quall**)
Strickland v Native Title Registrar [1999] FCA 1530 (**Strickland**)
Wakaman People 2 v Native Title Registrar and Authorised Delegate [2006] FCA 1198 (**Wakaman**)
Ward v Registrar, National Native Title Tribunal (1999) 168 ALR 242; [1999] FCA 1732 (**Ward v Registrar**)
Ward v Northern Territory [2002] FCA 171 (**Ward HC**)
Western Australia v Native Title Registrar (1999) 95 FCR 93; [1999] FCA 1591 (**WA v NTR**)

BACKGROUND

- [1] This is an application filed on behalf of the Huckitta native title claim group (**claim group**). It covers an area of approximately 1,698 square kilometres in the central region of the Northern Territory, approximately 160 kilometres north east of Alice Springs (**application area**).
- [2] The application was filed on 23 October 2020 and the Registrar of the Federal Court (**Court**) gave a copy of the application and accompanying affidavits to the Native Title Registrar (**Registrar**) on 27 October 2020 pursuant to s 63 of the Act. This has triggered the Registrar's duty to consider the claim made in the application for registration in accordance with s 190A.²

Registration conditions

- [3] Sections 190A(1A), (6), (6A), (6B) set out the decisions available to the Registrar under s 190A. Section 190A(1A) provides for exemption from the registration test for certain amended

² Section 190A(1).

applications and s 190A(6A) provides that the Registrar must accept a claim (in an amended application) when it meets certain conditions. Section 190A(6) provides that the Registrar must accept the claim for registration if it satisfies all of the conditions of s 190B (which deals mainly with the merits of the claim) and s 190C (which deals with procedural and other matters). Section 190A(6B) provides that the Registrar must not accept the claim for registration if it does not satisfy all of the conditions of ss 190B–190C.

- [4] Given that the application was made on 23 October 2020 and has not been amended, I am satisfied that neither s 190A(1A) nor s 190A(6A) apply.
- [5] I have decided that the claim in the application must be accepted for registration and this document sets out my reasons for that decision. Attachment A contains the information which will be included on the Register.

Procedural fairness

- [6] On 28 October 2020, a senior officer of the National Native Title Tribunal (**Tribunal**) wrote to the representative of the Northern Territory government (**NTG**) advising that any submissions in relation to the registration of this claim should be provided by 4 November 2020.
- [7] Also on 28 October 2020, the senior officer wrote to the applicant's representative to advise that any additional information should be provided by 4 November 2020.
- [8] On 2 November 2020, the representative of the NTG wrote to the Tribunal requesting an extension of time for the provision of registration test submissions to 11 November 2020.
- [9] On 3 November 2020, the senior officer wrote to the NTG's representative advising them that their request had been granted and that any information the NTG wished to be considered should be provided by 11 November 2020.
- [10] On 9 November 2020, the representative of the NTG wrote to the Tribunal advising that they did not wish to make any submissions regarding the application of the registration test in relation to this matter.
- [11] No submissions were received from the applicant and as such this concluded the procedural fairness process.

Information considered

- [12] Section 190A(3) sets out the information to which the Registrar must have regard in considering a claim under s 190A and provides that the Registrar 'may have regard to such other information as he or she considers appropriate'.
- [13] I have had regard to information in the application and the accompanying s 62 affidavits.³
- [14] I note there is no information before me obtained as a result of any searches conducted by the Registrar of State, Territory or Commonwealth interest registers.⁴

³ Section 190A(3)(a).

[15] As noted above the NTG has not provided any submissions in relation to the application of the registration test.⁵

[16] I have also considered:

- (a) information contained in a geospatial assessment and overlap analysis of the application area prepared by the Tribunal's Geospatial Services, dated 28 October 2020 (**the geospatial report**);
- (b) information in the Tribunal's geospatial database; and
- (c) information in the Register.

Procedural and other matters (s 190C)—Conditions met

Information etc. required by ss 61–2 – s 190C(2): condition met

[17] To meet s 190C(2), the Registrar must be satisfied that the application contains all of the prescribed details and other information, and is accompanied by any affidavit or other document, required by ss 61–2. This condition does not require any merit or qualitative assessment of the material to be undertaken.⁶

[18] I have examined the application and I am satisfied that it contains the prescribed information and is accompanied by the prescribed documents.

Section 61

[19] The application contains the details specified in s 61.

Section	Details	Form 1	Result
s 61(1)	Native title claim group has authorised the applicant	Schedule A, s 62 affidavits filed with application, Part A(2) - Authorisation	Met
s 61(3)	Name and address for service	Part B	Met
s 61(4)	Native title claim group named/described	Schedule A	Met

Section 62

[20] The application contains the details specified in s 62.

Section	Details	Form 1	Result
s 62(1)(a)	Affidavits in prescribed form	Section 62 affidavits filed with application	Met

⁴ Section 190A(3)(b).

⁵ Section 190A(3)(c).

⁶ *Doepel* [16], [35]–[39].

s 62(2)(a)	Information about the boundaries of the area	Schedule B	Met
s 62(2)(b)	Map of external boundaries of the area	Schedule C	Met
s 62(2)(c)	Searches	Schedule D, Attachment D	Met
s 62(2)(d)	Description of native title rights and interests	Schedule E	Met
s 62(2)(e)	Description of factual basis	Schedule F	Met
s 62(2)(f)	Activities	Schedule G	Met
s 62(2)(g)	Other applications	Schedule H	Met
s 62(2)(ga)	Notices under s 24MD(6B)(c)	Schedule HA	Met
s 62(2)(h)	Notices under s 29	Schedule I	Met

No previous overlapping claim group – s 190C(3): condition met

[21] To meet the requirements of s 190C(3) the Registrar must be satisfied that no person included in the native title claim group for the application was a member of the native title claim group for any previous application. A ‘previous application’ is an application which:

- (a) covers the whole or part of the area covered by the current application; and
- (b) has an entry relating to the claim in the previous application on the Register 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 s 190A.

[22] The geospatial report provides, and my own searches of the Tribunal’s geospatial database confirm, that there are no applications which overlap the current application, as is required by s 190C(3)(a). Therefore, there are no applications which meet the definition of ‘previous application’ under s 190C(3).

Conclusion

[23] I am therefore satisfied that no person is included in the native title claim group for this application that was a member of the native title claim group for any previous overlapping application and thus s 190C(3) is met.

Identity of claimed native title holders – s 190C(4): condition met

[24] In order to meet the requirements of s 190C(4), the Registrar must be satisfied that either of the following is the case:

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

[25] Schedule R contains a document titled 'Certification of Native Title Determination Application'. I therefore understand that I must assess the application against the requirements of s 190C(4)(a). As such I must be satisfied that:

- (a) the certificate identifies the relevant representative body;
- (b) the representative body has the power under Part 11 to issue the certification; and
- (c) the certificate meets the requirements of s 203BE(4).⁷

[26] I also note the comments of a majority of the High Court that representative bodies are not prohibited by operation of the Act from delegating their certification functions to persons within their 'organisational structures and administrative processes'.⁸ Where a representative body has purported to delegate its certification functions I understand that such delegation must be permitted by the representative body's constating statute.⁹

Is the relevant representative body identified?

[27] The Central Land Council (**CLC**) has issued the certificate, which is dated 5 December 2019. The certificate bears the common seal of CLC and was certified by a resolution of the Full Council of the CLC. It is signed by both the Chairman and an Executive Member of CLC. The certificate states that it has been provided pursuant to s 203BE of the Act. The geospatial report states, and I have verified using the Tribunal's geospatial database, that CLC is the only representative body for the area covered by the application. I am therefore satisfied that the certificate identifies the relevant representative body.

Does the representative body have the power to issue the certificate?

[28] As a recognised representative body, CLC can perform all of the functions listed in Part 11 of the Act, including the certification functions listed in s 203BE. I note that in this case I understand the application was certified pursuant to a resolution of the Full Council of the CLC. I am therefore satisfied that CLC has the power under Part 11 to issue the certification.

Does the certificate meet the requirements of s 203BE(4)?

Section 203BE(4)(a)- statement

[29] Section 203BE(4)(a) provides that a certificate must include a statement to the effect that the representative body is of the opinion that the requirements of s 203BE(2)(a)-(b) have been met.

[30] Section 203BE(2) provides a representative body must not certify under paragraph (1)(a) an application for a determination of native title unless it is of the opinion that:

- (a) all the persons in the native title claim group have authorised the applicant to make the application and to deal with matters arising in relation to it; and

⁷ *Doepel* [80]-[81].

⁸ *Quall* [32], [52].

⁹ *Ibid* [36].

- (b) all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the native title claim group.

[31] The certificate contains the required statement at paragraph 3 under the heading '**Statement** [s 203BE(4)(a)]'. I am therefore satisfied that the requirements of s 203BE(4)(a) are met.

Section 203BE(4)(b)- reasons

[32] Section 203BE(4)(b) requires that the certification briefly set out the representative body's reasons for being of the opinion that the requirements of s 203BE(2)(a)-(b) have been met.

[33] The certificate provides the following information regarding the authorisation of the applicant under the heading '**Reasons** [s 203BE(4)(b)]':

- (a) Claimant meetings, organised and facilitated by CLC, were held on 29 November 2016 and 23 October 2019 at Atitjere in order for CLC to obtain instructions regarding the claim. Those meetings were attended by claimants, including essential senior members of the claim group, and CLC legal and anthropological staff.
- (b) Under the traditional laws and customs of the claim group there is a process of decision-making that must be complied with for making decisions of this kind. In accordance with that process the necessary persons attended the claimant meetings and authorised the applicant to make the application and to deal with matters arising in relation to it for so long as they are willing and able to do so.
- (c) CLC staff consulted the claimants about the application during the claimant meetings and received instructions agreeing to the application's contents.
- (d) CLC conducted anthropological and historical research in relation to those persons who hold the claimed native title rights and interests in the application area. That research indicates that the members of the claim group, as described in the application, are the only persons who assert and are entitled to claim native title rights and interests in the application area. The research also indicates the description of the claim group accords with the traditional laws and customs acknowledged and observed by those persons and identifies or describes all the persons who hold the common or group rights comprising the native title in the application area.

[34] In my view the certificate sets out CLC's reasons for being of the opinion that the requirements of s 203BE(2)(a)-(b) have been met. I therefore consider that s 203BE(4)(b) is met.

Section 203BE(4)(c)- overlapping applications

[35] Section 203BE(4)(c) provides that where s 203BE(3) is applicable the representative body briefly set out what it has done to meet the requirements of that section.

[36] Section 203BE(3) provides that if the land or waters covered by the application are wholly or partly covered by one or more applications (including proposed applications) of which the representative body is aware, the representative body must make all reasonable efforts to:

- (a) achieve agreement, relating to native title over the land or waters, between the persons in respect of whom the applications are, or would be, made; and
- (b) minimise the number of applications covering the land or waters.

However, a failure by the representative body to comply with this subsection does not invalidate any certification of the application by the representative body.

[37] Paragraph 5, headed '**No overlapping applications** [s 203BE(4)(c)]', states that CLC is not aware of any other application or proposed application that partly or wholly covers the application area. As such, in my view the requirements of s 203BE(4)(c) are met.

Conclusion

[38] In light of the above, I am satisfied that the relevant representative body, being CLC, has been identified in the certificate and has the power under Part 11 to issue the certificate. I also consider that the requirements of s 203BE(4) have been satisfied and as such, s 190C(4)(a) has been met. This means therefore that s 190C(4) is met.

Merits of the claim (s 190B) – Conditions met

Identification of area subject to native title – s 190B(2) condition met

[39] In order to meet the requirements of s 190B(2), the Registrar must be satisfied the information and map contained in the application 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.

[40] I understand that the question at this condition is whether the information and map contained in the application provide certainty about the:

- (a) external boundary of the area where native title rights and interests are claimed;
- (b) any areas within the external boundary over which no claim is made.¹⁰

Does the information about the external boundaries meet this condition?

[41] Schedule B describes the application area as covering:

- (a) 'NT Portion 2454 comprising an area of 1,696 square kilometres 51 hectares held under Perpetual Pastoral Lease No 990 by Huckitta Aboriginal Corporation (ICN 7371).'
- (b) 'NT Portion 5994 comprising an area of 1 square kilometre 14 hectares 9,000 square metres held as an estate in fee simple by Tyarne Aboriginal Corporation (ICN 3922) as an Aboriginal Community Living Area.'

[42] Schedule C contains a copy of a map prepared by CLC, titled 'Huckitta Native Title Determination Application'. The map is dated 23 October 2020 and includes:

¹⁰ *Doepel* [122].

- (a) The application area depicted with a bold green outline line and cross hachuring;
- (b) Land parcels coloured by tenure type;
- (c) Selected topographic features;
- (d) An inset depicting NTP3402 in greater detail;
- (e) Scalebar, northpoint and coordinate grid; and
- (f) Notes relating to the source, currency and datum of data used to prepare the map.

[43] The assessment in the geospatial report is that the map and description are consistent and identify the application area with reasonable certainty. I have considered the map and description and agree with that assessment.

Does the information about the excluded areas meet this condition?

[44] Schedule B specifically excludes the following areas within the external boundaries:

- (a) 'NT Portion 3402 comprising an area of 2 hectares 2,500 square metres within NT Portion 2454 held for an estate in fee simple by Telstra Corporation Limited (ACN 051 775 556).'
- (b) 'A road 100 metres wide (Plenty Highway) which traverses NT Portion 2454 from the boundary of NT Portion 3676 (Mt Riddock Station) to the boundary of NT Portion 482 (Jinka Station).'
- (c) 'A road 100 metres wide (Indiana Road) which traverses NT Portions 2454 from the Plenty Highway to the boundary of NT Portion 746 (Indiana Station).'
- (d) 'NT Portion 7508 comprising an area of 69 square kilometres 50 hectares which is Crown land being part of the Jervois Stock Route.'

[45] Paragraph 8 of Schedule B states that, subject to Schedule L, any other area within the boundaries of the area covered by the application in relation to which a previous exclusive possession act has been done is excluded from the application. Schedule L provides that the applicant seeks to apply s 47, or in the alternative s 47A, in relation to NT Portion 2454, being Perpetual Pastoral Lease No 990 held by Huckitta Aboriginal Corporation.

[46] I note the comments of French J regarding general exclusion clauses, such as those found in paragraph 8 of Schedule B, that 'it is unrealistic to expect a concluded definition of the areas subject to these provisions to be given in the application. Their applicability to any area will require findings of fact and law to be made as part of the hearing of the application'.¹¹ In light of those comments I am satisfied that the areas affected by the general exemption clauses can be ascertained during the hearing of the application.

¹¹ *Strickland* [55].

Conclusion

- [47] I consider that the external boundary of, and those areas excluded from, the application area can be identified from the description with reasonable certainty. The map at Schedule C shows the external boundary of this application area. I am therefore satisfied that s 190B(2) is met.

Identification of the native title claim group – s 190B(3) condition met

- [48] To meet the requirements of s 190B(3), the Registrar must be satisfied that either:
- (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.
- [49] Paragraph 1 of Schedule A provides that the claim group comprises the members of the Amapete, Apwetyerlaneme, Atnweale and Warrtharre landholding groups (**landholding groups**). Those persons, according to the traditional laws acknowledged and customs observed by them:
- (a) have spiritual, physical and/or historical associations with the area described in Schedule B (“the application area”) and are traditionally connected to the area through:
 - (i) descent from ancestors (including adoption) connected with the application area as described in paragraph 7(a) below; or
 - (ii) non-descent based connections as described in paragraphs 7(b) below;
 - (b) hold the common or group rights and interests comprising the native title in the application area.
- [50] Paragraph 2 of Schedule A notes that the application area is located in Eastern Arrernte territory and that a common body of traditional laws and customs govern how rights are acquired and who holds them in particular parts of the territory. The four landholding groups which comprise the claim group form a community who together hold the common rights forming the native title over the application area as a whole.
- [51] Paragraph 3 explains that the term ‘estate’ is used to describe the land and waters associated with a particular landholding group and that the application area is divided between four ‘estates’, being:
- (a) Amapete- north-eastern;
 - (b) Apwetyerlaneme- north-western and central;
 - (c) Atnweale- northern; and
 - (d) Warrtharre- southern and south-eastern.
- [52] Paragraph 4 explains that whilst the landholding groups are associated with the Eastern Arrernte language, under the traditional laws and customs observed by the claim group, rights in land are not acquired through membership of a language group.

- [53] Paragraph 5 provides information about members of the claim group being recognised as traditional Aboriginal owners of other land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and as native title holders under the Act.
- [54] Paragraph 6 provides the particular landholding groups of the persons authorised to make the applicant.
- [55] Paragraph 7(a) states that under traditional laws and customs the claim group comprises all those persons who are descended (by birth or adoption and subject to paragraph 12) of one or more of the following named and unnamed ancestors of the landholding groups. The description lists the four landholding groups in bold and provides an apical ancestor for each group, followed by a list of their children.
- [56] Paragraph 7(b) states that under traditional laws and customs the claim group also comprises all those persons accepted as members of one (or more) of the landholding groups by the senior descent based members of the groups on the basis of their non-descent connections to the estate.
- [57] Paragraph 8 notes that the ancestors identified in paragraph 7(a) are the uppermost generations of the known ancestors of members of the claim group.
- [58] Paragraph 9 explains the ways in which a person can be recruited and recognised as a member of the landholding group on the basis of non-descent connections to the estate. It provides a list of the non-descent connections that senior members of a landholding group have regard to when considering recruitment of a particular individual.
- [59] Paragraph 10 notes that although the claimants' system of traditional laws and customs include rules about succession, there have been no instances of succession in relation to the application area.
- [60] Paragraphs 11 and 12 provide further information on the claimants' traditional laws and customs relating to descent based connection. Paragraph 11 explains that descent based connection is the most important basis for the possession of rights and interests in land. Paragraph 12 explains how rights and interests in a grandparent's father's estate are inherited through grandparental lineage.
- [61] Paragraph 13 states that in cases of non-descent connection, rights and interests are based on individual circumstances, usually limited to the individual and are not transferrable.
- [62] Paragraph 14 notes that a number of the claimants are members of more than one estate group, for example, by holding different grandparental links to multiple estates.
- [63] From the above description I understand that s 190B(3)(b) is applicable. I must therefore consider whether the description is sufficiently clear so that it can be ascertained whether any particular person is in the claim group.
- [64] In assessing the requirements of this provision, I understand I am neither required nor permitted to be satisfied about the correctness of the description of the claim group found in

the application.¹² Rather, my task is limited to ‘an assessment of the sufficiency of the description of the group for the purpose of facilitating the identification of any person as part of the group.’¹³ I understand that my consideration of this condition is limited to the information in the application itself.¹⁴

Is the description sufficient to ascertain the members of the claim group?

[65] From the description provided at Schedule A, I understand that there are two avenues to qualification as a member of the claim group. Noting the use of the word ‘or’ I understand that a person must meet only one of these criteria to qualify as a member. In order to qualify an individual must:

- (a) be descended, including through adoption, from one of the identified apical ancestors; or
- (b) be accepted as a member of one or more of the landholding groups by senior descent based members of the group on the basis of holding a non-descent connection to one of the four estates.

Descent

[66] I note that the Court has previously accepted descent from named apical ancestors to be an acceptable method for identification of members of a claim group.¹⁵ In my view, the first criterion, being descent from named apical ancestors, provides an objective starting point for any inquiry into the persons who comprise the group. I consider that through factual inquiry, such as an examination of genealogical records, it would be possible to ascertain whether any particular person was descended, including through adoption, from one of the named apical ancestors.

Acceptance on the basis of non-descent based connection

[67] The second criterion for membership is acceptance by one or more of the senior descent based members of the group on the basis of a person’s non-descent based connection to the estate. I consider that this contains a subjective element. I note the comments of Dowsett J that membership of a claim group must be based on group acceptance as that requirement is inherent in the nature of a society.¹⁶ In my view the traditional laws and customs of the claim group would provide an appropriate ‘set of rules or principles’ to assist with determining whether or not a person holds a non-descent based connection to one of the landholding groups.¹⁷ Paragraph 9 provides an explanation of the non-descent based connections that senior members of a landholding group will have regard to under the traditional laws and customs when considering the recruitment of a particular individual. Paragraph 13 explains the individual, non-transferable nature of such membership. Paragraph 4 notes that under the traditional laws and customs of the claim group, rights in land are not acquired through

¹² *Wakaman* [34].

¹³ *Ibid* [34].

¹⁴ *Doepel* [16].

¹⁵ *WA v NTR* [68].

¹⁶ *Aplin* [260].

¹⁷ *Ward v Registrar* [25].

membership of a language group and as such, linguistic affiliation is not necessarily indicative of a person's connection to particular land and waters. In my view by making enquiries of the senior-descent based claim group members it would be possible to ascertain whether a particular person is accepted as a member of the claim group on the basis of their non-descent based connection.

Conclusion

[68] I am satisfied that the application describes the persons in the claim group sufficiently clearly that it can be ascertained whether any particular person is a member of the claim group. As such s 190(3)(b) is satisfied and therefore the claim meets the requirements of s 190B(3).

Identification of claimed native title – s 190B(4) condition met

[69] To meet the requirement of s 190B(4), the Registrar must be satisfied that the description contained in the application is sufficient to allow the native title rights and interests claimed to be readily identified. My consideration at this condition is limited to the information that is found in the application itself.¹⁸

[70] The question of whether any of the claimed rights and interests can properly be considered 'native title rights and interests' pursuant to s 223 is, in my view, a question for consideration under s 190B(6), where my task is to consider whether each of the claimed rights or interests can be prima facie established as native title rights and interests.

Does the description of native title rights and interests meet this condition?

[71] From the description at paragraph 1 of Schedule E, I understand that exclusive possession is claimed in those parts of the application area where the extinguishment of native title must be disregarded. I understand that a broad claim to exclusive possession such as this does not offend the requirements of s 190B(4).¹⁹

[72] From the description at paragraph 2 of Schedule E, I understand that where exclusive possession cannot be claimed, certain non-exclusive rights are claimed. Paragraph 2 contains a list of 9 non-exclusive rights. In my view the non-exclusive rights form an exhaustive list and there are no inherent or explicit contradictions within the description.²⁰

[73] Paragraph 3 confirms that the non-exclusive rights claimed do not confer possession, occupation, use or enjoyment of the application area to the exclusion of all others or any right to control access to, or use of, the application area or its resources.

[74] Paragraph 4 qualifies the rights and interests by acknowledging that they are subject to, and exercisable in accordance with, the traditional laws and customs of the claimants and the valid laws of the Northern Territory and the Commonwealth.

[75] Paragraph 5 explains that the distribution of the rights and interests within the group, and in respect of the different parts of the agreement area, is governed by the claimants' system of

¹⁸ *Doepel* [16].

¹⁹ *Strickland* [60].

²⁰ *Doepel* [16].

traditional laws and customs. Paragraph 6 provides that the activities referred to in Schedules G and M were, and are, undertaken in the exercise of the rights and interests set out in paragraphs 1 and 2.

Conclusion

[76] I am satisfied that the description in Schedule E is sufficient for me to understand and identify the claimed rights and interests. As such the application meets the requirements of s 190B(4).

Factual basis for claimed native title – s 190B(5) condition met

[77] In order to meet the requirements of s 190B(5) 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; and
- (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; and
- (c) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

[78] I understand that my task at s 190B(5) is to consider whether the asserted facts can support the existence of the claimed native title rights and interests.²¹ My role is not to undertake an assessment of the 'strength of the evidence' which may ultimately be adduced to support those asserted facts.²²

[79] Although the asserted facts are not required to be proven by the applicant, I understand that the factual basis must be 'in sufficient detail to enable a genuine assessment' of whether the factual basis material can support the assertions at ss 190B(5)(a)-(c).²³

What information has been provided in support of the assertions at s 190B(5)?

[80] Schedule A provides information on the claim group and their connection to the apical ancestors. Schedule E sets out the claimed rights and interests. Schedule F provides a description of the factual basis for the claimed native title rights and interests. Schedule G lists the activities that members of the claim group carry out on the application area. Schedule M describes the physical connection which some members of the claim group have with the application area. The s 62 affidavits contain information about the deponents, their families, their association and connection with the application area and the laws and customs of the claim group.

²¹ *Doepel* [17].

²² *Ibid* [17].

²³ *Gudjala FC* [92].

What is required to provide a sufficient factual basis for s 190B(5)(a)?

[81] I understand that s 190B(5)(a) requires a sufficient factual basis to support the following assertions:

- that there is ‘an association between the whole group and the area’ although not ‘all members must have such association at all times’;²⁴
- that the predecessors of the whole group have had an association with the application area over the period since sovereignty;²⁵ and
- that there is an association with the entire area claimed, rather than an association with only part of it or ‘very broad statements’ having, for instance, ‘no geographical particularity’.²⁶

What information has been provided in support of the assertion at s 190B(5)(a)?

[82] Schedule F contains the following information relating to the association of the claim group, and their predecessors, with the application area:

- (a) The application area is part of the Eastern Arrernte territory and identified with the Eastern Arrernte language.²⁷
- (b) Ethnographic sources confirm that at the time of contact and settlement of the region, and continuing to the present day, people associated with a dialect of the Arrernte language, including members of the claim group and their ancestors, maintained physical, spiritual and other cultural associations with their country, including occupation and use of the application area.²⁸
- (c) Members of the claim group have maintained their connection with the application area notwithstanding the presence and activities of non-Aboriginal people in the region.²⁹

[83] Schedule F references a number of ethnographic sources including M.C. Hartwig’s ‘The Progress of White Settlement in the Alice Springs District and its effects upon the Aboriginal inhabitants, 1860-1894’ Unpublished PhD Thesis, University of Adelaide, 1965.³⁰ From that information I consider it reasonable to infer that European settlement in the application area occurred in the mid to late 19th century.

[84] The factual basis describes how the parents and grandparents of the current claim group grew up walking around the application area, camping and hunting.³¹ The claimants describe how

²⁴ *Gudjala* 2007 [52].

²⁵ *Ibid* [52].

²⁶ *Martin* [26]; *Corunna* [39], [45].

²⁷ Schedule F [19].

²⁸ *Ibid* [19].

²⁹ *Ibid* [20].

³⁰ *Ibid* [19].

³¹ Affidavit of [name removed], deposited on 23 October 2020 (**Claimant 1 Affidavit**) [10]; Affidavit of [name removed], deposited on 23 February 2017 (**Claimant 2 affidavit**) [10]-[11].

their predecessors worked on pastoral stations in and around the application area and would access the application area in order to hunt, collect natural resources and look after sacred sites.³² Specific reference is made to predecessors living at Atnweale, also known as Old Huckitta Station, about a kilometre to the north of the application area and Mount Riddock Pastoral Station, to the immediate south west of the application area.³³ I understand that Mount Riddock Pastoral Station once covered the application area, before it became Huckitta Station.³⁴ One claimant describes his grandfather building tin sheds at Anelye, about a kilometre south of the application area, and from there going hunting and camping in the application area.³⁵ The affidavits describe the locations of gravesites where ancestors have been buried on the application area.³⁶

[85] The affidavit of [name removed], deposed on 25 September 2020 (**Claimant 5 Affidavit**) states that he was born on Lucy Creek Station in the mid-1950s whilst his father was working there.³⁷ He states he has rights and interests in the application area through his mother and his mother's father, John Crow Peltharre.³⁸ I understand that John Crow Peltharre is the son of apical ancestor Marnte Angele Penangke.³⁹ Claimant 5 recalls visiting his mother's country on the application area as a child and staying at a sacred site called Warrtharre about a kilometer from Huckitta Station.⁴⁰ His family would stay there for a couple of months and his mother would teach him about his country.⁴¹ He now lives at Ilperle outstation, which I understand to be about 20 kilometres to the east of the application area.⁴² He states that he returns to the application area most weekends, taking his family and teaching them about country, where to get bush tucker and 'about sacred sites, the places they're not allowed to go'.⁴³ Sometimes, maybe once a year, he goes to check up on sacred sites and makes sure they have not been damaged.⁴⁴

[86] The affidavit of Claimant 4 provides that she has rights and interests in the application area through her mother, who was born at Atnweale about a kilometre north of the application area.⁴⁵ I understand that Claimant 4's mother's father's father is apical ancestor Inkaltereke.⁴⁶ Although Claimant 4 was born at Hatches Creek, outside the application area, her mother's family and the old people taught her stories for country on the application area because they recognised it was her country through her mother.⁴⁷ After marrying she lived at Mount Riddock and then at Jervois Station to the east and would frequently return to the application

³² Claimant 1 affidavit [10]; Claimant 2 affidavit [10]-[11]; Affidavit of [name removed], deposed on 22 February 2017 (**Claimant 3 affidavit**) [9]-[10].

³³ Affidavit of [name removed], deposed on 22 February 2017 (**Claimant 4 affidavit**) [9].

³⁴ Claimant 4 affidavit [11]; Claimant 3 affidavit [9].

³⁵ Claimant 3 affidavit [12].

³⁶ Claimant 2 affidavit [32].

³⁷ Claimant 5 Affidavit [12].

³⁸ Ibid [9].

³⁹ Schedule A [7].

⁴⁰ Ibid [13].

⁴¹ Ibid [14].

⁴² Ibid [21].

⁴³ Ibid [21]-[22].

⁴⁴ Ibid [25].

⁴⁵ Claimant 4 affidavit [9].

⁴⁶ Ibid [19], Schedule A [7].

⁴⁷ Ibid [12].

area to collect bush foods.⁴⁸ She continues to take her grand-daughters out onto country teaching them about country, hunting, collecting bush food and using the natural resources of the area, such as water and iron wood.⁴⁹ When Aboriginal rangers go out on country she goes with them to teach them about country and make sure they don't go to the wrong places, because there are lots of sacred sites on Huckitta pastoral station.⁵⁰

- [87] The affidavit of Claimant 3 states that he was born in the early 1950s at Mount Riddock and has rights and interests in the application area through his father and his father's father, apical ancestor Marnte Angele Penangke.⁵¹ Growing up he was taught about country by the old people who lived there, and would go hunting with them on the application area.⁵² He recalls walking all over the application area, from Mount Riddock in the south-west to Atnweale in the north.⁵³ When he began working as a stockman he would muster cattle through the application area, and return to spend his holidays and weekends there.⁵⁴ He now lives a short distance away and continues to visit in order to hunt and camp.⁵⁵ He states that after going through young men's business his father took him around his country, including the application area, showing him the sacred sites and teaching him the stories and songs for those places.⁵⁶ He now takes young men out around country after they have been through the Law, checking up on sacred sites and teaching the Law and how the sites should be protected.⁵⁷
- [88] The affidavit of [name removed], deposed on 23 February 2017 (**Claimant 6 affidavit**) states that he has rights and interests in the application area through his father and his father's father, Dick Penangke.⁵⁸ He recalls coming to the application area as a child and being shown his traditional country by the old people.⁵⁹ He was taught where to get water from the Marshall River in the northern portion of the application area and collected ochre at the Elchera plains.⁶⁰ Throughout his life he has continued to visit the application area to hunt, camp, gather the natural resources of the application area and look after sacred sites.⁶¹ He now takes younger generations, including his children, out on the application area, teaching them the stories and showing them the sacred sites associated with their country.⁶² He discusses Dreamings that run through his country and his responsibilities to them as well as sacred sites and objects on the application area.⁶³

⁴⁸ Ibid [11], [13].

⁴⁹ Ibid [12], [14-17].

⁵⁰ Ibid [19].

⁵¹ Claimant 3 affidavit [8], [13]; Schedule A [7].

⁵² Ibid [13]-[14].

⁵³ Ibid [9], [13].

⁵⁴ Ibid [13].

⁵⁵ Ibid [16]-[17].

⁵⁶ Ibid [18]-[19].

⁵⁷ Ibid [19]-[21].

⁵⁸ Claimant 6 affidavit [8]; Schedule A [7].

⁵⁹ Ibid [14].

⁶⁰ Ibid [14].

⁶¹ Ibid [15]-[19].

⁶² Ibid [16]-[17], [20]-[22].

⁶³ Ibid [24]-[30].

[89] The affidavit of Claimant 1 states that he has rights and interests in the application area through his father and his father's father, Bob Blue.⁶⁴ I understand that Bob Blue is the apical ancestor also identified as Blue Bob Ahamareke Penangke.⁶⁵ He was born in Lucy Creek to the north east of the application area in the late 1950s and grew up on his father's and his father's father's country.⁶⁶ He recalls learning about his country from his father and grandfather, walking around country, camping, making windbreaks and learning how to hunt and gather bush food and natural resources.⁶⁷ He discusses walking around the application area with Bob Blue being shown the old camps and grindstones and taught to gather bush food and to hunt using dogs.⁶⁸ From the age of 15 Claimant 1 worked at Huckitta Station in the application area for several years before moving to other stations.⁶⁹ He drove cattle across the application area and regularly returned to hunt, camp, get water and check on sites.⁷⁰ The affidavit provides he continues to return to the application area to go hunting, camping, to check on important sites and to show his children their country.⁷¹

[90] The affidavit of Claimant 2 provides that he has native title rights and interests in the application area through his father and his father's father, apical ancestor Marnte Angele Penangke.⁷² Claimant 2 states that Marnte Angele Penangke grew up living on and walking around the application area.⁷³ His son, Claimant 2's father, also grew up walking around the application area and learned about it from his father.⁷⁴ Throughout his life Claimant 2's father would return to the application area to hunt and collect natural resources such as ochre and wood.⁷⁵ As a child Claimant 2 recalls visiting a camp called Red Tank, located near the center of the application area where Huckitta Homestead is now located. From here he would go out hunting, gathering bush foods and bush meats.⁷⁶ He was taught by his father how to catch bush tucker as well as the business side of Warrtharre country.⁷⁷ Claimant 2 states that he went through Young Man's Ceremony at a site in the south-western portion of the application area near Eaglebeak, after which he spent a year travelling around, learning the Law and stories for Huckitta.⁷⁸ Throughout his life he has worked at a number of pastoral stations, both in and around the application area and regularly returned to his country to hunt, camp and check up on sacred sites, often bringing his family with him.⁷⁹ He now works as head stockman on Huckitta Station and lives in the application area with his family.⁸⁰

⁶⁴ Claimant 1 affidavit [8].

⁶⁵ Schedule A [7].

⁶⁶ Ibid [11].

⁶⁷ Ibid [9], [11].

⁶⁸ Ibid [9], [11].

⁶⁹ Ibid [12].

⁷⁰ Ibid [12].

⁷¹ Ibid [14].

⁷² Claimant 2 Affidavit [8]-[10]; Schedule A [7].

⁷³ Ibid [10].

⁷⁴ Ibid [11].

⁷⁵ Ibid [11].

⁷⁶ Ibid [12].

⁷⁷ Ibid [11].

⁷⁸ Ibid [26].

⁷⁹ Ibid [14]-[17].

⁸⁰ Ibid [13], [19].

Is the factual basis sufficient to support the assertion of s 190B(5)(a)?

- [91] The material before me describes locations which cover and surround the application area. There are references to pastoral stations which are established over and surrounding the application area and the associations that claim group members, and their predecessors, have and had with these stations. The map provided at Schedule C identifies the relevant pastoral stations in the vicinity of the application area, which I have relied on in assessing the claim group's association with the application area. I consider whether the information provided is sufficient to meet the requirements of s 190B(5)(a) below.

Is the factual basis sufficient to support an association between the claim group at sovereignty and since that time in the application area?

- [92] In my view, the factual basis is sufficient to support the assertion that the predecessors of the claim group were associated with the application area at the time sovereignty was asserted. Senior members of the claim group discuss their predecessors, including the apical ancestors, association with the application area. From the dates of birth which I can see in the information before me I consider it reasonable to infer that some of these predecessors would have been born in the period around the 1890s to 1900s. Noting the date at which European settlement in the region occurred, I consider it a reasonable inference that the apical ancestors would have been associated with the application area at around the time of settlement, or were born to the generation who were. I infer that these ancestors would have had a similar relationship with the application area as did earlier generations of the claim group's predecessors who were alive at the time of sovereignty. In making such retrospective inferences I note the guidance provided by the Court in *Harrington Smith No. 9*.⁸¹

- [93] The factual basis describes the ongoing association of the predecessors of the current claim group, living and working on pastoral stations which covered and surrounded the application area. It provides information on how the predecessors would access the application area in order to camp, hunt, gather natural resources and pass on traditional knowledge. The claimants recall their parents and grandparents living and working on the application area. The factual basis notes the ancestors of the claim group are buried on the application area. I therefore consider that the factual basis is sufficient to support the assertion of a continuing association with the application area from the time of sovereignty.

Is the factual basis sufficient to support an association between the claim group and the area currently?

- [94] In my view the information is sufficient to support the assertion that the claim group currently has an association with the application area. Claim group members were born and worked in and around the application area. Some claimants now live on the application area whilst others maintain a connection through regular visits, often accompanied by their children and grandchildren. While visiting the application area they check on sacred sites, hunt and gather natural resources. The material discusses how the claimants are connected to the application area, and to their particular estates within the application area, through their descent from

⁸¹ *Harrington Smith No. 9* [294]-[296].

one or more ancestors. It also describes their spiritual connection to, and cultural responsibilities for, sacred sites in the application area. The claimants maintain knowledge taught to them by their predecessors about the application area, including knowledge concerning relevant Dreamings, sacred sites, and ritual practices related to those Dreamings and sites. Some claimants undertook Young Men's Ceremonies in the application area and now take other young men to the application area in order to teach them the Law. I consider that the asserted facts are sufficient to support the assertion of an ongoing physical and spiritual association with the application area.

Is the factual basis sufficient to support an association between the claim group and the whole area?

[95] I understand that my task at s 190B(5)(a) is limited to assessing whether the factual basis is sufficient to support the assertion that the claim group have, and their predecessors had, an association with the application area as a whole.⁸² It is not a requirement that every member of the claim group have an association with the entire application area at all times.

[96] In my view, there is sufficient information to support an association by the claim group with the whole of the application area. The factual basis contains numerous references to locations within and surrounding the application area. For example there are references to sacred sites and ceremonial grounds across the application area. Claimants recall walking and driving across the application area and continue to travel to sacred sites to check up on them. The material references underlying pastoral stations such as Mount Riddock, which once covered the application area, and Huckitta Station which presently encompasses the application area.

Conclusion – s 190B(5)(a)

[97] In my view, the information before me is sufficient to support the assertion that the claim group presently has, and its predecessors had, a physical association with the whole of the application area. Considering the information about the claim group's spiritual beliefs and responsibilities to their country I am also satisfied that there is a sufficient factual basis to support the assertion of an ongoing spiritual association with the application area. As such the requirements of s 190B(5)(a) are met.

What is required to provide a factual basis for s 190B(5)(b)?

[98] This condition requires that the factual basis is sufficient to support the assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the claim group that give rise to the claim to native title rights and interests. The definition of 'native title rights and interests' in s 223(1)(a) provides that those rights and interests must be 'possessed under the traditional laws acknowledged and the traditional customs observed' by the native title holders.

[99] In *Yorta Yorta* the High Court held that a law or custom is 'traditional' where:

⁸² *Corunna* [31].

- the law or custom has been passed from generation to generation of a society, usually by word of mouth and common practice;⁸³
- the origins of the content of the law or custom concerned are to be found in the normative rules of the Aboriginal or Torres Strait Islander societies that existed before the assertion of sovereignty by the British Crown. It is only those normative rules that are the traditional laws and customs;⁸⁴ and
- the acknowledgement and observance of the laws and customs have continued without substantial interruption since sovereignty, being transmitted from generation to generation of the relevant society.⁸⁵

[100] In *Gudjala 2009*, Dowsett J considered some of the factors that may guide the Registrar, or her delegate, in assessing the factual basis, including:

- that the factual basis identifies, and demonstrates the existence of, the relevant pre-sovereignty society and those persons who acknowledged and observed the laws and customs of the pre-sovereignty society;⁸⁶
- that where descent from named apical ancestors is the basis of membership to the claim group, the factual basis demonstrates some relationship between those ancestral persons and the relevant pre-sovereignty society;⁸⁷ and
- that the factual basis contain some explanation of how the current rights and interests can be ‘traditional’. It is not sufficient to assert that the relevant laws and customs are traditional because they are derived from the laws and customs of a pre-sovereignty society from which the claim group descends, without any factual details concerning the pre-sovereignty society and its laws and customs.⁸⁸

[101] In *Warrie*, the Full Federal Court held that:

[A] claim group must establish that the traditional law and custom which gives rise to their rights and interests in that land and waters stems from rules that have a normative character, there is no further gloss or overarching requirement, and no further rigidity. The Native Title Act in terms does not require establishment of some overarching “society” that can only be described in one way and with which members of a claim group are forever fixed in relation to any other land and waters over which they assert native title.⁸⁹

[102] I understand that my task in assessing the sufficiency of the factual basis at s 190B(5)(b) requires the identification of:

⁸³ *Yorta Yorta* [46].

⁸⁴ *Ibid* [46].

⁸⁵ *Ibid* [87].

⁸⁶ *Gudjala 2009* [40].

⁸⁷ *Ibid* [40].

⁸⁸ *Ibid* [29].

⁸⁹ *Warrie* [107].

- (a) a link between the relevant pre-sovereignty society, the apical ancestors and the current claim group; and
- (b) the existence and continued observance of normative rules by successive generations of the claim group, such that these normative rules could be considered 'traditional laws and customs'.

What information has been provided in support of the assertion at s 190B(5)(b)?

Society

[103] The factual basis provides that the claim group forms part of a regional society which includes other Eastern Arrernte landholding groups and other Arrernte people with whom they share an association, for example through intermarriage, ceremonial connections and mutual estate recognition.⁹⁰ Members of this society acknowledge and observe a common body of traditional laws and customs.⁹¹ The application area is identified with the Eastern Arrernte language, however I note that under the traditional laws and customs of the claim group, rights in land are not acquired through membership of a language group.⁹²

Traditional laws and customs

Altyerre

[104] A communally acknowledged belief amongst the relevant regional society, to which the claim group belongs, is that of the *Altyerre*, or Dreaming. *Altyerre* is held to be a creative era long ago, when spiritual ancestors travelled the land establishing the physical and cultural landscape, the structures of social organisation and the conditions for their continuation.⁹³ The claimants system of traditional laws and customs is founded in the *Altyerre* and held to be passed down, unchanged, by the claim group's ancestors.

[105] The *Altyerre* covers a broad range of attributes including cosmogony, accounts of the spiritual ancestors, religious laws and practices as well as explicit and implicit events and directives, both 'sacred' and 'everyday'.⁹⁴ Sites associated with a predominant Dreaming form 'estates' or 'countries'.⁹⁵ The four estates associated with the application area are affiliated with the Amapete, Apwetyerlaneme, Atnweale and Warrtharre landholding groups, which together comprise the claim group.⁹⁶ It is the *Altyerre* which provides an ongoing foundation for the current exercise of rights and interests in relation to land or waters and associated spiritual beliefs.⁹⁷

⁹⁰ Schedule F [3].

⁹¹ Ibid [3].

⁹² Schedule F [19]; Schedule A [4].

⁹³ Schedule F [5].

⁹⁴ Ibid [6].

⁹⁵ Ibid [7].

⁹⁶ Ibid [7].

⁹⁷ Ibid [6].

Kinship system

[106] The claim group acknowledges and observes a kinship system which incorporates actual and classificatory kin relations between people along with metaphoric relationships between people, their country and the *Altyerre*.⁹⁸ The system involves recognition of common spiritual and human ancestors, classification of relatives based on lines of descent, sanctions relating to particular relationships, recognition of connection with, and responsibility for, country associated with landholding groups and affiliation with Dreaming beings associated with landholding groups.⁹⁹

[107] The kinship system is complemented by a further level of social classification based on sections (four divisions), subsections (eight divisions) and moieties (two divisions). Dreamings are associated with particular paired subsections called patricouples. In turn each patricouple belongs to a patrimoiety.¹⁰⁰ Members of the claim group have personal names which reflect their association with particular sections and subsections.¹⁰¹

Land Tenure System

[108] Under the claim group's system of traditional laws and customs, rights and interests in an estate or country are either inherited through descent or conferred on the basis of non-descent based connection.¹⁰² Descent connection is traced through a person's four grandparents' patrilineal connections to a particular estate. Persons with a father's father connection are *apmerek-artweye*, the 'owners' or 'bosses' of the Dreaming and ritual associated with that country.¹⁰³ Persons with a mother's father or father's mother connection to an estate are *kwertengerle*, the 'managers' or 'workers' of country.¹⁰⁴ Persons with a mother's mother connection may be either *apmerek-artweye* or *kwertengerle*.¹⁰⁵

[109] *Apmerek-artweye* and *kwertengerle* share joint responsibility for looking after country, with different but complementary roles in relation to ceremony and land management.¹⁰⁶ This arrangement requires a diffusion of knowledge amongst the members of the claim group, subject to restrictions imposed by age, gender, residence and seniority.¹⁰⁷ Claimants continue to observe this land tenure system and it is their descent from ancestors associated with the application area that gives rise to their claim for native title rights and interests. Claimant 1 speaks, for example, of being *apmerek-artweye* for one of the estates on the application area through his father and his father's father.¹⁰⁸ He speaks of his responsibilities, such as protecting and preserving sacred sites, including *mwerke mwerke*, dangerous sites.¹⁰⁹ As *apmerek-artweye* he can take visitors out on country and notes that if permission is not asked,

⁹⁸ Ibid [8].

⁹⁹ Ibid [9].

¹⁰⁰ Ibid [11].

¹⁰¹ Ibid [10].

¹⁰² Ibid [12].

¹⁰³ Ibid [13].

¹⁰⁴ Ibid [13].

¹⁰⁵ Ibid [13].

¹⁰⁶ Ibid [14].

¹⁰⁷ Ibid [14].

¹⁰⁸ Claimant 1 affidavit [8].

¹⁰⁹ Ibid [26].

or appropriate protocols not followed, people may get sick.¹¹⁰ He also notes that he is *kwertengerle* for other estates covered by the application area, and knows names and songs for those areas.¹¹¹ He explains that these rules are founded in the *Altyerre*.¹¹² Claimant 2 states that:

I have to look after that area which is why I'm *kwertengerle* for that country. I have responsibility to do that now... That is what being a *kwertengerle* is for those neighbouring areas. We help out.¹¹³

[110] Other important features of the land tenure system involve fulfillment of spiritual obligations to land and waters, observations of restrictions based on age, gender, ritual experience and status, the observance of restrictions imposed by the presence of Dreamings and sites of significance, and the recognition of traditional processes of succession.¹¹⁴

Transmission, acknowledgement and observance

[111] Knowledge of traditional laws and customs is passed from generation to generation through traditional modes of oral transmission, teaching and common practice. Knowledge of descent connections is transmitted orally. This continues amongst claim group members, who acknowledge and observe the traditional laws and customs passed to them by their ancestors.¹¹⁵

[112] Claim group members maintain their spiritual and ancestral connections with the application area on the basis of the communally acknowledged belief that spiritual ancestors created the land and ongoing human connections to it. Continued observance of the customary secular and spiritual practices by members of the claim group reaffirms connection to the land and waters of the application area.¹¹⁶ These practices often relate to Dreaming tracks and associated sites of significance.¹¹⁷ The claim group continues, for example, to maintain knowledge concerning *mwerke mwerke*, where sacred objects are stored, gender specific sites where only men can go and practices such as singing out to ancestors to let them know they are entering the country and avoid harm.¹¹⁸ The claimants discuss their responsibilities in protecting sacred sites and ensuring they are not disturbed as well as the sacred stories related to these sites.¹¹⁹ This knowledge is passed down to younger generations.¹²⁰ Claimants learn about country from their parents and elder as well as undertake Young Men's Ceremonies where they are taken out on country, shown sacred sites and learn the Law, songs and dances for their country.¹²¹ Senior members of the claim group recall learning about their

¹¹⁰ Ibid [27], [33]-[37].

¹¹¹ Ibid a [8], [31].

¹¹² Ibid [33], [34].

¹¹³ Claimant 2 affidavit [14].

¹¹⁴ Schedule F [15].

¹¹⁵ Ibid [17]-[18].

¹¹⁶ Ibid [19].

¹¹⁷ Ibid [19].

¹¹⁸ Claimant 1 affidavit [23], [26], [34]-[35]; Claimant 5 affidavit [16].

¹¹⁹ Claimant 2 affidavit [31].

¹²⁰ Ibid [27], [31].

¹²¹ Claimant 1 affidavit [19]; Claimant 2 affidavit [26]-[27].

country from the apical ancestors.¹²² Women have their own dances and songs which they do separately from men at Law time.¹²³

[113] Claimants continue to access the application area in order to camp, hunt, gather bush medicine, and check up on sacred sites in accordance with the traditional laws and customs of their predecessors. For example, when going on to the application area in order to hunt they are careful not to take anything too close to a sacred site.¹²⁴ When taking resources claimants continue to use practices and customs taught to them by the old people such as to avoid eating particular animals associated with their Dreaming, practices related to the cooking and preparation of certain meats which come from the *Altyerre*, and the access and use of soakages in accordance with traditional methods of conservation and preservation.¹²⁵ When members of the claim group are buried it is important for the *Altyerre* that they are interred on country so they can rest and claimants describe the burial of parents and other family members in the application area.¹²⁶

Is the factual basis sufficient to support the assertion of s 190B(5)(b)?

Does the factual basis address the identity of a pre-sovereignty society for the area?

[114] In my view the factual basis is sufficient to support the assertion that there existed a pre-sovereignty society for the area. The factual basis identifies a regional pre-sovereignty society and addresses the broader features of this society as well as how these features applied within the application area. I note the comments of Lindgren J in *Harrington Smith No. 5* that it is ‘conceivable that the traditional laws and customs under which the rights and interests claimed are held might, in whole or in part, be also traditional laws and customs of a wider population, without that wider population being a part of the claim group.’¹²⁷ In this case I am satisfied that the factual basis shows that the laws and customs of the claim group which are observed across a broader society give rise to rights and interests at the local level, and that in relation to the application area these rights are held by the claim group.

Does the factual basis establish a link between the pre-sovereignty society, the apical ancestors and the current claim group?

[115] The factual basis provides information concerning how the claim group’s predecessors fit within the social organisation of the relevant pre-sovereignty society in the application area. The predecessors who were alive at settlement, or born to those alive at settlement, had forebears who were members of the pre-sovereignty society and, in my view, it is reasonable to infer that they existed within that society in a similar way as their descendants. The material also describes how the current claim group is linked to the apical ancestors and how, as their descendants, they have inherited native title rights and interests in their country. As detailed in my reasons above at s 190B(3) claim group members can also hold non-descent based connections to the application area on the basis of their acceptance by senior descent

¹²² Claimant 1 affidavit [9].

¹²³ Claimant 6 affidavit [25].

¹²⁴ Claimant 5 affidavit [16].

¹²⁵ Claimant 6 affidavit [12], [16-17]; Claimant 4 affidavit [12], [17]; Claimant 5 affidavit [24]; Claimant 2 affidavit [20].

¹²⁶ *Ibid* [8], [32].

¹²⁷ *Harrington-Smith No. 5* [53].

based members of the landholding groups. I therefore consider that the factual basis is sufficient to support the assertion of a link between the current claim group, the apical ancestors and the society which existed in the application area prior to the assertion of British sovereignty.

Does the factual basis support the existence of traditional laws and customs?

[116] I consider that the information before me contains examples of how the claim group continues to observe the laws and customs observed by the relevant society prior to sovereignty. These include knowledge of the *Altyerre* in the application area and cultural obligations relating to the protection and preservation of sacred sites, as well as the sacred stories and rituals associated with these sites. They describe the potential spiritual consequences that will arise if the proper protocols in relation to sacred sites are not observed. Claimants discuss being taught laws and customs by their predecessors, for example relating to the avoidance of particular foods related to a person's Dreaming, or the avoidance of particular sites based on a person's ritual status and how they pass these laws and customs down to younger generations. The factual basis shows that these laws and customs, for example relating to the preparation of particular foods or burials on country, gain normative force through being rooted in the *Altyerre*, the communal belief system which underpins the relevant society and provides a foundation for traditional laws and customs. I also consider that claimants continue to observe the *apmerek-artweye/kwertengerle* land tenure system which the factual basis material identifies as a feature of the relevant pre-sovereignty society. Claimants discuss their responsibilities to look after country and particular sacred sites on the basis of their particular *apmerek-artweye/kwertengerle* connections to an estate, as well as how their rights and responsibilities have been inherited through their patrilineal connections to country.

[117] In my view, the material supports the assertion that there are 'traditional laws and customs' in the *Yorta Yorta* sense observed by the claim group. The factual basis provides examples of the current members of the claim group learning laws and customs from the predecessors, including the apical ancestors, through teaching, oral transmission and common practice. I consider it is reasonable to infer that previous generations of the claim group learned the laws and customs in much the same way as they transmitted them to the current claim group supporting an assertion that the laws are traditional.

Conclusion – s 190B(5)(b)

[118] I am satisfied that the factual basis supports a link between the pre-sovereignty society in the application area, the apical ancestors and the current members of the claim group. I am also satisfied that the factual basis supports the assertion that there exist traditional laws and customs observed by the claim group. As such s 190B(5)(b) is met.

What is required to meet the assertion at s 190B(5)(c)?

[119] In order to meet the requirements of s 190B(5)(c), the factual basis must support an assertion that the claim group have continued to hold the native title in accordance with those traditional laws and customs. I understand that s 190B(5)(c) requires me to be satisfied that there is a sufficient factual basis to support the assertion at s 190B(5)(b) that there exists

traditional laws and customs which give rise to the claimed native title.¹²⁸ I also understand there must be a continuity in the observance of traditional laws and customs going back to sovereignty or at least European settlement.¹²⁹

Is the factual basis sufficient to support the assertion of s 190B(5)(c)?

[120] As discussed above in relation to ss 190B(5)(a)-(b) the material before me is sufficient to support the assertion of an ongoing association with the application area, identifies a relevant pre-sovereignty society and supports the assertion of traditional laws and customs. The material shows the ongoing importance of *Altyerre*, and associated cultural obligations, to the claim group. The factual basis provides examples of how knowledge relating to the application area has been passed down to current members of the claim group by their predecessors. I also consider that the information relating to the continuing observance of the kinship and *apmerek-artweye/kwertengerle* land tenure systems is relevant to my consideration of s 190B(5)(c).

[121] The factual basis provides that claim group members hold knowledge about how previous generations observed their traditional laws and customs and how this knowledge has been passed down to the claim group. The information before me further shows that these practices continue to be observed by the current claim group and are passed down to younger generations. For example, Claimant 2 discusses how he was taught the sacred Dreaming stories about the application area by senior men, including his father, and now passes that knowledge on to younger members of the claim group, passing on the sacred stories and teaching them how to look after the sacred sites.¹³⁰ He also takes the younger generations and shows them how to get bush tucker, the way he was taught to get it by the old people.¹³¹ Claimant 6 states he makes sure to always leave seeds behind when collecting bush medicine and tobacco, and teaches his children and grandchildren to do the same, as the old people taught him.¹³² When he takes his family camping in the application area he shows them how to find soakage water, how to dig it up the 'proper way', how to look after soakages and cover them when they leave and tells them stories from the Dreaming, as was taught to him by his predecessors.¹³³ In my view, these example and others in the factual basis are sufficient to support the assertion that the laws and customs of the claim group have been observed in the application area, substantially interrupted, since the time of settlement.

Conclusion – s 190B(5)(c)

[122] I therefore consider that the factual basis is sufficient to support an assertion of continuity of observance of traditional law and practice and that s 190B(5)(c) is met.

¹²⁸ *Gudjala* 2009 [29].

¹²⁹ *Gudjala* 2007 [82].

¹³⁰ Claimant 2 affidavit [26]-[27], [31].

¹³¹ *Ibid* [18]-[20].

¹³² Claimant 6 affidavit [12].

¹³³ *Ibid* [16]-[17].

Conclusion

[123] I am satisfied that the factual basis on which it is asserted that the claimed native title rights and interests exist is sufficient to support the assertion. In particular, there is a sufficient factual basis for the three assertions of ss 190B(5)(a)–(c) and as such s 190B(5) is met.

Prima facie case – s 190B(6): condition met

[124] In order to meet the requirement of s 190B(6), the Registrar must consider that, prima facie, at least some of the native title rights and interests claimed can be established. A ‘native title right or interest’ is defined at s 223(1), as one held under the traditional laws acknowledged and traditional customs observed by the native title claim group.

[125] In relation to the requirements of s 190B(6), I understand that my task involves some weighing of the material provided in support of the application.¹³⁴ I note the guidance of the Court that the words ‘prima facie’ ought to be taken to mean that if ‘on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis’.¹³⁵

Native title rights and interests prima facie established

1. To the extent that any extinguishment of native title rights and interests must be disregarded the native title rights and interests that are claimed in relation to the application area are the right to possession, occupation, use and enjoyment to the exclusion of all others.

[126] In relation to the right to possession, occupation, use and enjoyment of the application area to the exclusion of all others, I note the comments in *Ward HC* that:

[A] core concept of traditional law and custom [is] the right to be asked permission and to ‘speak for country’. It is the rights under traditional law and custom to be asked permission to ‘speak for country’ that are expressed in common law terms as a right to possess, occupy, use and enjoy land to the exclusion of all others.¹³⁶

[127] In *Griffiths FC*, the Full Court held the question does not depend on formal classification of rights. Rather consideration is required of what the factual basis discloses about the content of the claim group’s rights under traditional law and custom.¹³⁷ The Full Court noted that:

If control of access to country flows from spiritual necessity because of the harm that “the country” will inflict upon unauthorised entry, that control can nevertheless support a characterisation of the native title rights and interests as exclusive. The relationship to country is essentially a “spiritual affair”.¹³⁸

[128] The s 62 affidavits which accompany the application contain a number of references to the right of *apmerek-artweye* and *kwertengerle* to ‘speak for country’. Permission is required to access the land, from those who hold the permission. For example, Claimant 3 provides:

¹³⁴ *Doepel* [127].

¹³⁵ *Ibid* [135].

¹³⁶ *Ward HC* [88].

¹³⁷ *Griffiths FC* [71].

¹³⁸ *Ibid* [127].

I have the right to speak for Warrtharre country because I am *apmerek-artweye*. I am one of the main men for my country so I am the one who can speak for my country and tell those stories. People need to ask me or my brothers about my country.¹³⁹

[129] Claimant 6 states:

You need to ask permission to go on someone's else's country, and they would need to ask your permission to go on your country. That comes from the Dreaming. We need to ask permission before we go on their country, this all comes from the *Altyerre* and looking after those sites. If people go onto my country without asking proper permission then they're breaking the rules of the Dreaming. Something might happen to them.

In our Law if you don't listen and then go to the wrong place you could get sick, there could be trouble. People will start talking about it too. People will say 'why is that mob walking on our country, they need to ask permission first, need to ask people if its right to go this way, that way. This is all rules under the *Altyerre* and these rules for looking after sites comes from that too. The Plenty River is a like a bit of a traditional boundary to show where Warrtharre stops and Apwetyerlaneme country starts.

When we go to our country, we have to sing out to the ancestors and let them know we're visiting. We still sing out. We are the owner for country we come to see country side. Let the ancestors know otherwise you might get sick. Or they think you are stealing something. Or if you pick up a pick up rocks without telling your ancestors you get sick. You need to tell the ancestors.

I can bring visitors but need to let the ancestors know. They are buried out there, those old people are buried out there and their spirits are still there resting and looking after that place. I feel sick when I go to someone else's country if I didn't go with the owners. You have to follow the right people.¹⁴⁰

[130] I consider that the factual basis shows how the traditional laws and customs of the claim group give rise to an exclusive right of possession, occupation, use and enjoyment to the exclusion of all others. The factual basis shows that pursuant to those laws certain members of the claim group have a right to govern access to their country. Harmful spiritual consequences can befall those who enter in transgression of those laws. Permission must be sought from the appropriate people in order to access the country safely, in accordance with the comments of the Full Court in *Griffiths FC*, which supports a characterisation of the native title right as exclusive. Claimants gain the right to speak for country, as discussed in *Ward HC*, as a result of their *apmerek-artweye* or *kwertengerle* connection to country, discussed in greater detail above in relation to s 190B(5). Considering the guidance in the case law, in my view the information before me prima facie establishes a right to possession, occupation, use and enjoyment to the exclusion of all others.

2. In relation to all areas where paragraph 1 does not apply, the native title rights and interests claimed are the rights to:

a) access, remain on and use the land and waters for any purpose;

b) access, take, and/or use the resources of the land and waters for any purpose; and

c) maintain and protect places, areas and things of significance under traditional laws and customs,

¹³⁹ Claimant 3 affidavit [22].

¹⁴⁰ Claimant 6 affidavit [33]-[36].

and, to the extent only that the following rights are not encompassed by the rights described in (a), (b) or (c) the rights to:

d) live on the land;

e) erect shelters and other structures;

f) light fires;

[131] The factual basis provides that the claim group accesses the application area in order to camp, hunt, gather bush food and medicine, and maintain and protect significant sites.¹⁴¹ The factual basis provides examples of claim group members, and their predecessors, building windbreaks and humpies whilst staying on country.¹⁴² There are also examples of the claim group making fires to cook and for the production of ashes to use with chewing tobacco.¹⁴³ Water is collected from soaks and rockholes, ochre is collected for ritual purposes and wood is collected for the lighting of fires and the making of spears and boomerangs.¹⁴⁴ The claimants discuss trading resources gathered from the application area with surrounding communities.¹⁴⁵

[132] I am satisfied that these rights are prima facie established under the traditional laws and customs of the claim group.

g) the right to conduct and participate in the following activities on the land and waters:

(i) cultural activities;

(ii) ceremonies;

(iii) meetings;

(iv) cultural practices relating to birth and death including burial rites;

(v) teaching the physical and spiritual attributes of sites and places on the land and waters;

[133] The factual basis shows that claim group members go through young men's business, learn the Law and hold corroboree, during which young men are initiated, in the application area.¹⁴⁶ They are taught about country, shown the sacred sites and learn the songs and stories relating to their country.¹⁴⁷ Claimants discuss collecting ochre in the application area for sorry business as well as the burial of ancestors in the application area.¹⁴⁸ Women have their own dances and songs which they perform separately at Law time.¹⁴⁹

[134] In my view, this right is prima facie established pursuant to traditional laws and customs.

¹⁴¹ Claimant 1 affidavit [11], [14].

¹⁴² Claimant 3 affidavit [14].

¹⁴³ Claimant 4 affidavit [16]; Claimant 3 affidavit [16]-[17].

¹⁴⁴ Claimant 2 affidavit [19], [25]; Claimant 6 affidavit [14], [17].

¹⁴⁵ Claimant 2 Affidavit [23]-[24].

¹⁴⁶ Claimant 2 affidavit [25]-[26]; Claimant 6 affidavit [21]-[23].

¹⁴⁷ Claimant 2 affidavit [25]-[26].

¹⁴⁸ Claimant 2 affidavit [25], [31]; Claimant 3 affidavit [27]; Claimant 4 affidavit [23].

¹⁴⁹ Claimant 6 affidavit [25].

h) make decisions about the use and enjoyment of the land and waters by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the native title holders;

[135] As a right asserting control over the use and enjoyment of land this could appear to express a non-exclusive right in the terms of a right of exclusive possession, which would ‘seldom be appropriate’.¹⁵⁰ The Full Court has however previously recognised this as a non-exclusive right where control is only directed to other Aboriginal people governed by the claim group’s traditional laws and customs.¹⁵¹ I consider that this is the case here.

[136] The factual basis discusses sites of avoidance on the application area where access is restricted. For example the Claimant 3 discusses sites restricted on the basis of ritual experience, which only those who have been through the Law may attend, where ceremonies are conducted.¹⁵² There are also examples of gender restricted sites, where only men are allowed, and sites which are avoided because of the objects of ritual significance located there or the ritual stories associated with the site.¹⁵³

[137] In my view, this right is prima facie established pursuant to traditional laws and customs.

i) be accompanied on the land and waters by persons who, though not native title holders, are:

(i) people required by traditional law and custom for the performance of ceremonies or cultural activities on the land and waters;

(ii) people who have rights in relation to the land and waters according to the traditional laws and customs acknowledged by the native title holders; or

(iii) people required by the native title holders to assist in, observe, or record traditional activities on the areas.

[138] The factual basis contains a number of examples of claim group members accompanying people who are not native title holders out onto country. For example, there are references to claim group members accompanying Aboriginal rangers out onto country or taking anthropologists doing research and showing them around the application area.¹⁵⁴ Similarly when people come for ceremony they have to be taken out onto country, they cannot go by themselves.¹⁵⁵

[139] In my view, this right is prima facie established pursuant to traditional laws and customs.

Conclusion

[140] I am satisfied that the application contains sufficient information about all of the rights claimed such that they can be established on a prima facie basis. I am also satisfied that the claimed rights can be considered ‘native title rights and interests’ held under traditional laws and customs per the definition in s 223(1). As discussed above in relation to s 190B(5)(b), I am

¹⁵⁰ *Ward HC* [51].

¹⁵¹ *De Rose FC No 2* [169]–[170].

¹⁵² Claimant 3 affidavit [19].

¹⁵³ Claimant 6 affidavit [26]; Claimant 5 affidavit [16]; Claimant 1 affidavit [23]; Claimant 2 affidavit [31].

¹⁵⁴ Claimant 3 affidavit [25]; Claimant 4 affidavit [19].

¹⁵⁵ Claimant 3 affidavit [24].

satisfied that there is a sufficient factual basis to support the assertion of the existence of traditional laws and customs. Therefore s 190B(6) is met.

Physical connection – s 190B(7): condition met

[141] In order to meet the requirements of s 190B(7), the Registrar must be satisfied that at least one member of the 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 such a connection but for things done by the Crown, a statutory authority of the Crown or any holder of or person acting on behalf of the holder of a lease, other than the creation of an interest in relation to land or waters.

[142] From the use of the word ‘traditional’ I understand that the connection must be in accordance with the laws and customs of the claim group which have their origin in the relevant pre-sovereignty society.¹⁵⁶ I understand that for the purposes of section 190B(7) I must be satisfied of a particular fact or facts, from the material provided, that one or more of the claim group has the necessary traditional physical association with the application area.¹⁵⁷

Is there evidence that at least one member of the claim group has or had a traditional physical connection?

[143] Based on the information before me I am satisfied that at least one member of the claim group currently has or had a traditional physical connection to the application area. The information in the material before me contains examples of claimants living on and visiting the application area, looking after sacred sites, hunting and gathering natural resources, both for food and medicine. I am therefore satisfied that there is currently a physical connection between the members of the claim group and the application area.

[144] I refer to my reasons in relation to s 190B(5), which provide that I am satisfied there is a sufficient factual basis to support the assertion that members of the claim group acknowledge and observe the traditional laws and customs of the relevant pre-sovereignty society. As such it follows that I am satisfied that the current claim group members possess a ‘traditional’ physical connection with the application area, in accordance with traditional laws and customs, as is required by s 190B(7).

Conclusion

[145] I am therefore satisfied that at least one member of the claim group currently has or previously had a traditional physical connection with a part of the application area. As such s 190B(7) is met.

¹⁵⁶ *Gudjala 2007* [89]

¹⁵⁷ *Doepel* [18].

No failure to comply with s 61A – s 190B(8): condition met

[146] In my view the application does not offend the provisions of ss 61A(1)–(3) and therefore the application does not satisfy the condition of s 190B(8):

Requirement	Information addressing requirement	Result
Section 61A(1) No native title determination application if approved determination of native title	The geospatial report states, and my own searches have confirmed, that the application area does not include any area where there has been an approved determination of native title.	Met
Section 61A(2) Claimant application not to be made that covers any previous exclusive possession act areas	Schedule B, paragraph 8 provides that, subject to Schedule L, the application excludes any area in relation to which a previous exclusive possession act has been done. Schedule L provides that s 47, or in the alternative s 47A, applies in relation to NT Portion 2454 held under Perpetual Pastoral Lease No 990 by Huckitta Aboriginal Corporation.	Met
Section 61A(3) Claimant application not to claim exclusive possession in areas covered by previous non-exclusive possession acts	Schedule E provides that Exclusive Possession is claimed only to the extent that any extinguishment must be <u>disregarded</u> . I therefore understand that exclusive possession is not claimed in areas covered by previous non-exclusive possession acts.	Met

No extinguishment etc. of claimed native title – s 190B(9): condition met

[147] In my view the application does not offend any of the provisions of ss 190B(9)(a)–(c) and therefore the application meets the condition of s 190B(9):

Requirement	Information addressing requirement	Result
Section 190B(9)(a) No claim made of ownership of minerals, petroleum or gas that are wholly owned by the Crown	Schedule Q provides that the applicant does not claim ownership of minerals, petroleum or gas wholly owned by the Crown.	Met
Section 190B(9)(b) Exclusive possession is not claimed over all or part of waters in an offshore place	Schedule P states 'Not Applicable'. I have confirmed using the Tribunal's geospatial database that the application area is in an entirely inland area and as such I am satisfied that no claim of exclusive possession is made in regard to any offshore place.	Met
Section 190B(9)(c) Native title rights and/or interests in the application area have otherwise been extinguished	There is nothing in the application that makes me aware that native title rights and interests in the application area have otherwise been extinguished.	Met

End of reasons

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Huckitta
NNTT No.	DC2020/005
Federal Court of Australia No.	NTD18/2020
Date of decision	4 December 2020

Section 186(1): Mandatory information

In accordance with ss 186, 190A(1) of the *Native Title Act 1993* (Cth), the following is to be entered on the Register of Native Title Claims for the above application.

Application filed/lodged with:

Federal Court of Australia

Date application filed/lodged:

23 October 2020

Date application entered on Register:

4 December 2020

Applicant:

As per Schedule

Applicant's address for service:

As per Schedule

Area covered by application:

As per Schedule

Persons claiming to hold native title:

As per Schedule

Registered native title rights and interests:

As per Schedule

Reasons for decision: DC2020/005—Huckitta—NTD18/2020

Decided: 4 December 2020

Bryn Hughes

Delegate of the Native Title Registrar pursuant to ss 190–190D of the Act under an instrument of delegation dated 27 July 2018 and made pursuant to s 99 of the Act.

4 December 2020