National Native Title Tribunal

Registration Decision

Application name	Southern West Yiradyuri/Wiradyuri/Wiradjuri People
Name of applicant	Bernard Higgins, Dorothy Whyman, Will Carter, Heath Lightfoot, Tamika Murphy and Geoffrey Johnson
Federal Court of Australia No.	NSD1851/2025
NNTT No.	NC2025/004
Date of Decision	30 April 2026

Claim accepted for registration

I have decided that the claim in the Southern West Yiradyuri/Wiradyuri/Wiradjuri People 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.

Michael Raine

Delegate of the Native Title Registrar pursuant to ss 190–190D of the Act under an instrument of delegation dated 5 February 2024 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

Anderson on behalf of the Numbahjing Clan within the Bundjalung Nation v Registrar of the National Native Title Tribunal [2012] FCA 1215; (2012) 297 ALR 660 (‘*Anderson*’)

Burragubba on behalf of the Wangan and Jagalingou People v Queensland [2017] FCA 373 (‘*Burragubba’*)

Butchulla People v Queensland [2006] FCA 1063; (2006) 154 FCR 233 (‘*Butchulla*’)

Corunna v Native Title Registrar [2013] FCA 372 (‘*Corunna*’)

Drury v Western Australia [2000] FCA 132; (2000) 97 FCR 169 *(‘Drury’)*

Fesl v Delegate of the Native Title Registrar [2008] FCA 1469; (2008) 173 FCR 150 (‘*Fesl*’)

Griffiths v Northern Territory of Australia [2007] FCAFC 178; (2007) 165 FCR 391 (‘*Griffiths*’)

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; (2009) 182 FCR 63 (‘*Gudjala 2009*’)

Harrington-Smith on behalf of the Wongatha People v Western Australia (No 9) [2007] FCA 31; (2007) 238 ALR 1 (‘*Harrington-Smith*’)

Lawson on behalf of the ‘Pooncarie’ Barkandji (Paakantyi) People v Minister for Land and Water Conservation for the State of New South Wales [2002] FCA 1517 (‘*Lawson*’)

Martin v Native Title Registrar [2001] FCA 16 (‘*Martin*’)

McLennan v State of Queensland [2019] FCA 1969 (‘*McLennan*’)

Members of the Yorta Yorta Aboriginal Community v Victoria [2002] HCA 58; (2002) 214 CLR 422 (‘*Yorta Yorta*’)

Noble v Mundraby, Murgha, Harris and Garling [2005] FCAFC 212 (‘*Noble*’)

Northern Territory of Australia v Alyawarr, Kaytetye, Wurumunga, Wakaya Native Title Claim Group [2005] FCAFC 135; (2005) 145 FCR 442 (‘*Alyawarr*’)

Northern Territory of Australia v Doepel (2003) 133 FCR 112; [2003] FCA 1384 (‘*Doepel*’)

Risk v National Native Title Tribunal [2000] FCA 1589 (‘*Risk*’)

Sampi v Western Australia [2005] FCA 777 (‘*Sampi*’)

State of Western Australia v Strickland [2000] FCA 652; (2000) 99 FCR 33 (*Strickland FC*’)

Strickland v Native Title Registrar [1999] FCA 1530 (‘*Strickland*’)

Ward v Northern Territory [2002] FCA 171 (‘*Ward*’)

Western Australia v Ward [2002] HCA 28; (2002) 213 CLR 1 (‘*Ward HC*’)

Weribone on behalf of the Mandandanji People v Queensland [2013] FCA 255 (‘*Weribone*’)

Western Australia v Native Title Registrar (1999) 95 FCR 93; [1999] FCA 1591 (‘*WA v NTR*’)

Background

[1] This decision concerns an amended native title determination application filed on 23 April 2026 on behalf of the Southern West Yiradyuri/Wiradyuri/Wiradjuri People native title claim group ('claim group' or 'Southern West Yiradyuri People').[2] The application covers land and waters in southern New South Wales, extending from the junction of the Murrumbidgee and Lachlan Rivers near Maude, north-east towards the Naradhan and Barmedman regions, and south to the Murray River near Albury.

[2] The application was originally filed in the Federal Court of Australia ('Court') on 1 October 2025 ('Original Application'), and a copy was provided to the Native Title Registrar ('Registrar') on 9 October 2025 pursuant to s 63 of the Act. The application was amended on 10 November 2025,[3] 23 March 2026,[4] and most recently on 23 April 2026 ('Amended Application').[5] A copy of the Amended Application was given to the Registrar on 23 April 2026 pursuant to s 64(4) of the Act. This has triggered the Registrar's duty to consider the claim made in the Amended Application for registration in accordance with s 190A.[6]

Preliminary considerations

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 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] I am satisfied that neither s 190A(1A) nor s 190A(6A) apply to the claim made in the Amended Application. The circumstance described in s 190A(1A) do not arise because the granting of leave by the Court to amend the application was not made under s 87A. Section 190A(6A) does not apply because at the time the Amended Application was filed, no decision had been made in relation to the Original Application under s 190A(1).

---

[2] I note the alternate spellings of Yiradyuri/Wiradyuri/Wiradjuri. For ease of reference, I have adopted the first of these spellings in these reasons, and note that this is consistent with the description used in the affidavit at Attachment E.

[3] Leave was granted for this amended application on 24 November 2025: Orders of Judicial Registrar Morrison in *Bernard Higgins on behalf of the Southern West Yiradyuri/Wiradyuri/Wiradjuri People & Ors and Attorney General of New South Wales* (Federal Court of Australia, NSD1851/2025, 24 November 2025).

[4] Leave was granted for this amended application on 22 April 2026: Orders of Perry J in *Bernard Higgins on behalf of the Southern West Yiradyuri/Wiradyuri/Wiradjuri People & Ors and Attorney General of New South Wales* (Federal Court of Australia, NSD1851/2025, 22 April 2026).

[5] Leave was granted for this amended application on 20 March 2026: Orders of Perry J in *Bernard Higgins on behalf of the Southern West Yiradyuri/Wiradyuri/Wiradjuri People & Ors and Attorney General of New South Wales* (Federal Court of Australia, NSD1851/2025, 20 March 2026).

[6] Section 190A(1).

[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.

Procedural fairness

[6] On 13 October 2025, a Senior Officer of the National Native Title Tribunal ('NNTT') wrote to the applicant and the State of New South Wales ('State') inviting any additional material or comments on the Original Application by 27 October 2025.

[7] On 24 October 2025, a representative for the State requested, and was granted, an extension of time to 10 November 2025 to consider the Original Application and whether submissions would be provided.

[8] The amended application filed on 10 November 2025 was provided to the State on 14 November 2025.

[9] Neither the State nor the Applicant provided any submissions on the Original Application, nor requested any further time to consider the amended application filed on 10 November 2025.

[10] On 20 February 2026, a Senior Officer sent the applicant a preliminary assessment of the amended application filed on 10 November 2026 prepared by a delegate of the Registrar, which identified potential deficiencies in the Application.[7]

[11] On 23 February 2026, the applicant advised the Senior Officer that the applicant would seek to amend the application to address the issues identified. As noted above, an amended application was filed on 23 March 2026.

[12] On 2 April 2026, a Senior Officer provided the applicant with a geospatial assessment in relation to the amended application filed on 23 March 2026.

[13] On 15 April 2026, a Senior Officer emailed the State to indicate that the applicant had been granted further time to address issues identified with the application, in particular relating to the written description of the application area, and to liaise with the NNTT's Geospatial Services in relation to those issues. That correspondence further noted that because any further amended application would be limited to updating the description of the application area, the delegate anticipated that the registration decision would be made within one week of the receipt of the amended application from the Court, with limited opportunity for further procedural fairness steps.

[14] On 23 April 2026 a Senior Officer wrote to the State and provided a copy of the Amended Application filed that same day. That correspondence:

- referred to the email sent to the State on 15 April 2026; and
- indicated that in the absence of any further correspondence indicating that the applicant or the State intend to provide any further material or submissions in

[7] An amended preliminary assessment was provided to the Applicant on 9 March 2026 to rectify an omission in the document.

relation to the Amended Application, the delegate will proceed to make the registration decision on or about 30 April 2026.

[15] Similar correspondence was sent to the applicant on 23 April 2026, indicating that in the absence of correspondence indicating that the applicant or the State intended to provide further material, the registration decision would be made on or about 30 April 2026.

[16] Neither the applicant nor the State indicated that they sought to provide any further information in relation to the Amended Application.

[17] This concluded the procedural fairness process.

Information considered

[18] 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'.

[19] 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'.

[20] I have had regard to information in the Amended Application in accordance with s 190A(3)(a).

[21] I note there is no information obtained as a result of any searches conducted by the Registrar of State/Commonwealth interest registers that I must have regard to in accordance with s 190A(3)(b).

[22] There are no submissions or information provided by the State before me under s 190A(3)(c).

[23] I may also have regard to such other information as I consider appropriate.[8] I have therefore considered information contained in a geospatial assessment and overlap analysis prepared by the NNTT's Geospatial Services in relation to the area covered by the Amended Application, dated 30 April 2026 ('Geospatial Assessment').

Section 190C Registration: conditions about procedural and other matters – Conditions met

Sections 190C(1), (2) and ss 61, 62: Registration conditions about procedural and other matters – conditions met

[24] I have examined the Amended Application and I am satisfied that it contains the prescribed information and is accompanied by the prescribed documents.

[8] Section 190A(3).

[25] 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.[9] However, it does seek '…to ensure that the application contains "all details" required by s 61…'.[10] As such, in my view s 190C(2) requires consideration of whether the application contains the required material and whether such material is sufficient to enable the Registrar to form an opinion about whether the claim satisfies all of the conditions in ss 190B and 190C.[11]

Section 61

[26] **Section 61(1)** provides that only persons included in and authorised by the native title claim group may make a native title determination application for the particular native title claimed. Six persons are named in the Amended Application as comprising the applicant. Schedule A contains a description of the native title claim group. Each of the persons comprising the applicant have deposed an affidavit for the purpose of s 62, which have been filed in the Court and annexed to the Amended Application ('Applicant Affidavits'). The Applicant Affidavits indicate that each deponent is a member of the native title claim group and is authorised to make the Amended Application by all the persons in the native title claim group.[12] From the material contained in Schedule A and the Applicant Affidavits, I am satisfied that the Amended Application meets the requirements of s 61(1).

[27] **Section 61(3)** requires an application to state the name and address for service of the applicant. Part A contains the name of the Applicant. Part B provides that the Amended Application is filed by the applicant and includes the address for service. I am satisfied that the Amended Application contains the information required by s 61(3).

[28] **Section 61(4)** requires a native title determination application authorised by persons in a native title claim group to name or describe the persons in that claim group so that it can be ascertained whether any particular person is one of those persons. I note the procedural nature of the exercise undertaken by a delegate under s 190C(2) (regarding the details and information required by ss 61 and 62) with the merits exercise undertaken pursuant to s 190B(3).[13] Schedule A contains a description of the native title claim group as being comprised of the descendants of 29 named apical ancestors. As such, I am satisfied that the Amended Application contains the information required by s 61(4).

[29] **Section 61(5)** provides that the application must be filed in the Court in a manner as prescribed and be accompanied by any prescribed fee. I consider this is a matter for the Court, but I note that the Amended Application was accepted for filing by the Court on 23 April 2026.

---

[9] *Doepel* [16], [35]–[39].

[10] Ibid [35].

[11] See also s 190D(3)(b).

[12] Form 1, Attachment R ('Applicant Affidavits') [1], [8].

[13] *Gudjala 2007* [31]–[32].

[30] For these reasons, I am satisfied that the Amended Application contains the details specified in s 61.

Section 62

[31] **Section 62(1)(a)** requires a claimant application to be accompanied by an affidavit sworn by the Applicant stating each of the matters mentioned in subsection (1A). The Amended Application is accompanied by the Applicant Affidavits,[14] which are in substantially identical terms and include statements of the following matters:

(1) that the applicant believes that the native title rights and interests claimed by the native title claim group have not been extinguished in relation to any part of the area covered by the application;

(2) that the applicant believes that none of the area covered by the application is also covered by an approved determination of native title;

(3) that the applicant believes that all of the statements contained in the Form 1 are true;

(4) that the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it;

(5) the details of the process of decision-making complied with in authorising the applicant to make the application and to deal with matters arising in relation to it; and

(6) that there are conditions under s 251BA of the Act on the authority that relate to the making of the application.

I am satisfied the statements contained in the Applicant Affidavits meet the description of each of the statements required by s 62(1A)(a)–(e) and (g). Section 62(1A)(f) has not been relied upon by the applicant. Each of the Applicant Affidavits refer to the above-mentioned s 251BA conditions and confirm that all statements made in the application are true and correct. Section 62(1A)(g) requires that the Applicant Affidavits include statements indicating whether any conditions on the authority of the applicant that relate to the making of the application have been satisfied and how they have been satisfied. The conditions include that the applicant must 'act on the instructions of the claim group at claim group authorisation meetings'. Having regard to the nature of the conditions, I am satisfied that the Applicant Affidavits show that the Amended Application has been brought following decisions made by the claim group at an authorisation meeting and that the conditions of authority have been satisfied. I am therefore satisfied that information in the Amended Application is sufficient to the requirements of s 62(1)(a).

[32] **Section 62(1)(d)** applies where an agreement has been entered into under s 47C and requires a copy of any relevant agreement to accompany a claimant application. It is apparent from

[14] Although the Applicant Affidavits were deposed prior to the filing of the Amended Application, I consider that they should be read in relation to it: *Doepel* [88]–[89]. I consider that there was no requirement for fresh s 62 affidavits to be deposed for the purpose of the Amended Application: *Drury* [11]–[13].

Schedule J that there is no agreement under s 47C in relation to the area covered by the Amended Application, and so the requirement at s 62(1)(d) not applicable.

[33] **Section 62(2)(a)** requires that a claimant application contains information that enables the boundaries of the area covered by the application and any areas within those boundaries that are not covered by the application to be identified. Schedule B refers to Attachment B, which contains a description of the Amended Application area. Schedule B lists general exclusions. I am satisfied that the Amended Application contains the information required by s 62(2)(a).

[34] **Section 62(2)(b)** requires that a claimant application include a map showing the boundaries of the area mentioned in s 62(2)(a). Schedule C refers to Attachment C, which contains a colour copy of an A3 sized map depicting the boundaries of the Amended Application area. I am satisfied that the Amended Application contains the information required by s 62(2)(b).

[35] **Section 62(2)(c)** requires that a claimant application include details and results of all searches of any non-native title rights and interests covered by the application. Schedule D provides: 'No such searches have been carried out by or on behalf of the native title claim group'. I am satisfied that the Amended Application contains the information required by s 62(2)(c).

[36] **Section 62(2)(d)** requires a claimant application to contain a description of the native title rights claimed in relation to particular land or waters. This description must not consist merely of a statement that the native title rights and interests are all that may exist or have not been extinguished. Schedule E of the Amended Application contains a description of the native title rights and interests claimed. In my view, the description of the claimed rights and interests at Schedule E meets the requirements and I am satisfied that the Amended Application contains the information required by s 62(2)(d).

[37] **Section 62(2)(e)** requires a claimant application to contain a general description of the factual basis on which it is asserted that the native title rights and interests are claimed to exist. The general description of the factual basis is contained at Schedule F and Attachment E and F. I am satisfied that the Amended Application contains the information required by s 62(2)(e).

[38] **Section 62(2)(f)** requires that if the native title claim group currently carry on any activities in relation to the land or waters claimed, details of those activities must be included in the claimant application. Schedule E refers to Attachment E for details of such activities. Attachment E is the affidavit of Wiliam Charles Carter affirmed 19 September 2025 ('WC-1 Affidavit'). I am satisfied that the Amended Application contains the information required by s 62(2)(f).

[39] **Section 62(2)(g)** requires a claimant application to include details of any other court applications seeking a determination of native title or native title compensation over any of the area covered by the application (of which the Applicant is aware). Schedule G states that the applicant is aware of one application and refers to the Wamba Wemba claim (VC2021/001). I am satisfied that the Amended Application contains the information required by s 62(2)(g).

[40] **Section 62(2)(ga)** requires a claimant application to include details of any s 24MD(6B)(c) notifications relevant to the claim area. Schedule GA states that the applicant is not aware of

any relevant notifications. I am satisfied that the Amended Application contains the information required by s 62(2)(g).

[41] **Section 62(2)(h)** requires that a claimant application include details of any s 29 notifications relevant to the claim area of which the Applicant is aware. Schedule H states that the applicant is not aware of any relevant notifications. I am satisfied that the Amended Application contains the information required by s 62(2)(h).

[42] **Section 62(2)(i)** requires a claimant application include details of any conditions under s 251BA on the authority of the Applicant to make the application and to deal with matters arising in relation to it. Schedule HA contains the details of the conditions on the authority of the applicant. The requirement at s 62(2)(i) is met.

[43] For these reasons, I am satisfied that the Amended Application contains all the details specified in s 62.

Conclusion on s 190C(2)

[44] As set out above, I am satisfied that the Amended Application contains all of the details and other information, and is accompanied by any affidavit or other document, as required by ss 61–62, and as such, the condition at s 190C(2) is met.

Section 190C(3): No previous overlapping claim groups – condition met

[45] The condition at s 190C(3) requires 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'.

[46] The condition at s 190C(3) only arises where there is a previous application that meets the criteria set out in subsections (a) to (c).[15] These criteria are that any previous claim covers at least some of the same area and was accepted for registration under s 190A and on the Register of Native Title Claims ('Register'). I understand the purpose of the provision is to prevent overlapping claims by members of the same native title claim group being on the Register simultaneously.[16]

[47] I understand that in assessing this requirement I may have regard to information which does not form part of the application and accompanying documents.[17]

[48] As noted above, Schedule G of the Amended Application refers to the Wamba Wemba claim. The Geospatial Assessment and my own searches of the NNTTs databases confirm that the only claimant application overlapping any of the area of the Amended Application is the Wamba Wemba claim, which is not on the Register and therefore does not fall within s 190C(3).

---

[15] *Strickland FC* [9].

[16] Explanatory Memorandum, Native Title Amendment Bill 1997 (Cth) 303 [29.25], 387 [35.38].

[17] *Doepel* [16].

[49] As there are no previous applications that meet the description of sub-ss (a)–(c), s 190C(3) requires no further consideration. I am satisfied that the Amended Application does not contravene this requirement.

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

[50] Under s 190C(4), the Registrar must be satisfied that either a certificate under s 203BE has been issued by the relevant representative Aboriginal/Torres Strait Islander body ('RATSIB'),[18] or the requirements under subsection (4AA) have been met.[19]

[51] It is apparent from Schedule P of the Amended Application that it was not certified by the relevant RATSIB, and so I must consider whether the requirements under subsection (4AA) have been met.

[52] Section 190C(4AA) requires the applicant to be a member of the native title claim group and further requires that the applicant is authorised to make the application, and deal with all matters arising in relation to it, by all the other persons in the native title claim group.[20] As such, it is necessary to identify whether:

- the persons comprising the Applicant are members of the native title claim group;
- the Applicant is authorised by 'all the other persons' in the native title claim group;
- that such authorisation was given in accordance with the requirements in s 251B; and
- where conditions are imposed under s 251BA, those conditions have been satisfied.

[53] In accordance with s 190C(5), the Registrar cannot be satisfied that an uncertified application meets these requirements unless the application[21] contains statements to the effect that the requirements in sub-s (4AA) have been met and briefly sets out the grounds upon which the Registrar should consider that the conditions have been met (where conditions have been imposed).

[54] In *Strickland*, French J (as his Honour then was) stated that s 190C(5):

> … requires no more than a statement that the requirement of authorisation referred to in s 190C(4)(b) has been met. It is also required briefly to set out the grounds on which the Registrar should consider that it has been met. The insertion of the word "briefly" at the beginning of par 190C(5)(b) suggests that the legislature was not concerned to require any detailed explanation of the process by which authorisation is obtained.[22]

Section 190C(4AA)(a): is the applicant a member of the native title claim group?

[55] The first requirement set out in s 190C(4AA)(a) is that 'the applicant is a member of the native title claim group'.

---

[18] Section 190C(4)(a).

[19] Section 190C(4)(b).

[20] The word 'authorise' is defined in s 251B: Note to s 190C(4AA).

[21] *Doepel* [16], [78].

[22] *Strickland* [57].

[56] Each of the Applicant Affidavits sets out that each person comprising the applicant is a member of the claim group. Having regard to the Applicant Affidavits, I am satisfied that each person comprising the applicant is a member of the native title claim group within the meaning of s 190C(4AA)(a).

Section 190C(4AA)(a): is the applicant authorised by all the other persons in the native title claim group?

[57] The second requirement at s 190C(4AA)(a) is that 'the applicant … 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'.

[58] Having regard to the authorities concerning authorisation of the applicant, my understanding is that consideration of the provisions at s 190C(4)(b) and (4AA):

- requires the Registrar to be satisfied 'of the fact of authorisation by all members of the native title claim group' by way of 'inquiry through the material available … to see if the necessary authorisation has been given';[23]
- requires the Registrar to be satisfied as to the identity of the claimed native title holders, including the applicant;[24] and,
- is not 'to be met by formulaic statements in or in support of applications'.[25]

[59] The authorisation of an application must come from *all* persons who claim to hold common or group rights and interests, and I note the comments of O'Loughlin J in *Risk* that the Registrar's task includes examining and deciding who, in accordance with the traditional laws and customs, comprises the native title claim group.[26] This is the case because, as stated by Lindgren J in *Harrington-Smith*:

> there must be a coincidence between (a) the native title claim group as defined in ss 61(1) and 253 of the [Act] (the actual holders of the particular native title claimed); (b) the claim group as defined in the Form 1; and (c) all of the persons who authorised the making of the application, and who must be named or otherwise defined in the Form 1 as required by s 61(4).[27]

[60] 'Authorise' is defined in s 251B of the Act and contains multiple requirements, as follows:

- '…all the persons in a native title claim group…'
- '…authorise … persons to make a native title determination application … and to deal with matters arising in relation to it, if':
  - (a) where there is a traditional decision-making process to be complied with by the native title claim group, that process has been used to authorise the person or persons to make the native title determination application; or

[23] *Doepel* [78].
[24] *Wiri People* [29].
[25] *Strickland* [57].
[26] *Risk* [60], [62].
[27] *Harrington-Smith* [1216].

(b) where there is no traditional decision-making process applicable, the persons in the native title claim group authorise the person or persons to make the application in accordance with a process of decision-making agreed to and adopted by the native title group.

[61] As regards 'all the persons in a native title claim group', I note the comments of Stone J in *Lawson* that 'the effect of the section is to give the word "all" a more limited meaning', that it does not require a unanimous vote and '[i]t is sufficient if a decision is made once the members of the claim group are given every reasonable opportunity to participate in the decision-making process'.[28] As such, in my view, I must also assess whether all the persons in the native title claim group were provided with an opportunity to attend and participate in the relevant authorisation meeting.

[62] In *Weribone*, Rares J held that a notice for an authorisation meeting 'must be sufficient to enable the persons to whom it is addressed … to judge for themselves whether to attend the meeting and vote for or against a proposal' and that 'fair notice of the business to be dealt with at the meeting' must be given.[29]

[63] As regards '…authorise…persons to make a native title determination application…and to deal with matters arising in relation to it', I must assess whether the application was 'authorised' under s 251B. In *Ward*, O'Loughlin J listed a number of questions relating to the authorisation process which were required to be addressed. The questions identified by O'Loughlin J, which do not need to be answered in any formal way, but the substance of which should be addressed,[30] are:

> Who convened it and why was it convened? To whom was notice given and why was it given? What was the agenda for the meeting? Who attended the meeting? What was the authority of those who attended? Who chaired the meeting or otherwise controlled the proceedings of the meeting? By what right did that person have control of the meeting? Was there a list of attendees compiled, and if so by whom and when? Was the list verified by a second person? What resolutions were passed or decisions made? Were they unanimous, and if not, what was the voting for and against a particular resolution? Were there any apologies recorded?[31]

[64] In *Noble*, the Full Court stated:

> Section 251B does not require proof of a system of decision-making beyond proof of the process used to arrive at the particular decision in question. The section accommodates a situation where a native title claim group agrees to follow a particular procedure for a particular decision even if other procedures are normally used for other decisions. Nor does s 251B require a formal agreement to the process adopted for the making of a particular decision. Agreement within the contemplation of s 251B may be proved by the conduct of the parties. There was evidence in this case that the claim group conducted itself at the meeting on the basis that it agreed to a vote by the members of the group to determine the question of authorisation. All persons present voted in favour of the motion. Nobody is recorded as leaving the meeting or refusing to vote or in any

[28] *Lawson* [25]. See also *Butchulla* [33].

[29] *Weribone* [40]–[41]; see also *Burragubba* [31].

[30] *Ward* [24]–[25].

[31] *Ibid* at [24], cited with approval in *Lawson* [26].

other way conducting to indicate dissent from the course adopted. There was thus evidence from the conduct of the claim group on which the primary judge could base his conclusion that the requirements of s 251B were satisfied.[32]

[65] In *Fesl*, Logan J considered the meaning and effect of s 251B as dealt with in the above passage from the Full Court in *Noble*, and stated the following principles distilled from the authorities concerning s 251B:

(a) the effect of the s 251B is to give the word 'all' in, materially, the table which appears below s 61(1) a more limited meaning than it might otherwise have;

(b) in those cases where there is no relevant traditional decision-making process, s 251B does not mandate any one particular decision-making process, only that it be one that is agreed to and adopted by the persons in the native title claim group or compensation group;

(c) "agreed to and adopted by" imports the giving to all of those whose whereabouts are known and have capacity to authorise a reasonable opportunity to participate in the adoption of a particular process and the making of decisions pursuant to that process;

(d) unanimous decision-making is not mandated;

(e) agreement to a particular process may be proved by the conduct of the parties even in the absence of proof of a formal agreement.[33]

What information has been provided in relation to authorisation?

[66] Schedule P provides:

(a) 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.

(b) Conditions under section 251BA of the Act on the Applicant's authority to make the application have been satisfied.

Attachment P contains information providing the grounds upon which the Registrar should consider that the statements mentioned in paragraph (a) and (b) are correct.

[67] Attachment P is comprised of two affidavits:

(1) the affidavit of Edward Douglas Besley affirmed 29 September 2025 ('EB Affidavit'); and

(2) the affidavit of William Charles Carter affirmed 30 September 2025 ('WC-2 Affidavit').

[68] Together these relevantly provide, in summary:

(1) A meeting to authorise the making of the application was held on 13 July 2025 at Darlington Point, NSW ('Authorisation Meeting').[34] An earlier meeting had been planned but delayed due to issues with the public notice.[35]

[32] *Noble* [18].

[33] *Fesl* [71].

[34] EB Affidavit at [4]; WC-2 Affidavit at [56].

(2) Notice of the Authorisation Meeting was given in the following manner:

(i) On 6 May 2025, Southern West Yiradyuri Clans Land, Water and Sky Country Aboriginal Corporation ('SWYC') launched a 'native title web page' featuring information such as a description of the native title claim process, a map of the intended claim area, a description of the claim group, meeting details, notices, and a registration form for members of the claim group.[36]

(ii) On various dates in May, June, and July 2025, SWYC posted details of the scheduled Authorisation Meeting on the corporation's social media pages.[37]

(iii) A hybrid online/in-person information session was held on 1 June 2025 (the original date of the authorisation meeting) with approximately 20 attendees.[38]

(iv) On 18 June 2025, public notice of the Authorisation Meeting was published in the Koori Mail.[39] This notice set out the area of the application and the purpose of the meeting, and was open to descendants of the 29 apical ancestors named in this Application, as well as those who hold or may hold native title rights and interests in the area.[40] The meeting was available to attend both remotely and in-person. Also on 18 June 2025, Mr William Carter emailed SWYC members to provide a copy of the notice and registration information.[41]

(v) On 25 June 2025, Mr Carter posted further details of the Authorisation Meeting on SWYC's Facebook page.[42]

(vi) Mr Carter also outlined his efforts to assist people to register and attend the Authorisation Meeting.[43]

(3) The information relating to the attendance at, conduct of, and outcomes from the Authorisation Meeting relevantly includes:

(i) There were 47 attendees at the Authorisation Meeting (30 in person; 17 online), 14 of which were members of SWYC.[44] 19 of the 29 apical ancestors had descendants in attendance at that meeting.[45]

(ii) The Authorisation Meeting was facilitated by Mr Edward Besley.[46] Mr Besley is the solicitor for the Applicant in this Application.

---

[35] WC-2 Affidavit at [44]–[47].
[36] Ibid at [33], Annexure WCC3.
[37] Ibid at [46], Annexure WCC10.
[38] Ibid at [47].
[39] Ibid at [49].
[40] Ibid at Annexure WCC11.
[41] Ibid at [50].
[42] Ibid at [52], Annexure WCC12.
[43] Ibid at [54]–[55].
[44] Ibid at [56]; EB Affidavit at [6]–[7].
[45] WC-2 Affidavit at [57].
[46] EB Affidavit at [10], Annexure EDB1 (page 1).

(iii) The attendees resolved that there was no traditional process of decision-making that must be complied with in relation to authorising the proposed application.[47] The meeting also resolved to agree and adopt a decision-making process for the purpose of the Authorisation Meeting.[48]

(iv) All of the persons named in the Application as comprising the Applicant were authorised by a resolution of the meeting to make the Application and deal with all matters arising in relation to it.[49] The meeting also resolved that the persons comprising the Applicant were also subject to certain conditions on their authority.[50]

(v) A seventh person was authorised to act as a member of the Applicant but subsequently advised the other members that she was not willing to act.[51] Resolution 11 of the meeting provided:

> The meeting resolves that if one or more of the Individuals who constitute the Applicant is unwilling or unable to continue to act, whether from death, ill-health or any other reason, the remaining individuals who are authorised by this meeting to constitute the Applicant may continue to act as the Applicant for the native title determination application without the need to appoint a replacement.

(vi) The meeting resolved to direct the Applicant to split any part of the application area that overlaps with any other claim so that the overlapped areas are dealt with separately.[52]

(vii) The meeting also resolved:

1. to note that the people entitled to be present and take part in the business of the meeting were descendants of the 29 Apical Ancestors.[53]
2. that sufficient notice was given of the Authorisation Meeting and the business to be discussed to enable authoritative decisions to be made about the proposed Application.[54]
3. that the people present at the meeting were sufficiently representative of the proposed claim group to make authoritative decisions about the making of Application.[55]

[47] Ibid at [16], Annexure EDB1 (pages 13-14).
[48] Ibid at [17], Annexure EDB1 at (pages 14-15).
[49] Ibid at [20], Annexure EDB1 at (page 17).
[50] Ibid at [19], Annexure EDB1 at (page 16).
[51] Ibid at [27].
[52] Ibid at [25], Annexure EDB1 at (pages 19-20).
[53] Ibid at [12], Annexure EDB1 at (pages 2-4).
[54] Ibid at [14], Annexure EDB1 at (pages 5-6).
[55] Ibid at [15], Annexure EDB1 at (pages 6-7).

4. to confirm there had been reasonable opportunity for informed discussion about the matters to be decided at the meeting.[56]

Consideration of 190C(4AA)(a) requirement

[69] Based on the material summarised above, and having regard to the authorities concerning authorisation, I am satisfied that the members of the claim group were given a reasonable opportunity to participate in the decision-making process to authorise the making of the application. The meeting was publicly notified in a special-interest publication several weeks before the Authorisation Meeting, and attempts were made to directly notify as many members of the claim group as possible. The Authorisation Meeting was relatively well-attended, and information regarding the proposed application was given to the attendees, as well as an opportunity to consider and discuss the information. I am satisfied that the claim group authorised the making of the application at the Authorisation Meeting in accordance with an agreed and adopted decision-making process outlined in the material.

[70] Given that the authorisation was given to make an application over the area set out in the notice, which is consistent with that as in the Amended Application, I am satisfied that the applicant is authorised by all the other persons in the native title claim group to make the Amended Application within the meaning of s 190C(4AA)(a).

Section 190C(4AA)(b): s 251BA conditions

[71] Section 190C(4AA)(b) requires that either:

(i) there are no conditions under section 251BA on the authority that relate to the making of the application; or

(ii) any conditions under section 251BA on the authority that relate to the making of the application have been satisfied.

[72] Schedule HA indicates there are such conditions on the Applicant's authority under s 251BA and outline they are:

> The Applicant must:
>
> (a) act at all times in the best interests of all the members of the claim group, not just themselves or their own families;
>
> (b) act on the instructions of the claim group at claim group authorisation meetings;
>
> (c) act on the reasonable legal advice of the solicitors on the Court record;
>
> (d) make decisions by majority where a consensus cannot be achieved;
>
> and unless explicitly authorised to do so by the claim group in accordance with the agreed and adopted decision making process at a properly notified and convened claim group authorisation meeting, the Applicant is not authorised to:

[56] Ibid at [26], Annexure EDB1 at (page 14).

(a) discontinue or withdraw the proceeding;

(b) change the name of the proceeding;

(c) change its legal representation;

(d) amend the claim to change the composition of the native title claim group (e.g. adding or removing an apical ancestor) or to reduce the geographical boundaries of the claim area;

(e) execute or enter into an Indigenous Land Use Agreement or any other agreement that has the effect of consenting to future acts, dealing with compensation or surrendering, extinguishing or impairing native title or otherwise affecting native or confirming the prior extinguishment or impairment of native title; and

(f) approve any proposed consent determination of native title or nominate a corporation to be the prescribed body corporate to hold any determined native title rights and interests in trust on behalf of the native title holders or to act as agent.

[73] In my view, the conditions imposed have been satisfied by the applicant. Having regard to the conditions imposed and the Applicant Affidavits I am satisfied the conditions under s 251BA on the authority that relate to the making of the application have been satisfied. I am therefore satisfied the requirement of s 190C(4AA)(b) is met.

Conclusion on the condition at s 190C(4)

[74] In my view, the information contained in the Amended Application is sufficient to meet the requirements of ss 190C(5)(a) and (b). The Amended Application contains statements to the effect that the requirements mentioned in subsection (4AA) have been met and briefly sets out the relevant grounds on which the Registrar should consider that they have been met.

[75] For the above reasons, I am satisfied that the requirements set out in s 190C(4)(b) are met.

Section 190B Registration: conditions about merits of the claim – Conditions met

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

[76] Section 190B(2) requires the Registrar to be satisfied that the written information and map contained in the application are sufficient to identify, with reasonable certainty, the land and waters in relation to which the native title rights and interests are claimed.

[77] Schedule B refers to Attachment B, which describes the Application area as 'Stages A & B Combined', and separately by 'Stage A' and 'Stage B'. Each of these contains a metes and bounds description referencing the boundaries of catchments, road centrelines, watercourse/former watercourse centrelines, Lake Hume and Hume Weir, state borders,

elevation features, a native title determination, a native title determination application, and coordinate points (with reference). Schedule B lists general exclusions.

[78] Schedule C refers to Attachment C, which contains a colour copy of an A3 sized map, titled 'Southern West Yiradyuri' dated 4 July 2025. The map includes the application area on a topographical background depicted by a bold black outline (Stages A and B labelled), scalebar, datum and projection information and locality map.

[79] The Geospatial Assessment concludes that the amended description and map are consistent and identify the application area with reasonable certainty. The Geospatial Assessment further notes that the inconsistencies noted in the geospatial assessment of the amended application filed on 23 March 2026 (see paragraphs 12 and 13 above) have been resolved.

[80] I have considered the Amended Application and the Geospatial Assessment and agree with its conclusions. As such, I am satisfied that the Amended Application meets the requirements of s 190B(2).

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

[81] Section 190B(3) requires the Registrar to be satisfied that either the persons in the native title claim group are named in the application,[57] or that persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.[58]

[82] When assessing the requirements under s 190B(3), I understand that:

(1) I am required to address only the content of the application;[59]

(2) 'only … the members of the claim group are required to be identified, not that there be a cogent explanation of the basis upon which they qualify for such identification';[60]

(3) where a claim group description contains a number of paragraphs, the paragraphs should be read 'as part of one discrete passage, and in such a way as to secure consistency between them, if such an approach is reasonably open';[61] and

(4) to determine whether the conditions or rules specified in the application have a sufficiently clear description of the native title claim group, '[i]t may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described'.[62]

[83] Schedule A contains a description of the claim group as the descendants of 29 apical ancestors. The Court has accepted that identification of members of a claim group by

[57] Section 190B(3)(a).
[58] Section 190B(3)(b).
[59] *Doepel* [51]; *Gudjala 2007* [30].
[60] *Gudjala 2007* [33].
[61] Ibid [34].
[62] *WA v NTR* [67].

reference to named ancestors can meet the requirements of s 190B(3)(b).[63] In my view, the question of whether a person is of biological descent from one or more of the apical ancestors is one which can be resolved by factual inquiry.

[84] For these reasons, I am satisfied 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. I am therefore satisfied that the Amended Application meets the requirements of s 190B(3).

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

[85] I understand that in order to assess the requirements of this provision, I am confined to the material contained in the application itself.[64]

[86] I understand that my task pursuant to s 190B(4) is to identify whether the rights and interests claimed are 'readily identifiable'. In *Doepel*, Mansfield J noted that the description of the native title rights and interests must be understandable, have meaning, and be without contradiction.[65] I note that a description of a native title right or interest that is broadly asserted 'does not mean that the rights broadly described cannot readily be identified within the meaning of s 190B(4)'.[66]

[87] Schedule E to the Application contains the following description of the native title rights and interests claimed by the claim group:

1. In relation to land and waters described in Schedule B where there has been no prior extinguishment of native title or where prior extinguishment is disregarded pursuant to ss 47, 47A or 47B, and which is not subject to the public rights to navigate and fish. The native title rights and interests claimed are the exclusive right to possession, occupation, use and enjoyment of the claim area as against all others, pursuant to the traditional laws and customs of the native title claim group.
2. In relation to the land and waters described in Schedule B where paragraph 1 does not apply, the native title claim group claims, pursuant to their traditional laws and customs, the non-exclusive rights to:
    a) access the application area;
    b) use and enjoy the application area;
    c) move about the application area;
    d) camp on the application area;
    e) erect shelters and other structures on the application area;
    f) live, being to enter and remain, on the application area;
    g) hold meetings on the application area;
    h) hunt on the application area;

[63] Ibid.

[64] *Doepel* [16].

[65] Ibid [99], [123].

[66] *Strickland* [60]. See also *Strickland FC* [85]–[87].

i) fish in the application area;

j) have access to and use water of the application area;

k) the right to gather and use the natural resources of the application area;

l) the right to share and exchange resources derived from the land and waters within the application area;

m) the right to participate in cultural and spiritual activities on the application area;

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

o) the right to conduct ceremonies on the application area;

p) the right to transmit traditional knowledge to members of the native title claim group including knowledge of particular sites within the application area;

q) the right to speak for and make non-exclusive decisions about the application area in accordance with traditional laws and customs;

r) the right to speak authoritatively about the application area among other Aboriginal People in accordance with traditional laws and customs; and

s) the right to control access to or use of the lands and waters within the application area by other Aboriginal People in accordance with traditional laws and customs.

[88] Paragraph 3 of Schedule E contains relevant definitions and paragraph 4 confirms that the claimed rights and interests are subject to the valid laws of the State and the Commonwealth.

[89] In my view, the native title rights and interests described in Schedule E of the Amended Application are understandable and have meaning. There is also a clear distinction between exclusive and non-exclusive rights. I do not consider there to be any inherent contradictions in these claimed rights and interests.

[90] For these reasons, I am satisfied that the requirements of s 190B(4) are met.

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

[91] Section 190B(5) requires the Registrar to be satisfied that the factual basis for the claimed native title rights and interests is sufficient to support the following assertions:

(a) that the native title claim group have, and the predecessors 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; and

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

[94] As per Mansfield J in *Doepel*, the task under s 190B(5):

> … requires the Registrar to address the quality of the asserted factual basis for those claimed rights and interests; but only in the sense of ensuring that, if they are true, they can support the existence of those claimed rights and interests… The role is not to test whether the asserted facts will or may be proved at the hearing, or to assess the strength of the evidence which may ultimately be adduced to establish the asserted facts.[67]

[95] As such, when assessing the requirements of this condition, I understand that I must treat the asserted facts as true and assess whether they are sufficient to support each of the relevant assertions.

[96] The Full Court in *Gudjala FC* provided guidance relevant to the task under s 190B(5), in respect of the details required under s 62(2)(e)(i) to (iii) 'general description of the factual basis on which it is asserted that the native title rights and interests claimed exist…':

> The fact that the detail specified by s 62(2)(e) is described as 'a general description of the factual basis' is an important indicator of the nature and quality of the information required by s 62. In other words, it is only necessary for an applicant to give a general description of the factual basis of the claim and to provide evidence in the affidavit that the applicant believes the statements in that general description are true. Of course the general description must be in sufficient detail to enable a genuine assessment of the application by the Registrar under s 190A and related sections, and be something more than assertions at a high level of generality. But what the applicant is not required to do is to provide anything more than a general description of the factual basis on which the application is based. In particular, the applicant is not required to provide evidence of the type which, if furnished in subsequent proceedings, would be required to prove all matters needed to make out the claim. The applicant is not required to provide evidence that proves directly or by inference the facts necessary to establish the claim.[68]

[97] Further clarity on this task was provided by the comments of Dowsett J in *Gudjala 2009*, where his Honour stated:

> In assessing the adequacy of a general description of the factual basis of the claim, one must be careful not to treat, as a description of that factual basis, a statement which is really only an alternative way of expressing the claim or some part thereof. In my view it would not be sufficient for an applicant to assert that the claim group's 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 also claims to be descended, without any factual details concerning the pre-sovereignty society and its laws and customs relating to land and waters. Such an assertion would merely restate the claim. There must be at least an outline of the facts of the case.[69]

[98] Therefore, it is my understanding that although the material provided by the applicant need not provide evidence to make out each claim, it must nevertheless provide sufficient factual details to enable a 'genuine assessment' of the factual basis for the assertions set out in ss 190B(5)(a) to (c) and at a minimum provide an outline of the facts of the case.

[99] Schedule E to the Amended Application describes the claimed native title rights and interests of the claim group. The factual basis material is contained in Schedule F and Attachment E and

---

[67] *Doepel* [17]; see also *Gudjala* FC [57], [83].

[68] *Gudjala FC* [92].

[69] *Gudjala* 2009 [29]; see also *Anderson* [43], [47]–[48].

F, comprising the WC-1 Affidavit and a Preliminary Connection Report of Dr Rose dated 16 September 2025.

[100] I set out my consideration under each of the assertions at s 190B(5)(a) to (c) below.

Section 190B(5)(a): the association of the native title claim group and their predecessors with the area

[101] Justice Reeves considered s 190B(5)(a) in *McLennan*, where his Honour set out the relevant principles as follows:

> To satisfy the condition in s 190B(5)(a) of the [Act], it will be sufficient if the applicant demonstrates that:
>
> (a) "the claim group presently has an association with the area, and the claim group's predecessors have had an association with the area since sovereignty or European settlement" [*Gudjala 2007* [52]];
>
> (b) "there is an association between the whole group and the area, although not all members must have such association at all times" [*Gudjala 2007* [52]]; and
>
> (c) "there is an association with the entire area claimed, rather than an association with only part of it or 'very broad statements', which have no 'geographical particularity'" [*Martin* [26]; *Corunna* [39]].[70]

[102] I also note Dowsett J's comments in *Gudjala 2007* that s 190B(5)(a) requires sufficient factual material to support the assertion that the identified claim group (and not another group) holds the identified rights and interests (and not some other rights and interests).[71]

Overview of material provided in support of the assertion at s 190B(5)(a)

[103] The factual basis material provided in relation to the assertion at s 190B(5)(a) is, in summary:

a. Population modelling identifies a single cohesive kin population descending from 29 apical ancestors who occupied the region at or shortly after effective sovereignty. These named apical ancestors are the same as those named at Schedule A of the Application.[72] The table at [4] of the Preliminary Connection Report also includes further details about the 29 apical ancestors, including dates of birth and death, and associated locations within the Amended Application area.

b. Effective sovereignty over the area was established in the 1830s, though not firmly until the 1950s, and most of the apical ancestors were born in the Amended Application area during that period.[73]

[70] *McLennan* [28], citations adapted from original.

[71] *Gudjala 2007* [39].

[72] Preliminary Connection Report at [4], Table 1.

[73] Ibid at [16].

c. Biographies and certificates show apical ancestors and descendants born, married, living and buried at locations within the Amended Application area (for example, Warangesda, Narrandera, Hay, Albury, Willandra).[74]

d. 'Spatiotemporal kinship network analyses' modelling of the birthplaces of approximately 500 individuals shows a systematic, continuous association of apical ancestors and their descendants with locations across the Amended Application area.[75] Community consultations corroborate this modelling and its geographic patterning of families across the area.[76]

e. Late-19th-century accounts from R.H. Mathews identify the 'southern Wiradthuri' with the Murrumbidgee from Jugiong to Hay, south to the Murray, north up the Lachlan to the Willandra Billabong.[77] Dr Rose notes some variations to Mathews' boundaries, arguing more reliable information provided by senior and knowledgeable traditional owners would extend the boundary further west to Tupra and reduce some of the southern boundary.[78] Other accounts also place the claim group between the eastern part of the Lachlan River in the northeast, the western part of the Lachlan River in the northwest, the Murray River to the south, with the Murrumbidgee as the locus and Bland Creek as the northeast limit.[79]

f. Areal linguistic studies map of the Southern West Yiradyuri language community across the Amended Application area; community members identify with this dialect and country.[80]

g. The Warangesda (Darlington Point) mission was established in 1880, intentionally nearby to a traditional ceremony ground recorded as being of some importance to the claim group.[81] Darlington Point is located around the centre of the Application area. Members of the group engaged in pastoral and agricultural work around the Application area, but Warangesda became the central location for the community.[82] After its closure in 1924, families relocated to towns within the Amended Application area, such as Albury, Griffith, Hay, Hillston, Leeton, Jerilderie, Wagga Wagga, and three 'fringe camps' at Griffith.[83]

[74] Ibid at Table 1 and Appendices 5-6.
[75] Ibid at [25].
[76] Ibid at [24].
[77] Ibid at [29]-[31].
[78] Ibid at [30], [33]–[35].
[79] Ibid at [36].
[80] Ibid at [41]–[50].
[81] Ibid at [64], [86].
[82] Ibid at [87].
[83] Ibid at [87]–[88].

h. From the early 1980s, Local Aboriginal Land Councils were later established at Albury, Hay, Leeton, Narrandera, Wagga Wagga and West Wyalong, with members of the claim group holding formal representative roles.[84]

i. Contemporary claim group members continue to visit, teach about and maintain sites, and to hunt, fish and gather at places across the area, including Murrumbidgee River, Corowa, Yanco Creek, Bundigerry, Barrellan, Morundah, Grong Grong, Hillston, West Wyalong and Mulwala.[85]

Consideration of the assertion at s 190B(5)(a)

[104] I consider the information provided in the Amended Application is sufficient to enable a 'genuine assessment' of the factual basis for the assertions that members of the claim group have an ongoing association with the Amended Application area. The material contains information, with geographical particularity, about the association that the predecessors and current members of the claim group have with the Amended Application area. This includes information about the apical ancestors indicating their association with the area around the time of effective sovereignty. The material includes further information about the predecessors who lived and worked in the area, and current members of the claim group living, hunting, fishing and using the natural resources of the Amended Application area. I consider that this is further supported in the material in the WC-1 Affidavit.

[105] I am satisfied that the factual basis material is sufficient to support the assertion at s 190B(5)(a).

Section 190B(5)(b): traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the native title rights and interests

[106] Section 190B(5)(b) requires the factual basis material to be sufficient to support the assertion of the existence of the traditional laws and customs giving rise to the native title rights and interests claimed. 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 by, and traditional customs observed' by the native title holders.

[107] In *Yorta Yorta*, the High Court observed that laws and customs are 'traditional' where:

a. 'the origins and content of the law or custom concerned are to be found in the normative rules' of a society that existed prior to the assertion of British sovereignty,[86] where the society consists of a body of persons united in and by their acknowledgement and observance of a body of laws and customs;[87]

[84] Ibid at [89].

[85] Ibid at [95], [98]–[101].

[86] *Yorta Yorta* [46].

[87] Ibid [49].

b. the normative system under which those traditional rights and interests are possessed is one which 'has had a continuous existence and vitality since sovereignty';[88]

c. the laws and customs have been passed from generation to generation, and must be rooted in the traditional laws and customs that existed pre-sovereignty;[89]

d. those laws and customs have been acknowledged and observed without substantial interruption since sovereignty.[90]

[108] In *Gudjala 2009*, Dowsett J identified some factors that may guide the Registrar in assessing the factual basis, including that:

a. it is necessary for the factual basis material to identify the relevant pre-sovereignty society of persons who acknowledged and observed the laws and customs;[91]

b. where the basis for membership of the claim group is descent from named ancestors, the factual basis material must demonstrate some relationship between the ancestors and the pre-sovereignty society from which the laws and customs are derived;[92] and

c. the factual basis material must provide an explanation, beyond a mere assertion, of how the current laws and customs of the claim group are traditional and derived from the pre-sovereignty society.[93]

[109] I also note the observations of the Full Court in *Warrie* that notwithstanding:

> … 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', the Act 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.[94]

Overview of material provided in support of the assertion at s 190B(5)(b)

[110] The Preliminary Connection Report includes the following information:

a. According to early accounts, Southern West Yiradyuri society was organised by four sociocentric sections.[95] Matrifilial descent determined one's class and *Jin* (totem), which formed the basis for social regulation and rights.[96] This system provided prescriptive/proscriptive marriage rules, which maintained social cohesion and regulated intergroup marriage, and determined who held particular responsibilities

[88] Ibid [47].
[89] Ibid [46], [79].
[90] Ibid [87].
[91] *Gudjala 2009* [37], [52].
[92] Ibid [40].
[93] Ibid [29], [54].
[94] *Warrie* [107]; see also *Alyawarr* [78].
[95] Preliminary Connection Report at [55].
[96] Ibid at [55]–[56].

and how rights were transmitted.[97] Specific *Jin* linked individuals and families to particular places/important sites.[98]

b. The Southern West Yiradyuri religious system centred around a pantheon of mythical hybrid human–animal beings (*Jin*), the centre of which was a named deity.[99] The central ceremony of this was an initiation ceremony, which regulated one's transition to adulthood and reinforced religious law, kinship responsibilities, and group cohesion.[100] Such ceremonies were held at specific, long-established sacred sites, including at Warangesda.[101] Mythological narratives linked the *Jin* with landscape features, cultural obligations, and ceremonies.[102]

c. The traditional Southern West Yiradyuri economy was, at the time of sovereignty, based on carefully regulated hunting, fishing, and gathering within known *ngurrung* (districts).[103] Each *ngurrung* was associated with specific hereditary branches, each managed according to different sets of rights and interests.[104] The Southern West Yiradyuri participated in regional trade for the exchange of resources and ceremonial objects governed by customary rules.[105]

d. In the opinion of Dr Rose, kinship, language, religious, and economic law together formed a coherent normative system defining membership, responsibilities, and entitlements.[106] These laws identified who could speak for Country, access particular sites, undertake ceremonies, and use resources.[107] Rights and interests in land (access, use, occupation, ceremony, protection of sites) arose directly from these laws and customs. The system formed a distinct, cohesive society at sovereignty, with its own normative rules governing land, waters, and relationships.

e. Contemporary members of the claim group today demonstrate knowledge transmission from earlier generations, showing substantially uninterrupted continuity albeit with some adaptation/modification.[108] For example, while many members of the claim group know their totem, it no longer appears to be used for the specific purpose of arranging marriage or allocation of rights/interests in specific areas.[109]

---

[97] Ibid.
[98] Ibid at [58].
[99] Ibid at [59]–[60].
[100] Ibid at [60]–[63].
[101] Ibid at [64].
[102] Ibid at [60]–[62], [68]–[71].
[103] Ibid at [72]–[74].
[104] Ibid at [72].
[105] Ibid at [78].
[106] Ibid at [79].
[107] Ibid at [80]–[82].
[108] Ibid at [102]–[104].
[109] Ibid at [91].

Consideration of the assertion at s 190B(5)(b)

[111] While the material in Schedule F is expressed at a high level of generality, the material in the Preliminary Connection Report provides more comprehensive information. The factual basis material together enables me to make a genuine assessment of the assertion at s 190B(5)(b). There is detailed material outlining the asserted laws and customs, with contemporaneous accounts and clear expert opinion. I consider this material supports the assertion of the existence of traditional laws and customs and sufficiently demonstrates how these laws and customs are 'traditional' in nature (including how they have been passed on through generations).

[112] I am satisfied that the factual basis provided in the Amended Application is sufficient to support the assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests.

[113] I am therefore satisfied that there is sufficient factual basis to meet the requirements of s 190B(5)(b).

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

[114] Section 190B(5)(c) requires the factual basis material to be sufficient to support the assertion that the native title claim group continues to hold native title in accordance with traditional laws and customs. The traditional laws and customs referred to in s 190B(5)(c) are those referred to under s 190B(5)(b).[110]

[115] I understand that continuity may be inferred where there is '[c]lear evidence of a pre-sovereignty society and its laws and customs, of genealogical links between that society and the claim group, and an apparent similarity of laws and customs'.[111]

[116] In addition to the material summarised above in relation to the s 190B(5)(a) and (b) assertions, the Preliminary Connection Report includes the following information:

a. Contemporary members of the claim group maintain (with some adaptation) traditional kinship classifications, extended-family marriage norms, and traditional understandings of relatedness.[112]

b. Contemporary knowledge of family affiliations to particular localities in the Application area reflects continuity from at-sovereignty territorial connections.[113]

c. Ongoing practice of mythology, sacred site knowledge, and teaching of *Jin* identities to younger generations.[114]

[110] *Martin* [29].

[111] *Gudjala 2009* [33].

[112] Preliminary Connection Report at [91]–[92]; WC-1 Affidavit at [4], [9].

[113] Preliminary Connection Report at [104].

d. Continued hunting, fishing, artefact-making, and sharing of resources in accordance with customary obligations (including how information relating to these has been passed down).[115]

e. There are clear genealogical links between today's knowledge-holders and apical ancestors evidenced through population modelling and oral accounts.[116]

f. Dr Rose concludes that fundamental structures and normative functions of traditional laws and customs have persisted, albeit in modified forms, from sovereignty to present.[117]

g. This is also supported by the material in the WC-1 Affidavit, which describes how Southern West Yiradyuri law and customs was passed down and obligations to pass these traditional beliefs and practices on to others, including the younger generations, to ensure that these are continued.[118]

Consideration of the assertion at s 190B(5)(c)

[117] The material contained in the Amended Application provide sufficient support for the assertion that the claim group have continued to hold the native title in accordance with the traditional laws and customs discussed above. The material demonstrates how traditional laws and customs have been passed down from the predecessors to current members of the claim group, and how these traditional laws and customs are practiced today.

[118] For these reasons, I am satisfied that there is sufficient factual basis material to meet the requirements of s 190B(5)(c).

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

[119] I consider that all of the claimed rights and interests have been established on a prima facie basis. Therefore, the claim satisfies the condition of s 190B(6).

[120] Section 190B(6) requires the Registrar to consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.[119]

[121] I understand that I may consider material additional to the application for the purpose of my assessment of this condition.[120] As a 'more onerous test [is] to be applied to the individual rights and interests claimed' than under s 190B(5),[121] I consider that the task involves some

---

[114] Ibid at [93]–[96]; see also WC-1 Affidavit at [8]–[10], [20]–[21], [38].

[115] Preliminary Connection Report at [98]–[101]; WC-1 Affidavit at [28]–[38].

[116] Preliminary Connection Report [23]–[25], [104].

[117] Ibid at [102]–[103].

[118] WC-1 Affidavit at [7]–[10].

[119] Section 186(1)(g) of the Act requires the Register of Native Title Claims to include a description of the native title rights and interests that, in applying s 190B(6), could be established on a prima facie basis.

[120] *Doepel* [16].

[121] Ibid [127], [132].

weighing of the factual basis for the claimed rights and interests. It follows that a claimed native title right and interest can be prima facie established if the factual basis is sufficient to demonstrate that it is possessed pursuant to the traditional laws and customs of the native title claim group.[122]

[122] According to Dowsett J in *Gudjala 2007*, s 190B(6) is to be considered having regard to the definition of 'native title rights and interests' in s 223(1).[123] As such, I must consider whether, on a prima facie basis, the claimed native title rights and interests:

- exist under traditional laws and customs in relation to any of the land or waters in the application area;
- are native title rights and interests in relation to land or waters; and
- have not been extinguished over the whole of the application area.

[123] Justice Kirby observed in Ward HC that 'for a native title right to be recognised under the [Act], the critical threshold question is whether it is a right or interest "in relation to" land or waters'.[124] The term "in relation to" is here to be given a 'wide import'.[125]

[124] The claimed rights and interests are extracted at paragraph 87 above, and in my view each of the claimed rights and interests are 'in relation to land or waters'. I consider each claimed right in turn below. For the reasons that follow, I consider that the factual basis material is sufficient to establish, on a prima facie basis, each of the rights and interests claimed in the Amended Application.

Native title rights and interests prima facie established

Exclusive possession native title rights and interests

1. […] THE EXCLUSIVE RIGHT TO POSSESSION, OCCUPATION, USE AND ENJOYMENT OF THE CLAIM AREA AS AGAINST ALL OTHERS, PURSUANT TO THE TRADITIONAL LAWS AND CUSTOMS OF THE NATIVE TITLE CLAIM GROUP.

[125] Paragraph 1 of Schedule E claims 'the exclusive right to possession, occupation, use and enjoyment of the claim area as against all others'.

[126] I note the comments of the High Court in *Ward HC*, that exclusive rights are 'the rights under traditional law and custom to be asked permission and 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'.[126]

[127] The Full Court held in *Griffiths* that:

> It is not necessary to a finding of exclusivity in possession, use and occupation, that the native title claim group should assert a right to bar entry to their country on the basis that it is "their

[122] *Yorta Yorta* [86]; *Gudjala 2007* [86].
[123] *Gudjala 2007* [85]–[87].
[124] *Ward HC* [577].
[125] *Alyawarr* [93].
[126] *Ward HC* [88].

country". 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'. It is also important to bear in mind that traditional law and custom, so far as it bore upon relationships with persons outside the relevant community at the time of sovereignty, would have been framed by reference to relations with indigenous people. The question of exclusivity depends upon the ability of the [native title holders] effectively to exclude from their country people not of their community. If, according to their traditional law and custom, spiritual sanctions are visited upon unauthorised entry and if they are the gatekeepers for the purpose of preventing such harm and avoiding injury to the country, then they have … an exclusive right of possession, use and occupation.[127]

[128] In *Sampi*, French J (as his Honour then was) noted that:

> The right to possess and occupy as against the whole world carries with it the right to make decisions about access to and use of the land by others. The right to speak for the land and to make decisions about its use and enjoyment by others is also subsumed in that global right of exclusive occupation.[128]

[129] Mr Carter deposes that 'Southern West Yiradyuri have the exclusive right to use and occupy our land under our laws and customs. Other Aboriginal people should only access and use our land with our permission (and vice versa)'.[129] He notes he was taught that:

> I do not possess Southern West Yiradyuri land. It possesses me and all other Southern West Yiradyuri people. I was taught to believe that Southern West Yiradyuri land and people are one and the same thing. She speaks to us and **we speak to and for her**.[130] (emphasis added)

[130] There is some evidence of spiritual or religious beliefs that ancestor spirits return to their home country after death which will 'punish trespassers' in the country.[131] Mr Carter also notes an obligation 'to look after our country and the significant places within it,'[132] and 'rights and obligations as a Southern West Yiradyuri man to … control the access to and use of the land by others'.[133] Failure to 'ensure that spiritual beliefs and practices are continued, significant places are protected, and the spiritual health of our land is maintained' will cause the land and people to suffer.[134]

[131] Dr Rose notes his opinion that:

> … traditional Southwest Wiradjuri economic culture maintained a normative economic system for regulating access to, use of, and distribution of natural resources within Southwest Wiradjuri territory, and between the Southwest Wiradjuri community and its neighbours. In my opinion, this evidence indicates that natural resources were carefully and deliberately managed by

---

[127] *Griffiths* [127].
[128] *Sampi* [1072].
[129] WC-1 Affidavit at [6].
[130] Ibid at [7].
[131] Ibid at [9].
[132] Ibid at [8].
[133] Ibid at [9].
[134] Ibid at [10].

> Southwest Wiradjuri community members for the purposes of ongoing, sustainable utilisation and trade.[135]

[132] There is also material that Southern West Yiradyuri traditional religion determined 'rights to access specific sacred sites within Southwest Wiradjuri territory'.[136]

[133] I consider the material prima facie establishes the claimed right to possession, occupation, use and enjoyment of the area to the exclusion of all others. There is material that demonstrates responsibilities/obligations to 'speak for' the land, to protect it and important sites, and to control access to (and use of) the land. It also speaks to the fact that other Aboriginal people should ask for permission before accessing and using the land, indicating reciprocal respect from other groups of this status. There is also material speaking to traditional laws and customs governing use of resources in the Amended Application area and determining rights of access to important and sacred sites, and the spiritual and physical consequences of failing to adhere to such restrictions. Taken together, I consider the material sufficiently demonstrates that rights to control access, speak for country, or to act as gatekeepers to avoid spiritual harm in accordance with the traditional laws and customs of the Southern West Yiradyuri People at sovereignty and within the meaning of the relevant case law referred to above. There is sufficient material to demonstrate that these claimed exclusive rights are held by members of the claim group and derived from the pre-sovereignty society.

[134] For these reasons, I am satisfied the claimed exclusive rights are traditional and prima facie established.

Non-exclusive native title rights and interests

[135] The claimed non-exclusive rights and interests are set out at paragraph 2 of Schedule E. For the below reasons, I am satisfied that each of the claimed non-exclusive rights and interests can be prima facie established under s 190B(6). Where I consider that the claimed rights and interests are related, I have dealt with them together.

A) ACCESS THE APPLICATION AREA; B) USE AND ENJOY THE APPLICATION AREA; C) MOVE ABOUT THE APPLICATION AREA; D) CAMP ON THE APPLICATION AREA; E) ERECT SHELTERS AND OTHER STRUCTURES ON THE APPLICATION AREA; F) LIVE, BEING TO ENTER AND REMAIN, ON THE APPLICATION AREA; H) HUNT ON THE APPLICATION AREA; I) FISH IN THE APPLICATION AREA; J) HAVE ACCESS TO AND USE WATER OF THE APPLICATION AREA; K) THE RIGHT TO GATHER AND USE THE NATURAL RESOURCES OF THE APPLICATION AREA;

[136] Mr Carter deposes to accessing,[137] enjoying,[138] moving about,[139] living,[140] camping,[141] hunting,[142] fishing,[143] and gathering and using the natural resources of the Application area.[144]

---

[135] Preliminary Connection Report at [82]. See also [109].
[136] Ibid at [81].
[137] WC-1 Affidavit at [30]–[35].
[138] Ibid at [22], [27]–[36].
[139] Ibid at [31].
[140] Ibid at [34].
[141] Ibid at [22], [33]–[34].
[142] Ibid at [22], [28]–[36].

There is also evidence of other claim group members living and working in the Amended Application area.[145] I consider the erection of shelters and access to/use of waters are incidental to and subsumed within the rights to live and camp on the Amended Application area. Dr Rose's report also refers to these claimed rights and interests, for example evidence of use of traditional fish traps/sanctuaries, and hunting and gathering over lagoons, rivers and swamps.[146] There are also numerous examples of past members of the claim group living in the Amended Application area.[147]

[137] I am satisfied that these claimed rights and interests are traditional and prima facie established.

G) HOLD MEETINGS ON THE APPLICATION AREA; M) THE RIGHT TO PARTICIPATE IN CULTURAL AND SPIRITUAL ACTIVITIES ON THE APPLICATION AREA; N) THE RIGHT TO MAINTAIN AND PROTECT PLACES OF IMPORTANCE UNDER TRADITIONAL LAWS, CUSTOMS, AND PRACTICES IN THE APPLICATION AREA; O) THE RIGHT TO CONDUCT CEREMONIES ON THE APPLICATION AREA;

[138] Mr Carter deposes to the conduct of and participation in traditional ceremonies,[148] and the maintenance and protection places of importance under traditional laws and customs, including a forbidden men's site[149] and a lake located in the Amended Application area.[150] I consider the holding of meetings to be incidental to participating in cultural and spiritual activities, and also in relation to the rights discussed at paragraphs 129 to 132 above and 145 below.

[139] I am satisfied that these claimed rights and interests are traditional and prima facie established.

L) THE RIGHT TO SHARE AND EXCHANGE RESOURCES DERIVED FROM THE LAND AND WATERS WITHIN THE APPLICATION AREA;

[140] There is evidence of traditional trade and distribution within and between communities (including the exchange of sacred objects/materials), as well as the sharing of game and trade with neighbours.[151] Mr Carter notes obligations to 'share' and 'not be greedy', and talks of how his uncle would of bring back food to share or trade.[152]

[141] I am satisfied that this claimed right is traditional and prima facie established.

---

[143] Ibid at [22], [33]–[35].
[144] Ibid at [22] and [28].
[145] Preliminary Connection Report at [88].
[146] Ibid at [74].
[147] Ibid at [86]–[88].
[148] WC-1 Affidavit at [12], [18], [20]–[21], and [26]
[149] Ibid at [18].
[150] Ibid at [23]
[151] Preliminary Connection Report at [78], [101], [109].
[152] WC-1 Affidavit at [36].

P) THE RIGHT TO TRANSMIT TRADITIONAL KNOWLEDGE TO MEMBERS OF THE NATIVE TITLE CLAIM GROUP INCLUDING KNOWLEDGE OF PARTICULAR SITES WITHIN THE APPLICATION AREA;

[142] Mr Carter deposes that he was taught of his obligations to 'pass on my ancestors' traditional beliefs and practices', outlining some specific religious and spiritual beliefs he was taught and is required to teach in turn.[153] He also outlines, for example, some traditional ecological knowledge he was taught,[154] and tells of two law women 'who taught all the kids on the Sandhill in Narrandera' about families and cultural protocols.[155] He also talks of the site near the Warangesda Mission, and how he was told of its history and importance by senior Elders.[156]

[143] Dr Rose's report also contains some material relevant to this claimed right, including details relating to how traditional law and custom has been passed down.[157]

[144] I am satisfied that this claimed right is traditional and prima facie established.

Q) THE RIGHT TO SPEAK FOR AND MAKE NON-EXCLUSIVE DECISIONS ABOUT THE APPLICATION AREA IN ACCORDANCE WITH TRADITIONAL LAWS AND CUSTOMS; R) THE RIGHT TO SPEAK AUTHORITATIVELY ABOUT THE APPLICATION AREA AMONG OTHER ABORIGINAL PEOPLE IN ACCORDANCE WITH TRADITIONAL LAWS AND CUSTOMS; S) THE RIGHT TO CONTROL ACCESS TO OR USE OF THE LANDS AND WATERS WITHIN THE APPLICATION AREA BY OTHER ABORIGINAL PEOPLE IN ACCORDANCE WITH TRADITIONAL LAWS AND CUSTOMS.

[145] I refer to my consideration of the claimed right of exclusive possession at paragraphs 129 to 132 above. For substantially the same reasons, I consider these claimed non-exclusive rights and interests are traditional and prime facie established.

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

[146] Section 190B(7) requires the Registrar 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, or previously had and would reasonably be expected to currently have a traditional physical connection with any part of the land or waters, but for certain things done.

[147] As Dowsett J observed in *Gudjala 2009*, the traditional physical connection under this provision 'must be in exercise of a right or interest in land or waters held pursuant to traditional laws and customs'.[158] The term 'traditional' (as used under s 223 of the Act) was considered in the joint judgment in *Yorta Yorta*:

> … the connection which the peoples concerned have with the land or waters must be shown to be a connection by their traditional laws and customs … 'traditional' in this context must be

[153] Ibid at [9]–[10].
[154] Ibid at [40]–[43].
[155] Ibid at [19].
[156] Ibid at [11].
[157] Preliminary Connection Report at [93]–[96].
[158] *Gudjala 2009* [84].

understood to refer to the body of law and customs acknowledged and observed by the ancestors of the claimants at the time of sovereignty.[159]

[148] Justice Mansfield in *Doepel* stated that the task of the Registrar under s 190B(7) requires 'some measure of substantive (as distinct from procedural) quality control upon the application, if it is to be accepted for registration'.[160]

[149] I therefore understand that I must be satisfied that the material provides a factual basis from which I can establish that at least one member of the claim group has or had the necessary 'traditional' physical association with the application area.

[150] There are numerous examples of members of the claim group having a traditional physical connection with the land and waters of the claim area, particularly as outlined in my reasons in relation to ss 190B(5) and (6) above. As a particular example, Mr Carter (a member of the applicant) talks of how he would go with his 'Southern West Yiradyuri Uncles' and cousins to 'exercise my traditional rights to take, use and trade natural resources through traditional hunting, fishing and gathering' in places such as the 'Gillenbah Forests'.[161] Gillenbah and its surrounds are in the Amended Application area.

[151] For these reasons, I am satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with a part of the claim area. I therefore am satisfied the Amended Application meets the requirements of s 190B(7).

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

[152] Section 190B(8) provides that the application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that the application should not have been made because it does not comply with s 61A.

Section 61A(1)

[153] Section 61A(1) provides that a native title determination application must not be made in relation to an area for which there is an approved determination of native title.

[154] The Geospatial Assessment and my own searches of the NNTT's databases confirm that there are no approved determinations of native title that fall within the Amended Application area. This requirement is met.

Section 61A(2)

[155] Section 61A(2) provides that a claimant application must not be made over areas covered by a previous exclusive possession act, unless the circumstances described in subparagraph (4) apply. That subsection provides that ss 61A(2) or (3) do not apply where:

[159] *Yorta Yorta* [86].

[160] *Doepel* [18].

[161] WC-1 Affidavit at [29]–[30].

a. the only PEPA or previous non-exclusive possession act (PNEPA) was one where extinguishment is required to be disregarded under ss 47, 47A, 47B, or 47C of the Act; and

b. the application states that one of these sections apply.

[156] I note the general exclusions at Schedule B (including Items B-E) and consider that the Amended Application does not offend the provisions of s 61A(2).

[157] I am therefore satisfied this requirement is met.

Section 61A(3)

[158] Section 61A(3) provides that an application must not claim native title rights and interests that confer possession, occupation, use and enjoyment to the exclusion of all others in an area where a previous non-exclusive possession act was done, unless the circumstances described in s 61A(4) apply.

[159] I consider that Schedule E of the Application is worded in such a way that that exclusive possession native title is claimed only over areas where such exclusive possession can be recognised. Having regard to this and the general exclusions Schedule B (including Item F), I consider that the Amended Application does not offend the provisions of s 61A(3).

[160] I am therefore satisfied this requirement is met.

Conclusion in relation to 190B(8)

[161] For the above reasons, the Amended Application meets the condition at s 190B(8).

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

[162] Section 190B(9) provides that the application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that claimed native title rights and interests include claims to ownership of minerals, petroleum or gas wholly owned by the Crown, exclusive rights to waters in an offshore place or extinguished native title rights and interests (except where such extinguishment can be disregarded under certain provisions of the Act).[162]

Section 190B(9)(a)

[163] Schedule O states: 'Not applicable as the Applicant claims no ownership of minerals, petroleum or gas wholly owned by the Crown'. I am therefore satisfied that the requirements of s 190B(9)(a) are met.

[162] See ss 47(2), 47A(2), 47B(2) or 47C(8) of the Act.

Section 190B(9)(b)

[164] Schedule N states: 'Not applicable as the Applicant does not claim any offshore places'. I am therefore satisfied that the requirements of s 190B(9)(b) are met.

Section 190B(9)(c)

[165] Schedule B, Item D confirms that the area covered by the Application excludes land or waters where the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsections 47(2), 47A(2) or 47B(2) pursuant to s190B(9)(c). I also note the effect of Schedule B, Items B, C, and E.

[166] For these reasons, I am satisfied the requirements of s 190B(9)(c) are met.

Conclusion in relation to 190B(9)

[167] In my view, the Application does not offend the provisions of ss 190B(9)(a)–(c) and therefore, the Amended Application meets the condition of s 190B(9).

End of reasons

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Southern West Yiradyuri/Wiradyuri/Wiradjuri People
NNTT No.	NC2025/004
Federal Court of Australia No.	NSD1851/2025

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:

10 November 2025

Date application entered on Register:

30 April 2026

Applicant:

Bernard Higgins, Dorothy Whyman, Will Carter, Heath Lightfoot, Tamika Murphy and Geoffrey Johnson

Applicant's address for service:

Level 17, 110 Mary Street
Brisbane QLD 4000

Conditions on Applicant's authority

As per Schedule HA of the Amended Application

Area covered by application:

As per Schedule B, Attachment B, and Attachment C of the Amended Application

Persons claiming to hold native title:

As per Schedule A of the Amended Application

Registered native title rights and interests:

As per Schedule E of the Amended Application

Michael Raine

Delegate of the Native Title Registrar pursuant to ss 190–190D of the Act under an instrument of delegation dated 5 February 2024 and made pursuant to s 99 of the Act.

30 April 2026