



## Registration Decision

**Application name** Payarri #2  
**Name of applicant** Bradley Wongawol, Kado Muir, Sophia Thomas  
**Federal Court of Australia No.** WAD40/2026  
**NNTT No.** WC2026/001  
**Date of Decision** 13 April 2026

### **Claim accepted for registration**

I have decided that the claim in the Payarri #2 application satisfies all of the conditions in ss 190B–190C of the *Native Title Act 1993* (Cth).<sup>1</sup> Therefore the claim must be accepted for registration and entered on the Register of Native Title Claims.

---

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

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.

# 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')

*Aplin on behalf of the Waanyi Peoples v State of Queensland* [2010] FCA 625 ('Aplin')

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

*De Rose v State of South Australia* [2002] FCA 1342 ('De Rose')

*Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People* [2019] FCAFC 177; (2019) 273 FCR 350 ('Warrie')

*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] FCAFC 157; (2008) 171 FCR 317 ('Gudjala FC')

*Gudjala People #2 v Native Title Registrar* [2009] FCA 1572; (2009) 182 FCR 63 ('Gudjala 2009')

*Helicopter Tjungarrayi on behalf of the Ngurra Kayanta People v Western Australia* [2016] FCA 910 ('Tjungarrayi')

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

*McLennan v Queensland* [2019] FCA 1969 ('McLennan')

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

*Muir on behalf of the Payarri People v Western Australia* [2025] FCA 1456 ('Payarri Determination')

*Narrier v State of Western Australia* [2016] FCA 1519 ('Narrier')

*Northern Land Council v Quall* [2020] HCA 33; (2020) 271 CLR 394 ('Quall HC')

*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] FCA 1384; (2003) 133 FCR 112 ('Doepel')

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

*Sampi on behalf of the Bardi and Jawi People v State of Western Australia* [2010] FCAFC 26 ('Sampi FC')

*Strickland v Native Title Registrar* [1999] FCA 1530; (1999) 168 ALR 242 ('Strickland')

*Wakaman People # 2 v Native Title Registrar and Authorised Delegate* [2006] FCA 1198; (2006) 155 FCR 107 ('Wakaman')

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

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

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

## Background

- [1] This decision relates to a native title determination application Bradley Wongawol & Ors on behalf of the Payarri People #2 and Western Australia & Ors ('Application'). It covers land and waters of approximately 937.8 square kilometres adjacent to the western edge of the *Payarri People* determination ('Payarri Determination'). The Application was filed on 5 February 2026 and on 11 February 2026 the Registrar of the Federal Court ('Court') gave a copy of the Application and accompanying affidavits to the Native Title Registrar ('Registrar') pursuant to s 63 of the Act. This has triggered the Registrar's duty to consider the claim made in the application for registration in accordance with s 190A.<sup>2</sup>

## Preliminary considerations

### *Registration conditions*

- [2] Sections 190A(1A), (6), (6A) and (6B) set out the decisions available to the Registrar under s 190A. Section 190A(6) provides that the Registrar must accept the claim for registration if it satisfies all of the conditions of s 190B (which the Act refers to as dealing mainly with the merits of the claim) and s 190C (which the Act refers to as dealing 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.
- [3] Given that the application was made on 5 February 2026 and has not been amended, I am satisfied that neither s 190A(1A) nor s 190A(6A) apply.
- [4] 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*

- [5] On 13 February 2026 a Senior Officer wrote to the applicant and the State of Western Australia ('State') to invite any additional information or submissions by 27 February 2026.
- [6] On 27 February 2026, the applicant provided the following additional information:
- applicant's submissions dated 27 February 2026 ('Applicant's Submissions');
  - document titled 'A Report for Consideration in the Application of the Registration Test in the Matter of Payarri #2 Native Title Claim' prepared by Amelia Brashaw dated February 2026 ('Brashaw 2026 Report');
  - document titled 'Anthropological Registration Report for the Payarri Claim' prepared by Dr Lynes and T Handley dated June 2022 ('Lynes and Handley 2022 Report');
  - document titled 'Supplementary Anthropological Report for the Payarri Native Title Claim' prepared by T Handley dated December 2023 ('Handley 2023 Report'); and
  - document titled 'An Expert Report in the matter of Payarri Native Title Claim' prepared by Dr Lynes dated July 2025 ('Lynes 2025 Report')

---

<sup>2</sup> Section 190A(1).

(together referred to as ‘Applicant’s Additional Material’).

- [7] On 2 March 2026 the Applicant’s Additional Material was provided to the State for comment by 16 March 2026. No submissions or response to the Applicant’s Additional Material was received from the State. This concluded the procedural fairness process.

### *Information considered*

- [8] 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’.
- [9] In accordance with s 190A(3)(a), I have had regard to the information in the application and accompanying documents and the Applicant’s Additional Material.
- [10] There is no information before me obtained as a result of any searches conducted by the Registrar of State/Commonwealth interest registers under s 190A(3)(b).
- [11] The State has not provided any submissions or information in relation to the application of the registration test that I must have regard to in accordance with s 190A(3)(c).<sup>3</sup>
- [12] Section 190A(3) provides that I may also have regard to such other information as I consider appropriate. I have also considered it appropriate to have regard to a geospatial assessment and overlap analysis prepared by the Tribunal’s Geospatial Services in relation to the area covered by the application, dated 16 February 2026 (‘Geospatial Assessment’).

## **Section 190C: conditions about procedural and other matters — conditions met**

### Sections 190C(2) and ss 61 and 62: registration conditions about procedural and other matters – condition met

- [13] I have examined the application and for the reasons set out below, I am satisfied that it contains all details and other information and is accompanied by affidavits and other documents as required by ss 61 and 62.
- [14] 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 61–62. This condition does not require any merit assessment of the material to be undertaken, however it does seek ‘...to ensure that the application contains “all details” required by s 61...’.<sup>4</sup> 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

---

<sup>3</sup> Section 190A(3)(c).

<sup>4</sup> *Doepel* [35].

enable the Registrar to form an opinion about whether the claim satisfies all of the conditions in ss 190B and 190C.<sup>5</sup>

### *Section 61 – native title applications*

- [15] **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. The Application is made by the three persons named in the Application as comprising the applicant. Attachment A contains a description of the native title claim group. Each of the persons comprising the applicant have deposited an affidavit for the purposes of s 62 and these have been filed in the Court and were provided under s 63 as documents accompanying the 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 Application by the persons in the native title claim group.<sup>6</sup> Having regard to this, I am satisfied that the Application has been made in accordance with s 61(1).
- [16] **Section 61(2)** provides that the persons authorised to make the native title determination application are jointly the applicant and none of the other members of the native title claim group is the applicant. In my view, nothing in the Application or other material that I have considered suggests otherwise.
- [17] **Section 61(3)** requires an application to state the name and address for service of the applicant. The names of each of the persons comprising the applicant are stated in the Application and Part B states that the applicant is represented by Central Desert Native Title Services Ltd ('CDNTS') and includes the relevant address for service. I am satisfied that the Application contains the information required by s 61(3).
- [18] **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. In *Gudjala 2007*, Dowsett J emphasised 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 in contrast to the merits exercise undertaken pursuant to s 190B(3).<sup>7</sup> In my view, the description of the native title claim group contained at Attachment A of the Application is sufficiently clear to confirm whether any particular person is a member of the claim group.<sup>8</sup> I am satisfied that the Application contains the information required by s 61(4).
- [19] **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. In my view, these are matters for the Court, however I note that the Application is made in the prescribed form and was accepted for filing on 11 February 2026.

---

<sup>5</sup> See also s 190D(3)(b).

<sup>6</sup> Affidavits of Bradley Wongawol affirmed 30 January 2026, Kado Muir affirmed 29 January 2026 and Sophia Thomas affirmed 13 January 2026 ('Applicant Affidavits'), [1], [5].

<sup>7</sup> *Gudjala 2007* [31]–[32].

<sup>8</sup> Section 61(4)(b).

*Section 62(1), (1A) and (2): information etc. in relation to certain applications; claimant applications*

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

- the deponent is one of the members of the applicant and a member of the native title claim group;
- the deponent believes that the native title rights and interests claimed have not been extinguished in relation to any part of the area covered by the Application;
- the deponent believes that none of the area covered by the Application is also covered by an approved determination of native title;
- the deponent believes that all of the statements made in the Application are true;
- the deponent believes that they are 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, because;
  - the description of the claim group includes all persons who hold the common or group rights according to traditional laws and customs;
  - as a senior law man or knowledge holder, the deponent understands the process of decision-making required in authorising the deponent under traditional laws and customs;
  - the traditional decision-making process involves meeting to discuss who should be the applicant and agreement by consensus; and
  - a meeting was held on 4 December 2025, attended by lawyers from CDNTS, at which the deponent was appointed as a member of the applicant in accordance with that process; and
- no conditions were imposed on the authority of the applicant.

[21] I am satisfied that the above statements in the Applicant Affidavits meet the description of each of the statements required by s 62(1A)(a)–(f) and that as no conditions were imposed, s 62(1A)(g) is not applicable. I am therefore satisfied that the Application is accompanied by the documents required by s 62(1)(a).

[22] **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 an application. Schedule J indicates that the Application area does not include any area to which section 47C applies. As such, the requirement at s 62(1)(d) is not applicable.

[23] **Section 62(2)(a)** requires that an 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. Attachment B contains a written description of the

external boundaries of the Application area and confirms that the claim area excludes the areas covered by three existing determinations. Schedule B provides a description of those areas within the external boundaries that are not covered by the Application. The Application contains the information required by s 62(2)(a).

- [24] **Section 62(2)(b)** requires that an application include a map showing the boundaries of the area mentioned in s 62(2)(a). Attachment C contains a map showing the external boundaries of the Application area. The Application contains the information required by s 62(2)(b).
- [25] **Section 62(2)(c)** requires that an application include details and results of searches of any non-native title rights and interests covered by the application. Attachment D contains details of the searches conducted and also refers to Attachment I.<sup>9</sup> I am satisfied that the Application contains the information required by s 62(2)(c).
- [26] **Section 62(2)(d)** requires an 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 application contains a description of the claimed native title rights and interests. In my view the description of the claimed rights and interests at Schedule E meets the requirements of s 62(2)(d) and so I am satisfied that the Application contains the required information.
- [27] **Section 62(2)(e)** requires an 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 factual basis is contained in Attachment F. The Application contains the information required by s 62(2)(e).
- [28] **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 an application. Schedule E refers to Attachments E and F, which includes the details of activities undertaken by members of the claim group. I am satisfied that the Application contains the information required by s 62(2)(f).
- [29] **Section 62(2)(g)** requires an 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. Schedule G states that as at 3 February 2026 there are no other applications or determinations of native title made in relation to the area covered by the Application and also refers to previous applications that have been withdrawn or dismissed. I am satisfied that the Application contains the information required by s 62(2)(g).
- [30] **Section 62(2)(ga)** requires an application to include details of any s 24MD(6B)(c) notifications relevant to the claim area. Attachment H contains a list including the relevant notices. I am satisfied that the Application contains the information required by s 62(2)(g).

---

<sup>9</sup> Although there is no Attachment I, I take this reference instead to be to Attachment H, which contains details of notices given under ss 24 and 29.

[31] **Section 62(2)(h)** requires that an application include details of any s 29 notifications relevant to the claim area of which the applicant is aware. The list at Attachment H includes the relevant notices. As such, I am satisfied that the Application contains the information required by s 62(2)(h).

[32] **Section 62(2)(i)** requires an 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 and the Applicant Affidavits indicate that no conditions were imposed on the authority of the applicant for the purposes of s 251BA. As such, the requirement at s 62(2)(i) is not applicable.

### *Conclusion on s 190C(2)*

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

### **Section 190C(3): no previous overlapping claim group – condition met**

[34] 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’. I understand that in assessing this requirement I may have regard to information which does not form part of the application and accompanying documents.<sup>10</sup>

[35] 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).<sup>11</sup> These criteria are that any previous application covers at least some of the same area, was accepted for registration under s 190A and is on the Register.

[36] Having regard to the Geospatial Assessment and my own searches of the NNTT’s databases, I am satisfied that there is no previous claim within the meaning of s 190C(3) that overlaps any of the area covered by the Application.

[37] As there are no previous applications within the meaning of ss 190C(3)(a)–(c), the Application does not contravene this requirement. The condition at s 190C(3) is met.

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

[38] 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’),<sup>12</sup> or the requirements in subsection (4AA) are met.<sup>13</sup> Schedule P states that the Application has been certified by CDNTS, and refers to Attachment P which contains the certification under

---

<sup>10</sup> *Doepel* [16].

<sup>11</sup> *Strickland FC* [9].

<sup>12</sup> Section 190C(4)(a).

<sup>13</sup> Section 190C(4)(b).

s 203BE ('Certification'). As such, I must consider whether the requirements of s 190C(4)(a) have been met.

- [39] Section 190C(4)(a) requires the Registrar to be 'satisfied about the fact of certification by an appropriate representative body', but is not to 'go beyond that point' and 'revisit' or 'consider the correctness of the certification'.<sup>14</sup> As such, I understand that my task is to identify the appropriate representative body and be satisfied that the Application is certified under s 203BE.

*Does the certifying body have power to certify?*

- [40] The Geospatial Assessment indicates that CDNTS is the relevant native title service provider responsible for the land and waters covered by the Application.<sup>15</sup> Paragraphs 1 and 2 of the Certification indicate that CDNTS is funded to perform all of the functions of a representative body under s 203FE(1)(a) and have certified the Application pursuant to ss 203FEA and 203BE. The certificate is signed by the Chief Executive Officer of CDNTS under delegation from the board of CDNTS. I understand that a Chief Executive Officer may perform the functions of a representative body under an instrument of delegation or as an agent.<sup>16</sup> I am satisfied that CDNTS is the appropriate certifying body and that it was within its power to issue the Certification.

*Have the requirements of s 203BE been met?*

- [41] To meet the requirements of s 190C(4)(a), the certification must comply with the provisions of s 203BE(4)(a) to (c).
- [42] **Section 203BE(4)(a)** requires a certification to contain a statement of the representative body's opinion as per s 203BE(2), that all persons in the native title claim group have authorised the applicant to make the application and deal with all matters in relation to it, any conditions under s 251BA on the authority that relate to the making of the application have been satisfied, and all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the native title claim group. Paragraph 4 contains the required statements of opinion under s 203BE(2). I am satisfied that the Certification meets the requirements of s 203BE(4)(a).
- [43] **Section 203BE(4)(b)** requires a certification to include brief reasons for the representative body's opinion. The brief reasons are set out at paragraphs 5 to 9 of the Certification, referring to legal and anthropological assistance provided in relation to the Application, including attendance at meetings and efforts to ensure that all members of the claim group are identified and have had a reasonable opportunity to participate in decision-making processes. I am satisfied that the Certification meets the requirement at s 203BE(4)(b).
- [44] **Section 203BE(4)(c)** applies where the application area is covered by an overlapping application for determination of native title. Paragraph 10 of the Certification indicates that

---

<sup>14</sup> *Doepel* [78], [80]–[82]; see also *Wakaman* [32].

<sup>15</sup> See also, Attachment P [3].

<sup>16</sup> *Quall HC* [48], [63] and [93].

CDNTS are not aware of other overlapping applications that cover the Application area. I am satisfied that s 203BE(4)(c) is not applicable to the Certification.

#### *Conclusion on s 190C(4)*

- [45] For the above reasons, I am satisfied that the Certification meets the requirements of s 203BE(4). I am therefore satisfied that the condition at s 190C(4)(a) is met because the Application has been properly certified under Part 11 by each relevant RATSIB.
- [46] I note that once satisfied that the requirements of s 190C(4)(a) have been met, I am not required to 'address the condition imposed by s 190C(4)(b)'.<sup>17</sup>

### **Section 190B: conditions about merits of the claim – conditions met**

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

- [47] 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.
- [48] Attachment B describes the application area by a metes and bounds description referencing the boundaries of surrounding native title determinations, the Goldfields Representative Aboriginal and Torres Strait Islander Body and a pastoral lease. Attachment B notes for the avoidance of doubt that the application area excludes areas subject to three native title determinations. Part B of Schedule B lists general exclusions.
- [49] Attachment C comprises a map prepared by Central Desert Native Title Services, titled 'PAYARRI #2 Claim Application Central Desert' dated 27 January 2026. The map shows the boundary of the claim area depicted by a bold blue outline and blue hachure, various labelled land tenures, RATSIB boundary, scalebar, northpoint, coordinate grid, legend, location map and notes relating to the source, currency and datum of data used to prepare the map.
- [50] The Geospatial Assessment concludes that the written description and map are consistent and identify the claim area with reasonable certainty. I agree with the conclusion of the Geospatial Assessment and am therefore satisfied that the written description and map contained in the Application are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land and waters. The Application meets the requirements of s 190B(2).

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

- [51] Section 190B(3) requires the Registrar to be satisfied that either the persons in the native title claim group are named in the application,<sup>18</sup> or that persons in that group are described

---

<sup>17</sup> Doepel [80].

<sup>18</sup> Section 190B(3)(a).

sufficiently clearly so that it can be ascertained whether any particular person is in that group.<sup>19</sup>

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

- I am required to address only the content of the application;<sup>20</sup>
- ‘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’;<sup>21</sup>
- 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’;<sup>22</sup> and
- 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’.<sup>23</sup>

[53] The description of the native title claim group is contained at Attachment A and is as follows:

The Payarri claim is brought on behalf of the Payarri people. The Payarri people are:

1. Those Aboriginal persons from time to time who, under Western Desert traditional laws and customs:
  - (a) have a connection to all or part of the application area through:
    - (i) their own birth or conception;
    - (ii) holding religious, sacred or ritual authority;
    - (iii) acquisition of knowledge through a traditional long association via occupation or custodianship; or
    - (iv) through descent from a person who has had such a connection in part or all of the area; and
  - (b) are recognised by other Payarri people as having native title rights and interests in the application area.
2. As at the date of the application, the persons referred to in paragraph 1(a) include, but are not limited to, the following persons:

[the descendants of 27 named apical ancestors]

[54] I consider that the description of the native title claim group has a number of elements. Paragraph 1 indicates that membership includes persons with a connection to the Application area under the categories set out in sub-paragraph (a), being the descendants of the apical

---

<sup>19</sup> Section 190B(3)(b).

<sup>20</sup> *Doepel* [51]; *Gudjala 2007* [30].

<sup>21</sup> *Gudjala 2007* [33].

<sup>22</sup> *Ibid* [34].

<sup>23</sup> *WA v NTR* [67].

ancestors listed in paragraph 2. Paragraph 1(b) further requires persons to be recognised by other Payarri People as having native title rights and interests in the Application area.

[55] Under paragraph 1(a) of Attachment A, persons may have rights in the application area through other non-descent-based categories. In my view, whether a person is a member of the claim group through birthplace, conception or religious, sacred or ritual authority may be readily ascertained through relevant inquiries. A description of a claim group by reference to birth on the claim area has previously been accepted by the Courts,<sup>24</sup> as has through conception sites.<sup>25</sup> As such, I am satisfied that eligibility for membership of the claim group under the non-descent-based categories may be ascertained through relevant inquiries.

[56] In relation to identifying members of the claim group by descent from named persons, I note that this has been accepted by the Court as satisfying the requirements of s 190B(3)(b).<sup>26</sup> In my view requiring a member to show descent as described in paragraph 2 of Attachment A provides a clear starting or external reference point and that with some factual inquiry it will be possible to identify the persons who fit this part of the description of the native title claim group. The list of apical ancestors at paragraph 2 is expressed as being non-exclusive. Membership through descent is also contingent on the relevant person being recognised by other Payarri People in accordance with paragraph 1(b). In my view, the descendants of any future ancestors that are identified will be those as recognised by the claim group under their traditional laws and customs.

[57] Paragraph 1(b) of Attachment A states that the categories for membership of the claim group is subject to recognition of other members of the claim group in accordance with the claim group's traditional laws and customs. Group acceptance has been previously held by the Court as 'inherent in the nature of a society'.<sup>27</sup> In *Sampi FC*, the Full Court noted that:

in determining whether a group constitutes a society in the *Yorta Yorta* sense is the internal view of the members of the group – the emic view. The unity among members of the group required by *Yorta Yorta* means that they must identify as people who are bound by the one set of laws and customs or normative system.<sup>28</sup>

[58] Attachment F and the Applicant's Additional Material set out information relating to the traditional laws and customs of the Payarri People. I consider that it is these laws and customs that provide the relevant rules or principles for ascertaining whether a person is recognised as a member of the claim group when applying the description of the claim group at paragraph 1(b) of Attachment A.

[59] I also note that the description of the claim group at Attachment A is largely identical to that in the Payarri Determination,<sup>29</sup> with the addition of one apical ancestor.

---

<sup>24</sup> *De Rose* [926].

<sup>25</sup> *Tjungarrayi* [13].

<sup>26</sup> *WA v NTR* [67].

<sup>27</sup> *Aplin* [260]; *Yorta Yorta* [108].

<sup>28</sup> *Sampi FC* [45].

<sup>29</sup> *Payarri Determination*, Determination, Schedule 2.

[60] For the above reasons, I am satisfied that the description of the claim group is sufficiently clear and meets the requirements of s 190B(3).

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

[61] Section 190B(4) requires the Registrar to be satisfied that the description contained in the application as required by s 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified. I understand that in considering this condition, I am confined to the material contained in the application itself.<sup>30</sup>

[62] 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.<sup>31</sup> 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)’.<sup>32</sup>

[63] The description of the claimed native title rights and interests at Schedule E is as follows:

1. Where there has been no extinguishment of native title rights and interests, or where any extinguishment must be disregarded,
  - (a) the applicant claims the right to possess, occupy, use and enjoy the lands and waters the subject of the application as against the whole world; and
  - (b) the applicant claims the right to control access to and use of these areas.
2. Where native title rights and interests have been partially extinguished, the applicant claims the following non-exclusive native title rights and interests:
  - (a) the right to access, remain in and use the application area;
  - (b) the right to access, take and use the resources of the application area for any purpose;
  - (c) the right to engage in spiritual and cultural activities in the application area; and
  - (d) the right to maintain and protect areas, sites and places of significance in the application area.
3. The native title rights and interests claimed in this application are subject to and exercisable in accordance with:
  - (a) the common law, the laws of the State of Western Australia and the Commonwealth of Australia;
  - (b) valid interests conferred under those laws; and
  - (c) the body of traditional laws and customs of the Payarri people.

[64] In my view, the claimed rights and interests are understandable and have meaning. I do not consider there to be any inherent contradictions. I am therefore satisfied that the Application meets the requirements of s 190B(4).

---

<sup>30</sup> *Doepel* [16].

<sup>31</sup> *Ibid* [99], [123].

<sup>32</sup> *Strickland* [60]. See also *Strickland FC* [85]–[87].

[65] I note that I consider below whether the factual basis material is sufficient to establish the existence of these claimed rights and interests on a prima facie basis under s 190B(6).

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

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

[67] Justice Mansfield stated in *Doepel* that 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.<sup>33</sup>

[68] 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.

[69] The guidance provided by the Full Court in *Gudjala FC* 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...’ is also relevant to the task under s 190B(5):

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.<sup>34</sup>

[70] In *Gudjala 2009*, Dowsett J further clarified the task under s 190B(5) as follows:

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

---

<sup>33</sup> *Doepel* [17]; *Gudjala FC* [57], [83].

<sup>34</sup> *Gudjala FC* [92].

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.<sup>35</sup>

[71] From the above, 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'.<sup>36</sup>

[72] The factual basis material is contained in Attachment F and the Applicant's Additional Material. I have set out my consideration of this material against each of the three assertions at s 190B(5) below.

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

[73] Section 190B(5)(a) was considered by Reeves J in *McLennan*. 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] and *Corunna* [39]].<sup>37</sup>

[74] In addition, I note the comments of Dowsett J in *Gudjala 2007* that s 190B(5)(a) requires sufficient factual material to support the assertion that the identified claim group (and not some other group) hold the identified rights and interests (and not some other rights and interests).<sup>38</sup>

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

[75] Attachment F states that the claim group's association with the area includes physical, spiritual, customary legal, economic and social elements and provides detail on each of these

---

<sup>35</sup> *Gudjala 2009* [29]; *Anderson* [43], [47]–[48].

<sup>36</sup> *Gudjala 2009* [29].

<sup>37</sup> *McLennan* [28], citations incorporated from original.

<sup>38</sup> *Gudjala 2007* [39].

elements.<sup>39</sup> The Brashaw 2026 Report refers to specific descendants of the claim group born in or near the Application area, as well as to their knowledge and observance of specific Tjukurrpa related to the claim area.<sup>40</sup> The material describes the date of ‘effective sovereignty’ in the Application area to be about 1900.<sup>41</sup> The Application area is described as a place used by the ancestors and current members of the claim group as a corridor or pathway for people travelling across Country for the purpose of ceremony and law business.<sup>42</sup>

- [76] The Brashaw 2026 Report includes detail relating to each of the apical ancestors named at paragraph 2 of Attachment A, including information indicating their associations and physical interactions with sites on the Application area at or around the time of effective sovereignty, including through spiritual connection to relevant Tjukurrpa.<sup>43</sup> This material also includes detail supporting the inclusion of the additional apical ancestor not listed in the Payarri Determination.<sup>44</sup>
- [77] The material describes the association of the predecessors of the claim group with the area, including their physical presence on the area as they travelled through it, following their Tjukurrpa, as a result of a massacre which occurred on a station to the north of the Application area.<sup>45</sup> Members of the claim group describe the importance of and their responsibilities in relation to a regional Tjukurrpa and water sources associated with the claim area, and detail about this Tjukurrpa is set out in the material.<sup>46</sup>
- [78] Current members of the claim are described as having long-term association with and knowledge about the claim area.<sup>47</sup> Specific examples include claim members describing their knowledge about hunting, gathering and preparing bush foods,<sup>48</sup> as well as camping on the Application area.<sup>49</sup> Members of the claim group also refer to the Payarri Determination and state that the Payarri #2 Application area was always part of the same area.<sup>50</sup>
- [79] I also consider that the material relating to the association with the claim group and their predecessors set out in the material relating to the first Payarri claim is relevant to this assertion.<sup>51</sup>

---

<sup>39</sup> Form 1, Attachment F [1]–[8].

<sup>40</sup> Brashaw 2026 Report, page 20 [72], page 22 [81].

<sup>41</sup> Brashaw 2026 Report, page 10 [34]; Lynes 2025 Report, page 19 [4.8].

<sup>42</sup> Brashaw 2026 Report, page 38 [148]–[150].

<sup>43</sup> *Ibid*, pages 22–29 [81]–[107].

<sup>44</sup> *Ibid*, pages 29–34 [108]–[125].

<sup>45</sup> *Ibid*, pages 11–13 [35]–[42].

<sup>46</sup> *Ibid*, pages 15–16 [58]–[62].

<sup>47</sup> *Ibid*, page 35 [132].

<sup>48</sup> *Ibid*, page 36 [138].

<sup>49</sup> *Ibid*, page 38 [151].

<sup>50</sup> *Ibid*, page 21 [76].

<sup>51</sup> See, eg, Lynes 2025 Report, pages 41–64, 66–73.

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

[80] From the above information, I consider that the factual basis material 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 claim area.

[81] In my view, the material contains sufficient material to demonstrate that the apical ancestors and predecessors of the claim group have an association with the area. The material contains detailed information relating to each of the apical ancestors and sets out particularly their use of the Application area relating to ceremony and law business. I note that material also includes detail relating to the additional apical ancestor not included in the Payarri Determination. The material also sets out the association of current members of the claim group, including direct physical association with the Application area and through knowledge and protection of a particular Tjukurrpa. In my view, this material includes sufficient geographical particularity to support the assertion that the whole claim group and their predecessors have an association with the whole of the claim area.

[82] For the above reasons, I am satisfied that the factual basis material contained in the Application is sufficient to support the assertion that the claim group and their predecessors have an association with the area. The Application meets the condition 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*

[83] 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, and traditional customs observed' by the native title holders.

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

- '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,<sup>52</sup> where the society consists of a body of persons united in and by their acknowledgement and observance of a body of laws and customs;<sup>53</sup>
- the normative system under which those traditional rights and interests are possessed is one which 'has had a continuous existence and vitality since sovereignty';<sup>54</sup>
- 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;<sup>55</sup>

---

<sup>52</sup> *Yorta Yorta* [46].

<sup>53</sup> *Ibid* [49].

<sup>54</sup> *Ibid* [47].

<sup>55</sup> *Ibid* [46], [79].

- those laws and customs have been acknowledged and observed without substantial interruption since sovereignty.<sup>56</sup>

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

- 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;<sup>57</sup>
- 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;<sup>58</sup> and
- 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.<sup>59</sup>

[86] I also note the observations of the Full Court in *Warrie*, that although

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.<sup>60</sup>

#### **What material has been provided to support the assertion at s 190B(5)(b)?**

[87] Attachment F states that the claim group are members of the well-recognised society known as the Western Desert Cultural Bloc ('WDCB') which includes a fundamental belief system, the Tjukurrkpa, that explains and is evidenced in the landscape, provides the rules and principles which guide the lives of the claim group and gives normative force to the traditional laws and customs of the claim group.<sup>61</sup> Attachment F also sets out the rights and responsibilities of members of the claim group under the WDCB traditional laws and customs, including those relating to impositions of sanctions and cultural restrictions, spiritual features associated with particular sites, social organization and respect for Elders and management of resources.<sup>62</sup> This is reflected in the Brashaw 2026 Report.<sup>63</sup>

[88] This is supported in the Applicant's Additional Material, for example the Lynes 2025 Report refers to the substantial evidence for the existence of a society, being the WDCB, both at effective sovereignty and at present in the Payarri claim area and surrounds.<sup>64</sup> The Brashaw

---

<sup>56</sup> Ibid [87].

<sup>57</sup> *Gudjala 2009* [37], [52].

<sup>58</sup> Ibid [40].

<sup>59</sup> Ibid [29], [54].

<sup>60</sup> *Warrie* [107]; see also *Alyawarr* [78].

<sup>61</sup> Form 1, Attachment F [9]–[14].

<sup>62</sup> Ibid [16]–[17].

<sup>63</sup> Brashaw 2026 Report, pages 14–15 [50]–[54].

<sup>64</sup> Lynes 2025 Report, page 20 [4.11].

2026 Report states that this is the society relevant specifically to the Payarri #2 Application area.<sup>65</sup>

- [89] The material sets out detail relating to the ‘multiple pathways’ model which applies to the claim group and under which members gain rights and interests in the lands and waters of the Application area through ‘long-term association with the claim area, knowledge of the claim area, responsibility for sites and/or regional Tjukurrpa within/relevant to the claim area, and birthplace in proximity to the claim area’.<sup>66</sup> Specific examples of this relating to particular members of the claim group are included in the material.<sup>67</sup>
- [90] The material indicates that members of the claim group maintain practices relating to sites, including continuing respect for gender restrictions at particular sites.<sup>68</sup> The material also describes the importance of ceremony and participating in law rituals,<sup>69</sup> as well as WDCB kinship systems.<sup>70</sup>
- [91] I also note that the existence of the traditional laws and customs of the Payarri People was recognised in the Payarri Determination.<sup>71</sup> The existence of laws and customs under the WDCB has been recognised in other determinations, including the ‘multiple pathways’ through which rights and interests in the relevant lands and waters are gained.<sup>72</sup>

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

- [92] I am satisfied that the material outlined above is sufficient to enable a genuine assessment of whether there exist traditional laws acknowledged and customs observed by the Payarri People that give rise to the claim to native title rights and interests.
- [93] In my view, the factual basis material is sufficient to demonstrate that the laws and customs of the claim group are traditional and derived from the pre-sovereignty society. The material contains detailed information relating to the traditional laws and customs associated with the WDCB generally, as well as the Payarri People and specific to the Payarri #2 Application area.
- [94] The material demonstrates that members of the claim group are knowledgeable about particular Tjukurrpa associated with the Application area and describes their rights and responsibilities to look after Country in accordance with the laws and customs of the WDCB. I also note that the traditional laws and customs of the Payarri People were recognised in the Payarri Determination.
- [95] For the above reasons, I am satisfied that the material is sufficient to support the assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the

---

<sup>65</sup> Brashaw 2026 Report, page 14 [47]. See also Lynes 2025 Report, pages 28–29 [4.30].

<sup>66</sup> Brashaw 2026 Report, pages 19–20 [68]–[71].

<sup>67</sup> Ibid [72].

<sup>68</sup> Ibid, page 37 [143].

<sup>69</sup> Lynes and Handley 2022 Report, page 66 [169].

<sup>70</sup> Handley 2023 Report, pages 15–21 [39]–[57].

<sup>71</sup> *Payarri Determination* [24]–[25].

<sup>72</sup> See, eg, *Narrier* [377]–[378].

native title claim group that give rise to the claim to native title rights and interests. The Application meets the condition at 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*

[96] 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).<sup>73</sup>

[97] 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'.<sup>74</sup>

**What material has been provided in support of the assertion at s 190B(5)(c)?**

[98] Attachment F states that the claim group are the recognised descendants of people who, under WDCB, were the persons united in their acknowledgment and observance of traditional laws and customs at sovereignty, and that these laws and customs have been continuously acknowledged and observed in the claim area, with some adaptive change (such as a greater emphasis on parental and grandparental association to Country given fewer births on Country).<sup>75</sup> Attachment F states that at all relevant times since sovereignty, members of the claim group and their predecessors have continued to occupy, use the resources and maintain spiritual connection with the claim area through rituals, songs and stories.<sup>76</sup>

[99] The Applicant's Additional Material provides specific examples of members of the claim group passing on their knowledge of traditional laws and customs, including to protect a Tjukurrpa which passes through the Application area.<sup>77</sup> Other members of the claim group describe their parents passing on rights and responsibilities and passing on knowledge and information to their children.<sup>78</sup> The Lynes 2025 Report provides further detail, for example the importance of following traditional laws and customs relating to the passing down of stories to the 'correct' members of future generations.<sup>79</sup>

[100] The material also includes examples of adherence to traditional laws and customs, such as restrictions relating to songs in accordance with the Tjukurrpa.<sup>80</sup>

[101] I also note that claim group's continuing connection to Country and acknowledgment and observance of traditional laws and customs under the system of the WDCB has been acknowledged in the adjacent Payarri Determination.<sup>81</sup>

---

<sup>73</sup> *Martin* [29].

<sup>74</sup> *Gudjala 2009* [33].

<sup>75</sup> Form 1, Attachment F [19]–[20].

<sup>76</sup> *Ibid* [22]–[23].

<sup>77</sup> *Brashaw 2026 Report*, page 36 [137].

<sup>78</sup> *Ibid*, page 36 [139].

<sup>79</sup> *Lynes 2025 Report*, page 73 [6.18].

<sup>80</sup> *Brashaw 2026 Report*, page 19 [67].

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

[102] In my view, the factual basis material contains sufficient detail relating to the transmission of traditional laws and customs from generation to generation to enable a genuine assessment of the extent to which the Payarri People have continued to hold their native title in accordance with those traditional laws and customs.

[103] The material contains examples of traditional laws and customs, stories and songs being passed down from one generation to the next. The material also includes detailed information linking members of the claim group and their predecessors to the apical ancestors. The material demonstrates that the claim group have maintained detailed knowledge of Country and associated Tjukurrpa and have maintained the responsibility to look after Country that has been passed on from their predecessors.

[104] For the above reasons, I am satisfied that there is sufficient factual basis material to support the assertion that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs. The Application meets the condition at s 190B(5)(c).

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

[105] The condition at s 190B(6) requires the Registrar to consider that, prima facie, at least some of the native title rights and interests claimed in a claimant application can be established.<sup>82</sup>

[106] I understand that I may consider material additional to the application for the purpose of my assessment of this condition.<sup>83</sup> Because a ‘more onerous test [is] to be applied to the individual rights and interests claimed’ than under s 190B(5),<sup>84</sup> I consider that the task involves some 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.<sup>85</sup>

[107] In *Gudjala 2007*, Dowsett J indicated that s 190B(6) is to be considered having regard to the definition of ‘native title rights and interests’ in s 223(1).<sup>86</sup> 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.

---

<sup>81</sup> *Payarri Determination* [48]–[49].

<sup>82</sup> 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.

<sup>83</sup> *Doepel* [16].

<sup>84</sup> *Ibid* [127], [132].

<sup>85</sup> *Yorta Yorta* [86]; *Gudjala 2007* [86].

<sup>86</sup> *Gudjala 2007* [85]–[87].

[108] In *Ward HC*, Kirby J observed 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’.<sup>87</sup> The term “in relation to” is here to be given a ‘wide import’.<sup>88</sup>

[109] The claimed native title rights and interests are set out at paragraph 63 above, and I note that each of the claimed rights and interests was recognised in the adjacent Payarri Determination.<sup>89</sup> I consider each of these claimed rights and interests are in relation to land or waters.

#### *Exclusive rights to possession, occupation, use and enjoyment of the lands and waters*

[110] Paragraph 1 of Schedule E claims ‘the right to possess, occupy, use and enjoy the lands and waters the subject of the application as against the whole world’ and to ‘control access to and use of these areas’.

[111] 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’.<sup>90</sup>

[112] 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 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.<sup>91</sup>

[113] 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.<sup>92</sup>

---

<sup>87</sup> *Ward HC* [577].

<sup>88</sup> *Alyawarr* [93].

<sup>89</sup> *Payarri Determination*, Determination [3]–[4].

<sup>90</sup> *Ward HC* [88].

<sup>91</sup> *Griffiths* [127].

<sup>92</sup> *Sampi* [1072].

[114] The material states that members of the claim group do not need to ask permission to use the Application area, however visitors or outsiders must ask permission.<sup>93</sup> One member of the claim group describes how if mining companies want to access the Application area they must talk to them because it is their Country.<sup>94</sup> The importance of this is clear in descriptions of the spiritual consequences to the intrinsic value of society arising should a site be damaged.<sup>95</sup>

[115] The Lynes 2025 Report contains further detail, including the importance of seeking permission for the purpose of keeping people safe on Country from dangerous places.<sup>96</sup>

[116] In my view, the material is sufficient to establish the claimed exclusive rights on a prima facie basis. The material sets out the traditional rights relating to outsiders seeking permission as well as the important spiritual need to protect places and keep people safe on Country. I consider that the material is sufficient to set out the Payarri People's rights to speak for or make decisions about land that reflect rights to possess, occupy, use and enjoy land to the exclusion of all others within the meaning of *Ward HC* and *Sampi*. The material also demonstrates that the claim group act as gatekeepers and prevent access to avoid spiritual harm within the meaning of *Griffiths*. For these reasons, my view is that the claimed exclusive rights are prima facie established and can be entered on the Register under s 186(1)(g).

#### *Non-exclusive rights and interests*

[117] The claimed non-exclusive rights are set out at paragraph 2 of Schedule E. I refer to the above factual basis material set out above in my consideration of the condition at s 190B(5), which contains information that is relevant to the claimed non-exclusive rights and interests.

[118] I consider that the claimed rights to **access, remain in and use the application area**, the material describes members of the claim group camping on Country and the importance of travelling through the Application area for ceremony and law.<sup>97</sup> I also consider that the material relating to the first Payarri claim is relevant, for example members of the claim group describe their Country as their 'backyard' and refers to their ancestors use of their Country.<sup>98</sup> In my view, there is sufficient factual basis material to indicate that this non-exclusive right is derived from the pre-sovereignty society and can be prima facie established for the purpose of s 190B(6).

[119] In relation to the claimed rights to **access, take and use the resources of the application area for any purpose**, the material describes members of the claim group having traditional knowledge about use of resources, such as cooking marlu (kangaroo) in a particular way in accordance with Western Desert law.<sup>99</sup> The material also describes use of resources, such as the root of a particular plant for making traditional tools.<sup>100</sup> In my view, the material is

---

<sup>93</sup> Brashaw 2026 Report, page 38 [152].

<sup>94</sup> Ibid.

<sup>95</sup> Ibid, page 36 [140].

<sup>96</sup> Lynes 2025 Report, page 66 [6.4].

<sup>97</sup> Brashaw 2026 Report, page 38 [148]–[151].

<sup>98</sup> Lynes and Handley 2022 Report, page 109 [288].

<sup>99</sup> Brashaw 2026 Report, page 35 [133].

<sup>100</sup> Ibid, page 38 [153].

sufficient to demonstrate that this claimed non-exclusive right is derived from the pre-sovereignty society and can be prima facie established under s 190B(6).

[120] In relation to the claimed rights to **engage in spiritual and cultural activities in the application area**, members of the claim group describe the importance of looking after the spiritual aspects of Country.<sup>101</sup> The material also describes ceremony, and law rituals relating to the Payarri People.<sup>102</sup> I consider that the material demonstrates that these claimed non-exclusive rights are an important part of Payarri culture derived from the pre-sovereignty society of the WDCB and can be prima facie established under s 190B(6).

[121] In relation to the claimed rights for the claim group to **maintain and protect areas, sites and places of significance in the application area**, the material describes the fundamental importance of protecting sites, because damage to a site results in damage to the intrinsic value of the claim group's society.<sup>103</sup> The Brashaw 2026 Report describes specific examples of members of the claim group physically maintaining sites using practices that also protect the spiritual aspects of Country.<sup>104</sup> Members of the claim group describe their responsibilities under traditional laws and customs to maintain and protect Country and looking after the Tjukurrpa.<sup>105</sup> For these reasons, I consider that this claimed non-exclusive right is traditional and derived from the pre-sovereignty society. These claimed rights can be prima facie established under s 190B(6).

[122] As at least some of the claimed rights and interests can be prima facie established, the Application meets the condition at s 190B(6). Each of the claimed exclusive and non-exclusive rights and interests will be entered on the Register under s 186(1)(g).

### Section 190B(7): traditional physical connection – condition met

[123] 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.

[124] Justice Dowsett observed in *Gudjala 2009* that the traditional physical connection under s 190B(7) 'must be in exercise of a right or interest in land or waters held pursuant to traditional laws and customs'.<sup>106</sup> 'Traditional' as that term is used under s 223 of the Act, was considered by the members of the joint judgment in *Yorta Yorta* who noted that:

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

---

<sup>101</sup> Lynes and Handley 2022 Report, page 111 [295].

<sup>102</sup> Ibid, page 66 [169], pages 67–69 [171]–[176].

<sup>103</sup> Brashaw 2026 Report, page 36 [140].

<sup>104</sup> Ibid, pages 36–37 [141].

<sup>105</sup> Ibid, page 37 [144]–[145].

<sup>106</sup> *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.<sup>107</sup>

[125] In *Doepel*, Mansfield J 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’.<sup>108</sup>

[126] Having regard to this, I 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.

[127] I refer to my above summary of the relevant factual basis material and reasons regarding the requirements of ss 190B(5) and (6). I consider that the material contains many examples of the traditional physical connection that members of the claim group have with the lands and waters in the Application area. The material describes site visits by current members of the claim group and descriptions of how members of the claim group ensure that they continue their responsibilities to visit and maintain Country.<sup>109</sup>

[128] I am satisfied that the factual basis material establishes that at least one member of the claim group currently has a traditional physical connection with the lands and waters of the Application area. As such, I am satisfied that the application meets the requirements of s 190B(7).

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

[129] Section 190B(8) provides that a claimant 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.

[130] **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. Each of the Applicant Affidavits state that none of the area covered by the application is also covered by an approved determination of native title.<sup>110</sup> This is confirmed in the Geospatial Assessment and my own searches of the NNTT’s geospatial database. Paragraph 3 of Attachment B confirms that the Application excludes any area subject to three identified native title determinations.

[131] **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 s 61A(4) apply. Paragraph 4(d) of Schedule B confirms that the Application does not cover any areas where a previous exclusive possession act was done.

---

<sup>107</sup> *Yorta Yorta* [86].

<sup>108</sup> *Doepel* [18].

<sup>109</sup> Brashaw 2026 Report, page 37 [143]–[145].

<sup>110</sup> Applicant Affidavits [3].

[132] **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. Having regard to Schedule E and the Application as a whole, I am satisfied that the Application is not made contrary to s 61A(3).

[133] Having regard to the information contained in the Applicant Affidavits, the Geospatial Assessment, Schedules B and E and Attachment B, I am satisfied that there is no failure to comply with s 61A. The Application meets the requirements of s 190B(8).

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

[134] Section 190B(9) provides that a claimant 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 (outside the limits of a State or Territory) or extinguished native title rights and interests (except where such extinguishment can be disregarded under certain provisions of the Act).<sup>111</sup>

[135] Schedules O and N confirm that the Application does not include claims to minerals, petroleum or gas or to any waters in an offshore place.

[136] Paragraph 4(e) of Schedule B indicates that the Application does not cover any areas where native title rights and interests have been otherwise extinguished.

[137] Having regard to Schedules B, N and O, I am satisfied that the Application meets the requirements of s 190B(9).

*End of reasons*

---

<sup>111</sup> See ss 47(2), 47A(2), 47B(2) or 47C(8) of the Act.

## Attachment A

### Information to be included on the Register of Native Title Claims

Application name	Payarri #2
NNTT No.	WC2026/001
Federal Court of Australia No.	WAD40/2026

#### 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:

5 February 2026

#### Date application entered on Register:

13 April 2026

#### Applicant:

Bradley Wongawol, Kado Muir, Sophia Thomas

#### Applicant's address for service:

[As per the Schedule]

#### Conditions on Applicant's authority

Not applicable

#### Area covered by application:

[As per the Schedule]

#### Persons claiming to hold native title:

[As per the Schedule]

**Registered native title rights and interests:**

[As per the Schedule]

A handwritten signature in blue ink, appearing to read 'M Raine', with a horizontal line underneath.

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.

13 April 2026