



National  
Native Title  
Tribunal

## Registration Decision

<b>Application name</b>	Wurundjeri Woi-wurrung People
<b>Name of applicant</b>	Darcy Cohen-Hunter, Malcolm Hoye, Mark Kolasa, Michelle Mills, Carolyn O'Halloran, Margaret Evelyn Parisi, Daniel Ross, Kathleen Terrick, Jara Wandin-Dow, Perry James Wandin, Oscar Wilson
<b>Federal Court of Australia No.</b>	VID1466/2025
<b>NNTT No.</b>	VC2025/002
<b>Date of Decision</b>	29 January 2026

### Claim accepted for registration

I have decided that the claim in the Wurundjeri Woi-wurrung People 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.

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.

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<sup>1</sup> 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')

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

*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')

*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')

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

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

*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 the native title determination application Perry James Wandin & Ors on behalf of the Wurundjeri Woi-wurrung People ('Application'). The Application area is defined by an external boundary and covers land and waters of approximately 10,423.7 square kilometres extending from the Werribee River in the west to include the Dandenong Ranges in the east. The Application identifies areas within the external boundary that are not covered by the Application, such as areas where native title rights and interests have been validly extinguished (including unqualified grants of an estate in fee simple).
- [2] The Application was filed on 30 October 2025, and the Registrar of the Federal Court ('Court') gave a copy of the Application and accompanying affidavits to the Native Title Registrar ('Registrar') on 7 November 2025 pursuant to s 63 of the Act. This has triggered the Registrar's duty to consider the Application for registration in accordance with s 190A.<sup>2</sup>

## Preliminary considerations

### *Registration conditions*

- [3] 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.
- [4] Given that the Application was made on 30 October 2025 and has not been amended, I am satisfied that neither s 190A(1A) nor s 190A(6A) apply.
- [5] I have decided that the Application must be accepted for registration and this document sets out my reasons for that decision.

### *Procedural fairness*

- [6] On 12 November 2025, a Senior Officer of the National Native Title Tribunal ('NNTT') wrote to the applicant and the State of Victoria ('State') to invite any additional information or submissions. The letter to the applicant noted that some of the affidavits that had been filed with the Application were missing annexures.
- [7] On 27 November 2025 the applicant provided additional information, comprising the missing annexures and a certification by First Nations Legal & Research Services ('FNLRS') under s 203BE ('Certification'). This material was provided to the State on 1 December 2025 for their comment.
- [8] The State did not provide any submissions. This concluded the procedural fairness process.

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

#### *Information considered*

- [9] 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’.
- [10] I have had regard to the information in the Application, accompanying documents and the Certification provided by the applicant, in accordance with s 190A(3)(a).
- [11] There is no information before me obtained as a result of any searches conducted by the Registrar of a register of interests in relation to land or waters maintained by the Territory or the Commonwealth in accordance with s 190A(3)(b).
- [12] There are no submissions from the State that I must have regard to in accordance with s 190A(3)(c).
- [13] I have also considered it appropriate to have regard to a geospatial assessment and overlap analysis prepared by the NNTT’s Geospatial Services in relation to the area covered by the Application, dated 14 November 2025 (‘Geospatial Assessment’).

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

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

- [14] 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.
- [15] 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>3</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 enable the Registrar to form an opinion about whether the claim satisfies all of the conditions in ss 190B and 190C.<sup>4</sup>

### **Section 61 – native title applications**

- [16] **Section 61(1)** provides that only persons included in and authorised by the native title claim group may make a native title determination application. Eleven persons are named in the Application as comprising the applicant. Schedule A contains a description of the native title claim group by reference to the descendants of named apical ancestors and persons that

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<sup>3</sup> *Doepel* [35].

<sup>4</sup> See also s 190D(3)(b).

identify themselves as Wurundjeri, Woi-wurrung, Yarra Yarra or Yarra Tribe under the traditional laws and customs applicable to the Application area. Each of the persons comprising the applicant have deposed an affidavit for the purposes of s 62 and these have been filed in the Court and accompany 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>5</sup> From the material contained in Schedule A and the Applicant Affidavits, I am satisfied that the Application has been made in accordance with s 61(1).

- [17] **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. I consider that there is nothing in the Application or other material that I have considered that would suggest otherwise.
- [18] **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 the address for service is included at Part B. As such, I am satisfied that the Application contains the information required by s 61(3).
- [19] **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 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>6</sup> As noted above, Schedule A contains a description of the native title claim group. I am satisfied that the Application contains the information required by s 61(4) because Schedule A describes the persons sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.<sup>7</sup>
- [20] **Section 61(5)** provides that the application must be filed in the Court in the prescribed form 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 by the Court.

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

- [21] **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). Each of the eleven persons comprising the applicant have deposed an affidavit that includes statements to the effect that the deponent:

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<sup>5</sup> Applicant Affidavits [1], [5]–[8]. I note the affidavit of [claim group member 5] affirmed on 27 October 2025 contains this information at [20]–[26].

<sup>6</sup> *Gudjala 2007* [31]–[32].

<sup>7</sup> Section 61(4)(b).

- is a member of the native title claim group and is authorised to make the Application on behalf of the Wurundjeri Woi-wurrung People;
- was present at an authorisation meeting on 6 September 2025 at which the claim group resolved:
  - that there is no traditional decision-making process which applied and agreed and adopted a decision-making process;
  - to file a native title determination application over an area of land and waters depicted on a map being Attachment C to the Application on behalf of all Wurundjeri Woi-wurrung people;
  - that the applicant be authorised to make and deal with all matters arising under the Act in relation to the Application, under conditions that:
    - (a) The applicant is not to make any significant decisions about any areas of land or waters the subject of the application without first obtaining informed consent from the Wurundjeri Woi-wurrung native title claim group;
    - (b) The applicant can't settle the native title claim without first obtaining the informed consent from the Wurundjeri Woi-wurrung native title claim group; and
    - (c) The applicant will do all things necessary to progress the native title determination application.
- 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;
- believes that none of the area covered by the Application is also covered by an approved determination of native title; and
- believes that all of the statements made in the Application are true and correct.

[22] 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)–(e). 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. Paragraph 3 of Schedule P of the Application states that '[a]ll conditions under section 251BA of the NTA on the authority that relate to the making of the application have been satisfied'. 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. There are no explicit statements in the Applicant Affidavits to this effect. However, having regard to the content and nature of each of the conditions, in my view the conditions relate to dealing with matters arising after the Application has been made and not to the 'making of the application'. As such, in my view the satisfaction of those conditions does not arise for consideration under s 62(1A)(g). As each applicant has confirmed that the Application is true and correct, and as each Applicant Affidavit indicates that the applicant was authorised to make the Application in accordance with the resolutions of the claim group, I am satisfied that each of the Applicant Affidavits contain the information required by s 62(1)(a).

- [23] **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. Schedule J of the Application does not indicate that any agreement under s 47C has been entered into. As such, the requirement at s 62(1)(d) is not applicable.
- [24] **Section 62(2)(a)** requires that a claimant application contain 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 claim area and Schedule B contains a description of the areas within the external boundary that are not covered by the Application. As such I am satisfied that the Application contains the information required by s 62(2)(a).
- [25] **Section 62(2)(b)** requires that a claimant 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. As such, I am satisfied that the Application contains the information required by s 62(2)(b).
- [26] **Section 62(2)(c)** requires that a claimant application include details and results of searches of any non-native title rights and interests covered by the application. Schedule D states that no searches have been carried out by or on behalf of the native title claim group to determine any non-native title interests. As no searches have been conducted, I am satisfied that s 62(2)(c) is not applicable to the Application.
- [27] **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. I am satisfied that the description of the claimed native title rights and interests included at Schedule E of the Application is sufficient to meet the requirements of s 62(2)(d).
- [28] **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 Application contains a general description of the factual basis at Schedule F, with further information contained at Schedule E and the affidavits of Wurundjeri Woi-wurrung Elders provided at Attachment E ('Attachment E Affidavits'). As such, I am satisfied that the Application contains the information required by s 62(2)(e).
- [29] **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 a claimant application. Schedule E contains details of activities in relation to the lands and waters currently carried on by members of the claim group. I am satisfied that the Application contains the information required by s 62(2)(f).
- [30] **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. Schedule G refers to the two historical applications and two existing applications (VC2020/001; VID363/2020 Boonwurrung People and VC2025/001;

VID1239/2025 Carl Rowan). I am satisfied that the Application contains the information required by s 62(2)(g).

- [31] **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 indicates that the applicant is not aware of any relevant notices. As such, I am satisfied that the Application contains the information required by s 62(2)(ga).
- [32] **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 aware of 50 notifications and refers to Attachment H, which contains a list of these notifications. As such, I am satisfied that the Application contains the information required by s 62(2)(h).
- [33] **Section 62(2)(i)** requires a claimant application to 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. Paragraph 11 of Schedule P sets out the relevant conditions on the authority of the applicant to make the Application. As such, the Application contains the information required by s 62(2)(i).

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

- [34] As set out above, 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. The Application meets the condition at s 190C(2).

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

- [35] 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>8</sup>
- [36] 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>9</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 of Native Title Claims (‘Register’).
- [37] As noted above, the Application refers to the Boonwurrung People Claim (VC2020/001; VID363/2020) and the claim made by Carl Rowan (VC2025/001; VID1239/2025). These claims are not registered and therefore do not fall within s 190C(3)(b). The Geospatial Assessment and my own searches of the NNTT’s mapping databases have confirmed that there are no other claims that meet the description of s 190C(3).

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<sup>8</sup> *Doepel* [16].

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

[38] 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 Application does not contravene this requirement.

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

[39] 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,<sup>10</sup> or the requirements in subsection (4AA) are met.<sup>11</sup> On 27 November 2025, the applicant provided the Certification by FNLRS. As such, I must consider whether the requirements of s 190C(4)(a) have been met.

[40] 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>12</sup> As such, I understand that my task is to identify the appropriate representative body and be satisfied that the Application is certified in accordance with s 203BE.

#### *Does the certifying body have power to certify?*

[41] The Geospatial Assessment indicates that FNLRS is the relevant representative Aboriginal/Torres Strait Islander body responsible for the land and waters covered by the Application. Paragraph 1 of the Certification indicates that the FNLRS have certified the Application pursuant to s 203BE(1)(a) of the Act. The certificate is signed by the Chief Executive Officer of FNLRS. 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>13</sup>

[42] Having regard to the above, I am satisfied that FNLRS is the relevant representative body for the area covered by the application and that it was within its power to issue the Certification.

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

[43] To meet the requirements of s 190C(4)(a), the certification must comply with the provisions of s 203BE(4)(a) to (c).

[44] **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 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 1 of the Certification contains a statement meeting the description of ss 203BE(a) and (b). Paragraph 2 of the Certification states that FNLRS is of the opinion that the

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<sup>10</sup> Section 190C(4)(a).

<sup>11</sup> Section 190C(4)(b).

<sup>12</sup> *Doepel* [78], [80]–[82]; see also *Wakaman* [32].

<sup>13</sup> *Quall* HC [48], [63] and [93].

requirements of section 203BE(2)(a), (aa) and (b) have been met. As such, I am satisfied that the Certification contains the statements required by s 203BE(4)(a).

- [45] **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 3 to 9 of the Certification. I consider that the information provided by FNLRS meet the requirement for the brief reasons for FNLRS being of the opinion that the requirements at s 203BE(2)(a) and (b) have been met.
- [46] In relation to the brief reasons for FNLRS being of the opinion that the requirement at s 203(2)(aa) has been met, the Certification does not directly refer to the s 251BA conditions. It does however indicate that the claim group have provided their informed consent through authorising the making of the Application and that the applicant has progressed the making of the Application. Having regard to the information contained in the Certification as a whole, and my reasoning in relation to the nature of the conditions at paragraph 22 above, I am satisfied that the Certification sets out the brief grounds for FNLRS being of the opinion that the requirement at s 203BE(2)(aa) has been met. As such, I consider that the Certification meets the requirement at s 203BE(4)(b).
- [47] **Section 203BE(4)(c)** states that where applicable, a certification should briefly set out what the representative body has done to comply with s 203BE(3) (relating to achieving agreement and minimising the number of applications where the relevant area is or may be covered by an overlapping application for determination of native title). Given that the Application is overlapped by the Boonwurrung Claim and Carl Rowan Claim, I consider that s 203BE(4)(c) is applicable. The Certification does not contain any information in relation to this requirement, however s 203BE(3) provides that a failure by the RATSIB to comply with that section does not invalidate the Certification.

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

- [48] For the above reasons, in my view the Certification satisfies the minimum requirements of s 203BE(4) of the Act. As such, I am satisfied that the Application has been properly certified under s 190C(4)(a) and therefore this condition is met.
- [49] 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>14</sup>

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

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

- [50] Section 190B(2) requires the Registrar to be satisfied that the written information and map contained in a claimant application are sufficient to identify, with reasonable certainty, the land and waters in relation to which the native title rights and interests are claimed.
- [51] Attachment B of the Application describes the external boundary of the claim area by reference to road parcels, Registered Aboriginal Party ('RAP') (under the *Aboriginal Heritage*

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<sup>14</sup> *Doepel* [80].

*Act 2006 (Vic)*) boundaries, the Parish of Baw Baw, a native title determination, the Werribee River and coordinate points shown to six decimal places referenced to the Geocentric Datum of Australia 2020 (GDA2020). Attachment B specifically excludes a native title determination and four adjoining RAP areas. Schedule B lists general exclusions.

- [52] Attachment C contains a colour copy of a map prepared by the NNTT's Geospatial Services, titled 'Wurundjeri' dated 30 July 2025. The map depicts the claim area by a bold blue outline, and includes a topographic map background showing roads, water features, towns and localities and land features, scalebar, coordinate grid, legend and notes relating to the source, currency and datum of data used to prepare the map.
- [53] 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 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. I am satisfied that the Application meets the requirement at s 190B(2).

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

- [54] 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>15</sup> or that persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.<sup>16</sup>
- [55] From the relevant case law, I understand that when assessing the requirements under s 190B(3):
  - I am required to address only the content of the application;<sup>17</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>18</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>19</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>20</sup>

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<sup>15</sup> Section 190B(3)(a).

<sup>16</sup> Section 190B(3)(b).

<sup>17</sup> *Doepel* [51]; *Gudjala* 2007 [30].

<sup>18</sup> *Gudjala* 2007 [33].

<sup>19</sup> *Ibid* [34].

<sup>20</sup> *WA v NTR* [67].

[56] Schedule A describes the native title claim group as follows:

1. The native title claim group on whose behalf the application is made, who are the native title holders for the area covered by the application (**Claim Area**), are the persons described as follows:
  2. The native title holders are those living Aboriginal people who satisfy the following criteria:
    - (a) are descended from one or more of the following ancestors:

[14 named apical ancestors]
    - xv. Any other person living at or before 1836 who is attested as a member of a Woi-wurrung speaking clan or family; **and**
  - (b) Identify themselves as Wurundjeri, Woi-wurrung, Yarra Yarra or Yarra Tribe under the traditional laws and customs applicable to the Claim Area (see **Attachment C**).

[57] Identifying members of the claim group by descent from named apical ancestors has been accepted by the Court as satisfying the requirements of s 190B(3)(b).<sup>21</sup> In my view, requiring a person to show descent from an identified ancestor provides a clear starting or external reference point and that with some factual inquiry it will be possible to identify the persons who fit the description of the native title claim group. I also consider that with some factual inquiry, it will be possible to identify the persons descended from an ancestor within the meaning of paragraph 2(a)(xv) of Schedule A.

[58] Paragraph 2(b) of Schedule A requires members of the claim group to self-identify as being Wurundjeri, Woi-wurrung, Yarra Yarra or Yarra Tribe under the traditional laws and customs. In my view this can also be ascertained through some factual inquiry.

[59] Having regard to the above, I am satisfied that the description of the claim group is sufficiently clear such that, with some factual inquiry, it can be ascertained whether a particular person is a member of the claim group. The Application meets the condition at s 190B(3).

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

[60] Section 190B(4) requires the Registrar to be satisfied that the description contained in a claimant 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 I am confined to the material contained in the application itself in considering this condition.<sup>22</sup>

[61] In *Doepel*, Mansfield J noted that the ‘test of identifiability’ for the purpose of this condition is whether the description of the native title rights and interests is understandable, has meaning and is without contradiction.<sup>23</sup> It is also open to the Registrar to read the contents of the claimed rights and interests together with any stated qualifications or restrictions.<sup>24</sup> A

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<sup>21</sup> *Ibid.*

<sup>22</sup> *Doepel* [16].

<sup>23</sup> *Ibid* [99], [123].

<sup>24</sup> *Ibid* [123].

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>25</sup>

[62] The claimed rights and interests are set out in Schedule E, as follows:

1. In areas where native title rights and interests have not been extinguished, as defined in Schedule B, including areas where any such extinguishment is required to be disregarded pursuant to ss 47, 47A, 47B or 47C of the NTA, the native title rights and interests claimed are the rights to possession, occupation, use and enjoyment of those parts to the exclusion of all others.
2. In areas where native title rights and interests are or have been partially extinguished:
  - (a) the right to “speak for” the land and waters;
  - (b) the right to make decisions about the use and enjoyment of the land and waters;
  - (c) the rights to have access to, remain on and use the land and waters for any purpose;
  - (d) the rights to have access to and take the resources of the land and waters;
  - (e) the rights to protect places, sites, areas, and things of cultural significance on the land and waters; and
  - (f) the rights to maintain their distinctive spiritual, cultural, material, and economic relationship with the land and waters and other resources.

[63] 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).

[64] 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

[65] 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.

[66] 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

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<sup>25</sup> *Strickland* [60]. See also *Strickland FC* [85]–[87].

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>26</sup>

- [67] 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.
- [68] 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>27</sup>

- [69] 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 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>28</sup>

- [70] 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>29</sup>
- [71] The factual basis material is contained in Schedules E and F and the Attachment E Affidavits.

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<sup>26</sup> *Doepel* [17]; *Gudjala FC* [57], [83].

<sup>27</sup> *Gudjala FC* [92].

<sup>28</sup> *Gudjala 2009* [29]; *Anderson* [43], [47]–[48].

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

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

[72] 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>30</sup>

[73] 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>31</sup>

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

[74] Schedule F states that the Wurundjeri Woi-wurrung People lived on their traditional lands in 1788 and that ‘effective sovereignty’ occurred in 1836.<sup>32</sup> The material states that, prior to and following effective sovereignty, the apical ancestors of the claim group lived, conducted ceremonies, used, enjoyed and protected the resources of the claim area.<sup>33</sup>

[75] The material contains further detail on each of the apical ancestors, including information which demonstrates that they were alive prior to or around the time of effective sovereignty, with some being recorded as *ngurungaeta* (headman),<sup>34</sup> traditional doctors and singers and as having an association with areas such as Mt Macedon and Mount Blackwood in the western part of the claim area.<sup>35</sup> Schedule F also sets out the association that apical ancestors had with other parts of the claim area, such as the Koranwarrabin Ranges and Nerre Nerre Warren west of Melbourne.<sup>36</sup> The material indicates that some of the apical ancestors named in Schedule A ‘made their mark on Batman’s attempted “treaty” in 1835,<sup>37</sup> and others led the

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<sup>30</sup> *McLennan* [28], citations incorporated from original.

<sup>31</sup> *Gudjala 2007* [39].

<sup>32</sup> Form 1, Schedule F [1]–[2].

<sup>33</sup> *Ibid* [6].

<sup>34</sup> Form 1, Attachment E, Affidavit of [claim group member 6] sworn 4 November 2022 [2].

<sup>35</sup> Form 1, Schedule F [6].

<sup>36</sup> *Ibid* [10].

<sup>37</sup> *Ibid* [2], [6].

establishment of Coranderrk in 1863.<sup>38</sup> One of the apical ancestors is recorded as giving an address in Woi-wurrung language to Governor Bowen in 1863 in William Street, Melbourne.<sup>39</sup>

- [76] The Attachment E Affidavits also contain information about some of the apical ancestors. One apical ancestor is particularly well known in oral history, including for his leadership,<sup>40</sup> knowledge of Country and artwork.<sup>41</sup> Members of the claim group recall hearing stories about some of the apical ancestors, including that they fished at places on Country.<sup>42</sup>
- [77] The material also includes information about the predecessors of the claim group at Coranderrk.<sup>43</sup> The Attachment E Affidavits indicate that grandparents of members of the claim group were born, lived and died on the claim area at places including Coranderrk and Healesville and passed on their oral histories, including information about apical ancestors.<sup>44</sup> The material refers to predecessors of the claim group living on the claim area at Dandenong, where other Aboriginal families living in that area knew and respected that it was Wurundjeri Country,<sup>45</sup> as well as other places throughout the claim area.<sup>46</sup> The extent of Wurundjeri Country, as passed on from the predecessors of the claim group, is also described in the material and is consistent with the claim area in the Application.<sup>47</sup>
- [78] Members of the claim group describe how Wurundjeri families have used particular areas within the claim area to catch eels and to meet and connect with their ancestors, including Police Paddocks near Dandenong.<sup>48</sup> One of the apical ancestors is described as using the Police Paddocks site for camping, and currently the claim group hold community and family gatherings there.<sup>49</sup> The Attachment E Affidavits include examples of members of the claim group fishing at the Werribee River, Birrarung River, Maribyrnong River, Warburton, Healesville and other locations within the claim area.<sup>50</sup> One member of the claim group describes living and conducting archaeological work in the western part of the claim area, as well as conducting re-burials.<sup>51</sup>

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<sup>38</sup> Ibid [11]–[12].

<sup>39</sup> Ibid [11].

<sup>40</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [58].

<sup>41</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [11], [14], [20].

<sup>42</sup> Form 1, Attachment E, Affidavit of [claim group member 3] affirmed 3 November 2022 [27].

<sup>43</sup> Form 1, Schedule F [12].

<sup>44</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [5]–[8], [10], [13]; Affidavit of [claim group member 3] affirmed 3 November 2022 [6]–[7].

<sup>45</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [31], [35].

<sup>46</sup> Form 1, Attachment E, Affidavit of [claim group member 2] sworn 10 October 2025 [9], [24]; Affidavit of [claim group member 5] affirmed 27 October 2025 [4].

<sup>47</sup> Form 1, Attachment E, Affidavit of [claim group member 3] affirmed 3 November 2022 [28]; Affidavit of [claim group member 6] sworn 4 November 2022 [20].

<sup>48</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [54]–[55].

<sup>49</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [14].

<sup>50</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [74]; Affidavit of [claim group member 5] affirmed 27 October 2025 [7]; Affidavit of [claim group member 6] sworn 4 November 2022 [11].

<sup>51</sup> Form 1, Attachment E, Affidavit of [claim group member 2] sworn 10 October 2025 [30].

[79] The material also describes the importance of the spiritual connection that Wurundjeri People have to Country, and that the whole of their Country holds the spirits and their stories, passed down by the ancestors.<sup>52</sup>

[80] The material also includes examples of the recognition by the Victorian Parliament, State government departments and local governments of the association of the claim group to the area, including through efforts to establish Wurundjeri Cultural Centres at Richmond and Police Paddocks.<sup>53</sup>

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

[81] 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.

[82] 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 refers to locations within the claim area where the predecessors camped, fished and gathered natural resources. The material also includes detail about the association of current members of the claim group. 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. The material also demonstrates the spiritual connection that the claim group have with the area.

[83] For the above reasons, I am satisfied that the factual basis material contained in the Application is sufficient to support the assertion that the native title 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*

[84] 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.

[85] 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

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<sup>52</sup> *Ibid* [19]–[20], [28].

<sup>53</sup> Form 1, Schedule E [4]; Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [51], [71].

sovereignty,<sup>54</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>55</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>56</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>57</sup>
- those laws and customs have been acknowledged and observed without substantial interruption since sovereignty.<sup>58</sup>

[86] 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>59</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>60</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>61</sup>

[87] 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>62</sup>

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

[88] Schedule F states that in 1788 the Wurundjeri Woi-wurrung People lived in a society governed and united by their traditional laws and customs, which included that they owned, protected, and had rights to exclude others from the land and resources in the claim area, shared language, kinship ties and a sense of belonging, held spiritual beliefs, conducted ceremony

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<sup>54</sup> *Yorta Yorta* [46].

<sup>55</sup> *Ibid* [49].

<sup>56</sup> *Ibid* [47].

<sup>57</sup> *Ibid* [46], [79].

<sup>58</sup> *Ibid* [87].

<sup>59</sup> *Gudjala 2009* [37], [52].

<sup>60</sup> *Ibid* [40].

<sup>61</sup> *Ibid* [29], [54].

<sup>62</sup> *Warrie* [107]; see also *Alyawarr* [78].

and ritual and recognised descent rights.<sup>63</sup> This is supported in the Attachment E Affidavits, for example members of the claim group describe passing on creation stories,<sup>64</sup> and describe their predecessors as being knowledgeable about cultural practices, traditions and Country.<sup>65</sup> The material notes that the claim group were also referred to as the 'Yarra Yarra Tribe'.<sup>66</sup>

- [89] Members of the claim group describe how kinship systems are central to how their society operates and how it is important to look out for their relations.<sup>67</sup> Practices such as traditional naming ceremonies are described in the material.<sup>68</sup> The material also refers in detail to other ceremonies which have been conducted by members of the claim group, adapted from what happened in the past.<sup>69</sup> Current members of the claim group describe conducting smoking ceremonies and Welcomes to Country.<sup>70</sup> Other practices and cultural roles have been maintained, for example the leadership role of *ngurungaeta* being passed on by Wurundjeri Elders.<sup>71</sup>
- [90] The material also refers to aspects of their society, such as respecting Elders, attending funerals, and acknowledging Elders and Country when travelling.<sup>72</sup> Funerals are described as being an important part of society for reinforcing relationships between families,<sup>73</sup> and members of the claim group describe the importance of being buried on Country.<sup>74</sup> The Attachment E Affidavits refer to the importance of respecting Country under their traditional law.<sup>75</sup> Further material refers to practices undertaken by the predecessors of the claim group to ward off bad spirits,<sup>76</sup> and the use of fire and smoke that has been passed on through the generations.<sup>77</sup> The material also refers to the importance of totems.<sup>78</sup>
- [91] In addition, the material refers to the use of Woi-wurrung language by the predecessors of the claim group, and that current claimants have conducted a more formal study of that language.<sup>79</sup> Schedule E notes that Woi-wurrung language has been incorporated into

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<sup>63</sup> Form 1, Schedule F [1], [4].

<sup>64</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [11].

<sup>65</sup> Form 1, Attachment E, Affidavit of [claim group member 6] sworn 4 November 2022 [18].

<sup>66</sup> Form 1, Attachment E, Affidavit of [claim group member 3] affirmed 3 November 2022 [27].

<sup>67</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [32].

<sup>68</sup> Form 1, Attachment E, Affidavit of [claim group member 2] sworn 10 October 2025 [7].

<sup>69</sup> Form 1, Attachment E, Affidavit of [claim group member 3] affirmed 3 November 2022 [46]–[47].

<sup>70</sup> Form 1, Attachment E, Affidavit of [claim group member 5] affirmed 27 October 2025 [1].

<sup>71</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [12]; Affidavit of [claim group member 5] affirmed 27 October 2025 [7].

<sup>72</sup> Form 1, Attachment E, Affidavit of [claim group member 3] affirmed 3 November 2022 [30].

<sup>73</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [9]; Form 1, Attachment E, Affidavit of [claim group member 5] affirmed 27 October 2025 [8].

<sup>74</sup> Form 1, Attachment E, Affidavit of [claim group member 7] sworn 3 November 2022 [12].

<sup>75</sup> Form 1, Attachment E, Affidavit of [claim group member 3] affirmed 3 November 2022 [43].

<sup>76</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [6].

<sup>77</sup> Ibid [20].

<sup>78</sup> Form 1, Attachment E, Affidavit of [claim group member 7] sworn 3 November 2022 [30].

<sup>79</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [7], [18].

legislation, for example the *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017* (Vic).<sup>80</sup> The material also indicates that the apical ancestors spoke Woi-wurrung.<sup>81</sup>

[92] The material also demonstrates that members of the claim group considered it their 'responsibility under First Nations Lore' to control their cultural heritage through participation in Western systems.<sup>82</sup> The material contains many examples of this, including in relation to protection of waterways, cultural burns, management of wetlands, revegetation and restorations.<sup>83</sup>

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

[93] 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 Wurundjeri Woi-wurrung People that give rise to the claim to native title rights and interests.

[94] 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 refers to a range of cultural practices, such as maintenance of kinship systems, conduct of smoking, naming and other ceremonies, as well as traditional knowledge about totems, creation stories and looking after Country.

[95] Although the material does not contain a significant amount of ethnographic or anthropological material relating to the pre-sovereignty society, in my view the material demonstrates that the predecessors of the claim group were knowledgeable about traditional laws and customs, and the claim group have maintained strong oral histories. The material refers to both apical ancestors and current members of the claim group holding the role of *ngurungaeta*, which in my view demonstrates that the claim group's laws and customs are traditional in the sense set out in *Yorta Yorta*. Further, the material indicates both apical ancestors and current members of the claim group speaking Woi-wurrung.

[96] In addition, the material at Schedule F refers to the claim group's traditional laws and customs being maintained through the establishment of Coranderrk, led by some of the apical ancestors. I consider that material demonstrates that their language, songs and culture have been passed on through the generations and can be said to be traditional. The material also contains many examples of the members of the claim group seeking to exercise, maintain and protect their cultural heritage.

[97] 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 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).

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<sup>80</sup> Form 1, Schedule E [5]. Wilip-gin Birrarung murron means 'keep the Birrarung alive'.

<sup>81</sup> Form 1, Schedule F [11].

<sup>82</sup> Form 1, Schedule E [7]–[9]; Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [22]–[24].

<sup>83</sup> Form 1, Attachment E, Affidavit of [claim group member 5] affirmed 27 October 2025 [13]–[15].

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

[98] 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>84</sup>

[99] 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>85</sup>

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

[100] Schedule F states that language and song were passed down, as well as knowledge of Wurundjeri Woi-wurrung Country, hunting, fishing and gathering.<sup>86</sup> This is supported by the Attachment E Affidavits, which refer to the predecessors of the claim group walking through the bush with the younger generations, passing on knowledge about plants and animals, how to use and look after them.<sup>87</sup> As noted above, the claim group's predecessors were also able to maintain their traditional laws and customs while at Coranderrk.<sup>88</sup> Members of the claim group are described as maintaining deep knowledge of Wurundjeri culture that was learnt from their Elders and predecessors, and the material includes examples of Dreaming stories being passed on to the next generation.<sup>89</sup> The Attachment F Affidavits describe how members of the claim group learnt about Wurundjeri Country and how their ancestors used Country.<sup>90</sup> This includes how their predecessors taught them about fishing methods and how to live off Country.<sup>91</sup>

[101] The material also refers to examples of oral histories and the continuity of Woi-wurrung society and activities on Country, including those given in evidence in the Boonwurrung People Claim.<sup>92</sup> Members of the claim group describe that their Elders are the original source of Wurundjeri knowledge and history.<sup>93</sup> Members of the claim group describe how rights in Country and responsibility to look after Country have been passed down through the generations.<sup>94</sup> Current members of the claim group also describe teaching their children and grandchildren about important aspects of society,<sup>95</sup> and that the younger generations are

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<sup>84</sup> *Martin* [29].

<sup>85</sup> *Gudjala* 2009 [33].

<sup>86</sup> Form 1, Schedule F [11].

<sup>87</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [18].

<sup>88</sup> *Ibid* [10].

<sup>89</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [47], [50].

<sup>90</sup> Form 1, Attachment E, Affidavit of [claim group member 2] sworn 10 October 2025 [11]–[12].

<sup>91</sup> Form 1, Attachment E, Affidavit of [claim group member 5] affirmed 27 October 2025 [4].

<sup>92</sup> Form 1, Schedule F [15]–[23].

<sup>93</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [11].

<sup>94</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [79]; Form 1, Attachment E, Affidavit of [claim group member 3] affirmed 3 November 2022 [38].

<sup>95</sup> Form 1, Attachment E, Affidavit of [claim group member 3] affirmed 3 November 2022 [30], [43].

engaged in culture.<sup>96</sup> The material states that Wurundjeri families have stories from their Elders and have seen Country through the eyes of their predecessors through these stories, which continue to be honoured by the younger generations.<sup>97</sup>

[102] The Attachment E Affidavits also contain detailed genealogical information tracing current members of the claim group to their predecessors and apical ancestors.<sup>98</sup>

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

[103] 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 Wurundjeri Woi-wurrung People have continued to hold their native title in accordance with those traditional laws and customs.

[104] The material contains many examples of traditional laws and customs being passed down from one generation to the next. The predecessors of the claim group are described as maintaining their stories, laws and customs at Coranderrk and passing these on to younger Wurundjeri People. Members of the claim group set out their oral histories, demonstrating how the detailed knowledge of their Elders has been passed on. The material also includes detailed genealogies going back to the claim group's apical ancestors. In my view, the material demonstrates that the claim group have maintained knowledge of Country and maintained the responsibility to respect and look after Country that has been passed on from their predecessors.

[105] 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**

[106] 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>99</sup>

[107] I understand that I may consider material additional to the application for the purpose of my assessment of this condition.<sup>100</sup> Because a 'more onerous test [is] to be applied to the individual rights and interests claimed' than under s 190B(5),<sup>101</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

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<sup>96</sup> Form 1, Attachment E, Affidavit of [claim group member 6] sworn 4 November 2022 [23].

<sup>97</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [21].

<sup>98</sup> See, eg, Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025, Annexure AEHG1; Affidavit of [claim group member 2] sworn 10 October 2025, Annexure AX-1; Affidavit of [claim group member 3] affirmed 3 November 2022, Annexure DMK-1.

<sup>99</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>100</sup> *Doepel* [16].

<sup>101</sup> *Ibid* [127], [132].

sufficient to demonstrate that it is possessed pursuant to the traditional laws and customs of the native title claim group.<sup>102</sup>

[108] 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>103</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.

[109] 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>104</sup> The term “in relation to” is here to be given a ‘wide import’.<sup>105</sup>

[110] The claimed native title rights and interests are set out at paragraph 62 above. 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*

[111] Paragraph 1 of Schedule E claims ‘the right to possession, occupation, use and enjoyment to the exclusion of all others’.

[112] 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>106</sup>

[113] 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

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<sup>102</sup> *Yorta Yorta* [86]; *Gudjala 2007* [86].

<sup>103</sup> *Gudjala 2007* [85]–[87].

<sup>104</sup> *Ward HC* [577].

<sup>105</sup> *Alyawarr* [93].

<sup>106</sup> *Ward HC* [88].

the purpose of preventing such harm and avoiding injury to the country, then they have ... an exclusive right of possession, use and occupation.<sup>107</sup>

[114] 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>108</sup>

[115] Schedule F contains a general assertion that the claim group had rights to exclude others from the land and resources in the claim area.<sup>109</sup> The factual basis material does not contain a significant amount of detail that I consider supports the claimed exclusive rights. The material generally refers to members of the claim group speaking for Country through conducting Welcomes to Country,<sup>110</sup> and some practices to ward off or cleanse bad spirits.<sup>111</sup> The material also refers generally to the efforts of the claim group to protect their cultural heritage, and I refer to the below material at paragraph 120 in relation to the claimed non-exclusive rights to protect places and sites.

[116] In my view, the material is not sufficient to establish the claimed exclusive rights on a *prima facie* basis. The material does not establish 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 relating to protecting against spiritual harm does not, in my view, demonstrate that the claim group acted as gatekeepers or prevented access to avoid spiritual harm within the meaning of *Griffiths*. For these reasons, my view is that the claimed exclusive rights are not *prima facie* established and cannot 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 '**speak for**' and **make decisions about the land and waters** is generally subsumed within the claimed exclusive rights. As a non-exclusive right, the material contains examples of members of the claim group conducting Welcomes to Country and smoking ceremonies.<sup>112</sup> I consider that the cultural heritage activities set out above at paragraph 92 demonstrate non-exclusive rights in relation to decision making about the lands and waters on the claim area. I also consider the material indicating that Wurrundjeri Woi-wurrung apical ancestors made their mark on Batman's "treaty" demonstrates these rights as existing in the pre-sovereignty society. In my view, there is sufficient factual basis material to

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<sup>107</sup> *Griffiths* [127].

<sup>108</sup> *Sampi* [1072].

<sup>109</sup> Form 1, Schedule F [1], [4].

<sup>110</sup> Form 1, Attachment E, Affidavit of [claim group member 3] affirmed 3 November 2022 [48].

<sup>111</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [6].

<sup>112</sup> Form 1, Attachment E, Affidavit of [claim group member 7] sworn 3 November 2022 [26].

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, remain on and use the land and waters for any purpose**, the Attachment E Affidavits describe learning from their Elders about 'reading the bush' and using the resources of the lands and waters.<sup>113</sup> The material refers to the predecessors of the claim group using the lands and waters, and that the children learned from them.<sup>114</sup> In my view, the material is sufficient to demonstrate that the predecessors of the claim group exercised these rights and the material also demonstrates current members of the claim group continuing to access and use the land and waters. As such, I am satisfied 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 **protect places, sites, areas, and things of cultural significance**, the Attachment E Affidavits provide examples of the predecessors of the claim group taking action to protect significant sites, such as a Corroboree Tree at Burnley (close to Melbourne City),<sup>115</sup> and particular trees used by their ancestors at a special place for the Wurundjeri People.<sup>116</sup> Members of the claim group describe the importance, passed down from their predecessors, of looking after a wide range of cultural sites.<sup>117</sup> I consider that the material demonstrates that these claimed non-exclusive rights are an important part of Wurundjeri culture derived from the pre-sovereignty society and can be *prima facie* established under s 190B(6).

[121] In relation to the claimed rights for the claim group to **maintain their distinctive spiritual, cultural, material, and economic relationship with the land and waters and other resources**, the material refers to a number of cultural practices and use of resources, such as weaving and making feather flowers, shell necklaces, boomerangs and firesticks.<sup>118</sup> The material indicates that these practices were undertaken by the predecessors of the claim group and that the younger generations have continued these traditions.<sup>119</sup> For these reasons, I consider that these claimed non-exclusive rights are 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 non-exclusive rights and interests will be entered on the Register under s 186(1)(g).

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<sup>113</sup> Form 1, Attachment E, Affidavit of [claim group member 2] sworn 10 October 2025 [14].

<sup>114</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [11]; Affidavit of [claim group member 6] sworn 4 November 2022 [18].

<sup>115</sup> Form 1, Attachment E, Affidavit of [claim group member 1] sworn 21 October 2025 [36]–[37], Annexure AEHG-10.

<sup>116</sup> Form 1, Attachment E, Affidavit of [claim group member 7] sworn 3 November 2022 [21].

<sup>117</sup> Form 1, Attachment E, Affidavit of [claim group member 2] sworn 10 October 2025 [16].

<sup>118</sup> Form 1, Attachment E, Affidavit of [claim group member 3] affirmed 3 November 2022 [16]–[18], [20].

<sup>119</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [6].

## 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>120</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 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>121</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>122</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 claim area. Several members of the claim group describe camping and fishing on the claim area.<sup>123</sup> One member of the claim group describes the spiritual feeling from seeing their totem on Country.<sup>124</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 claim 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.

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<sup>120</sup> *Gudjala 2009* [84].

<sup>121</sup> *Yorta Yorta* [86].

<sup>122</sup> *Doepel* [18].

<sup>123</sup> Form 1, Attachment E, Affidavit of [claim group member 4] affirmed 4 November 2022 [14]; Affidavit of [claim group member 1] sworn 21 October 2025 [74]; Affidavit of [claim group member 5] affirmed 27 October 2025 [7]; Affidavit of [claim group member 6] sworn 4 November 2022 [11].

<sup>124</sup> Form 1, Attachment E, Affidavit of [claim group member 7] sworn 3 November 2022 [30].

[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. This is confirmed in the Geospatial Assessment and my own searches of the NNTT's geospatial database. Paragraph 2(e) of Schedule B confirms that the Application excludes any of the area covered by one specified 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 2(c) of Schedule B indicates that the Application does not cover any areas where a previous exclusive possession act was done, and paragraph 3 indicates that this is subject to ss 47 to 47C.

[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 paragraph 1 of Schedule E, 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 and Schedules B and E, I am satisfied that there is no failure to comply with s 61A. As such, 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>125</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 2(d) of Schedule B indicates that the Application does not cover any areas where native title rights and interests have been otherwise extinguished by reference to specific classes. I am satisfied that the Application as a whole does not claim native title rights and interests that 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*

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<sup>125</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	Wurundjeri Woi-wurrung People
NNTT No.	VC2025/002
Federal Court of Australia No.	VID1466/2025

#### **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:**

30 October 2025

#### **Date application entered on Register:**

29 January 2026

#### **Applicant:**

Darcy Cohen-Hunter, Malcolm Hoye, Mark Kolasa, Michelle Mills, Carolyn O'Halloran, Margaret Evelyn Parisi, Daniel Ross, Kathleen Terrick, Jara Wandin-Dow, Perry James Wandin, Oscar Wilson

#### **Applicant's address for service:**

Peter Francis Boyle  
Slater and Gordon Lawyers  
Level 35, 530 Collins Street  
MELBOURNE VIC 3000

**Phone:** (03) 9190 0590

#### **Conditions on Applicant's authority**

- a. The applicant is not to make any significant decisions about any area of land or waters the subject of the application without first obtaining informed consent from the Wurundjeri Woi-wurrung native title claim group.
- b. The applicant cannot settle the native title claim without first obtaining informed consent from the Wurundjeri Woi-wurrung native title claim group; and
- c. The applicant will do all things reasonably necessary to progress the native title determination application.

**Area covered by application:**

[As per the Schedule]

**Persons claiming to hold native title:**

[As per the Schedule]

**Registered native title rights and interests:**

2. In areas where native title rights and interests are or have been partially extinguished:
  - (a) the right to “speak for” the land and waters;
  - (b) the right to make decisions about the use and enjoyment of the land and waters;
  - (c) the rights to have access to, remain on and use the land and waters for any purpose;
  - (d) the rights to have access to and take the resources of the land and waters;
  - (e) the rights to protect places, sites, areas, and things of cultural significance on the land and waters; and
  - (f) the rights to maintain their distinctive spiritual, cultural, material, and economic relationship with the land and waters and other resources.

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.

29 January 2026