



## Registration Decision

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| <b>Application name</b>               | Taungurung People  |
| <b>Name of applicant</b>              | Bernadette Franklin, Matthew Burns, Isobel Morphy Walsh, Matthew Shanks, Emily Loughron, Beau Murray and Alexander Burns |
| <b>Federal Court of Australia No.</b> | VID140/2026  |
| <b>NNTT No.</b>                       | VC2026/001   |
| <b>Date of Decision</b>               | 31 March 2026  |

### Claim accepted for registration

I have decided that the claim in the Taungurung 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.

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David Hinder

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) (the Act), unless otherwise specified.

# Reasons for Decision

## CASES CITED

*Anderson on behalf of the Numbahjng 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**)

*Bell v Native Title Registrar* [2021] FCA 229 (**Bell**)

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

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

*Hazelbane v Doepel* [2008] FCA 290 (**Hazelbane**)

*Love v Commonwealth* [2020] HCA 3; (2020) 270 CLR 152 (**Love**)

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

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

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

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

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

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

*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**)

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

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

*Wakaman People No 2 v Native Title Registrar* [2006] FCA 1198; 155 FCR 107 (**Wakaman**)

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

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

## BACKGROUND

[1] This decision concerns an **Application** filed in the Federal Court of Australia (**Court**) on behalf of the Taungurung People native title claim group (**claim group**). It covers land and waters in north (central and eastern) Victoria.

[2] The Registrar of the Federal Court (the **Court**) gave a copy of the Application and accompanying affidavits to the Native Title Registrar (**Registrar**) on 11 February 2026 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*

- [3] Sections 190A(1A), (6), (6A), (6B) set out the decisions available to the Registrar under s 190A. Section 190A(1A) provides for exemption from the registration test for certain amended applications and s 190A(6A) provides that the Registrar must accept a claim (in an amended application) when it meets certain conditions. Section 190A(6) provides that the Registrar must accept the claim for registration if it satisfies all of the conditions of s 190B (which deals mainly with the merits of the claim) and s 190C (which deals with procedural and other matters). Section 190A(6B) provides that the Registrar must not accept the claim for registration if it does not satisfy all of the conditions of ss 190B–190C.
- [4] Given that the Application was made on 11 February 2026 and has not been amended, I am satisfied that neither s 190A(1A) nor s 190A(6A) apply.
- [5] I have decided that the claim in the Application must be accepted for registration and this document sets out my reasons for that decision.

### *Procedural fairness*

- [6] On 17 February 2026, a Senior Officer at the National Native Title Tribunal (**NNTT**) wrote to the persons comprising the **Applicant** and State of Victoria (**State**) inviting any additional material or comments on the Application by 3 March 2026.
- [7] On 2 March 2026 a representative for the State advised the Senior Officer that the State would not be providing submissions regarding registration of the Application.
- [8] The Applicant did not provide any additional material or comments to the Senior Officer.
- [9] On 26 March 2026, one of the persons comprising the applicant in the overlapping Dhudhuroa, Waywurru and Ngurai Illum People application<sup>3</sup> sent a letter to the Registrar outlining their objection to the registration of the Application. After reviewing the letter and covering email, I concluded that they contained only high-level allegations without specific supporting evidence. I was also of the view that, unlike the Applicant and State, the objector was not a person or party to whom procedural fairness is owed.<sup>4</sup> Accordingly, I did not have regard to the material in making this registration decision and did not provide the material to the Applicant or the State for their comment.
- [10] This concluded the procedural fairness process.

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

<sup>3</sup> VC2023/001; VID945/2023.

<sup>4</sup> See *Hazelbane* at [23]–[31]; *Bell* at [72]–[73], [80]–[83].

## Information considered

- [11] 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’.
- [12] I have had regard to information in the Application.
- [13] I note there is no information before me obtained as a result of any searches conducted by the Registrar of State/Commonwealth interest registers.<sup>5</sup>
- [14] I may also have regard to such other information as I consider appropriate.<sup>6</sup> I have therefore considered information contained in a geospatial assessment and overlap analysis prepared by the NNTT’s Geospatial Services dated 23 February 2026 (**Geospatial Assessment**). I have also considered information obtained as a result of my own enquiries of the NNTT’s registers and application databases. I have set these out where relevant.

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

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

- [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 61–2. This condition does not require any merit or qualitative assessment of the material to be undertaken.<sup>7</sup> However, it does seek ‘...to ensure that the application contains “all details” required by s 61...’.<sup>8</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>9</sup>

### *Section 61*

- [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 for the particular native title claimed. Seven persons are named in the Application as comprising the Applicant. Schedule A contains a description of the native title claim group. Each of the persons comprising the Applicant has deposited an affidavit for the purpose of s 62, which has been filed in the Court and annexed to

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<sup>5</sup> Section 190A(3)(b).

<sup>6</sup> Section 190A(3).

<sup>7</sup> *Doepel* [16], [35]–[39].

<sup>8</sup> *Ibid* [35].

<sup>9</sup> See also s 190D(3)(b).

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 all the persons in the native title claim group. From the material contained in Schedule A and the Applicant Affidavits, I am satisfied that the Application meets the requirements of 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 would suggest otherwise. I am therefore satisfied that the requirement is met.

[18] **Section 61(3)** requires an application to state the name and address for service of the applicant. Part A contains the name of the Applicant. Part B provides that the Application is filed by Malyon Law on behalf of the Applicant and includes an address for service. 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. I understand 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) is to be contrasted with the merits exercise undertaken pursuant to s 190B(3).<sup>10</sup> Schedule A contains a description of the native title claim group as being comprised of Aboriginal people who:

- (1) descend by birth, or adoption in accordance with the traditional laws acknowledged and the traditional customs observed by the Taungurung People, from one or more of sixteen named apical ancestors;
- (2) identify as Taungurung persons; and
- (3) are recognised and accepted as Taungurung persons in accordance with the traditional laws acknowledged and the traditional customs observed by the Taungurung People.

I am therefore satisfied that the Application contains the information required by s 61(4).

[20] **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. While I consider this is a matter for the Court, I am satisfied the requirement is met as the Application was accepted for filing by the Court on 11 February 2026, and the form is compliant with the *Native Title (Federal Court) Regulations 2024*.

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

## *Section 62*

[22] **Section 62(1)(a)** requires a claimant application to be accompanied by an affidavit sworn by the Applicant stating each of the matters mentioned in subsection (1A). The Application

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<sup>10</sup> *Gudjala 2007* [31]–[32].

contains the Applicant Affidavits, which are in substantially identical terms and include statements regarding the following matters:

- (1) that the Applicant believes that the native title rights and interests claimed by the native title claim group have not been extinguished in relation to any part of the area covered by the Application;
- (2) that the Applicant believes that none of the area covered by the Application is also covered by an approved determination of native title;
- (3) that the Applicant believes that all of the statements made in the Application are true;
- (4) that the Applicant is authorised by all the persons in the native title claim group to make the Application and to deal with matters arising in relation to it;
- (5) the details of the process of decision-making complied with in authorising the Applicant to make the Application and to deal with matters arising in relation to it (i.e. details of an authorisation meeting on 23 November 2025); and
- (6) that there are conditions under s 251BA on the authority that relate to the making of the Application.

I am satisfied the statements contained in the Applicant Affidavits meet the description of each of the statements required by s 62(1A)(a)–(e) and (g). Section 62(1A)(f) has not been relied upon by the Applicant. Each of the Applicant Affidavits refer to the above-mentioned s 251BA conditions and confirm that all statements made in the Application are true and correct. Section 62(1A)(g) requires that the Applicant Affidavits include statements indicating whether any conditions on the authority of the Applicant that relate to the making of the Application have been satisfied and how they have been satisfied. 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 other than the ‘making of the application’. I am therefore satisfied that information in the Application is sufficient to meet the requirements of s 62(1)(a).

[23] **Section 62(2)(a)** requires the application to 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. Schedule B refers to the Schedule B Attachment, which describes the Application area as all the land and waters within the Taungurung Land and Waters Council Aboriginal Corporation Registered Aboriginal Party Boundary under the *Aboriginal Heritage Act 2006* as at 3 February 2026. Schedule B and Attachment B specifically exclude two native title determinations. Schedule B lists general exclusions. For these reasons I am satisfied that the Application contains the information required by s 62(2)(a).

[24] **Section 62(2)(b)** requires the application to include a map showing the boundaries of the area mentioned in s 62(2)(a). Schedule C refers to the Schedule C Attachment, which contains a colour copy of a map prepared by NNTT Geospatial Services titled ‘Taungurung’ and dated 17 October 2025. The map includes various identifying features. As such I am satisfied that the Application contains the information required by s 62(2)(b).

- [25] **Section 62(2)(c)** requires that the application include details and results of all searches of any non-native title rights and interests covered by the application. Schedule D provides: ‘No searches have been carried out by or on behalf of the native title claim group to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application.’ I am therefore 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 list and description of the native title rights and interests claimed in relation to the Application area. In my view, this does not consist merely of a statement that the native title rights and interests are all that may exist or have not been extinguished. Consequently, I am satisfied that the Application contains the information required by s 62(2)(d).
- [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. Schedule F contains high-level statements of the factual basis for the claim and refers to the ‘Schedule F Attachment’ (**Attachment F**) for further information. Attachment F contains a general description of the factual basis on which it is asserted that the native title rights and interests are claimed to exist. As such, I am satisfied that 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 the application. Schedule E contains details of such activities. 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 (of which the Applicant is aware). Schedule G provides:
- The Applicant is aware of the following claim that has been made in relation to a part of the area covered by the application:
- Dhudhuroa, Waywurru and Ngurai Illum People (VID945/2023)
- I am therefore 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. Schedule GA provides: ‘The Applicant is not aware of details of any notifications under paragraph 24MD(6B)(c) of the Act that have been given and that relate to the whole or any part of the Claim Area.’ I am therefore satisfied that the Application contains the information required by s 62(2)(g).
- [31] **Section 62(2)(h)** requires that the application include details of any s 29 notifications relevant to the claim area of which the Applicant is aware. Schedule H provides:

The Applicant is aware of the details of certain notices under section 29 of the Act (or under a corresponding provision of a law of Victoria) which have been given and that relate to the whole or a part of the Claim Area. Those details are set out in the **Schedule H Attachment**.

The Schedule H Attachment contains the relevant details. Therefore, I am satisfied that the Application contains the information required by s 62(2)(h).

[32] **Section 62(2)(i)** requires the application include details of any conditions under s 251BA on the authority of the Applicant to make the application and to deal with matters arising in relation to it. Schedule HA contains the details of such conditions. Therefore, I consider the requirement at s 62(2)(i) is met.

[33] **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 the application. It is apparent from Schedule J that there is no agreement under s 47C in relation to the area covered by the Application, and so the requirement at s 62(1)(d) is not applicable.

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

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

[35] 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, and as such, the condition at s 190C(2) is met.

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

[36] 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’.

[37] 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 claim covers at least some of the same area and was accepted for registration under s 190A and on the Register of Native Title Claims.

[38] I have considered the Explanatory Memorandum relevant to the 1998 amendments to this provision.<sup>12</sup> I understand the purpose of the provision is to prevent overlapping claims by members of the same native title claim group being on the Register simultaneously.

[39] 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>13</sup>

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

<sup>12</sup> Explanatory Memorandum, Native Title Amendment Bill 1997 (Cth) 303 [29.25].

<sup>13</sup> *Doepel* [16].

[40] The Geospatial Assessment indicates that there is no previous claim within the meaning of s 190C(3) that overlaps any of the area covered by the Application. My own searches of the NNTT registers and databases today confirms this.

[41] I am therefore satisfied that no person is included in the native title claim group for this Application that was a member of the native title claim group for any previous overlapping application.

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

[42] 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>14</sup> or the requirements under subsection (4AA) have been met.<sup>15</sup>

[43] Schedule P provides: ‘The application has been certified by First Nations Legal & Research Services. A copy of the certificate is at Schedule P Attachment.’ The ‘Schedule P Attachment’ is a **Certificate** titled ‘Statement of Opinion pursuant to section 203BE(2) of the *Native Title Act 1993* (Cth)’ issued by the Chief Executive Officer of First Nations Legal and Research Services (**FNLRS**).

[44] 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>16</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?*

[45] The Geospatial Assessment indicates one RATSIB area falls within the external boundary of this application as at 19 February 2026, being FNLRS.

[46] Paragraph 1 of the Certificate indicates that 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>17</sup>

[47] 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 Certificate.

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<sup>14</sup> Section 190C(4)(a).

<sup>15</sup> Section 190C(4)(b).

<sup>16</sup> *Doepel* [78], [80]–[82]; see also *Wakaman* [32].

<sup>17</sup> *Quall HC* [48], [63] and [93].

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

- [48] To meet the requirements of s 190C(4)(a), the certification must comply with the provisions of s 203BE(4)(a) to (c).
- [49] **Section 203BE(4)(a)** requires a certification to contain a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (2)(a), (aa), and (b) have been met (in short, 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 Certificate contains a statement meeting the description of ss 203BE(2)(a), (aa), and (b). I am therefore satisfied that the Certificate contains the statements required by s 203BE(4)(a).
- [50] **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 [2]-[11] of the Certificate and include information regarding the notifications and publications advertising the authorisation meeting, the decision-making process used during the meeting, authorisation of the applicant and conditions on the authority of the applicant. I consider that the information provided by FNLRS meets the requirements at s 203BE(2)(a), (aa), and (b).
- [51] **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). However, s 203BE(3) provides that a failure by the RATSIB to comply with that section does not invalidate any certification. Given that the Application is overlapped by the Dhudhuroa, Waywurru and Ngurai Illum People claim,<sup>18</sup> I consider that s 203BE(4)(c) is applicable. Paragraph 12 of the certificate provides a statement asserting compliance with the condition but does not provide any evidence in support of the assertions. As a failure to comply with this condition does not invalidate the certification, there is little utility in considering it further. In my view, the information is adequate for the purpose of s 203BE(4)(c).

*Conclusion on s 190C(4)*

- [52] For the above reasons, in my view the Certificate satisfies the requirements of s 203BE(4). As such, I am satisfied that the Application has been properly certified under s 190C(4)(a) and therefore this condition is met.
- [53] 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>19</sup>

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<sup>18</sup> VC2023/001; VID945/2023. Confirmed by the Geospatial Assessment.

<sup>19</sup> *Doepel* [80].

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

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

[54] 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.

#### *Description*

[55] Schedule B refers to the Schedule B Attachment, which describes the Application area as all the land and waters within the Taungurung Land and Waters Council Aboriginal Corporation Registered Aboriginal Party Boundary under the *Aboriginal Heritage Act 2006* as at 3 February 2026. Schedule B lists general exclusions. Schedule B and Attachment B also specifically exclude two native title determinations, being the:

(1) Yorta Yorta Determination (VCD1998/001; VID6001/1995)

(2) Gunai/Kurnai People Determination (VCD2010/001; VID6007/1998, VID482/2009)

#### *Map*

[56] Schedule C refers to the Schedule C Attachment, which contains a colour copy of a map prepared by NNTT Geospatial Services titled ‘Taungurung’ and dated 17 October 2025. The map includes various identifying features such as the Application area, abutting native title determinations, native title determination applications, Indigenous Land Use Agreements, Representative Aboriginal Party boundaries, a scalebar and coordinate-grid, locality diagram, and notes regarding the source, currency and datum of the data used to prepare the map.

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

[57] The Geospatial Assessment concludes the description and map are consistent and identify this application area with reasonable certainty. I agree with this assessment. The information provided is sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters. For these reasons, I am satisfied the claim meets the requirements of s 190B(2).

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

[58] 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>20</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>21</sup>

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<sup>20</sup> Section 190B(3)(a).

<sup>21</sup> Section 190B(3)(b).

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

- (1) I am required to address only the content of the application;<sup>22</sup>
- (2) 'only ... the members of the claim group are required to be identified, not that there be a cogent explanation of the basis upon which they qualify for such identification';<sup>23</sup>
- (3) where a claim group description contains a number of paragraphs, the paragraphs should be read 'as part of one discrete passage, and in such a way as to secure consistency between them, if such an approach is reasonably open';<sup>24</sup> and
- (4) to determine whether the conditions or rules specified in the application have a sufficiently clear description of the native title claim group, '[i]t may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described'.<sup>25</sup>

[60] Schedule A contains a description of the native title claim group as being comprised of Aboriginal people who:

- (1) descend by birth, or adoption in accordance with the traditional laws acknowledged and the traditional customs observed by the Taungurung People, from one or more of sixteen named apical ancestors;
- (2) identify as Taungurung persons; and
- (3) are recognised and accepted as Taungurung persons in accordance with the traditional laws acknowledged and the traditional customs observed by the Taungurung People.

[61] The Court has accepted that identification of members of a claim group by reference to named ancestors can meet the requirements of s 190B(3)(b). In my view, the question of whether a person is of biological or adoptive descent from one or more of the apical ancestors is one which can be resolved by factual inquiry.

[62] There are also the self-identification and reciprocal recognition elements of the description, each of which a person must also meet to be a member of the group. The courts have recognised that self-identification as a member of an Aboriginal society is not enough; there must also be a mutual acceptance by members of that society of this identification.<sup>26</sup> I am satisfied the question of whether a person identifies as a member of the claim group and is recognised by other members of the group in accordance with traditional laws and customs is one that can be settled through factual inquiries.

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<sup>22</sup> *Doepel* [51]; *Gudjala 2007* [30].

<sup>23</sup> *Gudjala 2007* [33].

<sup>24</sup> *Ibid* [34].

<sup>25</sup> *WA v NTR* [67].

<sup>26</sup> See *Aplin* [257]-[260]; see also *Yorta Yorta* [108]; *Sampi FC* [45]; *Love* [368], [371].

[63] For these reasons, I am satisfied the persons in the native title claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group. I am therefore satisfied the claim meets the requirements of s 190B(3).

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

[64] I understand that in order to assess the requirements of this provision, I am confined to the material contained in the application itself.<sup>27</sup>

[65] 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>28</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>29</sup>

[66] Schedule E to the application provides a description of the native title rights and interests claimed.

[67] In my view, the native title rights and interests described in Schedule E of the Application are understandable and have meaning. There is also a clear distinction between exclusive and non-exclusive rights, and an explicit statement that the claimed rights are subject to, and exercisable in accordance with the traditional laws and customs of the native title claim group, and the laws of the State of Victoria and the Commonwealth of Australia, including the common law. Paragraph 7 of Schedule E outlines the matters to which native title rights do not apply.

[68] I do not consider there to be any inherent contradictions in these claimed rights and interests.

[69] For these reasons, I am satisfied that the description contained in Schedule E is sufficient to allow the native title rights and interests claimed to be readily identified. Therefore, I am satisfied that the requirements of s 190B(4) are met.

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

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

[71] 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:

- (1) that the native title claim group have, and the predecessors had, an association with the area;

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<sup>27</sup> *Doepel* [16].

<sup>28</sup> *Ibid* [99], [123].

<sup>29</sup> *Strickland* [60]. See also *Strickland FC* [85]–[87].

- (2) 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
- (3) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

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

... requires the Registrar to address the quality of the asserted factual basis for those claimed rights and interests; but only in the sense of ensuring that, if they are true, they can support the existence of those claimed rights and interests... The role is not to test whether the asserted facts will or may be proved at the hearing, or to assess the strength of the evidence which may ultimately be adduced to establish the asserted facts.<sup>30</sup>

[73] 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.

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

The fact that the detail specified by s 62(2)(e) is described as 'a general description of the factual basis' is an important indicator of the nature and quality of the information required by s 62. In other words, it is only necessary for an applicant to give a general description of the factual basis of the claim and to provide evidence in the affidavit that the applicant believes the statements in that general description are true. Of course the general description must be in sufficient detail to enable a genuine assessment of the application by the Registrar under s 190A and related sections, and be something more than assertions at a high level of generality. But what the applicant is not required to do is to provide anything more than a general description of the factual basis on which the application is based. In particular, the applicant is not required to provide evidence of the type which, if furnished in subsequent proceedings, would be required to prove all matters needed to make out the claim. The applicant is not required to provide evidence that proves directly or by inference the facts necessary to establish the claim.<sup>31</sup>

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

In assessing the adequacy of a general description of the factual basis of the claim, one must be careful not to treat, as a description of that factual basis, a statement which is really only an alternative way of expressing the claim or some part thereof. In my view it would not be sufficient for an applicant to assert that the claim group's relevant laws and customs are traditional because they are derived from the laws and customs of a pre-sovereignty society, from which the claim group also claims to be descended, without any factual details concerning the pre-sovereignty society and its laws and customs relating to

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<sup>30</sup> *Doepel* [17]; see also *Gudjala FC* [57], [83].

<sup>31</sup> *Gudjala FC* [92].

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>32</sup>

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

[77] Schedule E to the Application describes the claimed native title rights and interests of, as well as the activities currently carried on by, the claim group in relation to the Application area. The factual basis material is contained in Schedule F and Attachment F. Schedule E also refers to the affidavits of Isobel Paipadjerook Morphy-Walsh (**IMW Affidavit**) and Matthew John Shanks (**MS Affidavit**) (both affirmed 4 February 2026), which are annexed to the Application.

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

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

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

To satisfy the condition in s 190B(5)(a) of the [Act], it will be sufficient if the applicant demonstrates that:

- (a) ‘the claim group presently has an association with the area, and the claim group’s predecessors have had an association with the area since sovereignty or European settlement’ [*Gudjala 2007* [52]];
- (b) ‘there is an association between the whole group and the area, although not all members must have such association at all times’ [*Gudjala 2007* [52]]; and
- (c) ‘there is an association with the entire area claimed, rather than an association with only part of it or ‘very broad statements’, which have no “geographical particularity”’ [*Martin* [26]; *Corunna* [39]].<sup>33</sup>

[80] I also note Dowsett J’s comments in *Gudjala 2007* that s 190B(5)(a) requires sufficient factual material to support the assertion that the identified claim group (and not another group) holds the identified rights and interests (and not some other rights and interests).<sup>34</sup>

**OVERVIEW OF MATERIAL PROVIDED IN SUPPORT OF THE ASSERTION AT S 190B(5)(A)**

[81] The Application relevantly asserts:

- (1) At both legal sovereignty and at effective sovereignty (c. 1845–1855), the Application area was owned, used, and occupied in accordance with the traditional laws and

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<sup>32</sup> *Gudjala 2009* [29]; see also *Anderson* [43], [47]–[48].

<sup>33</sup> *McLennan* [28], citations adapted from original.

<sup>34</sup> *Gudjala 2007* [39].

customs of Aboriginal people who spoke Taungurung language, a variety of the eastern Kulin language.<sup>35</sup> This is substantiated by observations from officials and early ethnographies, as well as modern anthropological sources.<sup>36</sup>

(2) The definition of the claim group is described, in part, by descent from named apical ancestors, each of which had an association with the area:

- i. Berrut Dr Billy: recorded as being near Mansfield in 1840. Later, he and his family lived on the Mohican (Acheron) settlement (within the Application area), and then at Coranderrk (approximately 10km south of the Application area).<sup>37</sup>
- ii. Birdarak Thomas Michie aka Tommy Bamfield: born at Benalla (about 5km from the northern boundary of the Application area); moved to Mohican (Acheron) and later Coranderrk; many of his children were born and lived in Coranderrk. When asked about his language he noted it was spoken 'about Benalla and Wangaratta right up the King River'.<sup>38</sup>
- iii. Bundowrok Mr W Cotton and Mrs Fulina Cotton: probable association with the upper Goulburn River area and the pastoralist John Cotton; recorded as living at Mohican (Acheron) in 1861, then moved to Coranderrk in 1863; evidence suggests an affiliation with the area immediately west of Yea.<sup>39</sup>
- iv. Burnie Jessie Hamilton: born in the Lower Goulburn or Kilmore region 'around 1957-1958' (I have presumed this is a typographic error and should read '1857-1858'). Present at Mohican (Acheron) in 1861 and Coranderrk in 1863, where she spent most of her life. Married in June 1876 at Coranderrk, then moved to Barmah in 1893 (approx. 45km north of the Application area).<sup>40</sup>
- v. Charles Tattambo: born around the '1780s-1800s' and affiliated with the Murchison, Muddy Creek, and Molka areas (Murchison and Molka are located approx. 5-15km from the Application area).<sup>41</sup>
- vi. Coeeyrun Peter Hunter: probably born in 1841. Recorded as being one of five Goulburn River men involved in the creation of the Mohican (Acheron) settlement, and then likely moved to Coranderrk in 1863. He was photographed there in 1866, and later died there in 1881.<sup>42</sup>

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<sup>35</sup> Attachment F at [2], [10]-[11].

<sup>36</sup> Ibid at [13]-[14].

<sup>37</sup> Ibid at Annexure F-1.

<sup>38</sup> Ibid at Annexure F-2.

<sup>39</sup> Ibid at Annexure F-3.

<sup>40</sup> Ibid at Annexure F-4.

<sup>41</sup> Ibid at Annexure F-5.

<sup>42</sup> Ibid at Annexure F-6.

- vii. Eliza Werry/Michie: born in Kilmore (within the Application area) around 1832 and lived as an adult at the at Mt Franklin (Franklinford) settlement (approx. 27 km west of the Application area). Moved to Coranderrk around 1864, married her second husband there in 1865 and died there in 1886.<sup>43</sup>
- viii. Ellen Norris: born in Kilmore around 1855-1857 and married in 1879 at Lake Condah, where she died in 1889 (approx. 250km from the Application area).<sup>44</sup>
- ix. Jerkunning Lilly Hamilton: born around 1852-1854 at Sugar Loaf Station (within the Application area). Moved to the Mohican (Acheron) settlement in 1861, then to Coranderrk in 1863, where she died in 1876.<sup>45</sup>
- x. John Franklin: born at Sugar Loaf Creek (date unknown). Married at Kilmore in 1874, then living on Doogalook station located on the Goulburn River and Muddy Creek, west of Yea. Died in Yea in 1921.<sup>46</sup>
- xi. Talgium William Hamilton: born in Kilmore around 1851-1852, then moved to the Mohican (Acheron) settlement in 1861. Moved to Coranderrk in 1863, where he lived most of his life.<sup>47</sup>
- xii. Tooterie: probably born around 1790-1810 in the Murchison area. Her son was recorded as living in Coranderrk.<sup>48</sup>
- xiii. Wallambyne Polly: born around 1838 – 1840 at Mansfield (within the Application area) and a resident at Coranderrk in 1874 when she married. Recorded as living at Delatite River in 1856 when she gave birth to a daughter.<sup>49</sup>
- xiv. Wyerdiuerum Dick Richards: born around 1839-1840 and affiliated with the Kilmore area. Moved to the Mohican (Acheron) settlement in 1861, then moved to Coranderrk in 1863 where he married in 1868. Died in 1907 at Coranderrk.<sup>50</sup>
- xv. Yabbee Billy Hamilton: born around 1817 and recorded as a Taungurung man by the Chief Protector. The two met in 1840 in the area between Yea and Kilmore, and again that year in Millison’s Creek (which runs into Sugar Loaf Creek). The Chief Protector understood Yabbee to be associated with those areas. Other

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<sup>43</sup> Ibid at Annexure F-7.

<sup>44</sup> Ibid at Annexure F-8.

<sup>45</sup> Ibid at Annexure F-9

<sup>46</sup> Ibid at Annexure F-10.

<sup>47</sup> Ibid at Annexure F-11.

<sup>48</sup> Ibid at Annexure F-12.

<sup>49</sup> Ibid at Annexure F-13.

<sup>50</sup> Ibid at Annexure F-14.

records substantiate this association as well as with Yea, Kilmore, Seymour, and Pyalong. Died in 1851 near Reedy Creek (within the Application area).<sup>51</sup>

- (3) Ongoing presence of members of the claim group evidenced by births, residence and work in towns across the area (Seymour, Broadford, Violet Town, Yea, Rubicon, Acheron, Alexandra, Benalla and Euroa).<sup>52</sup> This includes the activities set out in Schedule E.<sup>53</sup>
- (4) Ms Morphy-Walsh states she has lived on, worked on, camped on, and regularly returned to Taungurung Country (including the area of the Application) throughout her life.<sup>54</sup> Similarly, Mr Shanks deposes that he has undertaken activities on Taungurung Country since age six.<sup>55</sup> Both affidavits detail a significant association between the deponents and the lands and waters of the Application area (see my consideration of s 190B(6) below).

#### CONSIDERATION OF THE ASSERTION AT S 190B(5)(A)

[82] I consider the information provided in the Application is sufficient to enable a 'genuine assessment' of the factual basis for the assertions that members of the claim group have an ongoing association with the Application area.

[83] The material contains information, with geographical particularity, about the association that the predecessors and current members of the claim group have with the Application area. This includes information about the apical ancestors indicating their association with the claim area around the time of both legal and effective sovereignty and details regarding their association with the Taungurung people. The affidavit material regarding the present association of the claim group is detailed and geographically specific.

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

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

[85] Section 190B(5)(b) requires the factual basis material to be sufficient to support the assertion of the existence of the traditional laws and customs giving rise to the native title rights and interests claimed. The definition of 'native title rights and interests' in s 223(1)(a) provides that those rights and interests must be 'possessed under the traditional laws acknowledged by, and traditional customs observed' by the native title holders.

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

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<sup>51</sup> Ibid at Annexure F-15.

<sup>52</sup> Ibid at [17].

<sup>53</sup> Ibid at [18].

<sup>54</sup> IMW Affidavit at [13], [30], [48]-[50].

<sup>55</sup> MS Affidavit at [14]-[15].

- (1) '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>56</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>57</sup>
- (2) 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>58</sup>
- (3) 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>59</sup>
- (4) those laws and customs have been acknowledged and observed without substantial interruption since sovereignty.<sup>60</sup>

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

- (1) 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>61</sup>
- (2) 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>62</sup> and
- (3) 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>63</sup>

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

... a claim group must establish that the traditional law and custom which gives rise to their rights and interests in that land and waters stems from rules that have a normative character', the Act does not 'require establishment of some overarching 'society' that can only be described in one way and with which members of a claim group are forever fixed in relation to any other land and waters over which they assert native title.<sup>64</sup>

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<sup>56</sup> *Yorta Yorta* [46].

<sup>57</sup> *Ibid* [49].

<sup>58</sup> *Ibid* [47].

<sup>59</sup> *Ibid* [46], [79].

<sup>60</sup> *Ibid* [87].

<sup>61</sup> *Gudjala 2009* [37], [52].

<sup>62</sup> *Ibid* [40].

<sup>63</sup> *Ibid* [29], [54].

<sup>64</sup> *Warrie* [107]; see also *Alyawarr* [78].

## OVERVIEW OF MATERIAL PROVIDED IN SUPPORT OF THE ASSERTION AT S 190B(5)(B)

[89] The Application relevantly asserts:

- (1) The Taungurung are part of a regional Kulin society with shared (but not identical) laws and customs around, for example, social organisation, membership, authority/decision making, spiritual beliefs and ceremonies, regulating access, allocation of rights, and transmission of knowledge.<sup>65</sup> The claim group is the landholding group for the Application area, and by those laws and customs they hold rights to possess, occupy, use and enjoy the area and its resources, with corresponding responsibilities to protect and regulate access.<sup>66</sup> The contemporary laws and customs of the claim groups are ‘based on and adapted from those of the Taungurung ancestors’.<sup>67</sup>
- (2) Group membership, identity, and land tenure rules including at local, family and language group levels.<sup>68</sup>
- (3) Authority, decision-making, and permission rules including spiritual/mythological beliefs, underpinning laws and customs. Systems and structures of rights, obligations, authority and punishment are described in support of assertions made regarding traditional laws and customs.<sup>69</sup>
- (4) Obligations in relation to significant places and cultural landscapes are described. Examples of spiritual practices are particularised.<sup>70</sup>
- (5) Kinship, adoption, and marriage norms are explained in some detail in support of laws and customs relevant to membership of the claim group.<sup>71</sup>
- (6) The claim group’s laws and customs have evolved over time, shifting from earlier, narrower rules of descent and landholding to broader, more inclusive structures due to the impacts of colonisation. While these systems have adapted, families within the group continue to hold recognised responsibilities for particular areas.<sup>72</sup>

## CONSIDERATION OF THE ASSERTION AT S 190B(5)(B)

[90] The material contained in the Application is sufficient to enable me to make a genuine assessment of the assertion at s 190B(5)(b). The material identifies the relevant society and outlines the major laws and customs around membership, land tenure systems, authority and decision making, obligations, spiritual beliefs, and kinship/marriage rules. I consider this

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<sup>65</sup> Attachment F at [19].

<sup>66</sup> Ibid [20].

<sup>67</sup> Ibid at [21].

<sup>68</sup> Ibid at [24]-[29].

<sup>69</sup> Ibid at [31]-[38].

<sup>70</sup> Ibid at [39]-[42].

<sup>71</sup> Ibid at [43]-[46].

<sup>72</sup> Ibid at [8].

material supports the assertion of the existence of laws and customs that were held by Taungurung People in the Application area at the time of both legal and effective sovereignty. There is also a sufficient connection between the apical ancestors and the pre-sovereignty society from which the laws and customs are derived. For example, in the biographical sketches of the apical ancestors (see Annexures F-1 to F-15 of Attachment F), there is material suggesting that the apical ancestors were identified as members of the claim group and associated with the Application area.

[91] I am satisfied that the factual basis provided in the Application is sufficient to support the assertion that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests. I am therefore satisfied that there is sufficient factual basis to meet the requirements of s 190B(5)(b).

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

[92] 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>

[93] 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>

OVERVIEW OF MATERIAL PROVIDED IN SUPPORT OF THE ASSERTION AT S 190B(5)(C)

[94] The Application relevantly asserts:

- (1) Claim group members are biological or socially recognised descendants of apical ancestors who occupied the area at/prior to effective sovereignty.<sup>75</sup> The group and their predecessors have 'at all times since legal sovereignty' been united in acknowledging and observing the traditional laws and customs described.<sup>76</sup> Members, ancestors and forebears have 'at all times since legal sovereignty' possessed the Schedule E rights and interests over the claim area.<sup>77</sup>
- (2) Laws and customs have been acknowledged/observed 'without substantial interruption,' handed down with adaptations preserving their traditional character.<sup>78</sup> Connection with the Application area has been 'substantially maintained' under those laws and customs

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

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

<sup>75</sup> Attachment F at [47].

<sup>76</sup> *Ibid* at [48].

<sup>77</sup> *Ibid* at [49].

<sup>78</sup> *Ibid* at [50].

throughout.<sup>79</sup> Contemporary laws/customs ‘substantially derive’ from those at effective sovereignty, with any shift characterised as ‘permissible adaptations.’<sup>80</sup>

(3) There is evidence of the regular performance of ceremonies, Welcome to Country, singing, dancing, cultural camps, and lore discussions.<sup>81</sup> The material also speaks to the intergenerational transmission of traditional law and custom, including creation stories, oral histories, language, weaving, wood carving, adornment-making, songs, and protocols.<sup>82</sup> There is evidence of ongoing traditional environmental management practices and obligations, regular hunting, fishing, gathering, and camping, and ongoing law-based regulation of access to Country.<sup>83</sup> There is also material speaking to ongoing participation in wider, multi-nation ceremonies (*Tanderrum*), inter-group meetings, shared teaching and cultural exchange, consistent with continuing Kulin-based traditional relationships.<sup>84</sup>

#### CONSIDERATION OF THE ASSERTION AT S 190B(5)(C)

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

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

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

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

[98] Section 190B(6) requires the Registrar to consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.<sup>85</sup>

[99] I understand that I may consider material additional to the application for the purpose of my assessment of this condition.<sup>86</sup> As a ‘more onerous test [is] to be applied to the individual rights and interests claimed’ than under s 190B(5),<sup>87</sup> I consider that the task involves some

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<sup>79</sup> Ibid at [51].

<sup>80</sup> Ibid at [52]. See also [89(6)] above.

<sup>81</sup> IMW Affidavit at [34]–[41]; MS Affidavit at [16]–[30].

<sup>82</sup> Ibid.

<sup>83</sup> IMW Affidavit at [15]–[33], [48]–[51]; MS Affidavit at [11]–[13], [33].

<sup>84</sup> IMW Affidavit at [38]–[40]; MS Affidavit at [24]–[25].

<sup>85</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>86</sup> *Doepel* [16].

<sup>87</sup> Ibid [127], [132].

weighing of the factual basis for the claimed rights and interests. It follows that a claimed native title right and interest can be prima facie established if the factual basis is sufficient to demonstrate that it is possessed pursuant to the traditional laws and customs of the native title claim group.<sup>88</sup>

[100] According to Dowsett J in *Gudjala 2007*, s 190B(6) is to be considered having regard to the definition of ‘native title rights and interests’ in s 223(1).<sup>89</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.

[101] Justice Kirby observed in *Ward HC* that ‘for a native title right to be recognised under the [Act], the critical threshold question is whether it is a right or interest “in relation to” land or waters’.<sup>90</sup> The term “in relation to” is here to be given a ‘wide import’.<sup>91</sup>

[102] I consider each claimed right in turn below. For the reasons that follow, I consider that this material is sufficient to establish, on a prima facie basis, each of the rights and interests claimed in Schedule E of the application.

### *Exclusive native title rights and interests prima facie established*

#### 2. [...] THE RIGHT TO POSSESSION, OCCUPATION, USE AND ENJOYMENT OF THE LAND AND WATERS OF THE RELEVANT PART OF THE CLAIM AREA TO THE EXCLUSION OF ALL OTHERS

[103] Schedule E relevantly provides:

##### **Exclusive Native Title**

1. Paragraph [2] applies to every part of the Claim Area where there has been no extinguishment to any extent of native title rights and interests or where any such extinguishment is to be disregarded pursuant to sections 47, 47A, 47B or 47C of the NTA.
2. Where this paragraph applies, the native title rights and interests possessed under traditional laws and customs confer the right to possession, occupation, use and enjoyment of the land and waters of the relevant part of the Claim Area to the exclusion of all others.

[104] 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

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<sup>88</sup> *Yorta Yorta* [86]; *Gudjala 2007* [86].

<sup>89</sup> *Gudjala 2007* [85]–[87].

<sup>90</sup> *Ward HC* [577].

<sup>91</sup> *Alyawarr* [93].

expressed in common law terms as a right to possess, occupy, use and enjoy land to the exclusion of all others'.<sup>92</sup>

[105] 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>93</sup>

[106] 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>94</sup>

[107] Ms Morphy-Walsh states that only Taungurung People may make decisions about Taungurung Country, which also includes determining who may come on to country.<sup>95</sup> If a welcome is not given, which is a way of giving someone permission to come on country, but the person nonetheless gains access, then 'they are violating Taungurung lore and they get spiritually sick.'<sup>96</sup> This is supported by Mr Shanks, who deposes that there is an obligation to host and protect people to whom permission is given to enter country, and Elders should always be involved in such decisions.<sup>97</sup> He further states that outsiders must be guided and instructed on the places they are allowed to go as well as to avoid restricted places. Failure to do so will result in the person getting physically or spiritually sick, and thus liable to injury or even death.<sup>98</sup>

[108] The Application contains evidence of exclusive rights to control access and exclude outsiders, including the consequences of a failure to adhere to such traditional laws and customs.

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<sup>92</sup> *Ward HC* [88].

<sup>93</sup> *Griffiths* [127].

<sup>94</sup> *Sampi* [1072].

<sup>95</sup> IMW Affidavit at [11]-[12].

<sup>96</sup> *Ibid* at [12].

<sup>97</sup> MS Affidavit at [11].

<sup>98</sup> *Ibid* at [13].

Together, the material supports a prima facie right to possession, occupation, use and enjoyment to the exclusion of all others.

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

*Non-exclusive native title rights and interests prima facie established*

[110] Schedule E relevantly provides:

**Non-Exclusive Native Title**

3. Paragraph [4] applies to every part of the Claim Area to which paragraph [2] does not apply.

4. Where this paragraph applies, the native title rights and interests possessed under traditional laws and customs confer the right to:

- (a) access, remain on and use the land and waters;
- (b) access, take or use the resources of the land and waters; and
- (c) access, maintain and protect places, areas and things of significance under traditional laws and customs;

and to the extent only that the following rights are not described by the rights in subparagraphs (a), (b) or (c) of this paragraph [4], the native title rights and interests confer the right to:

- (d) live on the land;
- (e) erect shelters or other structures on the land;
- (f) hunt, fish and gather on the land and waters of the area;
- (g) light fires on the area and conduct burning in accordance with traditional laws and customs;
- (h) conduct ceremonies and maintain intangible spiritual and cultural connections to the land and waters of the area;
- (i) teach on the area the physical and unbroken intangible spiritual connections of the land and waters;
- (j) hold meetings on the area;
- (k) undertake cultural practices relating to birth and death, including burial rites; and
- (l) take the water and the natural resources of the land and waters of the area.

5. For the avoidance of doubt, nothing in the rights described in [4](d)-(l) above limits the meaning of the rights as set out in [4](a)-(c) above.

[111] I deal with each claimed right and interest in turn below. Where the claimed rights and interests are logically related, I have dealt with them together.

4. (A) ACCESS, REMAIN ON AND USE THE LAND AND WATERS; 4. (D) LIVE ON THE LAND; 4. (E) ERECT SHELTERS OR OTHER STRUCTURES ON THE LAND

[112] Ms Morphy-Walsh states she has lived, worked and undertaken activities on Taungurung Country since she was eight years old.<sup>99</sup> There is evidence of regular movement across the Application area including Euroa, Strathbogie, Yea, Mansfield, Broadford, Seymour, and Rubicon.<sup>100</sup> There is also evidence of swimming, travelling, and water use at numerous waterways including Broken River, Goulburn River, Rubicon River, Howqua River, and Campaspe River.<sup>101</sup>

[113] Mr Shanks deposes to regular site visits for cultural obligations and meetings, including Camp Jungai, Mount Buffalo, Reedy Lake, Nagambie, Howqua, and Mount Camel.<sup>102</sup>

[114] The Application contains material speaking to camping across Country involving shelters, camp infrastructure, including fires, tools, and customary structures.<sup>103</sup>

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

4. (B) ACCESS, TAKE OR USE THE RESOURCES OF THE LAND AND WATERS; 4. (L) TAKE THE WATER AND THE NATURAL RESOURCES OF THE LAND AND WATERS OF THE AREA

[116] Ms Morphy-Walsh speaks of harvesting grasses, reeds, stringybark, wildflowers, sap, ochre, seeds, and saplings.<sup>104</sup> She also speaks of the use of grasses for weaving, ceremony, adornment, nets, and traps and collecting various other resources such as seeds, feathers, quills, skins, and bones, and ochre, sap, and charcoal.<sup>105</sup> Mr Shanks deposes to the taking and use of timber, grass, stone, bush medicine, food, and animals including kangaroo.<sup>106</sup>

[117] There is also evidence of regular use of waterways for swimming, washing, dyeing, and other purposes.<sup>107</sup>

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

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<sup>99</sup> IMW Affidavit at [13].

<sup>100</sup> Ibid at [13], [15]-[17], [35].

<sup>101</sup> Ibid at [30].

<sup>102</sup> MS Affidavit at [16]-[21] [24], [26], [30]; MS Affidavit at [18].

<sup>103</sup> IMW Affidavit at [48]-[49]

<sup>104</sup> Ibid at [15]-[29].

<sup>105</sup> Ibid at [16]-[17], [21]-[22].

<sup>106</sup> MS Affidavit at [33].

<sup>107</sup> IMW Affidavit at [30].

4. (F) HUNT, FISH AND GATHER ON THE LAND AND WATERS OF THE AREA; 4. (G) LIGHT FIRES ON THE AREA AND CONDUCT BURNING IN ACCORDANCE WITH TRADITIONAL LAWS AND CUSTOMS

[119] The Application contains evidence that members of the claim group regularly hunt, fish, and collect bush foods on the Application area, including hunting kangaroo, deer, carp, and rabbits.<sup>108</sup> Ms Morphy-Walsh speaks of gathering extensive bush foods such as berries, Murrnong, Chocolate Lily, Lomandra stalks, wattle sap, and River Mint.<sup>109</sup>

[120] There is also evidence of the use of grass tree stems for fire-making,<sup>110</sup> fires used in welcome and healing ceremonies, as well as death rites,<sup>111</sup> and the conduct of cultural burns at sites in the Application area.<sup>112</sup>

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

4. (C) ACCESS, MAINTAIN AND PROTECT PLACES, AREAS AND THINGS OF SIGNIFICANCE UNDER TRADITIONAL LAWS AND CUSTOMS; 4. (H) CONDUCT CEREMONIES AND MAINTAIN INTANGIBLE SPIRITUAL AND CULTURAL CONNECTIONS TO THE LAND AND WATERS OF THE AREA

[122] There is evidence of ceremonies being conducted at various locations across the Application area.<sup>113</sup> The material also speaks to smoking, welcome, and healing ceremonies, as well as death rites, storytelling, dance, exchange of gifts, and inter-group ceremonies.<sup>114</sup>

[123] Mr Shanks speaks to monitoring and protecting resource sites such as weaving grass areas, darnuk tree sites, and also teaching others how to identify scar trees, ring trees and quarry sites.<sup>115</sup> Attachment F also speaks to obligations to look after, care for, preserve and protect areas including significant sites (such as camp sites, art sites, resource areas, story places, massacre sites and burials).<sup>116</sup>

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

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<sup>108</sup> Ibid at [31], [33]; MS Affidavit at [33].

<sup>109</sup> IMW Affidavit at [32].

<sup>110</sup> Ibid at [19].

<sup>111</sup> Ibid at [36]-[37].

<sup>112</sup> MS Affidavit at [22], [27].

<sup>113</sup> IMW Affidavit at [35].

<sup>114</sup> Ibid at [36]-[38].

<sup>115</sup> Ibid at [18], [26].

<sup>116</sup> Attachment F at [39].

4. (I) TEACH ON THE AREA THE PHYSICAL AND UNBROKEN INTANGIBLE SPIRITUAL CONNECTIONS OF THE LAND AND WATERS

[125] Ms Morphy-Walsh deposes to the teaching of weaving, carving, possum-skin sewing, dance, song, place-making, environmental maintenance, and story knowledge.<sup>117</sup> Similarly, Mr Shanks speaks of Elders and knowledge holders instructing young people regarding fire, harvest methods, creation stories, and resource practices.<sup>118</sup>

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

4. (J) HOLD MEETINGS ON THE AREA

[127] There is evidence of regular meetings of Taungurung families to discuss water, country, culture, ceremony and governance, as well as local forums and community gatherings for justice, storytelling, weaving, and bushfire recovery.<sup>119</sup> Mr Shanks shares specific examples, the first being a monthly water knowledge meeting, which has been going for seven years, and the second being ‘Reading Country’ methodology events held four times a year.<sup>120</sup>

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

4. (K) UNDERTAKE CULTURAL PRACTICES RELATING TO BIRTH AND DEATH, INCLUDING BURIAL RITES

[129] Ms Morphy-Walsh states that smoking ceremonies can be done in different circumstances, and are particularly important for sorry business, including helping the spirit transition so it does not remain trapped.<sup>121</sup> She also makes reference to birthing sites being within the ceremonial authority of women.<sup>122</sup>

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

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

[131] 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.

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<sup>117</sup> IMW Affidavit at [42]-[44].

<sup>118</sup> MS Affidavit at [23], [25].

<sup>119</sup> IMW Affidavit at [39]-[41].

<sup>120</sup> MS Affidavit at [16]-[17].

<sup>121</sup> IMW Affidavit at [37].

<sup>122</sup> Ibid at [11].

[132] As Dowsett J observed in *Gudjala 2009*, the traditional physical connection under this provision ‘must be in exercise of a right or interest in land or waters held pursuant to traditional laws and customs’.<sup>123</sup> The term ‘traditional’ (as used under s 223 of the Act) was considered in the joint judgment in *Yorta Yorta*:

... the connection which the peoples concerned have with the land or waters must be shown to be a connection by their traditional laws and customs ... ‘traditional’ in this context must be 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>124</sup>

[133] Justice Mansfield in *Doepel* stated that the task of the Registrar under s 190B(7) requires ‘some measure of substantive (as distinct from procedural) quality control upon the application, if it is to be accepted for registration’.<sup>125</sup>

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

[135] The Application contains examples of members of the claim group having a traditional physical connection with the land and waters of the claim area, particularly as outlined in my reasons in relation to ss 190B(5) and (6) above. As a particular example, both Ms Morphy-Walsh and Mr Shanks (members of the Applicant) detail their traditional physical connection to the Application area by accessing the area to hunt, fish, and gather on the land and waters as passed on to them by Taungurung family members and elders.<sup>126</sup>

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

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

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

#### *Section 61A(1)*

[138] 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.

[139] 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 enquiries today of the NNTT’s databases. Paragraph 2(c) of

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<sup>123</sup> *Gudjala 2009* [84].

<sup>124</sup> *Yorta Yorta* [86].

<sup>125</sup> *Doepel* [18].

<sup>126</sup> IMW Affidavit at [31], [33]; MS Affidavit at [33].

Schedule B confirms that the Application excludes any area for which there is an approved determination of native title, as defined in the Act. Paragraph 5 of Schedule B also excludes two specific determinations.

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

#### *Section 61A(2)-(3)*

[141] Section 61A(2) provides that a claimant application must not be made over areas covered by a previous exclusive possession act (**PEPA**), unless the circumstances described in subparagraph (4) apply.

[142] 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.

[143] Section 61A(4) provides that ss 61A(2) or (3) do not apply where:

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

(2) the application states that one of these sections apply.

[144] I consider that Schedule E of the Application is worded in such a way that exclusive possession native title is claimed only over areas where such exclusive possession can be recognised. I also note the general exclusions at Schedule B (including paragraphs 2-3) and consider that the Application does not offend the provisions of ss 61A(2) or (3).

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

#### *Conclusion in relation to 190B(8)*

[146] In my view, for the reasons set out above, the Application does not offend the provisions of s 61A(1) and therefore satisfies the condition of s 190B(8).

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

[147] Section 190B(9) provides that the application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that claimed native title rights and interests include claims to ownership of minerals, petroleum or gas wholly owned by the Crown, exclusive rights to waters in an offshore place or extinguished native title rights and interests (except where such extinguishment can be disregarded under certain provisions of the Act).<sup>127</sup>

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<sup>127</sup> See ss 47(2), 47A(2), 47B(2) or 47C(8) of the Act.

*Section 190B(9)(a)*

[148] Schedule O states: ‘The native title claim group does not claim ownership of minerals, petroleum or gas wholly owned by the Crown.’ I am therefore satisfied that the requirements of s 190B(9)(a) are met.

*Section 190B(9)(b)*

[149] Schedule N states: ‘The native title claim group does not claim exclusive possession of any part of an offshore place, and no offshore place is part of the Claim Area.’ I am therefore satisfied that the requirements of s 190B(9)(b) are met.

*Section 190B(9)(c)*

[150] Paragraph 2(a) 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. Paragraph 2(b) also excludes from the Application any other area in relation to which native title rights and interest have otherwise been validly wholly extinguished. Paragraph (3) provides:

Notwithstanding anything contained elsewhere in this application, the area covered by the application includes any area in relation to which the non-extinguishment principle (as defined in section 238 of the NTA) applies, including any area to which section 47, 47A or 47B of the NTA applies.

[151] I am therefore satisfied that the Application does not claim native title rights and interests that have been otherwise extinguished.

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

*Conclusion in relation to 190B(9)*

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

*End of reasons*

## Attachment A

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

|                                |                   |
|--------------------------------|-------------------|
| Application name               | Taungurung People |
| NNTT No.                       | VC2026/001        |
| Federal Court of Australia No. | VID140/2026       |

#### 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:

11 February 2026

#### Date application entered on Register:

31 March 2026

#### Applicant:

Bernadette Franklin, Matthew Burns, Isobel Morphy Walsh, Matthew Shanks, Emily Loughron, Beau Murray and Alexander Burns

#### Applicant's address for service:

As per Part B of the Application

#### Conditions on Applicant's authority

As per Schedule HA of the Application

#### Area covered by application:

As per Schedule B of the Application

#### Persons claiming to hold native title:

As per Schedule A of the Application

#### Registered native title rights and interests:

As per Schedule E (1)-(8) of the Application

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David Hinder

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.

31 March 2026