



National
Native Title
Tribunal

Registration test decision – Edited

Application name	Wongkumara People
Name of applicant	Noelene Margaret Edwards, Clancy McKellar, Iona Dawn Smith, Ernest (Hope) Ebsworth, Rosemary (Rose) Anne Wilson, Margaret Anne Collins, Sharleen Louise Knight and Archie Ebsworth
State/territory/region	Queensland
NNTT file no.	QC 08/3
Federal Court of Australia file no.	QUD 52/08
Date application made	11 March 2008
Date application last amended	12 April 2008

Name of delegate: Helen Bradbury

I have considered this claim for registration against each of the conditions contained in ss. 190B and 190C of the *Native Title Act 1993* (Cwlth).

I am satisfied that each of the conditions contained in ss. 190B and C are met. I accept this claim for registration pursuant to s. 190A of the *Native Title Act 1993* (Cwlth).

For the purposes of s.190D(3), my opinion is that the claim satisfies all of the conditions in s. 190B.

Date of decision: 12 April 2008

(to be signed off by the delegate)

Helen Bradbury

Delegate of the Native Title Registrar pursuant to sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cwlth)

Reasons for decision

Table of contents

Introduction.....	5
Delegation of the Registrar's powers.....	5
The test.....	5
Application overview.....	5
Information considered when making the decision.....	6
Procedural fairness steps.....	7
Procedural and other conditions: s. 190C.....	8
Subsection 190C(2) Information etc. required by ss. 61 and 62.....	8
Delegate's comment.....	8
Native title claim group: s. 61(1).....	8
Result.....	8
Reasons.....	8
Name and address for service: s. 61(3).....	9
Result.....	9
Reasons.....	9
Native title claim group named/described: s. 61(4).....	10
Result.....	10
Reasons.....	10
Application in prescribed form: s. 61(5).....	12
Result.....	12
Reasons.....	13
Affidavits in prescribed form: s. 62(1)(a).....	13
Result.....	13
Reasons.....	13
Application contains details required by s. 62(2): s. 62(1)(b).....	13
Delegate's comment.....	13
Result.....	14
Information about the boundaries of the area: s. 62(2)(a).....	14
Result.....	14
Reasons.....	14
Map of external boundaries of the area: s. 62(2)(b).....	14
Result.....	14
Reasons.....	14
Searches: s. 62(2)(c).....	14
Result.....	14
Reasons.....	14

Description of native title rights and interests: s. 62(2)(d).....	15
Result.....	15
Reasons.....	15
Description of factual basis: s. 62(2)(e).....	15
Result.....	15
Reasons.....	15
Activities: s. 62(2)(f)	16
Result.....	16
Reasons.....	16
Other applications: s. 62(2)(g).....	16
Result.....	16
Reasons.....	16
Section 24MD(6B)(c) notices: s. 62(2)(ga).....	16
Result.....	16
Reasons.....	16
Section 29 notices: s. 62(2)(h)	17
Result.....	17
Reasons.....	17
Combined result for s. 62(2)	17
Combined result for s. 190C(2)	17
Subsection 190C(3) No common claimants in previous overlapping applications	17
Result.....	17
Reasons.....	17
Subsection 190C(4) Authorisation/certification	19
Result.....	19
Reasons.....	19
Merit conditions: s. 190B	24
Subsection 190B(2) Identification of area subject to native title	24
Information regarding external and internal boundaries: s. 62(2)(a)	24
Map of external boundaries: s. 62(2)(b).....	24
Result.....	24
Reasons.....	24
Subsection 190B(3) Identification of the native title claim group.....	25
Result.....	25
Reasons.....	25
Subsection 190B(4) Native title rights and interests identifiable.....	26
Result.....	26
Reasons.....	26
Subsection 190B(5) Factual basis for claimed native title	27
The task of the Registrar and information that may suffice	27
The meaning of ‘traditional’	28
Result re s. 190B(5)(a)	28
Reasons re s. 190B(5)(a).....	29
Result re s. 190B(5)(b).....	32

Reasons re s. 190B(5)(b).....	32
Result re s. 190B(5)(c)	36
Reasons re s. 190B(5)(c).....	36
Combined result for s. 190B(5).....	37
Subsection 190B(6) Prima facie case	38
Result.....	38
Reasons.....	38
Result: Established.....	39
Reason	39
Non-exclusive rights and interests established	41
Reasons.....	41
Non-exclusive rights not established.....	43
Reasons.....	43
Subsection 190B(7) Traditional physical connection.....	44
Result.....	44
Reasons.....	44
Subsection 190B(8) No failure to comply with s. 61A.....	45
Delegate's comments.....	45
No approved determination of native title: s. 61A(1)	45
Result.....	45
No previous exclusive possession acts (PEPAs): ss. 61A(2) and (4)	46
Result.....	46
Reasons.....	46
No exclusive native title claimed where previous non-exclusive possession acts (PNEPAs): ss. 61A(3) and (4)	46
Result.....	47
Reasons.....	47
Combined result for s. 190B(8).....	47
Subsection 190B(9) No extinguishment etc. of claimed native title	47
Result re s. 190B(9)(a)	47
Reasons re s. 190B(9)(a).....	47
Result re s. 190B(9)(b).....	48
Reasons re s. 190B(9)(b).....	48
Result re s. 190B(9)(c)	48
Reasons re s. 190B(9)(c).....	48
Combined result for s. 190B(9).....	48
Attachment A Summary of registration test result	49
Attachment B Documents and information considered	51

Introduction

This document sets out my reasons for the decision to accept, the claimant application QC 08/3—Wongkumara People—QUD 52/08 for registration.

Subject to ss. 190A(1A) or 190A(6A), section 190A of the *Native Title Act 1993* (Cwlth) (the Act) requires the Native Title Registrar (the Registrar) to apply a ‘test for registration’ to all claimant applications given to him under ss. 63 or 64(4) by the Registrar of the Federal Court of Australia (the Court).

Subsection 190A(6) requires that I must be satisfied that all the conditions set out in ss. 190B and 190C of the Act are met, in order for me to accept a claim for registration.

Note: All references in these reasons to legislative sections refer to the Act as in force on 1 September 2007, unless otherwise specified. Please refer to the Act for the exact wording of each condition. For ease of reference, sections and subsections of the Act are denoted with ‘s.’ or ‘ss.’ in headings and elsewhere.

Numeric references are to paragraphs in identified documents unless other specified.

Delegation of the Registrar’s powers

I have made this registration test decision as a delegate of the Registrar who delegated his powers regarding the registration test and the maintenance of the Register of Native Title Claims (the Register) under ss. 190, 190A, 190B, 190C and 190D of the Act to certain members of staff of the National Native Title Tribunal, including myself, on 27 September 2007. This delegation is in accordance with s. 99 of the Act and remains in effect at the date of this decision.

The test

Section 190B sets out conditions that test particular merits of the claim for native title. Section 190C sets out conditions about ‘procedural and other matters’. Included amongst the procedural conditions is a requirement that the application must contain certain specified information and documents. In my reasons below I consider the s. 190C requirements first, in order to assess whether the application contains the required information and documents *before* turning to questions regarding the merit of that material for the purposes of s. 190B.

A summary of the result for each condition is provided at Attachment A.

Application overview

This is a claim to an area similar, but not identical, to the area of an earlier application QC99/29—Wangkumarra people —QUD6029/99. This application was accepted for registration on 28 October 1999 but dismissed by the Court on 10 November 2006 for failure to comply with orders to amend. On 10 December 2007 another application QC07/5—Wongkumara People—QUD415/07 was filed in the Federal Court and was referred to the Tribunal on 20 December 2007. On 12 December 2007 a notice of the intention to do a future act over part of this application area was issued by the Queensland Government, with a notification end date of 12 March 2008.

On 29 January 2008 a preliminary assessment of QC07/5 was provided to the applicant under s. 78 of the *Native Title Act 1993*.

On 11 March 2008 a new application QC08/3—Wongkumara People—QUD52/08 was filed in the Federal Court and referred to the Tribunal on 12 March 2008. This application covered the same area as QC07/5—Wongkumara People—QUD415/07 and was filed within the s. 29 notification period which ended on 12 March. On 19 March 2008 an affidavit from the applicant's representative together with further information regarding authorisation and other information relevant to the application was submitted to the Registrar.

On 20 March 2008 the Federal Court granted leave to discontinue the previous application QC07/5—Wongkumara People—QUD415/07 pursuant to Order 22 rule 2 of the Federal Court Rules.

In order for the native title parties to be afforded procedural rights under the Act in relation to the proposed future act, application QC08/3 (QUD52/08) had to be registered on or before 12 April 2008.

Problems in relation to an inconsistency between the written area description in Attachment B and the map at Schedule C of the application necessitated an amendment to the application in the Federal Court on 12 April 2008. This amended application was accepted for registration under s. 190A of the Act and placed on the Register on the same day, 12 April 2008.

One application, QC QC06/15—Boonthamurra People—QUD435/06, which passed the registration test on 30 July 2007, overlaps the application area.

Information considered when making the decision

Subsection 190A(3) directs me to have regard to certain information when testing an application for registration; there is certain information that I *must* have regard to, but I *may* have regard to other information, as I consider appropriate.

I am also guided by the case law relevant to the application of the registration test. Some conditions of the test do not allow me to consider anything other than what is contained in the application while other conditions allow me to consider wider material.

Attachment C of these reasons lists all of the information and documents that I have considered in reaching my decision, including submissions made by the states of New South Wales and Queensland adverse to the registration of this claim. Throughout these reasons I refer to those submissions and the subsequent response by the applicant.

I have not considered any information that may have been provided to the Tribunal in the course of its mediation functions in relation to this or any other claimant application. I take this approach because matters disclosed in mediation are 'without prejudice' (see s. 136A of the Act). Further, mediation is private as between the parties and is also generally confidential (see also ss. 136E and 136F).

Procedural fairness steps

When I make my decision about whether or not to accept this application for registration I am bound by the principles of administrative law, including the rules of procedural fairness, which seek to ensure that decisions are made in a fair, just and unbiased way. Procedural fairness requires that a person who may be adversely affected by a decision be given the opportunity to put their views to the decision-maker before that decision is made. They should also be given the opportunity to comment on any material potentially adverse to their interests that is before the decision-maker, noting, as was considered by the High Court in *Kioa v West* (1985) CLR 159 at p.627 that these requirements will vary from case to case and in the circumstances of the available time. The steps that I, and other officers of the Tribunal, undertook to ensure that procedural fairness was observed, are as follows:

- On 13 March 2008 in accordance with ss. 66(2) and (2A), a copy of the application was provided to the states of Queensland and New South Wales and to the two relevant representative bodies, New South Wales Native Title Services and Queensland South Native Title Services.
- On 19 March 2008, the applicant provided a significant amount of additional information directly to the Registrar. Analysis of this material together with the resolution of issues identified in relation to the area description in Attachment B caused some delay in the provision of this material to the relevant bodies. Also in order to test the application within the requisite statutory timeframe it was necessary to request very prompt comment.
- On Friday 4 April 2008 the material was provided electronically to the States of New South Wales and Queensland requesting a response by 9 April. An extension to midday on 10 April was granted on request.
- On the basis of His Honour Justice Mansfield's comments in *Hazelbane v Doepel* [2008] FCA 290 it was not considered necessary to provide any of the additional material to the relevant representative bodies or the applicant for the only overlapping application QC QC06/15—Boonthamurra People—QUD435/06.
- Submissions were received from the New South Wales Department of Lands and Crown Law, Queensland Government, by midday April 10 2008.
- A copy of those submissions was immediately provided by email to the applicant's representative.
- On 10 April 2008 before close of business the applicant responded to both the submissions.
- On 12 April 2008 the application was amended in the Federal Court, accepted for registration and placed on the Register.

Procedural and other conditions: s. 190C

Subsection 190C(2)

Information etc. required by ss. 61 and 62

The Registrar/delegate must be satisfied that the application contains all details and other information, and is accompanied by any affidavit or other document, required by sections 61 and 62.

Delegate's comment

I address each of the requirements under ss. 61 and 62 in turn and come to a combined result for s. 190C(2) at page 18.

Section 190C(2) requires the Registrar to be satisfied that the application contains all details and other information, and is accompanied by any affidavit or other document, required by ss. 61 and 62. If the application meets all these requirements, the condition in s. 190C(2) is met.

I note that in *Attorney General of Northern Territory v Doepel* (2003) 133 FCR 112 (*Doepel*) Mansfield J was of the view that 'section 190C(2) is confined to ensuring the application, and accompanying affidavits or other materials, contains what is required by ss 61 and 62' and '...for the purposes of the requirements of s. 190C(2), the Registrar may not go beyond the information in the application itself — at [16] and [39].

Doepel is also authority for the proposition that when considering the application against the requirements in s. 190C(2), I am not (except in the limited instance explored below in my reasons under s. 61(1)) to undertake any qualitative or merit assessment of the prescribed information or documents, except in the sense of ensuring that what is found in, or with, the application are the details, information or documents prescribed by ss. 61 and 62.

Native title claim group: s. 61(1)

The application must be made by a person or persons authorised by all of the persons (the native title claim group) who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed, provided the person or persons are also included in the native title claim group.

Result

The application **meets** the requirement under s. 61(1).

Reasons

The names of the persons comprising the applicant are Noelene Margaret Edwards, Clancy McKellar, Iona Dawn Smith, Ernest (Hope) Ebsworth, Rosemary (Rose) Anne Wilson, Margaret Anne Collins, Sharleen Louise Knight and Archie Ebsworth who, prima facie, are authorised by the native title claim group and who I am satisfied are included in the native title claim group.

If the description of the group in the application indicates that not all persons in the native title claim group are included, or that it is in fact a subgroup of the native title claim group, then the requirements of s. 190C(2) would not be met and the claim could not be accepted for registration: *Doepel* at [36].

Submission by the State of Queensland

The State of Queensland made the following submissions at page 2:

- (i) At paragraph 3.2 on page 170 a statement is made that all members of the Wanggumara Aboriginal Corporation for Land Culture and Heritage and their descendants are included in the native title claim group. A qualification of the claim group description in this manner would render description of the claim group uncertain as the membership list for the corporation is likely to fluctuate over time.
- (ii) At paragraph 3.3 on page 170 a statement is made that **[Person 1 - name deleted]** is excluded as a member of the claim group, seemingly on the basis of having withdrawn herself from a different application.

Response by the applicant

The applicant responded: 'There is an apparent misunderstanding on the part of the Crown Solicitor in that the statements identified in the submission are in a part of the material in support of the application that dealt with the history of the previous application', and pointing out the subheading 'Previous Application' on page 169 [referring to QUD 6062 of 1999].

Consideration

Point (i) of the State's submission appears to be an oversight. I agree with the applicant: the passage referred to in Attachment R relates to the history of a previous application filed in 1999 and dismissed in 2006 and not the current application, and therefore is not relevant to my consideration under this section.

Further, point (ii) appears to be a misreading of the paragraph of 3.3 in Attachment R, which states:

All the members of the Corporation and their descendants with the exception only of **[Person 1]** (who withdrew from the previous application and resigned from the Corporation in order to join the Yandrawantha Application) are included in the NTCG of this application.

On a prima facie reading of this text, [Person 1] had not withdrawn herself 'from a different application' at all, or been excluded on that basis.

Name and address for service: s. 61(3)

The application must state the name and address for service of the person who is, or persons who are, the applicant.

Result

The application **meets** the requirement under s. 61(3).

Reasons

The name and address for service of the applicant's representative is given at Part B.

Native title claim group named/described: s. 61(4)

The application must:

- (a) name the persons in the native title claim group, or
- (b) otherwise describe the persons in the native title claim group sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.

Result

The application **meets** the requirement under s. 61(4).

Reasons

At Schedule A the native title claim group is described as all those persons named in Attachment A and their biological descendants. Therefore the claim group is based on an apical ancestor description, and paragraph (b) of s. 61(4) applies. Attachment A is reproduced below.

ATTACHMENT "A"

Only surviving child of the Late Albert Ebsworth and Rose Ebsworth

Lena Murray

Children of the Late Martin Ebsworth

Rosemary Wilson, Barbara Ebsworth, Shirley Ebsworth, Karen Ebsworth, Linda Ebsworth, Jennifer Ebsworth, Amanda Ebsworth, Robyn Ebsworth, Gail Ebsworth, Martin Ebsworth Jr, Barry Mallyer, Roger Ebsworth, Carl Ebsworth

Children of the late Alfred Edward Ebsworth

Alfred ("Maxie") Ebsworth, Neville Ebsworth, Kenny Ebsworth, Noelene Perdrisat, Rose Carter

Children of the Late Michael Dixon

Brenda Dixon, Michael Dixon, Jessica Dixon, "Sonno" Johnston, Graham ("Noddy") Dixon, Vivienne ("Vickie") Dixon, John Dixon, Donna Dixon, Derek ("Lolly") Dixon, Donald ("Donnie-boy") Dixon, Tray ("Sorgie") Dixon, Bridget Dixon

Daughter of the Late Roy Dixon

Monica Dixon

Children of the Late Edna Joyce Leonard

Christen Leonard, Alan Leonard, Alfred Leonard, Les Leonard, Cynthia Leonard, Edna Leonard

Children of the Late Anthony Dixon

Anthony ("Sweeney") Dixon, Lorna Dixon, Christopher ("Cody") Dixon, Kim Dixon, Barbara Dixon, Kelvin Dixon, Venus Dixon

Children of the Late Warwick Fernando

Shaylee Gilbey, Warwick ("Sonno") Gilbey, Joycelyn Gilbey, Vivienne Gilbey, "Sissie" Gilbey

Children of the Late Beverley Fernando

Donald Fernando, Kenneth Fernando, Toni Fernando, Laura Fernando

Children of the Late Laura Dixon

Patricia Dixon, Netta Dixon, Noelene Dixon, Donald ("Donny") Dixon

Children of the Late Paul Dixon

Paul Knight, Leane Knight, Brody Knight

Children of the Late Claude Dixon

Richard Dixon, Tracy Dixon, Denise Dixon, Mary Dixon, Tootsie Dixon, Claudette Dixon, Erica Dixon

Children of the Late Albert Ebsworth

Alma Sullivan, Graham Knight

Children of the Late Hector Bates

Noelene Hudson, Susan Hudson, Andrew Hudson, Kristy Hudson, Paul Hudson, Bradley Hudson, Bruce Hudson, Roger Hudson, Donna Hudson

Children of the Late Rita McKellar

Linda Elwood, Lillian McKellar, Glen McKellar, David McKellar, Dean McKellar, Louella McKellar

Child of the Late Clifford Hartnett

Margie-Anne Whyman

Child of the Late Cyril Hartnett

Cyril ("Junior") Whyman

Children of the Late Shirley Edwards

Cynthia Knight, Joanne Barker, Margaret Edwards, Letitia Edwards, Megan Edwards, Morris Edwards, Percy Edwards, Mervyn Edwards, Dennis Edwards, Maria Edwards

Children of the Late Darcy Edwards

Aaron Orcher, Annika Orcher, Shirley-Anne Orcher, Deakin Orcher, Tegan Orcher, Marcia Orcher, Darcelle Orcher,

Children of the Late John Hartnett

Eunice Hartnett, Phyllis Hartnett, Roger Hartnett, Albert Hartnett, Jane Hartnett, Vera Thomas, Cherrie Hartnett, Adrian ("Russell") Broughton

Child of the Late Bernard Edwards

Steven Dargan

Child of the Late Ruby Johnson

Amy Gloria Elwood

Children of the Late Rhonda Williams

Kelly Williams, Kylie Williams, Noel Williams

Children of the Late Kerrin Johnson

Jannette Kelly, Annette Johnson, Jeffrey Johnson, Larry Johnson, Lorraine Johnson, Maureen Johnson

Children of the Late Roy Johnson

Moma Johnson, Maria Johnson, Roslyn Johnson, Gloria Johnson, Darryl Johnson,

Children of the Late Gladys Edwards

Patricia Edwards, Pam Edwards

Children of the Late Gladys Johnson

Deanna Edwards, Shane Edwards, Clark Edwards, Dell Edwards, Mark Edwards

Child of the Late Ron Johnson

Lisa Johnson

Child of the Late Elene Shepherd

Coleen Shepherd

Children of the Late Edith Edwards

Dawn Smith, Fay Monaghan, Wilma Edwards, Jannelle Edwards, Clem Edwards, Brian Edwards

Children of the Late Iris Edwards

Pauline Edwards, Malcolm Edwards

Children of the Late Roger Edwards

Fred Coleman, John Edwards, Audane Edwards, Bradley Edwards, Greg Edwards, Alfred Edwards, Darlene ("Darla") Edwards

Children of the Late Arnold ("Picaninie") Ebsworth

Margaret Collins, Judith Nicholls, Lorraine Gilby, Ellen Johnson, Irene Ebsworth

Children of the Late Martin Ebsworth

Chris Ebsworth, Anna Ebsworth, Kimbley Ebsworth

Children of the Late Cecil ("Nocka") Ebsworth

Cecil Ebsworth, Maureen Winbank, Malcolm Ebsworth, Ernest ("Hope") Ebsworth, Peter Ebsworth, Dianne McGlashen

Children of the Late Alma Ebsworth

Archie Ebsworth, Manuel Ebsworth, Lorna Pine, Loretta Tupou, Leona Tai

Children of the Late Jean McKellar

Clancy McKellar, Greg McKellar, Wayne McKellar, Ruth McKellar, Sally McKellar, Cal McKellar, Rebecca McKellar, Tray McKellar, Shona McKellar,

Children of the Late Gerald McKellar

Gerald McKellar Jr, Jenna McKellar, Shannon McKellar, Cody McKellar,

Children of the Late Thomas McKellar

Margaret McKellar, Thomas McKellar, Jay McKellar, Robert McKellar,

Children of the Late Janice Dennis

Shona McKellar, Peter McKellar, Floyd McKellar,

Children of the Late Arthur Ebsworth

Majella Jones, Coral-Lee Jones

Children of the Late Madeline Hines

Clarrie Hines, Peter ("Paddy-boy") Hines

Child of the Late Eileen Hines

Darren Hines

Children of the Late Jeannie Hines

Loretta McKellar, Judith Hines

Children of the Late Rita ("Georgina") Hines

Lorna Vincent, William Hines, Thomas Hines, Edna Hines, Rhonda Hines, Barry Hines

Children of the Late Malcom ("Pierce") Hines

Maureen Hines, Fiona Hines, Tina Hines,

Child of the Late Ray Hines

George Hines,

Raised by the Late Lucy Harding

Norman Hodge

Based on the comments by Mansfield J in *Doepel* as to how my consideration is to be confined when considering the procedural conditions in relation to s. 190C(2), I find that the application describes the persons in the native title claim group sufficiently clearly at Schedule A and Attachment A so that it can be ascertained whether any particular person is a member of the native title claim group.

Application in prescribed form: s. 61(5)

The application must:

- (a) be in the prescribed form,
- (b) be filed in the Federal Court,
- (c) contain such information in relation to the matters sought to be determined as is prescribed, and
- (d) be accompanied by any prescribed documents and any prescribed fee.

Result

The application **meets** the requirement under s. 61(5).

Reasons

The application fulfils the requirements of (a) to (d).

Section 190C(2) only requires me to consider details, other information and documents required by ss. 61 and 62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee to the Federal Court.

Affidavits in prescribed form: s. 62(1)(a)

The application must be accompanied by an affidavit sworn by the applicant that:

- (i) the applicant believes 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, and
- (ii) the applicant believes that none of the area covered by the application is also covered by an approved determination of native title, and
- (iii) the applicant believes all of the statements made in the application are true, and
- (iv) 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, and
- (v) setting out 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.

Result

The application **meets** the requirement under s. 62(1)(a).

Reasons

The application is accompanied by individually signed and competently witnessed affidavits of each of the persons comprising the applicant. The affidavits are dated between 14 February 2008 and 11 March 2008 and pertain to this application, not the previous one. Each affidavit complies with the requirements of subparagraphs (i) to (v). I note that in subparagraph (ii) the affidavits contain the statement: 'I believe that none of the area covered by the application is also covered by an entry in the National Native Title Register'. This statement was required by the Act before it was amended on 1 September 2007 under the *Native Title (Technical Amendments) Act 2007*. As a consequence of those amendments this statement is no longer required. The requirements of subparagraph (ii) however, are met. The new requirement is a lesser requirement and the affidavits meet what is required under the amended Act.

Application contains details required by s. 62(2): s. 62(1)(b)

The application must contain the details specified in s. 62(2).

Delegate's comment

My decision regarding this requirement is the combined result I come to for s. 62(2) below. Subsection 62(2) contains nine paragraphs (from (a) to (h)), and I address each of these subrequirements in turn. My combined result for s. 62(2) is found at page 18 below and is the same as the result for s. 62(1)(b) here.

Result

The application **meets** the requirement under s. 62(1)(b).

Information about the boundaries of the area: s. 62(2)(a)

The application must contain information, whether by physical description or otherwise, that enables the following boundaries to be identified:

- (i) the area covered by the application, and
- (ii) any areas within those boundaries that are not covered by the application.

Result

The application **meets** the requirement under s. 62(2)(a).

Reasons

Information in response to (i) and (ii) above is provided at Schedule B and Attachment B.

The assessment of the adequacy or correctness of the information required under s. 62(2)(a) for the purpose of identifying the boundaries of the application area is made when the corresponding merit condition of s. 190B(2) is applied: see *Doepel* —at [122].

Map of external boundaries of the area: s. 62(2)(b)

The application must contain a map showing the boundaries of the area mentioned in s. 62(2)(a)(i).

Result

The application **meets** the requirement under s. 62(2)(b).

Reasons

A map showing the external boundaries of the application area is provided at Attachment C.

Searches: s. 62(2)(c)

The application must contain the details and results of all searches 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 and waters in the area covered by the application.

Result

The application **meets** the requirement under s. 62(2)(c).

Reasons

Schedule D states that the native title claim group has not conducted any searches. The application, therefore, satisfies this requirement.

Description of native title rights and interests: s. 62(2)(d)

The application must contain a description of native title rights and interests claimed in relation to particular lands and waters (including any activities in exercise of those rights and interests), but not merely consisting of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law.

Result

The application **meets** the requirement under s. 62(2)(d).

Reasons

Schedule D lists a description of the native title rights and interest claimed in relation to the land and waters covered by the application and I am satisfied that this list is not merely a recitation of a formulaic statement to the effect that the native title rights and interests are all native title rights and interests that may exist or that have not been extinguished, at law.

Description of factual basis: s. 62(2)(e)

The application must contain a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist, and in particular that:

- (i) the native title claim group have, and the predecessors of those persons had, an association with the area, and
- (ii) there exist traditional laws and customs that give rise to the claimed native title, and
- (iii) the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

Result

The application **meets** the requirements under s. 62(2)(e).

Reasons

Schedule F contains the statement:

The native title claim group named in Attachment A are the descendants of traditional owners of the application area at the time of sovereignty including [Person 2 – name deleted] and [Person 3 – name deleted] (the grandparents of [Person 4 – name deleted] referred to in an oral evidence given to [Person 5 – name deleted] by [Person 6 – name deleted] in [sic] referred to in Fighters and Singers at p. 93 (see bibliography Attachment) and [Person 7 – name deleted] (the mother of [Person 8 – name deleted]) and referred to in Tindale geneology Brewarrina 1938: 1a, and are, under traditional Wongkumara law and custom, all the people entitled to claim native title rights and interests with respect to the claim area.
See Attachment F of summary and Attachments 'F1' to 'F6'.

Although there are some factual references in the first paragraph of this statement, the contents of attachments F1 to F6 referred to in the last sentence contain the majority of the information that provides the factual basis for the claims made in the application. Additionally, factual support is provided in the long-form affidavits made by [Person 9 – name deleted] and [Applicant 1 – name deleted] that were filed with the application.

I am therefore satisfied that the procedural requirements of s. 190C(2) in regard to s. 62 (2)(e) have been met.

Activities: s. 62(2)(f)

If the native title claim group currently carries out any activities in relation to the area claimed, the application must contain details of those activities.

Result

The application **meets** the requirement under s. 62(2)(f).

Reasons

Schedule G contains a list of 35 activities currently carried out by the claim group in relation to the area claimed. The list is not exhaustive.

Other applications: s. 62(2)(g)

The application must contain details of any other applications to the High Court, Federal Court or a recognised state/territory body of which the applicant is aware, that have been made in relation to the whole or part of the area covered by the application and that seek a determination of native title or of compensation in relation to native title.

Result

The application **meets** the requirement under s. 62(2)(g).

Reasons

Schedule H names one application—QUD 435/06 Boonthamurra People.

Section 24MD(6B)(c) notices: s. 62(2)(ga)

The application must contain details of any notification under s. 24MD(6B)(c) of which the applicant is aware, that have been given and that relate to the whole or part of the area covered by the application.

Result

The application **meets** the requirement under s. 62(2)(ga).

Reasons

Schedule HA contains the statement:

To the best of the native title groups knowledge no notifications under paragraph 24MD(6B)(c) of the Act have been given and that relate to the whole or part of the area.

This satisfies the requirements of this section of the Act.

Section 29 notices: s. 62(2)(h)

The application must contain details of any notices given under s. 29 (or under a corresponding provision of a law of a state or territory) of which the applicant is aware that relate to the whole or a part of the area covered by the application.

Result

The application **meets** the requirement under s. 62(2)(h).

Reasons

Schedule I contains the details of a s. 29 notice in respect of the Proposed Grant of ATP 855 to Icon Energy Ltd dated 4/10/07. Although I am aware that the notice issued under s. 29 for the grant of EPP 855 has a notification date of 12 December 2007, nothing turns on the accuracy of this information in the application and it is enough to satisfy this procedural condition.

Combined result for s. 62(2)

The application meets the combined requirements of s. 62(2).

Combined result for s. 190C(2)

The application **satisfies** the condition of s. 190C(2), because it **does** contain all of the details and other information and documents required by ss. 61 and 62, as set out in the reasons above.

Subsection 190C(3)

No common claimants in previous overlapping applications

The Registrar/delegate must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:

- (a) the previous application covered the whole or part of the area covered by the current application, and
- (b) the previous application was on the Register of Native Title Claims when the current application was made, and
- (c) the entry was made, or not removed, as a result of the previous application being considered for registration under s. 190A.

Result

The application **satisfies** the condition of s. 190C(3).

Reasons

I must be satisfied that this application of the Wongkumara People does not have any claimants in common with any other native title determination application that was on the Register of Native

Title Claims on 11 March 2008 when this application was made, if it overlaps any part of the application area. In order to do this I am able to search the Register: see s. 190A(3)(b).

Overlapped application

The Tribunal's Geospatial Services identified one registered application, QC QC06/15—Boonthamurra People—QUD435/06 which partly overlaps the application area. That application was registered on 30 July 2007. It was therefore on the Register at the time this application was made.

This overlap points to the possibility of shared or contested country; however, as Justice Mansfield pointed out in *Doepel*: 'the fact that there is or may be a competing native title claim group in respect of some or all of the claim area is not itself an impediment to acceptance of a claim for registration' —at [43].

Information I have considered

I have compared the native title claim group description contained in the Boonthamurra People's registered application with the claim group description at Attachment A of the Wongkumara People's application before me.

The Boonthamurra claim group is described as the biological descendants of a list of 24 named persons, none of whom appear as the named ancestors or claimants in the Wongkumara application, listed at s. 61 (1) above. In particular I have had regard to the affidavit dated 12 June 2007 of **[Person 10 – name deleted]** of the Boonthamurra who shares a similar sounding, although not similarly spelt, surname with two members of the Wongkumara claim group: **[Person 11 – named deleted]** and **[Person 12 – name deleted]**. **[Person 10]** swears that she is a member of the Boonthamurra People and names her children as members of the Boonthamurra claim group but not her forebears. She agrees in her affidavit to the 'new boundary with the Kullilli and Wangkumara Peoples' and authorises the applicant to go ahead with agreements about the boundaries.

Linguistic similarities between the Wongkumara and the Boonthumarra are discussed in the supporting materials at Attachment F1, 3.5 to 4.6 of the Wongkumara application. At footnote 16, folio 47, the contribution of one of the 'Wongkumara people and speakers' who assisted researchers was **[Person 13 – name deleted]**, a named member of the native title claim group for the Boonthamurra People. **[Person 13]** is also mentioned in the affidavit of **[Person14 – name deleted]** at paragraph 16 regarding where he was raised on the Paroo River:

...Other Aboriginal families I can remember living there, some of whom were Wangkumara, were **[Persons 15 and 16 – names deleted]**, **[Persons 17 and 18 – names deleted]**, **[Person 19 – name deleted]** and **[Person 20 – name deleted]**, **[Person 21 and 22 – name deleted]**. **[Persons 23 and 24 – names deleted]**, **[Person 13]**, **[Persons 25 and 26 – names deleted]**...

For the application to meet the requirements of s. 190B(3) I must be satisfied that neither **[Person 10]** nor **[Person 13]** is a member of the Wongkumara native title claim group. In response to my inquiry the solicitor for the Wongkumara people provided written confirmation that:

- **[Person 10]**, 'is not Wongkumara. She is not a descendant of a member of the Wongkumara claim group or a parent or grandparent of a member of the Wongkumara claim group'; and
- 'The late **[Person 13]** was Aboriginal and a speaker of Wongkumara amongst other languages. He himself was not regarded as, and did not himself identify as, Wongkumara. His tribal background is not known. No descendant of his is a member of the Wongkumara claim group. Indeed, it is not known that he had any descendants.'

I am therefore satisfied that there are no claimants in common between the overlapping applications QC08/3—Wongkumara People—QUD52/08 and QC06/15—Boonthamurra People—QUD435/06.

Subsection 190C(4)

Authorisation/certification

Under s. 190C(4) the Registrar/delegate must be satisfied either that:

- (a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application, or
- (b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.

Under s. 190C(5), if the application has not been certified, the application must:

- (a) include a statement to the effect that the requirement in s. 190C(4)(b) above has been met (see s. 251B, which defines the word 'authorise'), and
- (b) briefly set out the grounds on which the Registrar should consider that the requirement in s. 190C(4)(b) above has been met.

Result

I must be satisfied that the requirements set out in either ss. 190C(4)(a) or (b) are met, in order for the condition of s. 190C(4) to be satisfied. The application has not been certified by the representative bodies that could certify it, therefore, paragraph (b) applies.

For the reasons set out below, I am satisfied that the requirements set out in s. 190C(4)(b) are met, including the condition of s. 190C(5).

Reasons

s. 190C(5)(a)

I must be satisfied that the applicant is a member of the native title claim group and is authorised to make the application and deal with matters in relation to it, by all the other persons in the native title claim group. I must do this with reference to what is contained in the application (including the other material filed in the Court): see *Strickland v Native Title Registrar* [259] to [260]. This information is provided at Schedule R with reference to Attachment R, and in the affidavit of the applicant's solicitor filed on 19 March 2008.

The affidavits of the eight persons comprising the applicant contain the following statements:

1. I am one of the Applicants

2. I believe that the native title rights and interest claimed by the native title claim group have not been extinguished in relation to any part of the area covered by the application
3. I believe that none of the area covered by the application is also covered by an entry in the National Native Title Register
4. I believe that all the statements made in the application are true
5. I am 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
6. The basis on which I am authorised is set out in Attachment R.

Although not all the eight persons comprising the applicant are named in the native title claim group description, they are included in it as they are biological descendants of other named persons, and at Attachment R, 1.1 it states 'The applicants are members of the Native Title Claim Group ('NTCG') and are authorised to make the Application and deal with matters arising in relation to it by all the members of the NTCG.'

I note that the affidavits were all signed and witnessed between February and March of 2008 and are therefore current to the authorisation of this application and no other previous application.

The meaning of the word 'authorise'

The Federal Court has consistently emphasised the fundamental importance the Act places on ensuring that claimant applications are properly authorised, for example, see *Western Australia v Strickland* (2000) 99 FCR 33; [\[2000\] FCA 652](#) at [70] to [79].

Under s. 251B, there are two possible means by which a native title determination application may be authorised:

- (a) where there is a process of decision-making that, under the traditional laws and customs of the persons in the native title claim group or compensation claim group, must be complied with in relation to authorising things of that kind (that is the making of an application and dealing with matters arising in relation to it)—the group authorises the person or persons to make the application and to deal with the matters in accordance with that process; or
- (b) where there is no such process—the persons in the native title claim group authorise the other person or persons to make the application and to deal with the matters in accordance with a process of decision-making agreed to and adopted, by the persons in the native title claim group or compensation claim group, in relation to authorising the making of the application and dealing with the matters, or in relation to doing things of that kind.

Attachment R states that a traditional method of decision-making exists and has been adopted in the authorisation of this application—therefore, s.251B(a) applies. I must be satisfied that the grounds of the authorisation of the applicant have been set out; that is in this case, that the traditional decision-making process outlined in Attachment R exists and was followed in relation to the authorisation of this application.

Does a traditional decision-making process exist?

Attachment R states that:

- 2.1 The NTCG has a traditional method of decision-making in relation to Native Title Matters
- 2.2 The NTCG traditional decision-making procedure is as follows:

- 2.2.1 a decision requires the agreement of each extended family sub-group within the NTCG;
- 2.2.2 the decision makers within each family subgroup are the persons accepted by the other members of the family subgroup as the elders of that family subgroup ('the Elders');
- 2.2.3 the Elders determine before making a decision with whom and how they will consult before making a decision;
- 2.2.4 the elders of each family subgroup may appoint a representative authorised to speak for the family subgroup who is obliged to report back to all Elders of the family subgroup and to obtain and follow instructions from the Elders of the family subgroup; and
- 2.2.5 Wongkumara Law and Customs is followed as far as practicable.

The representatives of each of 12 family subgroups are then listed in a table at 2.3. At 2.5 the claim group is estimated to number about 500 adult members and 2000 children.

The Crown Solicitor for the State of Queensland submitted that 'the application does not appear to advise the basis on which the 12 family sub-groups listed on page 169 have been determined to represent the 48 family descent groups listed in Attachment A'.

The applicant responded on 10 April: 'It is true that Attachment A does not identify to which of the 12 family subgroups each of the identified members belongs. We do not consider that that is necessary. However, for the purposes of clarification we enclose a copy of page 169 where we have numbered each of the family subgroups and a copy of Attachment A with corresponding numbers entered against each grouping of members of the claim group'.

I accept that clarification. The requirement under s. 251B that the applicant be authorised by all the persons in the native title claim group does not necessarily mean that each and every member of the claim group must authorise the applicant. In *Moran v Minister for Land and Water Conservation for NSW* [1999] FCA 1637, His Honour Justice Wilcox recognised that a traditional decision-making process may exist under which a 'council of elders' or some other group has the requisite authority.

Was that traditional decision-making process used?

Attachment R, section 4 'New Application', outlines the decision of the Wongkumara Elders in calling several authorisation meetings, the dates and venues of those meetings, how they were advertised, who attended, what occurred and what was resolved.

Further information in relation to the authorisation of the application meetings was attested to in an affidavit dated 19 March 2008 by **[Solicitor 1 – name deleted]**, solicitor for the native title claim group, which stated (among other things), at point 5:

I caused notices of the meetings held at Dubbo, Bourke, and Dubbo NSW respectively on 5 January 2007, 19 January 2007 and 12 August 2007 to be mailed to all persons who had identified as Wongkumara People or who had expressed an interest in attending and to be published in newspapers as set out in 4.3, 4.9 and 5.3 of Attachment R.

Annexed to this affidavit were copies of the:

- advertisements of the three meetings published in the *Koorie Mail* which show that they contained information about the times, places, dates and purposes of the meetings together with a map of the application area. They also provided contact details of the convenor if

assistance was required to attend the meeting and requested that those who could not attend advise him; and

- address lists and signed attendance lists for all three meetings.

Attachment R states that the advertisements were also placed in the *Bourke Western Herald*, the *Daily Liberal*, the *Courier Mail* and the *Chinchilla News*.

Both the State of New South Wales and the State of Queensland raised issues regarding the attendance at the authorisation meetings of the persons who should authorise the applicants to bring the application. Queensland pointed to incorrect dates of advertisements and lists 20 members of the claim group who may not have been advised by mail of the meetings. New South Wales contended that there was a lack of information about the meetings and who attended them.

On 10 April in response, the applicant stated:

As regards the notices of the meeting, the annexures identified do indeed refer to meetings on 5 January 2006 and 19 January 2006. That was an error. The meetings were called for and held on 5 January 2007 and 19 January 2007. The advertisements were published in the respective newspapers on 20 December 2006 and 17 January 2007, so that the errors would have been readily apparent had anyone reading the advertisement noticed that the year was stated as 2006 and not 2007. Both meetings were held on a Friday and both advertisements refer to Friday as the day on which the meeting is to be held.

And, regarding the provision of written notice:

Individual notices were posted to all members of the native title claim group for whom there was a current postal address. There may be some members for whom a postal address was not held. As regards **[Person 27 – name deleted]** a notice was hand delivered to her.

I also note that at Attachment R at 2.6 an alternative communication method is described:

The NTCG has an internal system of communication known as ‘the bush telegraph’ which involves continuous conscious effort being made to advise family Elders where you and your children are, of any serious illness, a birth, a marriage or a death, what you are doing and keeping contact no matter how far away you are and passing on such information to other family members from children to adults, as appropriate.

I accept the applicant’s response to the concerns of the States and consider that the members of the native title claim group were given a reasonable opportunity to participate in the meetings: see *Ward v Northern Territory* [2002] FCA 171 — at [25].

Meetings of the native title claim group were held in Dubbo on 5 January 2007, in Bourke on 19 January 2007, in Dubbo on 12 August 2007. On 15 October 2007 ‘the family representatives, following [legal] advice ...unanimously confirmed that the eight proposed applicants be the applicant authorised to bring this Application and to deal with matters arising in relation to this application and on the wording of the application’. The relationship of the family representatives to the applicants was clarified by the applicant on 10 April, as above. And finally, ‘in meetings in Bourke and Dubbo on 14 February 2008 and in telephone link ups the persons jointly constituting the applicant authorised the claim group to be described as set out in Schedule A’.

I note the consistency of the decision-making process at each of the meetings. The support for the traditional decision-making process is attested to by the whole group in Attachment R at 4.6. At

4.7, 4.8, 4.13, and 4.14 it is shown that the Elders meet separately then report back to their subgroups and a unanimous position is arrived at. Further support to this being the traditional decision-making process is sworn to by **[Applicant 1]** in his long-form affidavit at 41 to 49, for example:

I was also taught by my late mother and my late grandmother that [*sic*] the Wongkumara traditional method of decision-making. This decision-making process is followed for making all decisions today and was followed in the authorisation of all the previous Wongkumara Native Title Claim Determination Applications including this one.

He goes on to explain the details of the process which reflects what went on in the authorisation meetings.

I am satisfied that a Wongkumara traditional decision-making process as described exists and was in fact followed in the authorisation of this application. Therefore, I find that the requirements of ss. 190C(4)(b) and 190C(5) have been met.

Merit conditions: s. 190B

Subsection 190B(2)

Identification of area subject to native title

The Registrar must be satisfied that the information and map contained in the application as required by ss. 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

Information regarding external and internal boundaries: s. 62(2)(a)

The application must contain information, whether by physical description or otherwise, that enables identification of the boundaries of:

- (i) the area covered by the application, and
- (ii) any areas within those boundaries that are not covered by the application.

Map of external boundaries: s. 62(2)(b)

The application must contain a map showing the boundaries of the area mentioned in s. 62(2)(a)(i).

Result

The application **satisfies** the condition of s. 190B(2).

Reasons

This application complies with the procedural conditions in relation to identification of the area. It contains information about the external boundaries of the area included in the application and the areas within those boundaries that are not included. It also contains a map showing the boundaries of the claim area – ss. 62(2)(a) and (b). The condition at s. 190B(2) is concerned with the quality of the information provided.

I must be satisfied that the boundary information and the map provided are sufficient for it to be said, with reasonable certainty, whether native title rights and interests are claimed in relation to particular land or waters. As noted earlier on p. 2 of these reasons an apparent inconsistency between the written description at Schedule B and the map at Schedule C caused the filing of an amended description at Attachment B.

A report dated 11 April 2008 by the Tribunal's Geospatial Services confirmed that the proposed amendment addressed the inconsistencies identified in the original application. The description and map were consistent and identified the area with reasonable certainty.

Schedule B of the amended application provided definitions of areas not covered by the application at points 1–5 as well as excluding land and waters where the native title rights and interests claimed have been otherwise extinguished.

Schedule B refers to Attachment B.

Attachment B as amended describes the application area by metes and bounds, and references:

- The Queensland – New South Wales and Queensland – South Australia State borders;
- Various rivers, creeks and other landmarks;
- Coordinate points of latitude and longitude referenced to the Geocentric Datum of Australia 1994 (GDA94); and
- Source and currency notes of information used to prepare the description.

Schedule C refers to Attachment C.

Attachment C (as supplied) is a monochrome copy of a map prepared by the Tribunal titled Proposed Native Title Determination Application – Wongkumara People and includes:

- The application area depicted by a bold line;
- The former Kullilli People 2 application (dismissed on 2 November 2006);
- Topographic information such as towns, rivers and creeks;
- Scalebar, northpoint, coordinate grid; and
- Notes relating to the source, currency and datum of data used to prepare the map.

I am satisfied that the information and map contained in the amended application are sufficient for it to be said with reasonable certainty, that the native title rights and interests are claimed in relation to the particular land and waters described in the application.

Subsection 190B(3)

Identification of the native title claim group

The Registrar must be satisfied that:

- (a) the persons in the native title claim group are named in the application, or
- (b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

Result

The application **satisfies** the condition of s. 190B(3).

Reasons

The focus of s. 190B(3)(b) is whether the application enables the reliable identification of persons in the native title claim group—*Doepel* at [51]. The delegate’s consideration of whether s. 190B(3) is met does not go beyond consideration of the terms of the application. Thus, the claim group description must be ‘in the application’—*Doepel* at [16].

The claim group description is at Schedule A: ‘all those persons named in Attachment A and their biological descendants.’ Attachment A lists all those people and I have reproduced that list at s. 61(4) above. Since all the persons in the native title claim group are not named, s. 190B(3)(a) does

not apply. Consequently, the question is whether 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 as required by s.190B(3)(b). I note that I am not to assess the ‘correctness’ of the claim group description: *Doepel* – at [37].

I find that the description provides an objective criterion (the biological descendants of the named persons) to establish if any person is in the native title claim group or not. In support of the kind of apical ancestor model used in this application, his Honour Justice Carr in *State of Western Australia v Native Title Registrar* (1999) 95 FCR 33 said:

it may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described. But that does not mean that the group has not been described sufficiently– at [67].

There is no ambiguity about the identity of the apical ancestors listed. It should therefore be possible, after some factual inquiry, to identify the biological descendants of those persons,

The State of New South Wales contended that ‘there is no reference to adoption or incorporation principles which are often found in claim group descriptions. If it is the intention to broaden the claim group description in this way the definition should be altered.’ Based on this the State contended that the Registrar could not be satisfied that the requirements of s. 190B(3) were met. I do not consider this issue relevant to my task at this section.

The State of Queensland’s concerns regarding the claim group description, specifically [Person 1], have been considered under s. 190C(2) at s. 61(1) above.

I am satisfied that the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

Subsection 190B(4)

Native title rights and interests identifiable

The Registrar must be satisfied that the description contained in the application as required by s. 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.

Result

The application **satisfies** the condition of s. 190B(4).

Reasons

I have previously found that the application satisfies the requirements in s. 62(2)(d). For the condition in s. 190B(4) to be met, the description of the native title rights and interests claimed must be ‘readily identifiable’. In *Doepel* Justice Mansfield considered that the term ‘readily identified’ within the context of s. 190B(4), could be answered by the following questions: ‘are they

understandable?’ and ‘do they have meaning?’. If the answer to those two questions is in the positive, this condition may be satisfied—at [99].

The native title rights and interests claimed by the applicant are set out at Schedule E of the application. I find the statement of rights and interests to be understandable and meaningful overall. They are grouped according to exclusive rights or non-exclusive rights and interests and are claimed only where they have not been extinguished or where the non-extinguishment principle applies under ss. 238, 47, 47A or 47B. I also consider the rights and interests themselves to be readily identifiable.

An assessment of whether the claimed rights and interests are native title rights and interests and whether they are established *prima facie* in the application is considered at s. 190B(6).

Subsection 190B(5)

Factual basis for claimed native title

The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:

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

The task of the Registrar and information that may suffice

I consider each of the three assertions set out in the three of s. 190B(5) in turn and come to combined result for s. 190B(5) at page 37 below.

For the application to meet this condition, the delegate must be satisfied that the factual basis provided is sufficient to support the assertion that the claimed native title rights and interests exist and the particular assertions in (a) to (c) of s. 190B(5). In *Doepel*, Mansfield J stated:

Section 190B(5) is carefully expressed. It requires the Registrar to consider whether the ‘factual basis on which it is asserted’ that the claimed native title rights and interests exist ‘is sufficient to support the assertion’. That 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. In other words, the Registrar is required to determine whether the asserted facts can support the claimed conclusions. 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—at [17].

In *Gudjala People 2 v Native Title Registrar* [2007] FCA 1167 his Honour Justice Dowsett was of the view that the factual basis had to be capable of demonstrating that:

- there are traditional laws and customs;

- these laws and customs are acknowledged or observed by the native title claim group; and
- that they give rise to the group's claim to native title rights and interests—at [62].

Material such as anthropological reports and statements made in support of the factual basis need to contain more than mere opinions and conclusions. It is insufficient for anthropological reports to merely contain views and opinions concerning Indigenous culture and norms generally—at [46],[68] and [81].

It may not suffice for a few individuals to talk about their particular association or that of their particular predecessors or of their personal connections if the association of the whole claim group to the claimed rights and interests is not shown (although not necessarily at all times—at [52].

The decisions in *Doepel* and *Gudjala* make it clear that in addressing the requirement of s. 190B(5) it is not sufficient to simply to assert that an opinion is based on fact or to identify the source of such facts. The asserted facts themselves must be set out in the material (see *Doepel*—at [127] to [128] and *Gudjala*—at [[52], [68] and [79] to [81]). However, I am not limited to considering only the information in the application, but may refer to additional material—*Doepel* at [124] to [125].

The meaning of 'traditional'

The High Court's decision in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; 194 ALR 538; [2002] HCA 58 (*Yorta Yorta*) provided the meaning of 'traditional' in relation to laws and customs in a native title context, and how 'native title rights and interests' as found in ss. 190B(5), 190B(6), and 190B(7) are to be interpreted.

The High Court was of the view that:

A traditional law or custom is one which has been passed from generation to generation of a society, usually by word of mouth and common practice. But in the context of the Native Title Act, "traditional" carries with it two other elements in its meaning. First, it conveys an understanding of the age of the traditions: the origins of the content of the law or custom concerned are to be found in the normative rules of the Aboriginal and Torres Strait Islander societies that existed before the assertion of sovereignty by the British Crown. It is only those normative rules that are "traditional" laws and customs.

Secondly, and no less importantly, the reference to rights or interests in land or waters being possessed under traditional laws acknowledged and traditional customs observed by the peoples concerned, requires that the normative system under which the rights and interests are possessed (the traditional laws and customs) is a system that has had a continuous existence and vitality since sovereignty. If that normative system has not existed throughout that period, the rights and interests which owe their existence to that system will have ceased to exist—at [46 to 47].

Laws and customs do not exist in a vacuum...Law and custom arise out of and, in important respects, go to define a particular society. In this context 'society' is to be understood as a body of persons united in and by its acknowledgment and observance of a body of law and customs—at [49].

Result re s. 190B(5)(a)

I am **satisfied** that the factual basis provided is sufficient to support the assertion described by s. 190B(5)(a).

Reasons re s. 190B(5)(a)

I must be satisfied that the application provides a sufficient factual basis to support the assertion that the native title claim group have, and the predecessors of those persons had, an association with the area. In *Gudjala* Dowsett J was of the view that the applicants...

may demonstrate that they and their families presently have an association with the claim area. They may also show that their predecessors have had such an association since European settlement; however, they have not demonstrated that the claim group as a whole presently has such an association. I do not mean that all members must have such an association at all times... —at [52].

Does the native title claim group presently have an association with the area?

A number of members of the claim group were raised on the application area, including [Person 9] (affidavit at 13–19) and [Applicant 1] (affidavit at 5, 6 and 10). Both men also worked throughout the application area on stations and continue to take their family members throughout the application area and teach them the laws, stories and customs, as they have been handed down to them – see [Applicant 1] at 53 and 54; [Person 9] at 82 ('I drive around Wongkumara country all year round') and 60 ('Dad told me this was a special site, and I must respect it and look after it, and teach my children to respect it and look after it, too').

Both [Person 9] and [Applicant 1] attest to a current spiritual affiliation with the land. [Person 9] is a Wongkumara Elder and has a permanent camp on the Cooper's Creek within the application area:

That is why I have made camp on the Cooper. Out there, I am part of the Wangkumara people. I am living in amongst my ancestors, where they lived and died and where their spirits are today. When I sit down fishing in the afternoon, they are standing beside me and looking over my shoulder. I am on my country and looking after my country. Other Wangkumara people know that I am out there on the Cooper and I feel responsible to them, especially the old people — [Person 9] at 75.

At Attachment F3 there is an explanation of the current spiritual beliefs held by the 'Wongkumara today' and the belief they have in the ancestral beings as described by the general term *Mura*. It states that

While there have been developments in Wongkumara religious beliefs and practices, these have not affected traditional doctrines and presumptions about the relationship of Wongkumara people to their country (Creamer 1974, 1975; Mathews 1975). The Wongkumara hold these as sacred, and each generation of descendants from those who were originally given the ownership and responsibility for Wongkumara country are believed to have inherited these rights and responsibilities and have the power to transmit them to their descendants. The Wongkumara regard their country as the repository of the *Mura* who remain in the region, metamorphosed in its topographic features... These beliefs underlie the Wongkumara participation in land-care and heritage management enterprises, which allow them to 'look out' and 'look after' Wongkumara country and people.

The claim group's association with the area as a group is outlined at Attachment R. This shows a traditional decision-making process in use for decisions relating to the claim area and

demonstrates a functioning social network amongst the members of the claim group, at 1.2, 2.2.5, 2.6. Elder **[Person 9]** swears to at least 20 meetings amongst the members of the claim group about protecting their traditional country from mining operations that have been held over the past seven or eight years (see also my consideration of s. 190C(4) above). Bearing in mind Dowsett J's emphasis on the claim group *as a whole* having the association, the information at Attachment R shows how the group as a whole arrives at consensus communally, and I find support for this in the long-form affidavits of **[Applicant 1]** and **[Person 9]**.

Schedule G lists more than 30 activities of the group including heritage protection work with resources companies currently undertaken on the application area.

[Person 9] has attached to his affidavit an inventory he has made of approximately 204 significant sites throughout Wongkumara country, including the geospatial coordinates for 150 of them. However he states that;

...I am responsible for looking after the country, not just the sites but the whole of the country. The sites are only a part of it, they are an important part but it is the full Wongkumara country that needs looking after. If the sites are destroyed, if the country is damaged, then the spirits may leave it—it would not make them very happy— at [76].

A number of references are made throughout the material to people living either temporarily or permanently in Bourke (see page 34). I note that Bourke is not in the application area; however, it is immediately adjacent to the application area (see the annexures marked as G, I and J to the affidavit of **[Solicitor 1]**).

On the basis of the above material I am satisfied that the native title claim group has an association with the claim area.

Did the predecessors of the claim group have an association with the area?

From 1970 to 1976 **[Person 28 – name deleted]**, the deceased mother of applicant **[Person 29 – name deleted]** recorded more than 90 hours of oral history with researcher **[Person 5]**. Written information relating to this oral history was supplied to the Registrar as additional material marked Annexure L on 19 March 2008, (folios 37 to 44) and provides a unique source of first-hand material regarding the predecessors of the claim group.

[Person 28] was born in 1911. She was raised on the application area with her great-grandparents, who were documented as assisting the survivors of the Burke and Wills expedition of 1861.

[She] remembered these old people clearly and much of her traditional knowledge had come from them. Various calculations of her paternal great-grandmother's birth date in relation to her memories of the Burke and Wills expedition camping near Cooper's Creek, suggest that she could have been as old as 105 when she died in 1936. Her husband, who died in 1926, is reputed to have been a centenarian also—at [37].

The account told to her by her great-grandparents is retold at folio 38. At folio 39 there is also reference to her great-grandfather and she is reported as feeling that 'her great grandfather had been honoured when the white people made him 'king' of the Wonggumara and presented him with a plate that he often wore (Howard Creamer [heritage officer for the NSW Government] reports he was **[Person 30 – name deleted]**). **[Person 30]** is a key common ancestor of the native title claim group.

The report also contains details of **[Person 28]** life when she was raised on the application area: who she lived with, events that occurred, how she and her extended family lived, information about and in her mother tongue 'Wongkumara', traditional beliefs and customs she witnessed and practised, stories told to her by Elders and her personal spiritual affiliations with the land.

Individuals mentioned in the extract are her great-great grandparents, her grandmother, her mother and father and sisters, **[Persons 31, 32, 33 and 34 – names deleted]**, **[Person 35]**, **[Person 36]**.

The interview by **[Person 37 – name deleted]** of **[Person 36]**, an ancestor of applicant **[Applicant 2 – name deleted]** as an adult in 1938 (Attachment F1 folio 48), places him in the Wongkumara society when it would have consisted of people who were living in the area at the time of the early colonial expeditions.

The association of the predecessors of the claim group is also outlined in the two long-form affidavits (**[Applicant 1]** at 3, 9 and 10; **[Person 38 – name deleted]** at 16, 48, 51, 52, 70, 71, and 76). This material is corroborated by other sources, contained in the application or accompanying material.

Under s. 190B(5)(c) I deal with the implications of the forced removal of members of the claim group and their predecessors. For present purposes it is sufficient to note that **[Person 28]** report of these events is corroborated in a number of important ways by other accounts. **[Person 28]** refers to 60 people (including herself) having been forcibly moved from Tibooburra to a mission at Brewarinna in 1938. These individuals are also mentioned in the writings of researchers in the twentieth century: see Attachment F1, at 1.3, 3.6, 5.2, 5.3, 5.4, 8.2 and 8.3, as is the group removal of approximately 130 people to the Brewarinna mission. **[Applicant 1]** affidavit also refers to some of the same people in **[Person 28]** extracted history: **[Person 28]** and her mother, **[Persons 33 and 34]**, **[Person 36]**, and to the removal of, he estimates, 120 people to the mission in 1938. **[Person 9]** affidavit also refers to some of these same people and many others by name at 16, 37 and 49.

Information regarding the location, extent and structure of the Wongkumara language is provided at Attachment F1 sections 3 and 4. **[Person 37]** two informants were the great-grandfather (**[Person 36]**) and grandfather (**[Person 8]**) of applicant **[Applicant 2]** (see Attachments A and F1, 4.5). The Tribunal's geospatial database records that the area where **[Person 39 – name deleted]** identified Wongkumara as being spoken corresponds with the application area. Attachment F1 Section 3 discusses the ethnographic and language maps for the region and concludes that the most notable are those by **[Person 37]** [1940] and **[Person 40 – name deleted]** (compiled with the assistance of Wongkumara man **[Person 36]** in the 1950s). This material supports the claimant's assertion that their traditional language has its source in the people associated with that area (**[Person 38]** at 9 and 52 and **[Applicant 1]** at 12, 13 and 38).

I accept that the Wongkumara language has its roots in the region which includes the application area, that the language is being maintained and spoken and that therefore this is evidence of the association of its speakers with the claim area. The speaking of the language *per se* is not a native title right or interest, however in an oral-based culture it is an important means by which

traditional law and customs are transmitted. In s. 190B(5) (b) below, I consider the stories and histories passed down to the current generation of Wongkumara.

The information provided in relation to this condition is consistent and corroborative: the predecessors of the claim group belonged to a group known as Wongkumara who had an association with the application area. This is demonstrated by named individuals in witnesses' accounts, oral depositions, recordings of the language spoken today and is supported by formal research findings that support the existence of the Wongkumara people as a group during the nineteenth and twentieth centuries: (see F1 sections 1-4). On the basis of *Gudjala*, I consider that the corroboration of the witness accounts is an important indicator of the factual basis for the claims made in this application.

On the basis of all the above material I am satisfied that the predecessors of the native title claim group had an association with the claim area.

Below, I consider the pre-colonisation component of the requirements of s. 190B(5).

Result re s. 190B(5)(b)

I am **satisfied** that the factual basis provided is sufficient to support the assertion that the condition in s. 190B(5)(b) has been met.

Reasons re s. 190B(5)(b)

In this section I must assess the factual basis of the claim 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 interest. The section turns on the meaning of the word 'traditional' in the context of a claim to native title. See the passages from *Yorta Yorta*, above.

Following *Yorta-Yorta* in *Gudjala* Dowsett J was of the view that for laws and customs to be 'traditional' they must have their source in a pre-sovereignty society and have been observed since that time by a continuing society. However, that did not mean that the apical ancestors must have comprised a society — at [63].

In His Honour's view:

Broadly speaking, the task [at s. 190B(5)] is to identifya society of people, living according to identifiable laws and customs, having a normative content. I take that to mean that such laws and customs must establish normal standards of conduct or, perhaps, be prescriptive of such standards — at [65].

There can be no relevant traditional laws and customs unless there was, at sovereignty, a society defined by recognition of laws and customs from which such traditional laws and customs are derived. The starting point must be identification of an indigenous society at the time of sovereignty... — at [66].

What were the traditional laws and customs of pre-contact Wongkumara society?

Although sovereignty was established by the British Crown over the area in 1788, the first contact of the British with the Indigenous people in the area was in the second half of the nineteenth

century in expeditions led by Sturt (1845), Gregory (1858), Burke and Wills (1860), Howitt (1861, 1862), and McKinley (1861). There is, therefore, a period of only fifty-seven years between the time of the acquisition of sovereignty and first recorded contact, and I have assumed that the laws and customs of the Wongkumara people recorded by the first explorers in the nineteenth century were also those of the Wongkumara society at the time of the acquisition of sovereignty in the century before.

Details of the pre-sovereignty society of the Wongkumara People and their acknowledgement and observation of laws and customs are contained in Attachment F1 at 1.1, 1.2 and 2. This was compiled from 'Background Report to the Preservation of Evidence of [Person 34] and [Person 9]' in 2003 and a report of [Anthropologist 1 – name deleted] commissioned by 'Queensland South Representative Body Aboriginal Corporation'. Amongst the history of the Wongkumara society provided in this report are reported recordings of the eye-witness accounts of early white explorers in the region from 1845 to 1862. The report notes that:

The explorers' descriptions of encounters with many small groups of Aboriginal people and the occasional discovery of large settlements and gatherings of several hundred people give an impression of a vigorous society and culture— Attachment F1 at 1.1.

Archaeological and anthropological evidence in the expert studies cited at Attachment F1 show evidence of long-term Aboriginal occupation of the area. The existence of burial grounds, old camp sites, cleared walking tracks, rock art, rock and ochre quarries, and cairns is evidence of human occupation throughout the application area and indicates the occurrence of ceremonial and cultural practices. That this was a society that established normative rules of conduct is established at Attachment F1, for example at 2.3:

The early ethnographic data recorded for this region describe the existence of named, exogamous matri-moieties (Myles in Curr 1886:37; Mathews 1898: 77; Simpson 1899), which were sometimes mistaken for tribal groups (Beckler 1860)...the moieties functioned in initiation and burial rituals, in marriage arrangements, dispute resolutions, camping arrangements, and "various secret matters" (Elkin 1931). Marriages were regulated according to prescriptions that maintained genealogical proprieties. Wives could also be obtained through capture and elopement (Hughes n.d.) These latter methods, however, led to feuds and retaliatory raids (Myles in Curr 1886:38). There were networks in exchange and trade within and beyond the region (Beckett 1978; Curr 1886; McBryde 1987; McCarthy 1939; Mulvaney 1976). Traded goods included narcotics such as *pitcheree* [*pituri*] and *murradutta*, stone blades, grinding dishes and rain stones.

Further support for some of the findings of these studies in relation to such things as burial sites and marriage rules are referred to in the affidavits of [Applicant 1] and [Person 9], (including the inventory of significant sites and their geospatial coordinates attached to [Person 9] affidavit).

There is sufficient material before me to conclude that at the time of acquisition of sovereignty there was an identifiable society of Wongkumara people, living according to identifiable laws and customs, having a normative content.

To satisfy the condition in 190B(5), however, I must be satisfied that those traditional laws, and customs acknowledged and observed by the native title claim group give rise to the claim to native title rights and interests.

The State of New South Wales submitted that no evidence had been provided that the laws and customs are practised on the claim area today.

What were the laws and customs that gave rise to the claimed native title rights and interests of today's Wongkumara people?

I find that there are traditional laws and customs that give rise to the native title laws and customs claimed and considered at s. 190B(6) that are demonstrated to come from the pre-contact society. These include:

- (i) Recognition of common ancestors and belief in the creation myths of the Wongkumarra that in the *Yorta Yorta* sense convey an understanding of the age of the traditions. These are the *Mura* or *Muda* cited in the research reports in Attachment F1, Attachment F3 folios 96–98 and referred to in the deposition of **[Person 28]**, (see below). **[Person 28]** mentions Mt Poole as the source of the creation of the Wongkumara, **[Person 9]** names Alabena, Bald Top mountain on Durham Downs, the site of the Three Brothers, Yulabirti waterhole and many other places with spiritual significance that are believed in today. See Attachment F1 6.4 to 6.6.
- (ii) Recognition of individuals' connection to the land and waters through their place of birth and their mother's, father's and grandparents' place of birth and the concomitant responsibilities this connection imposes on those individuals to 'look after the country'. For example, see the affidavit of **[Person 9]** at 3, 51 and 52. His father was named after the waterhole at which he was born, his father taught him that the people, the plants and animals in which they lived, the rivers and other natural features of Wangkumara country in which they lived were created by 'our Wangkumara ancestors' during a period which he referred to as the Dreamtime; that before white people came to the country the Wangkumara Elders 'looked after their country and the sites on it. They took what they needed from the country and everything in the country belonged to them, the Wangkumara people. They were responsible for the country and looked after it, just like those of us today are responsible for the country and must look after it. All these things my father taught me...' This is also sworn to by **[Applicant 1]** at paragraph 52 of his affidavit:

The traditional law and custom which I have been taught and to which I pass onto my children and my grandchildren and all other Wongkumara who wish to hear is that the Wongkumara People have a common spiritual affiliation to the sites of significance in the claim area such that the Wongkumara have a primary spiritual responsibility for those sites and for the claim area as a whole. That applies particularly to burial sites...
- (iii) Laws and customs about traditional activities such as hunting, fishing, gathering of plants for food and medicines are well documented in the literature of the first explorers and settlers in the area and are asserted to have been passed on to the current claim group by their Elders who pass them on to the next generation: see Attachment G point 6. Traditional methods of living off the land and waters such as the preparation and cooking of emu and porcupine are explained in Attachment F3 and in the affidavit of **[Applicant 1]**. **[Person 9]** explains the details of his hunting practices as they were passed onto him by his father at 52 and 73. The use of the

narcotic *pituri* was witnessed by **[Person 28]** who stated that her great-grandmother gave the plant to the men in the Burke and Wills expedition of 1861;

- (iv) Behaviour of the claim group members at certain sites of significance on the claim area shows a spiritual affiliation with the area: see the affidavit of **[Person 9]** at 48–65 and 74 and 58–61 regarding the Three Brothers. Attachment F3 folios 106-7 documents behaviours of the pre-contact Wongkumara people at the site of the Three Brothers, which is corroborated by his own testimony. Annexure L, '**[Person 28]**', folio 39 explains her belief in the White Lady of the Wongkumara and adds that many people including **[Person 28]** herself visited the site regularly until the late 1930s 'to add dirt or branches and ensure that their secret was safely hidden'. **[Applicant 1]** corroborates his aunt's belief in the White Lady. **[Applicant 3 – name deleted]** reported that certain sacred areas may not be accessed by people without knowledge. Should they be so, then those people will get sick (cited in a study by Crisp and Burke in 1996, Attachment F1, folio 73).
- (v) I concluded at page 31 that the Wongkumara language has its roots in the region which includes the application area. Material in relation to the maintenance of the Wongkumara language provides further support for the maintenance of traditional law and custom. Schedule G point 3 of the application states that cultural and language education programmes are held in schools and that radio programmes are broadcast in Bourke. **[Applicant 1]** in his affidavit states that he learned the Wongkumara language from his grandmother and aunty: 'Granny spoke to us in her native language, which is how I learnt to speak Wongkumara. She taught me pretty well, because when I was older, in my 20s, I would talk to the elders down at the pub in the lingo as well' (at 12 and 13). He now teaches the Wongkumara language to adults and children in the community and has been involved in establishing a school programme teaching language to grades 8 and 9 at high school in Bourke (at 38).

The material recorded by **[Person 28]** extracted at Annexure L provides additional support for the view that the laws and customs outlined are 'traditional' in the sense understood by the court in *Yorta Yorta*. The claim group continues to observe a wide range of traditional laws and customs including: decision-making about land, caring for the land, speaking the language, maintaining spiritual beliefs, story-telling about the land and living off the land and waters.

I therefore do not accept the submission by the State of New South Wales that no evidence has been provided that traditional laws and customs are practised on the claim area. I find that there is sufficient information in the application and accompanying material to provide the necessary factual basis to support an inference that there was an Indigenous society in the area of this claim, observing identifiable laws and customs. I further find that there is sufficient information in the application before me to support the inference that the claim group are descended from members of the same society and continue to carry out traditional laws and customs that have come from pre-sovereignty laws and customs of that society. Numbered from (i) to (v) above, there is also sufficient factual information in the application to support the assertion that these traditional laws and customs have given rise to the claimed native title rights and interests considered at s. 190B(6) below.

Result re s. 190B(5)(c)

I am **satisfied** that the factual basis provided is sufficient to support the assertion described by s. 190B(5)(c).

Reasons re s. 190B(5)(c)

Section 190B(5)(c) requires that I be satisfied a factual basis is provided sufficient to support the assertion that the claim group have continued to hold native title in accordance with their traditional laws and customs. The emphasis in this subsection is on the notion of continuing association. The State of New South Wales in its submission drew attention to what it considered a break in the association of the current claim group and the application area through ‘removals and disruptions’ (see p. 4). Although I have considered the current association of the claim group with the area at s. 190B(5)(a) above, the removals and disruptions require addressing.

In *Yorta Yorta* the High Court enunciated that:

[A]cknowledgment and observance of those laws and customs must have continued substantially uninterrupted since sovereignty. Were that not so, the laws and customs acknowledged and observed *now* could not properly be described as the traditional laws and customs of the peoples concerned—at [87].

And with regard to the degree of interruption:

In the proposition that acknowledgment and observance must have continued substantially uninterrupted, the qualification “substantially” is not unimportant. It is a qualification that must be made in order to recognise that proof of continuous acknowledgment and observance, over the many years that have elapsed since sovereignty, or traditions that are oral traditions is very difficult...Nonetheless, because what must be identified is possession of rights and interests under traditional laws and customs, it is necessary to demonstrate that the normative system out of which the claimed rights and interests arise is the normative system of the society which came under a new sovereign order when the British Crown asserted sovereignty, not a normative system rooted in some other, different society. To that end it must be shown that the society, under whose laws and customs the native title rights and interests are said to be possessed, has continued to exist throughout that period as a body united by its acknowledgment and observance of the laws and customs—at [89].

In the material provided at Attachment F1, section 5 ‘Contact history’ folios 47–51 and in the histories of **[Person 28]** and **[Applicant 1]**, the removal of Wongkumara People from Tibooburra to a mission at Brewarrina in 1938 under the 1897 Queensland Protection of Aborigines Act is discussed. Did the removals substantially interrupt the association of the Wongkumara people with their country?

I find that there is information in the application which supports the assertion that they did not.

Although removals were made, many people were shifted to other areas on traditional lands, within the current application area, such as Tibooburra, Nockatunga Station, Durham Downs and Naryilco. Significantly, large tracts of the area were owned up to 1934 by the Stanley Kidman Empire. The application states that it was **[Person 41 – name deleted]** practice to use the knowledge of Wongkumara people about landscape, water resources, ecology and climate and to

follow the routes taken by the the *Mura* in exchange for which it is asserted that Kidman in return for this knowledge employed a large number of Wongkumara stockmen. [Person 28] father was a stockman within the application area, and more recently, [Applicant 1] father and uncles, as well as [Person 9] himself all worked on stations in the application area.

[Person 28] family were unhappy at the forced removal to Brewarrina mission in 1938. Her sister and grand parents died there during the four-year period they were there. [Person 37] noted that [Person 36] 'objects to the idea of being brought from Tibooburra. Wants to go back and will soon be back there' etc (Attachment F1 folio 48). I am satisfied that the predecessors of the current native title claim group attempted to get back to their traditional lands and many succeeded, either by working as stockmen on properties within the application area or resettling like [Person 36], who resettled at White Cliffs, near Tibooburra.

I find that despite the removals, great efforts were made to return to their traditional lands; that if they did eventually live outside the application area, that they continued, particularly the men, to work on and move about the application area (such as at Nockatunga Station, Durham Downs and Naryilco); and that in the second half of the twentieth century the Wongkumara community in Bourke maintained the Wongkumara language and some cultural practices including regular trips to sites on country.

In my consideration of the requirements at subsection (a) above, I found a sufficient factual basis to support the assertion the native title claim group have, and their predecessors had, an association with the claim area. At (b) I found a sufficient factual basis to support the assertion that 'traditional' laws and customs were acknowledged and observed by the claim group and gave rise to the claim to native title rights and interests. I further find a sufficient factual basis to support the assertion that the native title claim group have continued to hold that native title in accordance with those traditional laws and customs.

The requirements of subsection 190B(5)(c) are met.

Further support for these conclusions is provided below at s. 190B(6).

Combined result for s. 190B(5)

The application **satisfies** the condition of s. 190B(5) because the factual basis provided is **sufficient** to support each of the particularised assertions in s. 190B(5), as set out in my reasons above.

Subsection 190B(6)

Prima facie case

The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.

Result

The application **satisfies** the condition of s. 190B(6). The claimed native title rights and interests are listed below and I consider whether each one is established, prima facie.

Reasons

Under this section of the Act I must be satisfied that at least one of the claimed native title rights and interests can be established prima facie in order for the application to be registered. The meaning of ‘prima facie’ is what the High Court held in *Waanyi People v Queensland* [1996] HCA 2; (1996) 185 CLR 595 which was the ordinary dictionary meaning of the phrase: ‘At first sight; on the face of it; as it appears at first sight without investigation’ — at [22].

His Honour Justice Mansfield stated in *Doepel* that:

s. 190B(6), together with ss. 190B(5) and (7) ‘clearly calls for consideration of material which may go beyond the terms of the application, and for that purpose information sources specified in s. 190A(3) may be relevant’ — at [16].

His Honour also expressly approved of comments by McHugh J in *Waanyi People* made at [638] to [641] as a guide for the meaning of ‘prima facie’ under s. 190B(6):

...if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis—at [135].

It is not for the Registrar to resolve disputed questions of fact or law (such as those about extinguishment and the applicability or otherwise of ss. 47, 47A or 47B) in considering whether a claimed right or interest is established prima facie under s. 190B(6). My role here is to decide on the rights and interests that can be registered against this application. The Federal Court determines if and where the native title rights and interests exist.

As noted at s. 190B(4) I must first decide if the claimed rights and interests are native title rights and interests under the definition in s. 223 of the Act.

It follows that if a claimed right or interest cannot be established prima facie as a *native title* right or interest, then it cannot be registered.

Regarding the difference between exclusive native title rights and interests and non-exclusive native title rights and interests, the courts have determined that where exclusive native title rights and rights cannot be demonstrated, the Registrar must have regard to the nature and extent of the particular non-exclusive rights and interests, as claimed in the application.

It follows that if a claimed right or interest cannot be prima facie established as a *native title* right or interest, then it cannot be registered.

1. Over areas where a claim to exclusive possession can be recognised (such as where there has been no prior extinguishment of native title or where s. 238, including where ss. 47, 47A or 47B apply), the Wongkumara People claim the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world, pursuant to the traditional laws and customs of the claim group.

Result: Established

Reason

The High Court in *Western Australia v Ward* (2002) FCA 191 (Ward) held that:

The expression ‘possession, occupation, use and enjoyment ... to the exclusion of all others’ is a composite expression directed to describing a particular measure of control over access to land. To break the expression into its constituent elements is apt to mislead—at [89].

However, it may be accepted that: ‘a core concept of traditional law and custom [is] the right to be asked permission and to “speak for country”’. It is the right under traditional law and custom to be asked permission and to “speak for country” that is expressed in common law terms as a right to possess, occupy, use and enjoy—at [88].

In *Griffiths v Northern Territory* [2007] FCAFC 178 (*Griffiths*) at [127] the Full Court of the Federal Court stated that:

[I]t 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 that flow from spiritual necessity because of harm that ‘the country’ will inflict upon unauthorised entry, that control can nevertheless support a characterisation of the native title rights and interest as exclusive—at [127].

At Schedule E the application claims exclusive native title rights and interests:

[o]ver areas such where such a claim can be recognised such as where there has been no prior extinguishment or where s. 238, including where ss. 476, 47A or 47B apply.

Having already been satisfied at s. 190B(5) that there is a factual basis for the existence of ‘traditional’ rights and interests demonstrated in the application, I can now consider the support for the claim to exclusive possession.

The application contains information supporting the right to control the access of others to the area and the right to speak for country in the long-form affidavits of two claimants. The affidavits are also supported by information at Schedule G.

[Applicant 1]

[Applicant 1] in his affidavit sworn on 11 March 2008 states, ‘We have always recognised that we lived in a form of exile from our traditional country but that our traditional country would always be ours and it was our responsibility to look after it and to speak for it’—at 51. And he states,

The traditional law and custom which I have been taught and to which I pass onto my children and my grandchildren and all other Wongkumara who wish to hear is that the Wongkumara People have a common spiritual affiliation to the sites of significance in the claim area such that the Wongkumara have a primary spiritual responsibility for those sites and for the claim area as a whole. That applies particularly to burial sites...which we must be ever vigilant of in our

monitoring of activities because repeatedly these sites have become exposed. Our people traditionally held secret, sacred information relating to those sites and the claim area as a whole and controlled access to the area by neighbouring groups. Today we still have knowledge because it has been passed on and we do all in our power to control access to sites. Even today other Aboriginal people who are mindful of Aboriginal law and custom will not go into our area without speaking to us—at [52].

[Person 14]

[Person 14] has been living on 'Wongkumara land' for about 41 years, has a permanent camp on Coopers Creek in the application area, and in his affidavit dated 11 March 2008 demonstrates a number of occasions where he has exercised his claim to exclusive possession.

About 10 or 12 years ago, a company put in a gas pipeline...Another Aboriginal man and ...I walked the proposed route of the [gas] pipeline... to ensure it did not go through Aboriginal sites. In several places it did and I relocated the route to ensure the sites were not disturbed. The company changed the route two more times and, each time, I walked the line again, those times with other Wangkumara people, to ensure the pipeline did not interfere with our sites—at [78]

Regarding his right to control the access of others he states:

In mid-2000 I came upon two Santos teams clearing new seismic lines, using bulldozers and graders. I inspected where they had been and saw they had been through sand hills, burial sites, fireplaces and areas containing artefacts. There were no Aboriginal monitors with them. I asked the land council, QSRBAC, to commence legal proceedings in my name on behalf of the Wangkumara people to stop Santos continuing their seismic work. I worked on the case along with other Wangkumara people: **[Group of persons 1 – names deleted]** It was a time of great concern for Wangkumara people. We were constantly discussing what had happened and exchanging views about what could be done to stop it. After some days in Court, Santos agreed to mediation. In the result, we negotiated an agreement that provides for Wangkumara people to be employed to monitor Santos seismic and other activities that might disturb our sites. Santos agreed not to disturb any more sandhills—at 80.

If I want to take a stranger out on to Wangkumara country, I always get permission from one or two of our elders. The ones I usually ring include **[Group of persons 2 – name deleted]**. I report back to other Wongkumara people if anything happens on, or needs to be discussed in relation to, our country. Over the past seven or eight years we have had 20 or more meetings to talk about how we are going to protect our country from damage by mining operations.

People come from Bourke, Dubbo, Mildura and other places to these meetings—at [86]–[88].

The current responsibility for country shown by the group is demonstrated at Schedule G 1(a) to (j) where, for example, negotiation and implementation of the Cultural Heritage Management Plans with Santos Ltd, Beach Petroleum P/L and Victoria Petroleum P/L. At point 2 in Schedule G it states:

Wongkumara People actively participate in and are consulted in relation to the identification, mapping and protection of places of significance and archaeological sites on their traditional land, for example participation in development projects to protect important places and archaeological sites, and negotiation and consultation with station owners including Durham Downs and Naryilco.

I am satisfied that in the areas where exclusive possession is capable of being claimed prima facie the information in the application and accompanying material establishes this right as a matter of Wongkumara traditional law and custom. For all of these reasons this right is able to be registered.

Non-exclusive rights and interests established

Reasons

2. Over areas where a claim to exclusive possession cannot be recognised the Wongkumara People claim the following rights and interests:

- a. the right to access the application area*
- b. the right to camp on the application area*
- c. the right to erect shelters on the application area*
- d. the right to live on the application area*
- e. the right to move about the application area*

Attachment F documents many instances of these rights being exercised by the native title claim group and its forebears both currently and traditionally. They derive from the traditional law and customs elucidated at s. 190B5(b), points (i) and (ii) on p. 34 of these reasons and are corroborated by factual information of early settlers and explorers provided at Attachment F1. Additionally, the affidavit of [Person 14] attests to the exercise of these rights insofar as he and his brothers (one of whom is named as an applicant) were raised in a humpy on the banks of the Paroo River together with other Wongkumara people.

- f. the right to hold meetings on the application area*
- g. the right to hunt on the application area*
- h. the right to fish on the application area*
- i. the right to use the natural waters resources of the application area including the beds and banks of watercourses*
- j. the right to gather the natural products of the application area including food, medicinal plants, timber, stone, ochre and resin according to traditional laws and customs*

[Person 9] states in his affidavit that:

Over the past seven or eight years we have had 20 or more meetings to talk about how we are going to protect our country from damage by mining operation. People come from Bourke, Dubbo, Mildura and other places to these meetings — at [88].

Although he does not stipulate where the meetings have been held I am prepared to infer that at least some of these meetings occur on the application area, and that during the meetings inspections are required to be made of the sites to be protected. For example, in relation clearing for seismic lines by Santos in mid-2000 [Person 9] notes that:

I worked on the case along with other Wangkumara people: [Group of persons 2] It was a time of great concern for Wangkumara people — at [80].

It is unlikely that the case could be worked on without a meeting being held on the country. This therefore, provides enough information to support the registration of the right described at (f).

The variety of the traditional diets of the members of the claim group, their forebears in the twentieth century (such as **[Person 28]**) and the customs recorded by early white explorers of the predecessors of members of the claim group in the nineteenth century attest to the claim to rights (g), (h) and (j). **[Person 9]** carries out hunting and fishing today with his family on the application area according to the teachings of his father (at 19 and 20), and:

When I am out on my country I catch and eat, for myself and my family, kangaroos and emus, yabbies and mussels, porcupine and ducks, rabbits, yellow belly, black brim and catfish, pigeon, bush turkey, wild pig. I collect and eat edible gums off trees, various native berries...at [73].

The specific substances or activities in (j) are all mentioned in the information before me at Attachment F including the affidavit of **[Person 9]** at 73. A wide variety of plant materials is mentioned in the **[Person 28]** history, dogwood (Kuriwarra) timber, leaves and resin ('syrup from gum trees') are mentioned by **[Applicant 1]**, stone is mentioned throughout the evidence supplied in Attachment F as used in cairns and sites of significance, dug out of quarries and used for tools, in accordance with traditional law and customs.

The rights described at (i) in Schedule E are supported in 66– 71 'Waterholes of the Cooper and Wilson River' of **[Person 9]** affidavit, where information pertains not only to the use of the water but to waterholes located in the application area as centres of other activities, for example:

My father took me and showed me many of these water holes, including all the permanent ones. He told me their Aboriginal names....My father was born on Nockunoora waterhole; his brother, **[Person 33]**, was born on Tull Wulli; **[Person 42 – name deleted]** on Pikaninii waterhole.

My father told me that the Wongkumara people lived on these waterholes, hunting, fishing and gathering food in and around them, using the trees to make shelters for their camps as well as for tools and weapons and carry baskets. He grew up on these waterholes. He told me that about how old Wongkumara people used to tell him about their ancestors, how they lived and hunted along the waterholes, going back generations. He said his great grandmother was still alive when he was a boy, and that she talked to him about living on the waterholes and about her great grandmother having lived on them.

All around the waterholes there are stone artefacts, grinding dishes, stone axes, scarred trees, middens, fireplaces and, in the sandhills behind them, human bones. My father said this is where most of our people died and are buried – at [70].

Finally, the spiritual association he attests to in the section 'Water Snake' asserts that water courses, their beds and banks were created by a mythical being and are to be used in accordance with the established rules of that being:

My father, another old Wongkumara man—**[Person 43 – name deleted]**, and my brother **[Person 34]**, have all told me about the Water Snake. It made the lakes and watercourses on Wongkumara country, including Lake Yamma Yamma, Coopers Creek and all the channels...the snake had young ones and they went out and made smaller channels and creeks...

Today, that snake lives in Yulibardti waterhole on Tanbar Station. It has pulled horses and cattle into that waterhole; old **[Person 44 – name deleted]**, an Aboriginal man, told me that. He'd never rife a horse into that waterhole, nor would I. Dad and I went on a droving trip with

[Person 44] from Mt Leonard Station to Quilpie. That's when he told me about the snake in that waterhole. I asked Dad about what he told me, and he said it was right—at [64]–[65].

l. the right to participate in cultural activities on the application area

m the right to maintain places of importance under traditional laws, customs and practices in the application area

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

Although the application does not exactly explain what a cultural activity is, I take the right at (l) to mean the passing on of and participation in, traditional law and custom relating to the application area. Information supporting this right is provided at F5 in the affidavit of [Person 9] at 56, 83, 84 and 85 and the commitment to the preservation of the Wongkumara culture, stories and language is shown in the affidavit of [Applicant 1]. The rights at (m) and (n) are well documented (see these reasons at p. 39 above) and are shown to have been defended by [Person 9] together with other named members of the claim group at 80 to 84 of his affidavit, quoted above. Information is also contained in that affidavit at paragraph 27 where the deponent's father also defended a site of significance according to his law and custom and handed down this responsibility to his son.

That protection of a place of importance can be a non-exclusive native title right was confirmed in *Western Australia v Ward* (2000) 99 FCR 316, where the Full Federal Court said:

The notion of protection of significant Aboriginal sites is well understood. It may involve physical activities on the site to prevent its destruction... we do not think the words would be read as implying a general control of access—at [25].

Non-exclusive rights not established

k. the right to conduct ceremony on the application area

o. the right to conduct burials on the application area

q. the right to cultivate and harvest native flora according to traditional laws and customs the application area

Reasons

In relation to the right claimed at (k) there is no information before me that would enable me to decide that ceremonies are currently conducted on country by the Wongkumara society, although the existence of corroboree grounds are discussed in Attachment F3 at folio 94.

Regarding the right at (o), I find that although there are graves and assertions that the ancestors of the members of the claim group are buried on the application area, and those burial sites are protected, there is no information before me to support that traditional burials are currently carried out by the claim group on the application area.

The right at (q) is expressed in such a way as to prevent its registration. Cultivation of the native flora is not well established by the materials, although information at Attachment F3, folio 85 asserts that cultivation by spreading of seed in an area in order to harvest it the following season was practised. However, for this right to be registered, there needs to be information provided about that activity as it is done currently. I am unable to separate the harvesting of plants from the

cultivation of them for the purposes of this registration test; therefore the whole of the right at (q) cannot be registered.

I note that the provisions of s. 190(3A) of the Act are available to the applicant if there is further information which would support a decision under that section to include these rights on the Register.

*p the right to speak for and make non-exclusive decisions about the application area
r the right to control access to, and use of, the area by those Aboriginal people who seek access or use in accordance with traditional law and custom*

As discussed at p. 39 above under the claim to exclusive possession, the right the right to speak for, and control access to, country may not be recognised as non-exclusive rights. This was confirmed in *Northern Territory v Alyawarr* [2005] FCAFC135 at [148] to [151] by reference to the High Court's judgment in *Ward*, where for example:

... their Honours said at [52] that without a right, as against the whole world, to possess the land 'it may greatly be doubted that there is any right to control access to the land or make binding decisions about the use to which it is put'. Having regard to what was said in the High Court it seems that the right to control access cannot be sustained where there is no right to exclusive occupation against the whole world. The underlying rationale for that conclusion is that particular native title rights and interests cannot survive partial extinguishment in a qualified form different from the particular native title right or interest that existed at sovereignty—at [148].

I therefore do not consider that these rights can be established, *prima facie*, as non-exclusive.

Subsection 190B(7)

Traditional physical connection

The Registrar must be satisfied that at least one member of the native title claim group:

- (a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application, or
- (b) previously had and would reasonably be expected to currently have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to the land or waters) by:
 - i. the Crown in any capacity, or
 - ii. a statutory authority of the Crown in any capacity, or
 - iii. any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease.

Result

The application **satisfies** the condition of s. 190B(7).

Reasons

This condition requires that I 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 application area. In *Yorta Yorta* the High Court provided a clear interpretation of the term 'traditional': see

190B(5) above. This approach is consistent with the reasoning of Dowsett J in *Gudjala*, where his Honour stated:

The Delegate considered that the reference to '*traditional physical connection*' should be taken as denoting, by use of the word "traditional", that the relevant connection was in accordance with laws and customs of the group having their origin in pre-contact society. This seems to be consistent with the approach taken in *Yorta Yorta* — at [89].

The State of New South Wales, while conceding that the affidavit of **[Person 9]** 'would suggest that there is, on his part, a traditional connection to the land covered by the application' submitted that this material is not sufficient to meet the requirements of this section of the Act. In response to the State's submission the applicant wrote:

...But the Director General seems to have introduced a new test (not justified by the words of s. 190B(7), when it stated that "it is not clear whether the 'Wongkumara People' as a claim group carry out these activities on the land subject to the claim".

I agree with the applicant's submission on this point.

On 19 March the applicant's representative submitted, amongst other things, a 'Statement as to Traditional Connection', summarising the life experience and continuing association **[Person 9]** has with the application area and reiterating the relevance of the affidavit material. The State was given copies of this statement.

I am satisfied that the affidavit and statement **[Person 9]** clearly establish that he has maintained a continuing traditional physical connection with the application area.

Subsection 190B(8)

No failure to comply with s. 61A

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s.61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.

Delegate's comments

Section 61A contains four subsections. The first of these, s. 61A(1), stands alone. However, ss. 61A(2) and (3) are each limited by the application of s. 61(4). Therefore, I consider s 61A(1) first, then s. 61A(2) together with (4), and then s. 61A(3) also together with s. 61A(4). I come to a combined result at page 47.

No approved determination of native title: s. 61A(1)

A native title determination application must not be made in relation to an area for which there is an approved determination of native title.

Result

The application **meets** the requirement under s. 61A(1).

I refer to my reasons under s. 190C(2) regarding the information required to be included in the affidavits of the persons comprising the applicants under s. 62(1)(a). I have searched the National Native Title Register and no determinations fall within the external boundary of this application. This is confirmed by the geospatial report of 11 April 2008.

No previous exclusive possession acts (PEPAs): ss. 61A(2) and (4)

Under s. 61A(2), the application must not cover any area in relation to which

- (a) a previous exclusive possession act (see s. 23B) was done, and
- (b) either:
 - (i) the act was an act attributable to the Commonwealth, or
 - (ii) the act was attributable to a state or territory and a law of the state or territory has made provisions as mentioned in s. 23E in relation to the act.

Under s. 61A(4), s. 61A(2) does not apply if:

- (a) the only previous exclusive possession act was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made, and
- (b) the application states that ss. 47, 47A or 47B, as the case may be, applies to it.

Result

The application **meets** the requirement under s. 61A(2), as limited by s. 61A(4).

Reasons

Schedule B of the application excludes from the application area any area covered by previous exclusive possession acts as defined in s. 23B. Also at Schedule B the application does not exclude areas where ss. 47, 47A and 47B apply.

Exclusive possession is also not claimed in relation to areas which have been covered by:

- A Scheduled interest
- A freehold estate
- A commercial lease that is neither an agricultural lease nor a pastoral lease
- An exclusive agricultural lease or an exclusive pastoral lease
- A residential lease
- A community purpose lease
- A lease dissected from a mining lease and referred to in s. 23B(2) (c)(vii) of the *Native Title Act 1993* (Cth)
- Any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters.

No exclusive native title claimed where previous non-exclusive possession acts (PNEPAs): ss. 61A(3) and (4)

Under s. 61A(3), the 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) a previous non-exclusive possession act (see s. 23F) was done, and
- (b) either:

- (iii) the act was an act attributable to the Commonwealth, or
- (iv) the act was attributable to a state or territory and a law of the state or territory has made provisions as mentioned in s. 23I in relation to the act.

Under s. 61A(4), s. 61A(3) does not apply if:

- (a) the only previous non-exclusive possession act was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made, and
- (b) the application states that ss. 47, 47A or 47, as the case may be, applies to it.

Result

The application **meets** the requirement under s. 61A(3), as limited by s. 61A(4).

Reasons

Schedule B, point 3 states that exclusive possession is not claimed over areas over which valid to previous non-exclusive possession acts have been done by the Commonwealth or the State of Queensland, except as qualified under the ensuing points 4 and 5 regarding the provisions of ss. 23 and 47.

Combined result for s. 190B(8)

The application **satisfies** the condition of s. 190B(8), because it **meets** the requirements of s. 61A, as set out in the reasons above.

Subsection 190B(9)

No extinguishment etc. of claimed native title

The application and accompanying documents must not disclose, and the Registrar/delegate must not otherwise be aware, that:

- (a) a claim is being made to the ownership of minerals, petroleum or gas wholly owned by the Crown in the right of the Commonwealth, a state or territory, or
- (b) the native title rights and interests claimed purport to exclude all other rights and interests in relation to offshore waters in the whole or part of any offshore place covered by the application, or
- (c) in any case, the native title rights and interests claimed have otherwise been extinguished, except to the extent that the extinguishment is required to be disregarded under ss. 47, 47A or 47B.

Result re s. 190B(9)(a)

The application **satisfies** the subcondition of s. 190B(9)(a).

Reasons re s. 190B(9)(a)

At Schedule Q of the application it is stated that the native title claim group 'does not claim ownership of minerals, petroleum or gas where they are wholly owned by the Crown'.

Result re s. 190B(9)(b)

The application **satisfies** the subcondition of s. 190B(9)(b).

Reasons re s. 190B(9)(b)

The application area does not include any offshore waters or place.

Result re s. 190B(9)(c)

The application **satisfies** the subcondition of s. 190B(9)(c).

Reasons re s. 190B(9)(c)

Nowhere in the application or in the accompanying documents is it disclosed that the native title rights and interests claimed have otherwise been extinguished, except to the extent that the extinguishment is required to be disregarded under ss. 47, 47A or 47B.

Combined result for s. 190B(9)

The application **satisfies** the condition of s. 190B(9), because it **meets** all of the three subconditions, as set out in the reasons above.

[End of reasons]

Attachment A

Summary of registration test result

Application name	Wongkumara People
NNTT file no.	QC 08/3
Federal Court of Australia file no.	QUD 52/08
Date of registration test decision	12 April 2008

Test condition (see ss.190B and C of the Native Title Act 1993)	Subcondition/requirement	Result
s. 190C(2)		Combined result: met
	re s. 61(1)	met
	re s. 61(3)	met
	re s. 61(4)	met
	re s. 61(5)	met
	re s. 62(1)(a)	met
	re s. 62(1)(b)	met
	re s. 62(2)(a)	met
	re s. 62(2)(b)	met
	re s. 62(2)(c)	met
	re s. 62(2)(d)	met
	re s. 62(2)(e)	met
	re s. 62(2)(f)	met

	re s. 62(2)(g)	met
	re s. 62(2)(ga)	met
	re s. 62(2)(h)	met
s. 190C(3)		met
s. 190C(4)		met
s. 190B(2)		met
s. 190B(3)		met
s. 190B(4)		met
s. 190B(5)		Combined result: met
	re s. 190B(5)(a)	met
	re s. 190B(5)(b)	met
	re s. 190B(5)(c)	met
s. 190B(6)		met
s. 190B(7)		met
s. 190B(8)		Combined result: met
	re s. 61A(1)	met
	re ss. 61A(2) and (4)	met
	re ss. 61A(3) and (4)	met
s. 190B(9)		Combined result: met
	re s. 190B(9)(a)	met
	re s. 190B(9)(b)	met
	re s. 190B(9)(c)	met

Attachment B

Documents and information considered

The following lists **all** documents and other information that were considered by the delegate in coming to his/her decision about whether or not to accept the application for registration:

- Excerpt from Attachment A and affidavit of **[Person 10]** in registration test file for QC06/15—Boonthamurra People—QUD435/06;
- all documents in the National Native Title Tribunal's registration test file for this application, including QC08/3—Wongkumara—QUD 52/08 native title determination application;
- submissions from the State of Queensland and the State of New South Wales received by the Registrar's delegate on 10 April 2008 regarding additional material provided by the applicant;
- responses by the applicant to submissions made on 10 April 2008 and received by the Registrar's delegate on that day;
- GeoTrack 2008/0479 dated 8 April 2008 in which was stated: 'Numerous coordinate points were omitted from the description and reference was made to "the western edge of the Cooper Creek Channel country at Longitude 141.831908°E, Latitude 25.936379°S". This coordinate point was not in the vicinity of the application boundary as shown on the map.'
- GeoTrack 2008/0655 dated 11 April 2008 which assessed the revised description contained in the amended Attachment B as consistent and describing the application area with reasonable certainty;
- uplifted Attachment B and a copy of the amended Notice of Motion signed by **[Solicitor 1]** on 10 April 2008 and accepted by the Court on 12 April 2008;
- the National Native Title Tribunal Geospatial (GIRO) database;
- the Tribunal's Geospatial Services assessment and overlap analysis dated 11 April 2008;
- the Register of Native Title Claims;
- the Schedule of Native Title Applications; and
- the National Native Title Register.

[End of document]