

National Native Title Tribunal

DELEGATE DECISION

DELEGATE	Simon Nish
CASE MANAGER	Tony Shelley
DATE	31 January 2000

Application Name	Arakwal #2
Name(s) of Applicant(s)	Lorna Kelly, Linda Vidler
Region: NSW	NNTT No: NC97/36
Date Application Made: 12 December 1997	Fed Court No: NG6040/98

The Delegate has considered the application against the conditions of the registration test contained in s190C(2) and s190C(4) of the *Native Title Act 1993*. The following material sets out the reasons for the decision.

Information Relevant to the Decision

The delegate has considered all information and documents in the working and registration test files for this application (NC97/36).

The Tribunal wrote to the applicant on 1 October 1998 to advise that the Registrar would be considering the application for the registration test. On 22 December 1998 the applicants requested an extension of time in which to provide additional information to the Registrar. On 22 December 1998 the applicants were granted an extension to provide such additional information until 29 January 1999.

The Tribunal further wrote to the applicant and the applicant's representative on 4 May 1999, forwarding a submission made by the State of New South Wales, and advising them of their right to respond. The new date by which any response was to be received was 28 May 1999.

The Tribunal forwarded additional adverse information to the applicants by letter dated 3 November 1999, and informed the applicants of their right to make a response. The Tribunal wrote to the applicants on 9 November 1999 and advised that the registration test would be applied to this application at the end of November 1999.

On 15 December 1999 the case manager for this application had a discussion with the applicant's representative at the Federal Court Sydney Registry, and advised that if the applicants took no action to amend the application, the abbreviated registration test would have to be applied. Counsel for the applicants, Mr Adam McLean, advised the case manager that the applicants did not intend to amend this application and that they consented to the application being subject to the registration test as soon as possible.

Reasons for Decision

1. The application has not been amended, nor has additional information been provided, nor things done, in order that it might satisfy the provisions of the amended Native Title Act 1993 relating to registration.
2. There has been generally no attempt to satisfy the formal and procedural conditions as set out in 190C(2), 190C(4) and 190C(5).
3. In particular, the applicant has not provided affidavits (as specified in 62(1)(a)) and as required for the satisfaction of 190C(2). I do not accept that the affidavit lodged with the original application satisfies the full substantive requirements of s62(1)(a)(i) to s62(1)(a)(v).
4. Further, the applicant has not provided evidence that the application has been certified by each representative Aboriginal /Torres Strait Islander body that could certify the application (as set out in 190C(4)(a)). In the alternative, the applicant has not provided evidence that the applicant is a member of the native title claim group and is authorised to make the application and to deal with matters arising in relation to it, by all the other persons in the native title claim group (that is, to satisfy the requirements as set out in 190C(4)(a) and 190C(4)(b)).
5. Finally, the applicant has not supplied a statement to the effect that the requirement set out in paragraph 190C(4)(b) has been met, and that sets out the grounds on which the Delegate should consider that it has been met. For this reason I am not satisfied that the conditions in subsection 190C(4) is met.
6. Given the failure in respect to 190C(2) and 190C(4) I have not considered it necessary to apply the test in respect to the merits questions in 190B.

DECISION

The application IS NOT ACCEPTED for registration pursuant to s190A of the *Native Title Act 1993*

Written notice of the decision and the reasons for the decision, are to be provided to the applicant and to the Federal Court, in accordance with s190D of the *Native Title Act*.

Simon Nish

Date