

National Native Title Tribunal

REGISTRATION TEST
REASONS FOR DECISION
(EDITED)

DELEGATE: Deanna Cartledge

Application Name	Quandamooka		
Names of Applicants	Dale Ruska, Ian Delaney		
Region	SE QLD	NNTT No	QC95/2
Date Application Made	3 January 1995	Fed Court No	QG6010/98

DECISION –Quandamooka QC95/2

The delegate has considered the application against each of the conditions contained in s190B and 190C of the *Native Title Act 1993*.

DECISION

The application IS ACCEPTED for registration pursuant to s190A of the *Native Title Act 1993*.

.....
Deanna Cartledge

Date of Decision

Delegate of the Registrar pursuant to
sections.190, 190A, 190B, 190C, 190D

Brief History of the Application

This application was lodged in the National Native Title Tribunal on 3 January 1995 and registered on 8 September 1995. The public notification period ended on 18 December 1995. Mediation is continuing.

An amended application was filed in the Federal Court on 26 November 1999 and provided to the Registrar under s.63 of the Native Title Act (NTA) on 29 November 1999. An amended application for the second Quandamooka application QC99/25 (Q6024/99) was filed in the Federal Court and provided to the Registrar on the same dates.

Unless otherwise indicated reference to ‘the application’ in these reasons for decision refers to the amended application.

Information considered when making the Decision

In determining this application I have considered and reviewed all of the information and documents from the following files, databases and other sources:

- ◆ The working files for application QC95/2
- ◆ The Registration Test File, Legal Services Files and Federal Court Application Files for application QC99/25.
- ◆ Other tenure information acquired by the Tribunal in relation to the area covered by this application;
- ◆ The National Native Title Tribunal Geospatial Database;
- ◆ The Register of Native Title Claims and Schedule of Native Title Applications;
- ◆ The Native Title Register;
- ◆ Determination of Representative ATSI Bodies: their gazetted boundaries.

Note: Information and materials provided in the context of mediation have not been considered in making this decision due to the without prejudice nature of those conferences and the public interest in maintaining the inherently confidential nature of such conferences.

A. Procedural Conditions

190C2

Information, etc, required by section 61 and section 62:

The Registrar 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.

Details required in section 61

61(3) Name and address for service of applicants

Reasons relating to this sub-condition

The names of the two applicants and their address for service are detailed at Part B of the application.

Result: Requirements met

61(4) Names persons in native title claim group or otherwise describes the persons so that it can be ascertained whether any particular person is one of those persons

Reasons relating to this sub-condition

Schedule A of the application describes the native title claim group. For the reasons which led to my conclusion (below), that the requirements for s.190B(3) have been met I am satisfied that 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.

Result: Requirements met

61(5) Application is in the prescribed form, lodged in the Federal Court, contains prescribed information, and is accompanied by prescribed documents and fee

Reasons relating to this sub-condition

The application is in the form prescribed by Regulation 5(1)(a) of the *Native Title (Federal Court) Regulations* 1998. The application was filed in the Federal Court as required pursuant to s.61(5)(b) of the Act.

The application meets the requirements of s.61(5)(c) and contains all information prescribed in s.62. I refer to my reasons in relation to those sections. As required by s.61(5)(d) the application is accompanied by an affidavit affirmed by each applicant, as prescribed by s.62(1)(a), and maps as prescribed by s.62(2)(b). I refer to my reasons in relation to those sections of the Act.

I note that s.190C2 only requires me to consider details, other information and documents required by sections 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. For the reasons outlined above, it is my view that the requirements of s.61(5) have been met.

Result: Requirements met

Details required in section 62(1)

62(1)(a) Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)

Reasons relating to this sub-condition

Each applicant has provided an affidavit, paragraph 6 of which sets out the basis upon which the applicant is authorised. Paragraphs 8, 9, 3 and 5 address the matters required by s.62(1)(a) (i) to (iv) respectively. Each applicant's affidavit was affirmed on 25 November 1999. I am satisfied that the affidavits satisfactorily address the matters required by s.62(1)(a)(i)-(v).

Result: Requirements met

62(1)(c) Details of physical connection (information not mandatory)

The application contains some details relating to 'traditional physical connection' at Schedule G.

Result: Provided

Details required in section 62(2) by section 62(1)(b)

62(2)(a)(i) Information identifying the boundaries of the area covered

Reasons relating to this sub-condition

For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the information and maps provided by the applicants is sufficient to enable the area covered by the application to be identified with reasonable certainty.

Result: Requirements met

62(2)(a)(ii) Information identifying any areas within those boundaries which are not covered

Reasons relating to this sub-condition

For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the information contained in the application and provided by the applicants is sufficient to enable any areas within the external boundaries of the claim area which are not covered by the application to be identified.

Result: Requirements met

62(2)(b) A map showing the external boundaries of the area covered by the application

Reasons relating to this sub-condition.

For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the maps provided by the applicants sufficiently identify the boundaries of the claim area.

Result: Requirements met

62(2)(c) Details/results of searches carried out to determine the existence of any non-native title rights and interests

Reasons relating to this sub-condition

The requirements of s.62(2)(c) can be read widely to include all searches conducted by any person or body. However, I am of the view that I need only be informed of searches conducted by the applicants in order to be satisfied that the application complies with this condition. It would be unreasonably onerous to expect the applicants to have knowledge of, and obtain details about all searches carried out by every other person or body. The applicants themselves have not conducted any tenure searches. However at Schedule D

of the application the applicants set out information provided by the Queensland State Government in regard to non-native title interests relating to the land and waters in the application area.

Result: Requirements met

62(2)(d) Description of native title rights and interests claimed

Reasons relating to this sub-condition

An adequate description of the native title rights and interests claimed by the applicants is contained in Schedule E of the application. The description is more than simply a statement that the native title rights and interests are all native title rights and interests that may exist, or that have been extinguished at law. I have outlined these rights and interests in my reasons for decision in respect of s.190B(4).

Result: Requirements met

62(2)(e)(i) Factual basis – claim group has, and their predecessors had, and association with the area

Reasons relating to this sub-condition

This information is contained at Schedule F of the application and in the affidavit of [name deleted] sworn on 10 September 1999 and filed in matter Q6024/99 (QC99/25 Quandamooka application #2). The applicants state at Schedule F that this affidavit is, among other things, the factual basis on which it is asserted that the native title claim group has and the predecessors of those persons had, an association with the claim area.

For the reasons which led to my conclusion that the requirements of s.190B(5)(a) have been met, I am satisfied that there is sufficient factual basis to support the assertion that the native title claim group has, and the predecessors of those persons had, an association with the area.

Result: Requirements met

62(2)(e)(ii) Factual basis – traditional laws and customs exist that give rise to the claimed native title

Reasons relating to this sub-condition

This information is contained at Schedule F of the application and in the affidavit of [name deleted] sworn on 10 September 1999 and filed in matter Q6024/99 (QC99/25 Quandamooka application #2). The applicants state at Schedule F that this affidavit is, among other things, the factual basis on which it is asserted that there exist traditional laws and customs that give rise to the claimed native title.

For the reasons which led to my conclusion that the requirements of s.190B(5)(b) have been met, I am satisfied that there is sufficient factual basis 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 native title rights and interests claimed.

Result: Requirements met

62(2)(e)(iii) Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs

Reasons relating to this sub-condition

This information is contained at Schedule F of the application and in the affidavit of [name deleted] sworn on 10 September 1999 and filed in matter Q6024/99 (QC99/25 Quandamooka application #2).

The applicants state at Schedule F that this affidavit is, among other things, the factual basis on which it is asserted that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

For the reasons which led to my conclusion that the requirements of s.190B(5)(c) have been met, I am satisfied that there is sufficient factual basis to support the assertion that the native title claim group has continued to hold the native title in accordance with their traditional laws and customs.

Result: Requirements met

62(2)(f) If native title claim group currently carry on any activities in relation to the area claimed, details of those activities

Reasons relating to this sub-condition

The application provides details of the activities which the native title claim group carries out in relation to the area claimed at Schedule G of the application. It is my view that this description of activities is sufficient to comply with the requirements of s.62(2)(f).

Result: Requirements met

62(2)(g) Details of any other applications to the High Court, Federal Court or a recognised State/Territory body the applicant is aware of (and where the application seeks a determination of native title or compensation)

Reasons relating to this sub-condition

Schedule H of the application states that the applicant is not aware of any application made to the High Court, Federal Court or a recognised State body in relation to the application area.

Note: the applicants state in Schedule H of the amended application for the second Quandamooka application QC99/25 that apart from a number of areas not included in the 'original' application QC95/2 (the current application) (listed by Lot on Plan number in paragraph 2), all areas in the second application were formerly included in the original application, but were withdrawn from the application on 21 September 1995, prior to acceptance of the original application by the Tribunal. A search of the Tribunal's geospatial data also reveals that there is no recorded overlapping application.

Result: Requirements met

62(2)(h) Details of any S29 Notices (or notices given under a corresponding State/Territory law) in relation to the area, and the applicant is aware of

Reasons relating to this sub-condition

At Schedule I of the application the applicants state that they are not aware of any notice under Section 29 of the *Native Title Act 1993* (or equivalent State provision) that has been given in relation to any part of the application area.

Result: Requirements met

Reasons for the Decision

For the reasons identified above the application contains all details and other information, and is accompanied by the affidavits and other documents, required by ss.61 and 62. I am satisfied that the application meets the requirements of this condition.

Aggregate Result: Requirements met

190C3

Common claimants in overlapping claims:

The Registrar 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) an entry relating to the claim in 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 consideration of the previous application under section 190A.**

Reasons for the Decision

A search of the Schedule of Native Title Applications and Register of Native Title Claims on 13 January 2000, revealed that there is no overlapping application covering the whole or part of the area covered by the application.

The applicants state at Schedule H of the second Quandamooka application (QC99/25) that certain areas not included in the first Quandamooka application (the current application) (listed at paragraph 2 of Schedule H) are included in the second Quandamooka application. All other areas included in the second application were formerly included in the first Quandamooka application but were withdrawn from the application on 21 September 1995, prior to acceptance of the application by the National Native Title Tribunal.

Three lots, 1 USL 32114, 1 USL 32128 and 2 USL 32113, are included in both applications. However it is noted in Schedule B of the current application that these areas only extend to portions not formerly covered by Mt Scott Pastoral Holding No 2721. The balance of these lots, formerly covered by Mt Scott Pastoral Holding, are included in the second Quandamooka application.

Following the decision made by French J in *Strickland v Native Title Registrar* on 4 November 1999, the earliest date old Act applications could be said to be 'made' to the Federal Court was 30 September 1998. The relevant date for the current application is therefore 30 September 1998. When the current application was made, there was no other application covering the whole or part of the area covered by the current application which had been entered on the Register of Native Title Claims under s.190A.

The applicants state at Schedule H of the application that they are not aware of any other application that has been made to the High Court, Federal Court or a recognised State body in relation to the application area.

Accordingly, the application does not offend the provisions of s.190C(3).

Result: Requirements met

190C4(a) or 190C4(b)

Certification and authorisation:

The Registrar must be satisfied that either of the following is the case:

(a) the application has been certified under paragraph 202(4)(d) by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; 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.

Note: s.190C(5) – Evidence of authorisation:

If the application has not been certified as mentioned in paragraph 4(a), the Registrar cannot be satisfied that the condition in subsection (4) has been satisfied unless the application:

(a) includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met; and

(b) briefly set out the grounds on which the Registrar should consider that it has been met.

Reasons for the Decision

The application has not been certified by the relevant Representative Body (FAIRA Aboriginal Corporation). The application therefore does not meet the requirements of s.190C4(a).

Under this section, I am only required to be satisfied that one of these conditions is met. I have therefore limited my consideration to compliance with s.190C(4)(b) – authorisation by the native title claim group.

The application provides information about the authorisation of the applicant to make the application. The affidavits of the applicants under Section 62 of the Act dated 25 November 1999 and attached to the application are virtually identical. Each applicant states that he is an applicant in the current application and is authorised to make the amended application by all the persons in the native title claim group and to deal with matters arising in relation to it.

The application sets out the grounds on which the Registrar should consider that the requirements of s.190C4(b) have been met in paragraph 6 of the applicants' affidavits. They state that the basis on which they are authorised to make the amended application is the unanimous resolution of a meeting of the native title claim group convened by the Quandamooka Land Council on 13 November 1999 that 'the Quandamooka native title claim group authorise [name deleted] and [name deleted] to be the applicants of and to deal with the first and second Quandamooka community native title applications" A copy of the resolution is attached and marked DAER 1.

NB no attendance list for meeting provided

Result requirements met

B. Merits Conditions

190B2

Description of the areas claimed:

The Registrar must be satisfied that the information and map contained in the application as required by paragraphs 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.

Reasons for the Decision

Map and external boundaries

The claim area consists of 83 parcels of land (reserves and State land) on Stradbroke Island in south-east Queensland. The land parcels are listed by lot and plan number at Schedule B and Schedule 1 of Schedule J of the application. These references identify the areas clearly according to the Queensland State Government's land tenure record system.

Note: A number of lots were intended to be included in this application, (QC95/2), but for reasons unknown to QLC were not included. A number of other lots were formerly included in this application, but were withdrawn from the application on 21 September 1995, prior to acceptance by the National Native Title Tribunal. These lots are included in the second Quandamooka application (QC99/25).

Only parts of Lots 1 USL 32114, 1 USL32128 and 2 USL332113 are included in this application, being portions not formerly covered by Mt Scott Pastoral Holding No 2721. The remaining portions of these lots are included in the second Quandamooka application QC99/25, being portions formerly covered by Mt Scott Pastoral Holding.

Schedule C of the application provides individual maps of each of the lots included in the application. These are Blinmaps prepared by the Department of Natural Resources. The maps show a scale which allows distances and areas to be ascertained and map window position indicating co-ordinates. They are part of a public record system upon which members of the community might reasonably rely to deal with land use issues.

Given that the maps the applicants have relied upon are the same maps that the State of Queensland relies upon in its land tenure administration, I am satisfied that the maps submitted with the application meet the requirements of s. 62 (2)(b) as the boundaries of the areas covered by the application can be identified.

Written description

In addition to providing maps defining the external boundaries of the claim at Schedule C of the application, the applicants have provided a general written description of the external boundary by reference to the specific parcels of land subject to the claim. This is at Schedules B and I of the application.

I am required to be satisfied that this description enables the external boundaries of the application to be identified. This may simply be done by reference to the specific Lot references which are identified.

I am satisfied that the physical description of the external boundaries meets the requirements of s62 (2)(a)(i).

Internal Boundaries

At Schedule B of the amended application, the applicants have provided information identifying the internal boundaries of the claimed area by way of a formula that excludes a variety of tenure classes from the claim area.

Areas that are excluded from the claim area:

On the assumption that any such area exists, the application does not cover any area for which native title has been extinguished as a matter of law, including any area for which native title has been extinguished by any previous exclusive possession act (apart from those areas for which sections 47 to 47B of the Native Title Act apply).

On the assumption that any previous non-exclusive possession act was done in relation to an area, the native title rights and interests claimed in the application do not confer possession, occupation, use and enjoyment of that area to the exclusion of all others (apart from those areas for which sections 47 to 47B of the Native Title Act apply).

To the extent possible, the validity or otherwise of any relevant extinguishing acts, including any previous exclusive possession act or previous non-exclusive possession act, on the assumption that any exist, will be agreed between the parties at a date to be fixed by consent.

In my view the exclusion clauses at Schedule B of the application would effectively exclude or qualify the rights asserted over any parts of the lots which may have been subject to any scheduled tenures or other extinguishing acts or events should these circumstances be identified in future reviews of the tenure material.

Refer also to my reasons under s.190B8.

I am satisfied that the information and the maps contained in the application as required by paragraphs 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights or interests are claimed in relation to particular areas of land or waters. The requirements of s.190B2 are met.

The applicants seek the protection of ss.47, 47A and 47B at Schedule B of the application. Further details are provided at Schedule L. At Paragraph c of Schedule L they state that the following areas of vacant crown land (unallocated state land) are occupied within the meaning of s.47B of the *Native Title Act 1993*, and provide a list of the areas by Lot on Plan number. At paragraph d of Schedule L the applicants state that on the assumption that there are areas within the application area mentioned in paragraph c over which the extinguishment of native title is required by section 47, 47A or 47B of the Act to be disregarded, which the native title claim group do not accept as a correct assumption, then the native title claim group relies upon those sections of the Act for those purposes. Whether the applicants may have benefit of these provisions is a matter to be determined in another forum.

Conclusion

For the reasons given above, I am satisfied that the information and maps contained in the application as required by paragraphs 62(2)(a) and (b) is sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

Result: Requirements met

190B3

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.**

Reasons for the Decision

To meet this condition, the description of the claim group must be sufficiently clear so that it can be said with reasonable certainty whether any particular person is a member of the native title claim group.

An exhaustive list of names of persons in the claim group is not provided in the application. The requirements of s.190B3(a) of the Act are therefore, not met.

Alternatively, s.190B(3)(b) requires the Registrar to be satisfied that 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.

The claim group is described in Schedule A of the application as comprising eleven named descent groups. These are: Brown; Bulsey; Costelloe; Dalton/Dillon; Gonzales; Martin; Moreton; Newfong; Nuggin; Queary; and Rollands. The members of each of the descent groups are identified as the descendants of a named apical ancestor.

Whether a person is a descendant of one of the named apical ancestors, and therefore a member of one of the named descent groups could, with minimal inquiry, be ascertained.

At paragraph 4 of the affidavit of [name deleted] dated 10 September 1999 and lodged with the second Quandamooka application (QC99/25) he states that the native title claim group includes any Aboriginal person raised as the child of a descendant and recognised and regarded by the Quandamooka community, in accordance with its traditional laws and customs, as the child of that descendant. I am satisfied that such persons could be identified with minimal inquiry.

For the above reasons I am satisfied that the application names or otherwise describes the persons in the native title group so that it can be ascertained whether any particular person is in that group.

Result: Requirements met

190B4

Identification of the native title rights and interests:

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

Reasons for the Decision

This condition requires me to be satisfied that the native title rights and interests claimed can be readily identified. It is insufficient to merely state that these native title rights and interests are 'all native title interests that may exist, or that have not been extinguished at law'. To meet the requirements of s190B (4), I need only be satisfied that at least one of the rights and interests sought is sufficiently described for it to be readily identified.

Schedule E of the amended application lists the native title rights and interests claimed by the applicants. These are described as the rights and interests of the native title claim group to possess, occupy, use and enjoy the determination area, to the exclusion of all others, under their traditional laws acknowledged and customs observed.

The broad rights and interests are subdivided into six specific rights and interests. These are the right to:

1. Conserve and safeguard the application area and its natural resources for the benefit of the native title claim group;
2. Maintain and manage the application area for the benefit of the native title claim group;
3. Use and enjoy the application area, including to live on and build structures on the application area
4. Take, use, keep or interfere with the resources of the application area
5. Exercise cultural, spiritual, religious, traditional or customary rights and discharge responsibilities on the application area
6. Maintain, protect and prevent the misuse of cultural knowledge of the native title claim group associated with the application area.

Three of the above rights and interests ((2, 4 and 5) are further subdivided into more specific rights and interests.

In my view the native title rights and interests described at Schedule E are readily identifiable. The description is more than a statement that native title rights and interests are 'all native title interests that may exist, or that have not been extinguished at law'.

I am satisfied that the description in Schedule E allows the native title rights and interests claimed to be readily identified in compliance with s.190B(4).

Result: Requirements met

190B5**Sufficient factual basis:**

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;**
- (b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests;**
- (c) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.**

Reasons for the Decision

This condition requires me to be satisfied that the factual basis on which it is asserted that there exist native title rights and interests described at Schedule E of the application is sufficient to support that assertion. In reaching this decision I must be satisfied that the factual basis supports the three criteria identified at s.190B5 (a) – (c).

The information, in addition to that within the application, which I considered in relation to this section was the affidavit of [name deleted] in support of registration sworn on 10 September 1999 and attached to the second Quandamooka application (QC99/25).

At Schedule F of the application the applicants assert that:

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

The applicants refer to the affidavit of [name deleted] in support of registration sworn on 10 September 1999 and filed with the second Quandamooka application (QC99/25) to provide the factual basis for these assertions.

190B(5)(a) - that the native title claim group have, and the predecessors of those persons had, an association with the area

This criteria requires me to be satisfied that:

- the members of the native title claim group have an association with the area; *and*
- the predecessors in title or antecedents of the members of the native title claim group had an association with the area.

Schedule G of the application provides information that supports this sub condition. This Schedule provides a brief summary of the activities continuously conducted by members of the native title claim group in the area. This information complements the affidavit material provided.

The affidavit provided by [name deleted] provides additional information about the traditional association of the Quandamooka people with the claim area. In this affidavit, the deponent refers to the association of the Quandamooka people with the region. He states (para 3) that the Quandamooka people are comprised of three indigenous groups whose ancestors occupied the land the subject of the application at the time of annexation, namely:

- the Koenpul group, whose territory was and is North Stradbroke Island, South Stradbroke Island and the mainland coast from the Brisbane River to the Logan River, and the smaller islands in the south of Moreton Bay.
- The Nunukul group, whose territory was and is North Stradbroke island; and
- The Ngugi group, whose territory was and is Moreton Island.

It would appear that the area with which the native title group is associated extends beyond that covered by this claim.

The deponent further states:

- He was raised on Minjerribah (North Stradbroke Island) by his maternal grandparents and also spent some of his childhood raised by his mother on the mainland (para 5)
- The members of the native title claim group recognise the existence of spiritual entities which continue to inhabit the land and with whom they continue to relate (para 6)
- To ensure the ongoing connection of the spirit of a Quandamooka person with Quandamooka country it is necessary for the person to be buried in his or her country (para 19)
- He has a traditional physical connection with the land and waters the subject of the application. He hunts, fishes and gathers food on the land and in the waters. He has built several residences and established several camp sites on Minjerribah (para 21).

Result: Requirements met

190B(5)(b) – that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests.

This subsection requires me to be satisfied that:

- traditional laws and customs exist;
- that those laws and customs are respectively acknowledged and observed by the native title claim group, and
- that those laws and customs give rise to the native title rights and interest claimed

Schedule G and the affidavit of [name deleted] refer to a range of traditional laws and customs relating to the care of the land, the control of access to sacred sites and appropriate conduct at such sites, the passing on of knowledge to the young, and fulfilling ritual obligations.

The affidavit of [name deleted] indicates that the members of the native title claim group:

- Acknowledge and observe traditional laws and customs, in particular their system of beliefs about the origins of the land and waters and the existence of spiritual entities which continue to inhabit the land and with whom they continue to relate (para 6)
- Control access to sacred sites and observe appropriate conduct at such sites, according to traditional laws and customs, for example the ritual introduction of other Aboriginal visitors to Quandamooka country at particular sites and avoidance of certain places (paras 7, 8, 10)
- Care for and protect the land and waters, for example by controlled, seasonally planned burning, cleaning weed and undergrowth from freshwater creeks to ensure waterflow, and conserving species (paras 12, 14, 15, 18)
- Use the land and waters to hunt and gather for example fish, turtle, shellfish and other marine life, berries, nuts and other plant foods and various animals and birds such as bandicoots, goanna and porcupine (para 17)

- Distribute resources to kin, countrymen and elders according to traditional laws and customs (paras 17, 18)
- Pass on knowledge of traditional laws and customs and traditional knowledge of flora and fauna and places of cultural significance to the younger generation (paras 13, 15, 22, 23)
- Believe in the presence on the land of spiritual entities who may appear to members and communicate through dreams or signs. Particular birds are believed to convey messages or signs. (para 11).

The information referred to above provides examples of the existence of a body of law and custom and the affect of that law and custom on the rights and interests of the claimant group members and others.

Within the affidavit there are references to a range of laws and customs which govern the contemporary lives of members of the claimant group. These relate to access to 'country', ceremonies, and other forms of interaction with people and with the land. Some of these modes of interaction are further discussed in the section relating to s190B(6).

Result: Requirements met

190B(5)(c) - that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

This subsection requires that the native title claim group continues to hold native title in accordance with their traditional laws and customs. I have already referred to information relevant to this subsection in the two earlier subsections. I will not repeat that information here.

I also note that Schedule G of the application provides information about specific activities that are undertaken by members of the claim group, relating those to the claimed rights and interests.

In my view the applicants have provided sufficient evidence to demonstrate that the native title claim group continues to hold native title in accordance with their traditional laws and customs.

I am satisfied this condition is met.

Result: Requirements met

Conclusion

There is evidence to support the factual basis in each of the three criteria identified at s.190B5 (a) to (c). This evidence in turn is sufficient for me to be satisfied that the factual basis on which the assertion of the existence of the native title rights and interests claimed is sufficient to support the assertion.

Aggregate Result: Requirements met

190B6**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.

Reasons for the Decision

Under s.190B6 I must consider that, prima facie, at least some of the native title rights and interests claimed can be established.

“Native Title Rights and Interests” are defined at s.233 of the Act. This definition specifically attaches native title rights and interests to land and water, and in summary requires:

- the rights and interests to be linked to traditional laws and customs;
- those claiming rights and interests to have a connection with the relevant land and waters; and
- those rights and interests to be recognised under the common law of Australia.

The definition is closely aligned with all the issues I have already considered under s.190B5. I will draw on the conclusions I made under that section in my consideration of s.190B6.

Under s.190B(6) I must consider that, prima facie, at least some of the rights and interests claimed can be established. The term “prima facie” was considered in *North Ganalanja Aboriginal Corporation v Qld* 185 CLR 595 by their Honours Brennan CJ, Dawson, Toohey, Gaudron and Gummow JJ, who noted:

“The phrase can have various shades of meaning in particular statutory contexts but the ordinary meaning of the phrase “prima facie” is: “At first sight; on the face of it; as it appears at first sight without investigation.” [citing Oxford English Dictionary (2nd ed) 1989].”

I have adopted the ordinary meaning referred to by their Honours in considering this application, in deciding which native title rights and interests claimed can prima facie be established.

The information, in addition to that within the application, which I considered is the affidavit of [name deleted] in support of registration dated 10 September 1999.

I consider that the following native title rights and interests claimed in the application can be, prima facie, established for the reasons indicated.

1. *Conserve and safeguard the application area and its natural resources for the benefit of the native title claim group.*

The activities carried out by members of the claim group described in paras 12, 14, 15 16 and 18 of [name deleted] affidavit support the above right. These activities include: caring for and protecting freshwater creeks, estuaries and foreshores; burning the country in a controlled and seasonally planned manner and cleaning out weed and undergrowth from freshwater creeks to ensure waterflow. Members of the claim group may refuse requests from outsiders to hunt turtle and dugong in Moreton Bay in order to prevent overharvesting of marine resources.

Seasonal controlled burning is included in the activities listed at Attachment G of the application.

2. *Maintain and manage the application area for the benefit of the native title claim group.*

The activities carried out by members of the claim group described in paras 8, 15 and 16 of [name deleted] affidavit support the above right. These activities include: ritual introduction of Aboriginal visitors to Quandamooka country; the practice of outside Aboriginal people to seek the permission of the elders of the Quandamooka people before taking food or other resources from the country; managing the land and waters of their traditional country, and making decisions concerning use of and development of the lands and waters.

3. *Use and enjoy the application area, including to live on and build structures on the application area*

The activities described in para 21 of [name deleted] affidavit support the above right. He states that he has built several residences for members of his family at Moopi-Moopi Pah (One Mile), a traditional camping area of his people. He has also established several camp sites on Minjeribah (North Stradbroke Island).

Attachment G of the application includes camping and residing on the claimed lands in the list of activities currently carried on by the native title claim group.

4. *Take, use, keep or interfere with the resources of the application area*

The activities described in paras 17 and 18 of [name deleted] affidavit and at Attachment G of the application support the above right. These include hunting, fishing, gathering, gathering plants for medicinal and ceremonial purposes, collecting ochres for ritual purposes and timbers and plant material for artefacts. Resources continue to be traded with other Aboriginal groups and individuals.

5. *Exercise cultural, spiritual, religious, traditional or customary rights and discharge responsibilities on the application area*

The activities described in paras 7, 8, 10, 13, 14, 15, 16, 19, 22 and 23 of [name deleted] affidavit and at Attachment G of the application support the above right. These include controlling access to sacred sites and appropriate behaviour at such sites, caring for country, controlling use of resources by outsiders, observing traditional hunting and gathering practices and methods of distribution of resources, and burial of Quandamooka people in their country.

6. *Maintain, protect and prevent the misuse of cultural knowledge of the native title claim group associated with the application area.*

The activities described in para 23 of [name deleted] affidavit support the above right. He states that it is customary for traditional knowledge to be entrusted only to people who are considered to be responsible and mature enough to have the knowledge. He states that he withholds knowledge from his own children until such time as they are considered ready to hold it.

In finding that each of the native title rights and interests claimed by the applicants can be established on a prima facie basis, I note that the application contains a number of provisions limiting the rights claimed.

- (a) Schedule B [outlined in my reasons for decision at 190B(4)] states that on the assumption that any previous non-exclusive possession act was done in relation to an area, the native title rights and interests claimed in the application do not confer possession, occupation, use and enjoyment of any of that area to the exclusion of all

others (apart from those areas for which sections 47 to 47B of the *Native Title Act* apply).

- (b) Schedule 5 of Schedule J states that the relationship between the rights and interests described in Schedule 3 and the other interests described in Schedule 4, is that the native title rights and interests of the native title holders coexist with the other interests. To the extent of any inconsistency between the native title rights and interests and the other interests, the native title interests yield to the other interests and are suspended for the duration of the inconsistency.
- (c) Schedule M-R states that the application does not include any claim by the native title group of ownership of minerals, petroleum or gas.
- (d) Schedule M-R states that the application does not include any claim by the native title group of exclusive possession of all or part of an offshore place.

Result: Requirements met

190B7

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 have been expected currently to 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 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 holder of a lease.**

Reasons for the Decision

In addition to the application, I also considered the affidavit of [name deleted] in support of registration sworn on 10 September 1999 and lodged with the second Quandamooka application (QC99/25).

This section requires me to be satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application.

Traditional physical connection is not defined in the Native Title Act. I am interpreting this phrase to mean that physical connection should be in accordance with the particular traditional laws and customs relevant to the claim group.

For the reasons given at s.190B(5), I am satisfied that there exist traditional laws acknowledged by and customs observed by the claim group sufficient to support traditional physical connection.

I am further satisfied based on the information supplied and identified previously that the applicant [name deleted] currently has a traditional physical connection with the land or waters covered by the application (refer to paragraph 21 of his affidavit).

Result: Requirements met

190B8

No failure to comply with s61A:

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that, because of s61A (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.

Reasons for the Decision

s61A(1) – Native Title Determination

A search of the Native Title Register conducted on 11 January 2000, reveals that there is no approved determination of native title in relation to the area claimed in this application.

S61A(2) – Previous Exclusive Possession Acts

In Schedule B of the application, certain tenures are excluded from the claim area. For reasons provided above at s190B(2) these exclusions are sufficiently clear to provide reasonable certainty about all the tenure excluded and this includes previous exclusive possession acts.

S61A(3) – Previous Non-Exclusive Possession Acts

The applicants are not seeking exclusive possession over areas the subject of previous non-exclusive possession acts.

S61A(4) – s47, 47A, 47B

The applicants claim the benefit of ss.47, 47A and 47B. I am required to ascertain whether this is an application that should not have been made because of the provisions of s.61A. In my opinion, the applicants' express statements with respect to the provisions of that section are sufficient to meet the requirements of s 190B(8). Subsection 61A(4) of the Act provides that an application may be made in these terms. Whether or not the applicants have provided sufficient information to bring any area of land and waters covered by the application within the ambit of sections 47, 47A and 47B is a matter to be settled in another forum.

Conclusion

For the reasons identified above the application and accompanying documents do not disclose and it is not otherwise apparent that because of Section 61A the application should not have been made.

Result: Requirements met

190B9 (a)

Ownership of minerals, petroleum or gas wholly owned by the Crown:

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

- (a) *to the extent that the native title rights and interests claimed consist or include ownership of minerals, petroleum or gas - the Crown in right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;*

Reasons for the Decision

Schedules M-R in the application makes the statement that:

This application does not include any claim by the native title group of ownership of minerals, petroleum or gas.

I am satisfied that this statement ensures that the application complies with the requirements of s.190B(9)(a).

Result: Requirements met

190B9 (b)

Exclusive possession of an offshore place:

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

- (b) *to the extent that the native title rights and interests claimed relate to waters in an offshore place - those rights and interests purport to exclude all other rights and interests in relation to the whole or part of the offshore place;*

Reasons for the Decision

Schedules M-R of the application state that the application does not include any claim by the native title group of exclusive ownership of all or part of an offshore place.

I am satisfied that this statement ensures that the application complies with the requirements of s.190B(9)(b).

Result: Requirements met

190B9 (c)

Other extinguishment:

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

- (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 subsection 47(2), 47A(2) or 47B(2)).*

Reasons for the Decision

The application does not disclose, and I am not otherwise aware of, any area where an extinguishing act has occurred and yet the application seeks native title rights and interests over such an area. I am satisfied that the requirements of this section have been met.

Result: Requirements met

End of Document

National Native Title Tribunal