National Native Title Tribunal

REGISTRATION TEST

REASONS FOR DECISION

DELEGATE:	Monica Khouri
Application Name:	Chaterhoochie-Mt McMinn
Names of Applicants:	Sammy Bulabul, Moses Silver, Peter Woods and Ishmael (Gerard) Andrews (On behalf of the Ngalakan Group)
Region:	Northern Territory (north) NNTT No.:DC01/64
Date Application Made:	25 October, 2001 Federal Court No.:D6064/01

The delegate has considered the application against each of the conditions contained in s.190B and s.190C of the *Native Title Act* 1993 (C'wlth).

DECISION

The application is ACCEPTED for registration pursuant to s.190A of the *Native Title Act* 1993 (C"wlth).

Monica Khouri

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

23 November, 2001
Date of Decision

Brief History of the Application

On 25 October 2001 the application was filed in the Northern Territory District Registry of the Federal Court of Australia ("the Court") and provided by the Court Registry to the National Native Title Tribunal, Darwin Registry on 26 October, 2001

The application was made in the name of Sammy Bulabul, Moses Silver, Peter Woods and Ishmael (Gerard) Andrews (On behalf of the Ngalakan group).

Delegation Pursuant to Section 99 of the Native Title Act 1993 (Cth)

On 8 June 2001 Christopher Doepel, Native Title Registrar, delegated to members of the staff of the Tribunal including myself all of the powers given to the Registrar under sections 190, 190A, 190B, 190C and 190D of the Native Title Act 1993 (Cth).

The delegation of 8 June 2001 has not been revoked as at this date.

Information considered in making the decision

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

- Federal Court Application filed 25 October 2001
- The Registration Test File;
- Determination of Native Title Representative Bodies: their gazetted boundaries;
- The National Native Title Tribunal Geospatial Database;
- The Register of Native Title Claims;
- The National Native Title Register;
- ILUA Database;
- Correspondence from the Northern Land Council16 November 2001;
- Correspondence from Solicitor for the Northern Territory 7 November 2001;
- Correspondence from Solicitor for the Northern Territory 21 November 2001.

A. Procedural Conditions

s.190C(2)

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.

On 12 April 2001 Keifel J handed down her decision *in State of Queensland v Hutchison [2001]* FCA 416. Among other things, her Honour refers to:

> "…..the statutory obligation, on the part of the Registrar or delegate, to ensure that the application contains all of the information required by s 62. This is part of the registration test: s 190C(2)."

I refer to the individual reasons for decision in relation to sections 61 and 62 set out below. I find that the procedural requirements of sections 61 and 62 have been met and accordingly I find that the application meets the requirements of s.190C(2).

Details required in section 61

s.61(1) The native title claim group includes all the persons who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed.

Reasons relating to this sub-condition

Schedule A of the application provides a description of the native title claim group that is comprised of the Ngalakan Group (here after referred to as "The Native Title Claim Group") I do not have any other information that indicates that this group does not include, or may not include, all the persons who hold native title in the area of the application. I am satisfied that the group described includes all the persons who, according to their traditional laws and customs, hold the native title claimed.

Result: Requirements met

s.61(3) Name and address for service of applicants

Reasons relating to this sub-condition

Part B of the application has been completed and sets out details of the applicants' address for service.

Result: Requirements met

s.61(4) Names the persons in the 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

An exhaustive list of names of the persons in the native title claim group has not been provided so the requirements of section 61(4)(a) are not met.

For the reasons set out in relation to section 190B(3)(b) I find that the persons in the native title claim group are described sufficiently clearly in Schedule A, so that it can be ascertained whether any particular person is one of those persons in accordance with section 61(4)(b).

Result: Requirements met

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

Reasons relating to this sub-condition

The application meets the requirements of s.61(5)(a) in that it is in the form prescribed by Regulation 5(1)(a), Native Title (Federal Court) Regulations 1998. As required by s.61(5)(b), the application was filed in the Federal Court on 25 October, 2001.

The application is accompanied by four affidavits by the applicants as prescribed by s.62(1)(a) and by a map as prescribed by s.62(2)(b).

I refer to my reasons for decision in relation to those sections of the Act.

I note that s.190C(2) only requires me to consider details, other information and documents required by s.61 and s.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)

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

Reasons relating to this sub-condition

The application filed in the Federal Court was accompanied by four affidavits from the named applicants. In the affidavits the applicants are identified by name and address. The affidavits were affirmed before Frances Jessie Claffey, Commissioner for Oaths.,at Katherine in the Northern Territory on 19 and 21 October, 2001, respectively.

The applicants depose in paragraphs (1) to (4) of the affidavits to the matters contained in s.62(1)(a)(i)-(iv) essentially using the words of the statute, and the requirements of these sub-paragraphs are therefore satisfied.

Section (1)(a)(v) requires that the affidavits state the basis on which the applicants are authorised as mentioned in subparagraph (iv). Section 251B states what it means for the applicants to be authorised by all the persons in the native title claim group. Essentially, authorisation is said to have occurred if it is (a) in accordance with a process of decision making under traditional laws and customs, or, where there is no such process, (b) in accordance with a process of decision making agreed to and adopted by the persons in the native title claim group.

The applicants state that they are authorised, in accordance with decision making processes under traditional laws acknowledged and customs observed, to make this application. There are no further details as to when this authorisation occurred.

Schedule R of the application provides details of Certification by the Northern Land Council. A statement is provided regarding authorisation and the current application.

A further statement has been provided in Part A of the application under Authorisation. The application states that the applicants are entitled to make this application as the persons authorised by the native title claim group to make the native title determination application.

I am satisfied that the application is accompanied by four affidavits that meet the procedural requirements of section 62(1)(a).

Result: Requirements met

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

Comment on details provided

Schedule F contains a general description of native title rights and interests claimed, and refers to the factual basis on which the claim group asserts association with the land, the existence of traditional laws and customs giving rise to the claimed native title, and the continuity of that title.
Schedule G provides details of activities carried out in the application area.
Schedule M provides details of traditional physical connection covered by the application.

Result: Provided

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

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

Reasons relating to this sub-condition

Schedules B and C refer to a map, which is provided as Attachment A.

The map was produced by the Northern Land Council in October 2001 and shows the external boundaries of the area covered by the application. The map also identifies surrounding Northern Territory portions.

Further, the application at Schedule B describes the application area as being, "The land and waters subject to this application are located near Chatterhoochie and Mount McMinn in the Northern Territory. The area claimed is all land and waters within the area as symbolised on the map referred to in Schedule C and 'hatched' in Attachment A."

Result: Requirements met

s.62(2)(a)(ii) Information identifying any areas within those boundaries which are not covered by the application

Reasons relating to this sub-condition

For the reasons which lead to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the information provided by the applicants is sufficient to enable the area not covered by the application to be identified with reasonable certainty and meets the procedural requirements of s.62(2)(a)(ii).

Result: Requirements met

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

Reasons relating to this sub-condition

Schedules B and C refer to a map contained in the application and labelled Attachment A. The map clearly identifies the external boundaries of the application.

Result: Requirements met

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

Reasons relating to this sub-condition

Section 62(2)c) combined with section 62(1)(b) requires that the application contain details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application.

Schedule D of the application states that the applicants have not conducted any title searches.

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 under this condition I need only be informed of searches conducted by the applicant in order to be satisfied that the application complies with this condition.

Result: Requirements met

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

Reasons relating to this sub-condition

A description of the native title rights and interests claimed by the applicants is contained in Schedule E of the application. I have outlined these rights and interests in my reasons for decision in respect of s.190B(4).

Result: Requirements met

s. 62(2)(e) ***The application contains 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.

A general description of the factual basis as required by s62(2)(e) is contained within Schedules F, G and M of the application.

Schedule F of the application describes the area subject to claim as belonging to the claimants since time immemorial and including after the assertion of sovereignty by the Crown of the United Kingdom. The claimants are said to retain a traditional connection both to the area claimed, and the application refers to material evidence of physical connections by the ancestors of the claimants.

Schedule F of the application further provides a description of the common kinship system and common laws relating to land tenure that are observed by the group.

Schedules G and M of the application provide descriptions of the traditional usage of their country by the claimants including but not limited to residing on or travelling across the land, using the resources of the land, conducting ceremonies on the land, and passing on traditional knowledge of the land and waters to younger generations.

For the reasons detailed above I am satisfied that a general description of the factual basis, that specifically addresses each of the three particular requirements in (i), (ii) and (iii), does form part of the application itself.

I refer to my reasons at 190B(5) in respect of the sufficiency of the factual basis to support the assertion that the native title claim group have and the predecessors of those people had, as association with the area under claim.

Result: **Requirements met**

s.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

Schedule G of the application provides a list of a number of current activities of the native title claim group associated with the application area. Further particulars of current activities are provided at Schedule M of the application.

Result: **Requirements met**

s.62(2)(g) Details of any other application 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:

"The applicants are not aware that any other applications seeking a determination of native title, or a determination of compensation, have been made in relation to the whole or part of the area covered by the application."

Result: Requirements met

s.62(2)(h) Details of any s.29 notices given pursuant to the amended Act (or notices given under a corresponding State/Territory law) in relation to the area, which the applicant is aware of

Reasons relating to this sub-condition

Schedule I of the application states:

"The applicants are not aware of any notices under s29 of the Act that have been given and that relate to the whole or part of the area."

Result: Requirements met

For the reasons outlined above, I consider that the application **passes** the conditions contained in s.190C(2).

s.190C(3)

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

If all three conditions nominated at section 190C(3) apply, I must consider whether any person included in the native title claim group was a member of the native title claim group(s) for any previous application(s).

Condition (a) of s.190C(3) is that the previous application covered the whole or a part of the area covered by the current application. A search of the Schedule of Native Title Applications, Register of Native Title Claims and Geospatial's assessment dated 12 November 2001 did not identify applications which overlap this current application.

Condition (b) of s.190C(3) is that an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made. This is not applicable in this application.

Condition (c) of s.190C(3) requires that potential previous application(s) must have been entered onto (or not removed from) the Register as a result of consideration under s.190A (the Registration Test.) This is not applicable in this application.

Therefore there is no application which meets the criterion in subsection 190C(3)(c), and as such, no further consideration of this section is required. I am satisfied the application passes the requirements of the section.

Result: Requirements met

s.190C(4)(a) or s.190C(4)(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 is certified by the Northern Land Council pursuant to section 203BE of the Act. The Certificate is supplied as Schedule R in the application.

The Northern Land Council is the sole Aboriginal/Torres Strait Islander representative body that could certify the application under Section 203BE. I am satisfied that it is the proper body to provide the required certification.

The Certificate is signed and dated 25 October 2001 by Norman Fry, Chief Executive Officer, Northern Land Council.

Therefore, I am satisfied that the requirements of section 203BE(1)(a), 203BE(2)(a) and (b) and 203BE (4)(a) and (b) have been addressed.

Result: Requirements met

B. Merits Conditions

s.190B(2)

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 and waters.

Reasons for the Decision

Map and External Boundary Description

A map showing the external boundaries of the area claimed has been produced by the Northern Land Council and is included as Attachment A to the application. The map shows geographic coordinates.

Further, the application at Schedule B describes the application area as being "the land and waters subject to this application are located near Chatterhoochi and Mount McMinn in the Northern Territory. " The area claimed is all land and waters within the area as symbolised on the map referred to in Schedule C and "hatched" in Attachment A

The Tribunal's Geospatial Unit have provided an assessment of the map and the description and state that they are consistent with each other and describe the area covered by the application with *reasonable* certainty.

Internal Boundaries

The applicants provide details in Schedule B.

"Subject to Schedule L of this application, any area in relation to which a previous exclusive possession act under s 23B of the NTA has been done, is excluded from this application."

The applicants also acknowledge that in Schedule E (2) (a) "their native title rights and interests are subject to all valid and current laws of the Commonwealth and the Northern Territory; and (b) the exercise of their native title rights and interests might be regulated, controlled, curtailed, restricted, suspended or postponed by reason of the existence of valid concurrent rights and interests in others by or under such laws".

Schedule E (3) states: "Subject to Schedule L, this application does not claim that the native title rights and interests confer possession, occupation, use and enjoyment to the exclusion of all others in relation to any area regarding which a previous non-exclusive possession act under s 23F of the NTA has been done".

Whether the exclusions identified by this formula are sufficient to meet the conditions of s.190B(8) and (9) is not considered here. I refer to my reasons for decision in relation to those sections.

Conclusion

I find that the description and map contained in the application are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

Result: Requirements met

s.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.

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.

A list of names of all the persons in the native title claim group has not been provided in the application, so the requirements of section 190B(3)(a) are not met.

In the alternative, section 190B(3)(b) requires me 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. It is my view that the section requires such a description to appear in the application itself.

Pursuant to the requirements of s.190B(3), the native title claim group is said to be comprised by the Ngalakan Group who comprise all persons descended from twenty four apical ancestors. Particulars, are provided in the application in regard to the descendants of the named apical ancestors.

Section 190B(3)(b) requires me 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 key phrase is “can be ascertained”. It is not necessary, in considering this particular condition, for me to ascertain now whether a particular individual is a member of the group. It is necessary only to be satisfied that, on the information provided, this can be ascertained.

I am satisfied that the description contained within the application is sufficiently clear so that it can be ascertained whether a particular individual is a member of the group, as described.

The application satisfies s.190B(3).

Result: Requirements met

s.190B(4)

Identification of claimed native title:

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 the 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 s.190B(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.

The application at Schedule E, (1) lists the native title rights and interests claimed.

These are:

(a) to possess, occupy, use and enjoy the area claimed to the exclusion of all others;
(b) to speak for and to make decisions about the use and enjoyment of the application area;
(c) to reside upon and otherwise to have access to and within the application area;
(d) to control the access of others to the application area;
(e) to use and enjoy the resources of the application area;
(f) to control the use and enjoyment of others of the resources of the application area;
(g) to share, exchange and/or trade resources derived on and from the application area;
(h) to maintain and protect places of importance under traditional laws, customs and practices in the application area;
(i) to maintain, protect, prevent the misuse of and transmit to others their cultural knowledge, customs and practices associated with the application area; and
(j) to determine and regulate membership of, and recruitment to, the landholding group.

The applicants continue in Schedule E, (2), (3), (4), (5) and (6):

"The claimants acknowledge that:

(2) (a) their native title rights and interests are subject to all valid and current laws of the Commonwealth and the Northern Territory; and
(b) the exercise of their native title rights and interests might be regulated, controlled, curtailed, restricted, suspended or postponed by reason of the existence of valid concurrent rights and interests in others by or under such laws.

(3) Subject to Schedule L, this application does not claim that native title rights and interests confer possession, occupation, use and enjoyment to the exclusion of all others in relation to any area regarding which a previous non-exclusive possession act under s 23F of the *NTA* has been done.

(4) All rights and interests listed in paragraph 1 above exist (and existed) throughout the whole of the area claimed.

(5) The native title rights and interests are held communally by the claimants, albeit that:

(a) the capacity of individuals to exercise these rights and interests will vary according to a variety of circumstances, for example age, gender, and physical and mental capacity;

(b) by traditional laws and customs, responsibility for the area claimed is exercised by different individuals in different ways.

(6) The activities referred to in Schedule G are enjoyed by the claimants, and derive from their native title and are consistent with their native title rights and interests."

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

Result: Requirements met

s.190B(5)

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

On 19 January 2001 French J handed down his decision *(Martin v Native Title Registrar [2001] FCA 16 (Martin)*. Amongst other things, his Honour considered this condition of the registration test in that case. I note, at the outset, his Honour's findings that,

> *"Provision of material disclosing a factual basis for the claimed native title rights and interests, for the purposes of registration, is ultimately the responsibility of the applicant. It is not a requirement that the Registrar or his delegate undertake a search for such material"* - at [23].

In regard to paragraph (a) of s190B(5) his Honour noted,

> *"…What he* (the delegate*) had to be satisfied of was that the factual basis on which it was asserted that the native title rights and interests claimed exist supported the proposition that the native title claim group and the predecessors of those persons had an association with the area "* - at [22].

His Honour imparts the same formulation of the question to the circumstances of paragraph b) - see [27].

In regard to paragraph c).his Honour noted that,

> "…*the delegate had to be satisfied that there was a factual basis supporting the assertion that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs. This is plainly a reference to the traditional laws and customs which answer the description set out in par (b) of s 190B(5). It followed from his conclusion in relation to that paragraph that he could not be so satisfied that there was a factual basis set out for the assertion referred to in par (c)…."* - at [29]

The applicants list at Schedule E a description of native title rights and interests claimed in relation to the area subject to the application, including activities in exercise of those rights and interests. The applicant also provides material in support of s190B(5) at Schedules F, G and M.

Schedule F contains a general description of the rights and interests claimed and describes, in particular, the factual basis on which it is asserted that the three criteria identified at s 190B5(a)–(c) are met. Schedule G provides details of traditional usage asserted by the claimants, including in some cases the area claimed. Schedule M provides details of the traditional physical connection the claimants assert they have maintained with the application area.

It is apparent in these schedules that the applicants have made a series of assertions in relation to the existence of the claimed native title rights and interests, including statements which related to the three particular matters referred to in s 190B(5). What I must determine here is whether or not the applicants have also provided a factual basis which is sufficient to support the assertions made in the application.

In *Martin*, French J noted that the delegate was not limited to considering the statements in the application, but may go to additional material.

On 16 November 2001 the applicant's representative provided additional material to the Tribunal. This additional material was entitled "Additional Information for Registrar – Chatterhoochie-Mount McMinn and included findings contained in the Roper Valley (Kewulyi) and Matranka Area Land Claim Reports.

The additional information states, in part:

> "In 1999 the Commissioner, Justice Olney, published his findings regarding the Roper Valley (Kewulyi) Land Claim. In that Land Claim, there were two groups who were found to be the traditional owners of the claim area: the Kewulyi group and the Gunduburun group. In each case, the traditional country of these groups extends far beyond the claim area [38]. Kewulyi country extends to the east and north beyond the boundaries of the claim area [56]."
>
> "The position of the native title claim is shown in the map attached, which shows named pastoral stations and the Land Trust and the area of the Urapunga stock route, part of which was subject to the Mataranka Area claim. It can be seen from the map that
> - Kewulyi Aboriginal Land Trust is about 7 kilometres to the west of the native title claim are; and
> - That part of the Mataranka Area land claim subject to the Urapunga stock route is partly covered by the native title claim.

The land claim report and the subsequent land grant are probative of the fact that a sufficient factual basis exists in relation to the existence of native title rights and interests over the whole of the land and waters subject to this native title application."

This additional material was supplied to the Solicitor for the Northern Territory on 16 November 2001. A response was received on 21 November 2001, advising that it will not be possible to give proper consideration to these materials in the time provided and reserving whatever rights it may have in relation to the consideration of such additional material by the Tribunal Delegate in such circumstances.

I have considered the additional information.

On 12 April 2001 Keifel J handed down her decision *in State of Queensland v Hutchison [2001]* FCA 416. Among other things, her Honour noted that s 62(2)(e) does not entirely correspond with s 190B(5),

> "It requires that a "*general description*" of the factual basis for the assertions of the existence of native title rights and interests be provided in the application. Section 190B(5) may require more, for the Registrar is required to be satisfied that the factual basis asserted is sufficient to support the assertion. This tends to suggest a wider consideration, of the evidence itself, and not of some summary of it' - at [25].

In considering 190B(5) I have had regard to information contained in the application (specifically schedules A, F, G and M) and the additional information provided by the Northern Land Council on 16 November 2001 that included references in respect of the Roper Valley (Kewulyi) and the Mataranka Area Land Claim Reports.

Before dealing with each particular aspect of this condition it is necessary to clarify that it is not the role of the Delegate to reach definitive conclusions about complex anthropological issues pertaining to applicants' relationships with the country subject to native title claimant applications. What I must do, is consider whether the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion that the native title claim group have, and the predecessors of those persons had, an association with the area.

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

The application asserts association since time immemorial, including at the time when sovereignty was asserted by the Crown of the United Kingdom and at the time of contact with non-Aboriginal people (Schedule F(2)).

The application further asserts, that the connection of the members of the native title claim group and the predecessors of those persons with the application area is based on possession, occupation, use and enjoyment of the application area derived from a system of traditional laws and customs, including common kinship system, observance of common laws relating to land tenure and traditional usage of land and waters.

Schedule F(3), states that the traditional connection of the claimants with the claim area, and native title rights and interests, were inherited from their ancestors in accordance with traditional laws and customs.

In Schedule F(8) the applicants state that material evidence of physical connections by the ancestors of the claimants exists in their country, and is illustrated by the presence of archaeological evidence of both pre-contact and post-contact Aboriginal habitation. The assertion is that the evidence includes artefact fragments, rock art and traditional occupancy sites.

Schedule G provides details of traditional usage of their country asserted by the claimants, including in some cases the area claimed. It is not clear from the information provided which of these activities apply to the area claimed.

Schedule M states that the claimants have maintained a traditional physical connection with the application area and describes how they have entered and travelled across the land and waters covered by the application, resided on the land, used the resources of the land and waters and maintained sites including burial sites.

The additional material provided by the NLC notes that members of the native title claim group were identified as traditional owners in the Land Claim Reports.

The material notes the following in respect of the Roper Valley (Kewulyi) Land Claim:

> " Findings regarding the Kewulyi group included:
>
> - The focus of the Kewulyi Group is on the original Roper Valley pastoral lease are[41].
> - The groups includes the descendants of Ngamama[44], Jamalamal[46], Kunamuyka[47], Hedrick Minymul[48], who can be identified with members of the native title claim group listed in paragraphs (3)(I),(iv), (iii) & (v) of Schedule A, respectively."

In respect of the Mataranka Area Land Claim, the following is noted:

> "In 1988 the Commissioner, Justice Maurice, published his findings regarding the Mataranka Area Land Claim. In that Land Claim, several groups were found to be traditional owners of the claim area [6.2.1}. He recommended that the remaining claim area be granted to a Land Trust to be held on trust for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the claim area. That has not yet occurred."
>
> Findings regarding some of these group included:
>
> - Country 11 has a considerable north south extension, including areas east and north of the claim area within Roper Valley Station towards Flying Fox Creek, and south to Gewulyi [6.12.1]. The group of traditional owners for Country 11 included descendants of Ngamama, Jamalamal, Junumuyka [6.12.3], who can be identified with members of the native title claim group listed in paragraphs (3)(i), (iv), & (iii) of Schedule A, respectively. The membership of the claim group also included people who can be identified as members of the native title claim group at paragraph (3)(v). This group can be identified with the Kewulyi group described in the Roper Valley (Kewulyi) Land Claim.
>
> - The group of traditional owners for country 12 included descendants of "Jarrarnajin 'Bluja'", and "Bringgil-badi (?-Paddy?)", [6.13.5], who can be identified with members of the native title claim group listed in paragraphs (3)(x) & (ix) of Schedule A, respectively. The membership of the claim group also included people who can be identified as members of the native title claim group at paragraph (3)(viii)."

I note O'Loughlin J's reference, in *Ngalakan People v Northern Territory of Australia (2001) FCA 654,* to French J's comment *in Re: Waanyi People's Native Title Application (1995) 129 ALR 118 at 133-134* that a claim area is not to be viewed in isolation:

> "it would be sufficient for the applicant to establish that the claimed area lies within a wider area within which they have the requisite connection."

In the same decision French J; also commented that:

> "…evidence on the hearing of a native title determination application will not be confined to evidence directly and only concerned with the area available for claim. That conclusion is a necessary incident of the common law concept of native title and its dependence on the traditional laws and customs of applicants group which will no doubt in many cases, if not most cases, relate to and be explicable only be reference to traditional country….It is a corollary of that proposition that it is not necessary for the establishment of native title to show that the particular area under claim contains specific sites of spiritual significance to the applicants."

In my view, the proximity of the land claimed in the Roper Valley (Kewulyi) and Mataranka Area Land Claims to the land subject to this native title application, together with the specific references in the land claim reports to members of the native title claim group, 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 subject to this application.

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

Schedule F (5) to (8) assert the traditional ownership of the claimed area by the claimants.

Further assertions relating to details of traditional laws and customs are provided in this schedule at sections (9) and (12) and include; common kinship system, observance of common laws relating to land tenure, and traditional usage of land and waters.

Assertions of the activities associated with the observation, maintenance and passing on of a body of traditional law and customs are also provided in Schedule G(1) (a)-(q).

The additional material provided by the NLC notes the following references in respect of the Roper Valley (Kewulyi) Land Claim Report and activities carried out by members of the native title claim group:

> "There was no reason to doubt the validity of the claimed right of the Kewulyi group to forage over Kewulyi country[55]."

In respect of the Mataranka Area Land Claim it is noted that:

> "There was strong evidence of extensive use of the claim area by the claimants and the communities in which they live for fishing hunting and gathering [7.1.1]."

I am satisfied that the factual basis on which it is asserted that there exist traditional laws acknowledged, and traditional customs observed, by the native title claim group that give rise to the claim to native title rights and interests is sufficient to support that assertion.

(c) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.

Assertions of the continued observation of traditional laws and customs from which the native title rights and interests claimed are said to derive is provided as follows:

- Processes for transmission of rights and interests (succession) (Schedule A(1)(a)), and Schedule G.

- Continued observance of a common kinship system by the claimants, and outlined in Schedule F(10) and includes; recognition of common ancestors, recognition of group and individual responsibilities towards land and waters; and participation in and responsibility for ceremony.

- A description of common laws relating to land tenure (Schedule F(11); and activities in furtherance of the above rights and interests (Schedules G and M).

While Schedule G provides details of the activities asserted to be associated with the traditional usage of, in some cases, the area claimed, it is not clear from the information provided which of these activities apply to the area claimed. Schedule M on the other hand provides a description of the traditional physical connection that the claimants have maintained with the land and waters covered by the application.

I am of the view that the material contained in the application together with the references in the Land Claim Reports, and the likely link between the Ngalakan group's interest in the general region and, by extension, to the area subject to this application, provide a sufficient factual basis to support the assertion that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.

Conclusion

I am satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertions described for each of the criteria set out in s.190B(5).

Result: Requirements Met

s.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.

Reasons for the Decision

Under s190B(6) I must consider that, prima facie, at least some of the native rights and interests claimed can be established.

'Native title rights and interests' are defined at s.223 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 the rights and interests to have a connection with the relevant land and waters; and
- these rights and interests to be recognised under the common law of Australia.

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 appears at first sight without investigation." [Citing the Oxford English Dictionary (2nd ed 1989)]".

In the *State of Western Australia v Ward* [2000] FCA 191 (Ward's case), handed down on 3 March 2000, the majority of the full Federal Court held that some of the native rights and interests which had previously been accepted following Lee J's first instance decision may not be recognisable at common law (and therefore in a determination under s.225). The majority held that the common law does not protect purely religious or spiritual relationships with land. It was held that rights and interests which involve physical presence on the land and activities on the land associated with traditional social and cultural practices are recognised and protected by the common law: see [104] of Ward's case. In finalising the determination the Court confirmed these findings. (See *State of Western Australia v Ward* [2000] FCA 611 dated 11 May 2000.)

Following Ward's case, the rights which can be made out, prima facie, appear to be only those which can be characterised as having an aspect involving physical use and enjoyment of the land claimed. I have considered this aspect of the judgement in relation to the rights and interests claimed as set out below.

The applicants state in Schedule E that the native title rights and interests claimed are subject to Schedule L applying.

The claimants acknowledge that:

(a) their native title rights and interests are subject to all valid and current laws of the Commonwealth and the Northern Territory; and
(b) the exercise of their native title rights and interests might be regulated, controlled, curtailed, restricted, suspended or postponed by reason of the existence of valid concurrent rights and interests in others by or under such laws.

Subject to Schedule L of the application, the applicant does not claim that native title rights and interests confer possession, occupation, use and enjoyment to the exclusion of all others in relation to any area regarding which a previous non-exclusive possession act under s 23F of the NTA has been done.

I am satisfied that these statements qualify all the rights and interests claimed.

(a) The right to possess, occupy, use and enjoy the application area to the exclusion of all others;

The applicants provide specific examples of cultural activities involving possession, occupation, use and enjoyment of the claim area and land and waters proximate to the application area by the applicants and members of the claim group. The applicants state that, since time immemorial and in accordance with traditional laws and customs, the application area has been regarded as belonging to the native title claim group. Details of communal or group activities carried out currently in the area are provided in Schedules G and M of the application.

Although the applicants claim these rights to the exclusion of all others, the claim is subject to the general statements provided in Schedule E noted above and Schedule J. I am satisfied that these statements are qualifications to the rights claimed and are sufficient to show, prima facie, that these rights are not asserted exclusively where such a claim cannot be established.

For the reasons given above, I am satisfied that this right is, prima facie, capable of being established.

(b) To speak for and to make decisions about the use and enjoyment of the application area;

The applicants provide examples about decisions related to the use and enjoyment of the area claimed and also of land waters proximate to the application area. Some of the activities listed in Schedule G which provide support for the rights claimed appear to be of a kind which the majority in Ward's case rejected. However, on the face of it, some of the activities described in paragraphs (a) to (d), (f) to (k) and (n) and (o) could be characterised as activities which involve physical presence on the land or activities on the land associated with traditional social and cultural practices. In the draft determination in Ward's case, the majority found that a non-exclusive right to make decisions about the use and enjoyment of the land was recognisable at common law over areas where native title was found to exist but to which s 47 and 47A did not apply.

Prima facie this right is not claimed to the exclusion of all others. See also the statements made in Schedules E and J.

For the reasons given above, I am satisfied that this right is, prima facie, capable of being established.

(c) To reside upon and otherwise to have access to and within the application area;

The applicants provide examples about residency and access of the area claimed and also of land proximate to the application area in accordance with traditional laws and customs. For example, Schedule G refers to accessing, travelling and residing on the land and includes building and using shelters on the land and accessing the land for particular purposes. Clearly, these can be characterised both as activities which involve physical presence on the land and activities on the land associated with traditional social and cultural practices.

Prima facie this right is not claimed to the exclusion of all others. See also the statements made in Schedules E and J.

For the reasons given above, I am satisfied that this right is, prima facie, capable of being established.

(d) To control the access of others to the application area;

The applicants provide examples about controlling the access of others to the application area and land and waters proximate to the application area. In Schedule G, paragraphs (l), and (m) respectively mention regulating access to parts of the land according to gender, age, and ritual experience and restricting the access of outsiders to the land and waters. All these could be characterised as activities that involve physical presence on the land, or activities on the land associated with traditional social and cultural practices.

I note that, in Ward's case, this right formed part of Justice Lee's determination but not that of the majority. However, there was no discussion as to why this right was not included in the draft determination. As noted above, the application of s 47A in that case resulted in the applicants having the right of use, occupation, possession and enjoyment as against the whole world. The majority found this would give rise to rights similar to those available under a freehold title which would include the right to control the access of others to the area (subject to the laws of Australia): see para [207] of the decision.

Prima facie this right is not claimed to the exclusion of all others. See also the statements made in Schedules E and J.

For the reasons given above, I am satisfied that this right is, prima facie, capable of being established.

(e) To use and enjoy the resources of the application area;

The applicants provide examples at Schedule G about the use, enjoyment and management of resources to the application area and land and waters proximate to the application area. Information is provided in Schedule G1(b) about hunting and gathering on the land and waters; (d) using waters from the land, (f) collecting materials including timber, stones, minerals, ochre, resin, grass and shell.

In *State of Western Australia v Ward*, the majority of the Full Court said that all minerals and petroleum are the property of the Crown and that any native title to minerals and petroleum was extinguished (relevantly) by the *Minerals (Acquisition) Ordinance Act* (NT) and the *Petroleum Act 1984 (NT).* (This case is currently on appeal to the High Court.) In *Yarmirr v Northern Territory* (1998) 82 FCR 533 at 601, it was found that native title to minerals, petroleum or gas has been extinguished in the Northern Territory.

However, in Ward's case, a claim to use and enjoy the "traditional resources" of the land was recognised in the draft determination and, specifically, a claim to ochre was acceptable: see [524] to [544].

I am satisfied that some of the resources particularised in the application, namely food resources and water, timber, stones, ochre, resin, grass and shell, fall within the scope of "traditional resources". Although the claimants claim minerals as a natural resource, I do not think it satisfies the Ward's case and can be considered a "traditional resource."

Further confirmation of this is included in *Hayes v Northern Territory* (1999) 97 FCR 32, when Olney J found that there was no evidence of traditional laws and customs relating to the extraction or use of minerals.

I note that the claimants exclude claiming ownership of minerals, petroleum or gas wholly owned by the Crown.

Prima facie this right is not claimed to the exclusion of all others. See also the statements made in Schedules E, J and Q.

For the reasons given above, I am satisfied that this right is, prima facie, capable of being established.

(f) To control the use and enjoyment of others of the resources of the application area;

The applicants provide examples about the use and enjoyment of others of the resources of the application area and land and waters proximate to the application area. The claim group make a claim in paragraph 1(m) of Schedule G which states that they restrict the access of outsiders to the land and waters and 1(n) responsibility for caring for the land and waters in accordance with spiritual, economic and social obligations. These activities could be characterised as activities that involve physical presence on the land or activities on the land associated with traditional social and cultural practices. On the face of it, access to and responsibility for the land and waters would include *traditional resources* eg. food and fish of the area. This would provide, prima facie, evidence for the rights claimed.

However, I note that although this right formed part of Justice Lee's determination, the majority in Ward's case did not include it in their draft determination. There was no discussion as to why this was so. As noted above, the application of s 47A in that case resulted in the applicants having the right of use, occupation, possession and enjoyment as against the whole world. The majority found this would give rise to rights similar to those available under a freehold title which would include the right to control the use and

enjoyment of others of the resources of the application area, subject to the laws of Australia: see para [207] of the decision.

See also the statements made in Schedules E and J.

For the reasons given above, I am satisfied that this right is, prima facie, capable of being established;

(g) To share, exchange and/or trade resources derived on and from the application area;

Prima facie, I am not satisfied that there is sufficient information provided in regard to this right to make it capable to being established. Schedule G(1)(e) merely recites, as an activity, the right claimed. No further information was provided to support this right.

(h) To maintain and protect places of importance under traditional laws, customs and practices in the application area;

The applicants provide information about the maintenance and protection of places of importance of the application area and land and waters proximate to the application area. Schedule G lists the following which support this right; 1(k) conducting ceremonies on the land; 1(l) observance of laws and sanctions restricting access to areas of the land and waters according to divisions of gender, age, and ritual experience; 1(n) responsibility for caring for the land and waters in accordance with spiritual, economic and social obligations; and 1(q) maintaining traditional knowledge of the land and waters and passing that knowledge on to younger generations. These activities could be characterised as activities, which involve physical presence on the land, or activities on the land associated with traditional social and cultural practices.

The right is claimed subject to the qualifications set out in Schedules E and J mentioned above.

For the reasons given above, I am satisfied that this right is, prima facie, capable of being established.

(i) To maintain, protect, prevent the misuse of and transmit to others their cultural knowledge, customs and practices associated with the application area;

Notwithstanding the assertions in the application, the majority in Ward's case held that the right to maintain, protect, prevent the misuse of and transmit to others their cultural knowledge, customs and practices associated with the application is not a native title right and interest which can be recognised in a determination of native title: See [666].

Therefore, I am not satisfied that this right is, prima facie, capable of being established.

(j) To determine and regulate membership of, and recruitment to, the landholding group.

The application provides information on the traditional laws and customs governing membership of, and recruitment to, the native title claim group and describes the differing roles and responsibilities of members recruited to the group. However, it does

not appear to satisfy the criterion set out in Ward's case mentioned above as, prima facie, it does not seem to describe activities which involve physical presence on the land or activities on the land associated with traditional social and cultural practices. It may be possible to characterise this right as involving such activities but there is nothing before me to support such a characterisation.

Therefore, I am not satisfied that this right is, prima facie, capable of being established.

Summary

In summary I am satisfied that the rights and interests listed at (a), (b), (c), (d), (e) (but only traditional resources and not minerals), (f), and (h) are capable of being established, however, I am not satisfied in respect of the rights and interests listed at (g), (i) and (j).

Result: Requirements met

s.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 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 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.

Reasons for the Decision

This section requires that I am 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 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.

This condition does not require me to consider the sufficiency of the factual basis on which traditional physical connection is established. I have had regard to statements contained in the application including Schedules G and M and am satisfied that the applicants have provided a general description of their traditional physical connection. The applicants depose that the statements are true, and Schedule M, in particular, details traditional physical connection to the land or waters covered by the application by any member of the native title claim group thus:

"1. The claimants have maintained a traditional physical connection with the land or waters covered by the application. The claimants reside on their country, and there are many examples of such physical connections, both in respect of their country generally, and in the vicinity of the area claimed.

2. Examples include as follows.

Throughout their lives the applicants have used the land and waters covered by the application, including:

(a) entering and travelling across the area claimed;
(b) hunting and fishing;
(c) collection of plants for food, ceremonial objects and artefacts;
(d) managing the land by seasonal burning;
(e) maintenance of sites;
(f) maintenance of burial sites;

(g) residence."

On 16 November 2001 the representative for the applicants provided additional material to the Tribunal including extracts from reports under the *Land Rights Act (NT*):the Roper Valley (Kewulyi) and Mataranka Area Land Claims to assist me in considering the requirements of this condition. I have taken this information into consideration.

On the basis of the combined description of activities in the named schedules, the further information provided and the deposition of the applicants, and given my earlier comments about the relative proximity of the *Land Rights Act* lands and the land subject to this application, I am satisfied that at least one member of the claim group currently has a traditional physical connection with the application area.

The application meets the requirements of S.190B(7).

Result: Requirements met

s.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.

Reasons for the Decision

S61A(1) – Native Title Determinations

A search of the National Native Title Register shows no approved determinations of native title for the area claimed in this application.

S61A(2) - Previous exclusive possession acts

Previous exclusive possession acts under s.23B have been excluded from the area of the application by virtue of Schedule B(b), and the application complies with s.61A(2).

S61A(3) - Previous non-exclusive possession acts

The applicants state in Schedule E(3) that subject to Schedule L the application does not claim that native title rights and interests confer possession, occupation, use and enjoyment to the exclusion of all others on any area in relation to which a previous non-exclusive possession act under s.23F of the Act has been done.

The application therefore complies with s.61A(3).

S61A(4) - s.47, 47A 47B

The applicants have not provided any information in regard to this in their application.

Conclusion

I am required to ascertain whether this is an application that should not have been made because of the provisions of s61A. There is nothing before me to indicate that this application could not be made. I am satisfied the applicant's statements with respect to the provisions of that section are sufficient to meet the requirements of s 190B(8).

Result: Requirements met

s.190B(9)(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 the right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;

Reasons for the Decision

Schedule Q of the application states that:

"The claimants do not claim ownership of minerals, petroleum or gas wholly owned by the Crown. The claimants assert that the Crown does not wholly own minerals, petroleum or gas in the area subject to the application".

In *State of Western Australia v Ward*, the majority of the Full Court said that all minerals and petroleum are the property of the Crown and that any native title to minerals and petroleum was extinguished (relevantly) by the *Minerals (Acquisition) Ordinance Act* (NT) and the *Petroleum Act 1984 (NT).* (This case is currently on appeal to the High Court.) In *Yarmirr v Northern Territory* (1998) 82 FCR 533 at 601, it was found that native title to minerals, petroleum or gas has been extinguished in the Northern Territory.

Although the claimants assert that the Crown does not wholly own minerals, petroleum or gas in the area subject to the application, they do not claim ownership of minerals, petroleum or gas wholly owned by the Crown.

In their application the claimants acknowledge that:

"a) their native title rights and interests are subject to all valid and current laws of the Commonwealth and the Northern Territory; and
b) the exercise of their native title rights and interests might be regulated, controlled, curtained, restricted, suspended or postponed by reason of the existence of valid concurrent rights and interests in others by or under such laws."

The claimants also provide a general exclusion clause in Schedule J.

I am satisfied that this exclusion clause provides sufficient clarity to ensure that the application complies with the requirements of s.190B(9)(a).

Result: Requirements met

s.190B(9)(b)

Exclusive possession of an offshore place:

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

Not applicable

Result: Requirements met

s.190B(9)(c)

Other extinguishment:

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

Under the requirements of this section, I must consider whether there are any native title rights and interests claimed by the applicants that have been otherwise extinguished.

In addition to the areas excluded from the claim area as considered in s.190B(8), I have listed, in my reasons for decision in relation to s.190B(4), the qualifications to the native title rights and interests claimed at Schedule E of the application.

The application does not disclose, and I am not otherwise aware of, any additional extinguishment of native title rights and interests in the area claimed.

The application meets the requirements of s.190B(9)c.

Result: Requirements met

ATTACHMENT A

THE FOLLOWING IS TO BE ENTERED AS CONTENTS OF THE REGISTER OF NATIVE TITLE CLAIMS PURSUANT TO S186

S186 (1)

(a) whether the application was filed in the Federal Court or lodged with a recognised State/Territory body

Application filed in the Federal Court of the Northern Territory.

(b) if the application was lodged with a recognised State/Territory body – the name of that body

Not applicable

(c) the date on which the application was filed or lodged

25 October 2001

(c.a) the date on which the claim is entered on the Register

23 November 2001

(d) the name and address for service of the applicant/s

Applicant/s:

Sammy Bulabul, Moses Silver, Peter Woods and Ishmael (Gerard) Andrews (On behalf of the Ngalakan Group)

Address for service:

Ron Levy
Solicitor for the Applicant
PO Box 42921
Casuarina NT 0811

(e) the area of land or waters covered by the claim

1. The land and waters subject to this application are located near Chatterhoochie and Mount McMinn in the Northern Territory. The area claimed is all land and waters within the area as symbolised on the map referred to in Schedule C and "hatched" in attachment A, including those areas subject to:

   (a) Authorisation 23075, save for that part on Northern territory portion 671; and
   (b) Those areas of Northern Territory portion 4970 and Northern Territory portion 4971 that are not subject to Authorisation 23075, save for the areas subject to:

      (i) native title determination application D6019/01 (DC01/19) (Chatterhoochie);
      (ii) the Big River-Urapunga native title determination application filed on or about the same day as this application; and
      (iii) the Roper valley North native title determination application filed on or about the same day as this application.

2. Subject to Schedule L of this application, any area in relation to which a previous exclusive possession act under s23B of the NTA has been done, is excluded from this application.

(f) a description of the persons who it is claimed hold the native title

As per CMS and application.

(g) a description of the native title rights and interests in the claim that the Registrar in applying the subsection 190B(6); considered, prima facie, could be established.

The claimants acknowledge that:

(c) their native title rights and interests are subject to all valid and current laws of the Commonwealth and the Northern Territory; and
(d) the exercise of their native title rights and interests might be regulated, controlled, curtailed, restricted, suspended or postponed by reason of the existence of valid concurrent rights and interests in others by or under such laws.

Subject to schedule L, this application does not claim that the native title rights and interests confer possession, occupation, use and enjoyment to the exclusion of all others in relation to any area regarding which a previous non-exclusive possession act under s 23F of the NTA has been done.

(a) – (f) and (h).

S186 (2)

The Registrar may include in the Register such other details about the claim as the Registrar thinks appropriate.