

Talking Western Australia



Amendments to Act see claims dismissed



Justice John Gilmour made WA's first s190F(6) decisions in October.

The Federal Court has used powers conferred on it by the 2007 amendments to the *Native Title Act* (1993) to dismiss 14 claims from across Western Australia.

Changes introduced by the *Native Title Amendment Act* 2007 included section 190F(6) which empowers the Court to dismiss an unregistered application. It can do this if it finds the application is unlikely to be amended in a way that could enable registration by the Tribunal, or where there is no other reason not to dismiss the application.

The amendments were introduced by the Federal Government to provide a greater focus on the responsibility of applicants to take steps to improve the quality of their claims, while recognising that poor quality claims can be a burden on the native title system.

WA's first decisions under section 190F(6) were made in the Federal Court in Perth by Justice Gilmour on 13 October 2008, who dismissed five claims from WA's Goldfields and six from the South West.

On 12 November, Justice McKerracher dismissed one unregistered claim from the Pilbara and two from the Geraldton region.

The Tribunal's WA State Manager Lillian Maher said the dismissals did not affect people's rights to lodge new claims.

"Applicants whose claims have been dismissed can now work on preparing new claims that may be able to be registered by the Tribunal and progressed through the native title system," she said.

Tribunal due to release second national native title report

The second *National Report: Native Title*, a status report on the native title system, is soon to be released by the Tribunal.

This periodic report was launched in July 2008 to provide an ongoing series of reports on the progress of native title claimant applications.

The second report will provide national and state

statistics and trends, and observations about the challenges facing stakeholders when working to resolve native title claims.

To be notified that the report is published, visit www.nntt.gov.au and go to Contacts, Subscription Centre and subscribe to items in the What's New section.

In this issue:

Unregistered claims dismissed

National Native Title Report

Proposed amendments to the Native Title Act

Mediation scoping conferences

Future act activity

WA annual stakeholder function

Tribunal's substantive list

Key contacts



Native Title Act faces review

The Federal Court's role in the mediation of native title applications may be expanded as the result of a review of the Native Title Act, announced in October 2008 by the Attorney-General Robert McClelland.

The Attorney-General explains the review in a discussion paper, *Proposed minor native title amendments*, which was released on 23 December 2008.

The paper discusses the proposals and the questions relevant to applicants and respondent parties in native title proceedings.

Submissions on the proposed amendments can be made to the Attorney-General's Department until Monday 16 February 2009.



Attorney-General Robert McClelland.

Scoping conferences may reduce mediation time

A program of on-country mediation scoping conferences, launched in 2008 by the WA Registry, may reduce the time parties spend in mediation.

Claimants, respondents and their representatives attended the conferences, where Tribunal mediators worked with them to identify their concerns.

WA State Manager Lillian Maher said that if the concerns of all parties were addressed before claimants provided connection documentation to the State Government, it may be possible to tailor the terms and content of the evidence to suit the needs of both

claimants and respondents.

"This, in turn, may reduce the time in mediation before a consent determination can be reached," Ms Maher said.

"Although it is too early to assess the ultimate success of the scoping conferences, the initial responses have been positive so far," she said.

Previously, it has taken up to three years of post-connection mediation before a consent determination could take place. Ms Maher hoped scoping conferences would help reduce this time.

WA future act activity remains high

Since August 2008, the slow-down of the global economy has contributed to less notifications by the State Government of its intention to grant mineral and petroleum titles. But from January to August last year, the level of notifications was extremely high.

This meant a busy year for the WA Registry, which assisted parties by acting as an impartial and independent body (in both its mediation and decision-making capacities) to resolve any issues arising from the granting of those tenements.

The WA Registry finalised a total of 128 section 31(3) mediation meeting requests and section 150 conferences in the 2008 calendar year. There were 37 agreements as a result of negotiations facilitated by the Tribunal (out of 65 referrals where the parties participated in negotiations).

The remaining 63 requests were terminated, mainly because parties did not take part in the negotiations or tenement applications were withdrawn as a result of the economic downturn.

In the expedited procedure arbitration process in the financial year to date*, 764 objections have been finalised, of which 58 per cent were resolved by agreement, while another 13 per cent have been dismissed after the withdrawal of the associated tenement application.

The WA Registry's service standards for timeliness of decision-making were met by the future act team in the 2008 calendar year – although the workload was high, the team continued to deliver speedy results.

(*Figures at 31 December 2008)

President recaps 2008 for WA stakeholders

About 100 people attended the WA Registry's annual stakeholder function, held on 9 December 2008.

WA State Manager Lillian Maher invited a range of stakeholders to the event to join Tribunal President Graeme Neate, Deputy President Christopher Sumner, members Dan O'Dea and John Catlin, recently appointed Registrar Stephanie Fryer-Smith and directors Hugh Chevis and Franklin Gaffney.

Tribunal President Graeme Neate addressed the guests and reflected on the highlights of the year, noting that all native title determinations and most future act determinations were by consent. He also commented on the trend for parties to address native title in a broader social and economic sense, rather than as an end in itself.

State Manager Lillian Maher said she had received a great deal of very positive feedback about the event.

"It was a terrific opportunity to catch up with a range of people involved in WA native title business in a relaxed, informal environment," she said.

WA update on substantive list

The status of native title claims are periodically reviewed as part of the Tribunal's National Case Flow Management Scheme.

Criteria are applied to each claim before they are allocated to one or more of three lists. To read the criteria, go to www.nntt.gov.au, Applications and Determinations, then Procedures and Guidelines.

The lists are:

- Substantive list – matters likely to be resolved within the next two years
- Regional list – matters that require considerable preparation (with regard to key features such as connection, tenure and resolution of overlaps) before they can move to the substantive list
- Registrar's list – matters that require registration testing or notification or have not been referred to the Tribunal for mediation.

The WA claimant applications on the substantive list include:

| NNTT number | NNTT name | Date filed | NCFMS region | Date mediation began |
|-------------|------------------------------|------------|----------------|----------------------|
| WC00/6 | Balanggarra #3 | 03/07/2000 | Kimberley | 11/12/2000 |
| WC05/2 | Ngarla #2 | 07/04/2005 | Pilbara | 08/12/2005 |
| WC07/2 | Nyangumarta People 2 | 23/11/2007 | Pilbara | 18/12/2007 |
| WC96/64 | The Esperance Nyungars | 06/06/1996 | Goldfields | 13/02/1997 |
| WC97/95 | Thudgari People | 18/11/1997 | Geraldton | 07/09/2000 |
| WC98/65 | Nyangumarta People | 29/09/1998 | Pilbara | 13/03/2000 |
| WC98/68 | Birriliburu People | 29/09/1998 | Central Desert | 30/06/1999 |
| WC99/35 | Uunguu | 21/10/1999 | Kimberley | 11/12/2000 |
| WC99/47 | Balanggarra (Combination) | 30/04/1999 | Kimberley | 30/04/1999 |
| WC99/7 | Dambimangari | 09/04/1999 | Kimberley | 09/04/1999 |



Tribunal President Graeme Neate with WA State Manager Lillian Maher at the WA Registry stakeholder function in December.

Key contacts in the WA Registry

| Name | Responsibility | Contact number |
|-----------------|---|----------------|
| Lillian Maher | State Manager | (08) 9268 7356 |
| Alan Toogood | Future act mediation | (08) 9268 7472 |
| Sara Burke | Future act arbitration | (08) 9268 7443 |
| Steve Edwards | South West, Central Desert and Goldfields | (08) 9268 7329 |
| Tom Weaver | Geraldton, Kimberley and Pilbara | (08) 9268 7394 |
| Natalia Gemmell | Indigenous land use agreements | (08) 9268 7386 |
| Tina Mills | Communication and corporate | (08) 9268 7243 |
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