



Standards set for assessing basis of claim

RECENT Federal Court hearings reviewing a decision not to register a native title claim in Queensland have caused speculation on how claims will now be affected. The effect has been minimal.

The Gudjala native title application review has set out standards for assessing the factual basis of claims. However, the information required from claimants has changed little and native title applications are progressing normally through the system.

Native title begins with an application to the Federal Court. This may sound simple, but the clarity and detail of the application can affect how a claim progresses in the system.

The registration of a native title application gives claimants some important rights, like the right to negotiate about the grant of some mining tenements, and certain other procedural rights. Getting the application right is the key.

To pass the registration test, an application must satisfy criteria set out in the Native Title Act which include clear descriptions of the claim area and the native title group; what rights and interests are claimed; a sufficient factual basis for the rights and interests claimed (some facts that support the claim to having a traditional connection to country); and other, mostly procedural, conditions.

As part of a native title application, claimants are required to provide a factual basis for their claim. This can be done by providing statements from the claimants or other information about



NATIVE TITLE AND YOU

with National Native Title Tribunal Acting Registrar
FRANKLIN GAFFNEY

their traditional connection to the land claimed.

It is also possible to provide this information through reports from experts such as anthropologists, although this will not be necessary if the statements provided in an application are comprehensive.

As Registrar, I must also 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 claimed.

If the claim does not satisfy the registration test conditions it will not be accepted for registration. However, unless the application is dismissed by the Federal Court, a claim group can still pursue a determination of native title with their unregistered application.

If an application is not accepted for registration then the claimants have the option to request a reconsideration of their claim by a Tribunal Member (this only applies to claims made or amended in the Federal Court after 1 September 2007) or a review of the decision by the Federal Court. The claimants could also amend their application to meet the registration requirements.

The registration decision for the Gudjala native title application was reviewed by Justice Dowsett in August 2007 and an appeal to the Full Federal Court was recently allowed, finding that the court's initial approach used a more onerous standard than the Native Title Act required. The matter has been referred back to Justice Dowsett, who may provide further guidance on what is required for a factual basis in support of a claim.

Any groups considering making new claims or amending their claims should consult the guide *Native title claimant applications: a guide to understanding the requirements of the registration test*, available at the Tribunal website www.nnt.gov.au, and the Federal Court decision in Gudjala #2 v Native Title Registrar. Further information can be obtained by contacting Louise Bygrave, Senior Registration Delegate, on free-call 1800 640 501 or on (02) 9235 6300.