

Responsibilities of Applicants (2)

Overview

The GLSC frequently receives questions from claimants regarding the obligations and responsibilities of Applicants. The aim of this information sheet is to set out the basic principles that regulate their actions, principles which also apply to members of governing committees of body corporates (Corporations).

The role of Applicants and Corporations in the native title process is very important, and clearly laid out in Australian law (eg. *Native Title Act 1993*). Both are legal entities that the law empowers to act on behalf of whole groups of people. Individual claimants who make up these groups are therefore entitled to expect that the Applicants or the people who make up the committee that runs their Corporation will manage their affairs competently and in accordance with the law.

Any breaches of the high level of responsibility and trust, which the positions of Applicant and member of a Corporation carry, could result in criminal charges (eg. fraud) being laid against the wrong-doer/s by the police, with heavy fines or even jail terms the possible outcome. Alternatively, offenders could be removed from their positions, or suffer orders by the courts to make good any harm that their illegal actions have caused.

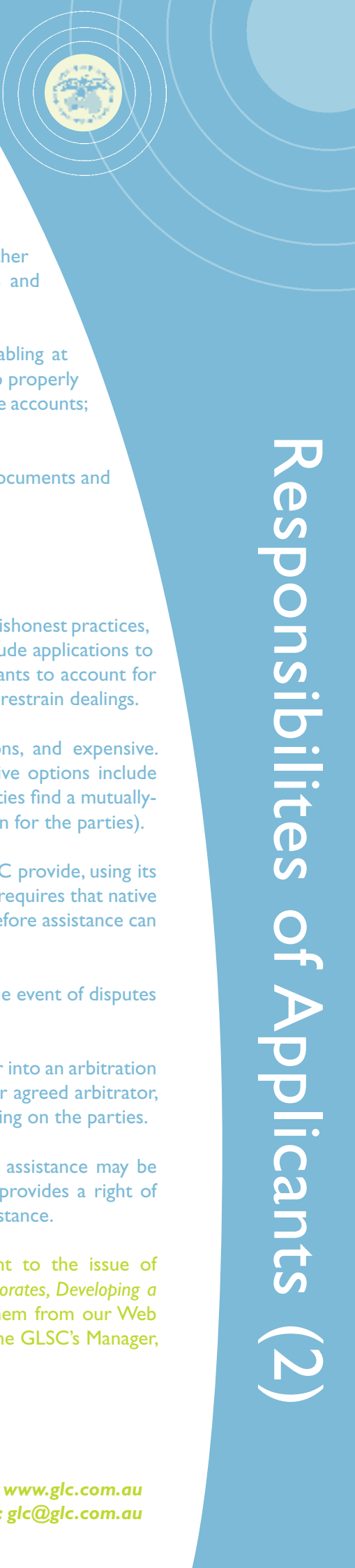
The key point for Applicants to understand is that they are **not there to act in their own personal interests or their own family's interests**. Rather their duty is to act in the interests of all of the members of the claim group that appointed them. In doing so they have to consult with the group and take instructions and directions from the group. Native title Corporations, insofar as they may have been appointed as agents of claim groups, are in the same position as Applicants. In essence, Applicants are required to:

- Progress the relevant native title applications according to direction of their claim groups;
- Abide by proper corporate governance procedures of accountability, proper record keeping and responsibility;
- Enter into agreements only on terms as explained and authorised by their claim groups; and
- Disburse and distribute any benefit (including money) from native title, including future act dealings, on a fair and equitable basis and only as approved by their claim groups.

Conditions for GLSC assistance to native title Applicants and Corporations

Under the *Native Title Act 1993* representative bodies, such as the GLSC, have a responsibility to make sure Applicants and Corporations who act for claim groups do their jobs satisfactorily and lawfully. To ensure this happens, the GLSC has adopted conditions that they must agree to before the representative body will provide them with assistance. These conditions include:

- (i) Agreement for the GLSC to convene properly constituted, regular claim group meetings and to abide by the decisions of those meetings and not take any steps that are not authorised by the meetings;

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- (ii) All agreements entered into by Applicants or native title bodies corporate (Corporations) must first be the subject of advice by GLSC lawyers and thereafter approved at properly constituted claim group meetings before they are executed;
 - (iii) Applicants and bodies corporate agree to abide by agreed disbursement and distribution of benefits policies;
 - (iv) All moneys from native title, including those from future act and other agreements, are to go into nominated accounts, with agreed signatories and other security requirements, and a distribution policy, where applicable;
 - (v) Accountants are to be appointed to prepare claim group accounts for tabling at claim group meetings, and Applicants and bodies corporate are to report to properly constituted claim group meetings upon their activities, including tabling of the accounts; and
 - (vi) GLSC officers are to have the right to examine the accounts and financial documents and to advise the claim groups on them.

Claimant Disputes

In the event that Applicants or bodies corporate (Corporations) engage in unfair or dishonest practices, native title claimants have, as a last resort, certain remedies at law. These could include applications to a court to replace the Applicants; or applications for court orders to direct Applicants to account for moneys received, provide restitution of moneys wrongly paid out or injunctions to restrain dealings.

But the legal process can be very disruptive to family and community relations, and expensive. Therefore, the GLSC prefers to see disputes resolved outside of court. Alternative options include internal discussions, mediation (an in-house or independent 3rd party helps the parties find a mutually-agreeable solution) or even arbitration (an independent 3rd party decides a solution for the parties).

Providing mediation services is one of the functions that the Act requires the GLSC provide, using its own staff, consultants or professional mediators. Following on from this, the GLSC requires that native title Applicants or Corporations also agree to the following additional conditions, before assistance can be provided:

- (vii) That they will engage in good faith in mediation arranged by the GLSC in the event of disputes between claimants or with relevant native title bodies corporate; and
- (viii) In the event of a dispute not being resolved by mediation, they agree to enter into an arbitration process. In this way an arbitrator, such as an independent barrister or other agreed arbitrator, could hear the dispute, and make findings and decisions that would be binding on the parties.

If any of the above conditions are breached the GLSC may issue a warning that assistance may be suspended or terminated if the breach is not rectified. The *Native Title Act 1993* provides a right of appeal (to ATSIIC) against any decision by a representative body not to provide assistance.

Further copies of this information sheet and other GLSC publications relevant to the issue of proper standards for native title Applicants (*Responsibilities of Applicants, Body Corporates, Developing a Distribution Policy*) can be obtained by contacting the GLSC or by downloading them from our Web site (www.glc.com.au - go to 'publications'). For more information please contact the GLSC's Manager, Native Title, Dr Bertus de Villiers on (08) 9218 9260