



Overview

Questions are often asked about the functions, powers and responsibilities of Applicants in native title claims. It is important for all claimants, including Applicants, that they are aware of their responsibilities. If Applicants do things outside of their powers, legal proceedings can be initiated to protect the interests of all claimants.



Some of the attendees at a recent meeting of the Sir Samuel claimant group.

In a nutshell: Applicants are chosen by native title claim groups to represent the group's interests and to do whatever the group instructs them to do. This relationship has a special place in the legal system. It's called an 'agency' relationship, where the Applicant is required (by law) to act at the direction and in the best interests of the group.

Applicants cannot act in their own interest. That would be unlawful. Hence the frequent meetings that are held with all claimants to enable proper instructions to be given to Applicants and where Applicants can be held accountable for their actions.

Some of the frequently asked questions about Applicants are:

Applicants are chosen by native title claim groups to represent the group's interests

1. How are Applicants appointed?

The claimant group appoints applicants when the claim is registered. The choice of Applicant/s may take account of family interests, amalgamation of claims and other matters that are relevant to traditional law and custom. Claimant groups have the choice of how many Applicants they want to represent them.

Although Applicants always represent all of the claimants from any group, internal arrangements can be made so that certain Applicants speak for certain parts of the country. This is a good way of showing respect for those who have a special knowledge of a particular part of country.

2. How are Applicants removed or replaced?

It is relatively simple to replace an Applicant who has resigned or who is deceased. Also the Native Title Act (Section 66B) says an Applicant can be removed if such a person is no longer authorised to act on behalf of the group or has exceeded his/her authority.

As removal of an Applicant is a serious matter, it requires an order of the Court. Before going to Court all the reasons for the proposed removal must have been discussed and agreed to at properly constituted claimant meetings.



The Court would not allow removal of an Applicant simply because a few claimants are disgruntled. A serious issue has to arise to justify the action. However, it is important for claimants to know that they have the power to remove an Applicant and for Applicants to realise that they are accountable to claimants.

The removal or replacement of an Applicant requires an amendment to the claim, which means the claim has to pass the registration test again.

3. Who gives instructions to an Applicant?

An Applicant acts as 'agent' on behalf of the claimant group and therefore has to take directions and instructions from the group. That is why Applicants have to report to claimant meetings on their actions.

Some practical guidelines for Applicants are that they:

- May not sign an agreement without the approval of the claimant group;
- May not receive any money or other benefits without approval of the claimant group;
- May not appoint separate legal representation or other consultants to that which is authorised by the claim group;
- May not withdraw objections in return for payment or other benefits, unless that is part of a compensation agreement approved by the claimant group; and
- Must declare his/her interest when a conflict of interest arises. This means when the Applicant receives a special benefit or advantage.

An Applicant acts as 'agent' on behalf of the claimant group

4. Who is the Applicant accountable to?

An Applicant is accountable to all claimants. That is why GLC arranges frequent meetings of all claimants to discuss all business of the claim. At these meetings instructions can be given to Applicants, draft agreements are discussed, and policy is formulated. It is very important for claimants to attend these meetings to ensure that all their questions are answered and all issues are raised.

5. Can an Applicant enter into agreements without the claimant group's approval?

An Applicant may not engage in negotiations on behalf of the group without their authorisation.

If claimants become aware of negotiations taking place, without it being authorised, the mining company should be advised that the Applicant is in breach of his/her authority and that negotiations should be halted until proper claimant meetings take place. In an extreme case, a Court injunction can be sought to suspend negotiations.

6. What happens to Applicants once native title is determined?

Once native title is determined the role of Applicants is completed. The Native Title Act says that a prescribed body corporate authorised by a duly constituted meeting of the claimant group, will take on their responsibilities.

For more information please contact Bertus de Villiers, Manager: Legal and Native Title, or raise the issue at the next claimant meeting.