



GOLDFIELDS LAND COUNCIL

body corporate

Introduction

With the registration process for most native title claims within the Goldfields either completed or in the process of completion, attention is now focused on the establishment of body corporates and preparations for determination of native title by the Federal Court.

The Native Title Act requires that native title holders have a body corporate which can hold native title, on behalf of the whole group, once it has been determined.

What a body corporate can do

Body corporates are registered, legal entities. The registration process includes lodging a constitution and a statement of the aims and objectives of the body corporate under the Aboriginal Councils and Associations Act, 1976.



Community meetings throughout the Goldfields will discuss body corporates.

Body corporates are not peculiar to native title claimants. They are very commonly used in Australia for bringing together groups of people with common interests (eg. people living in strata-titled homes, groups whose aims are to further the interests of the community, and groups undertaking commercial or business ventures, etc) and providing them joint representations on financial and legal matters.

- With respect to native title, body corporates can provide:
- coordinated approaches on issues for all members of claimant groups;
 - clarity and certainty to members on all matters affecting the claims;
 - accountability to all claimants at duly constituted and frequent meetings; and
 - a device which enables a community to enter into legally binding commitments and agreements.

There is no need for claimants to wait until determination of native title by the Federal Court before establishing a body corporate. In the process leading to determination there are many activities which also require a coordinated response, such as:

- negotiations on 'future acts' (proposed minerals exploration, mining, establishment of town sites etc.);
- ensuring protection of heritage (protection of sites, involvement of elders and younger persons, protection of information and intellectual property rights etc.); and
- distribution and investment of any income derived from compensation which might be paid by mining companies under future act and land access agreements.

All these activities can be much better coordinated if a proper legal body which represents all claimants, such as a body corporate, is in place.



Fairness and accountability

A body corporate with a properly constituted board of directors or trustees, can provide native title claimant groups with a formal structure for representing their interests in negotiations and the general management of their affairs, while at the same time ensuring that the directors remain accountable to the claimants for all actions.

Many of the problems currently experienced by claimants (eg. not always being aware of agreements concluded, compensation paid, and issues related to heritage protection and surveys) can be

addressed by a properly structured body corporate. Provision for frequent meetings of claimants is essential to ensure that every person is well informed and proper approval of agreements takes place before signing on behalf of the group.

A body corporate can also ensure the fair distribution of whatever benefits are obtained through negotiations with other parties such as explorers, miners and land developers (eg. skills training, employment and contracting opportunities, and compensation).

The main issues to consider

Body corporates are very flexible in their structure. They can be tailored to suit the unique features or needs of any claimant group. Some of the main issues requiring discussion by native title claimants who are in the process of setting up a body corporate are:

- The most appropriate legal entity;
- Objectives and functions of the body corporate;
- Representation and ways in which different interest groups or families can be represented;
- Investment and distribution of income;
- Responsibility and accountability of governing committee to claimants;
- Frequency of meetings; and
- Voting rights and membership

Establishment - the GLC will help

Once native title has been determined, the Native Title Act requires that the title be held in trust by a prescribed body corporate. The prescribed body corporate must be incorporated under the Aboriginal Councils and Associations Act 1976, which recognises the right of Aboriginal people to establish, manage and control body corporates.

Several body corporates have been established in the Goldfields and operate

successfully, such as the North East Independent Board (NEIB). The NEIB is accountable to its members and is required to obtain approval at duly constituted meetings before an agreement may be signed. The GLC assisted with the establishment of the NEIB.

Up to the middle of 2000 the GLC will be running an information campaign at claimant meetings and meetings of the Regional Working Groups, aimed at assisting with everyone's understanding of all

of the options for the establishment of an appropriate body corporate.

The GLC will also be talking to the other land councils in WA and the rest of Australia to learn from their experiences, knowledge which will be passed on to Goldfields' claimants. The GLC will also assist claimants to develop proper distribution policies to ensure that all income is spent or invested in accordance with proper community resolutions and support.

Want more information?

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