



NATIVE TITLE ACT AMENDMENTS – Dismissal of unregistered claims

In 2007, in spite of opposition from the GLSC and other native title Representative Bodies, the former Commonwealth Government amended the *Native Title Act 1993* to change the way in which the Federal Court deals with claims that have not met all of the conditions of the Registration Test and are therefore unregistered.

The amendments allow the Federal Court to dismiss unregistered claims under new Section 190F(6) of the Act if the following three key criteria are met:

- the application has not been amended since it was first considered by the Native Title Registrar;
- the application is unlikely to be amended in a way that would lead to a different registration test outcome, and
- in the opinion of the Court, there is no other reason why the claim should not be dismissed.

During May 2008, the GLSC convened meetings of each of the affected claim groups it represents to further explain the process and obtain people's views.

On 13 October 2008, Federal Court Justice John Gilmour found that with several Goldfields claims all of the above requirements of section 190F(6) were met and therefore decided to dismiss the following native title claims:

Represented by GLSC

- Sir Samuel #1 & #2
- Koara
- Ngalia Kutjungkatja
- Tjupan

Not represented by GLSC but in the GLSC area and overlaps GLSC Claims

- Wom-Ber (previously overlapped Esperance Nyungar and Ngadju)

Some time after December 2008 the Federal Court will be considering whether to dismiss some other unregistered Goldfields-Esperance claims. Those other claims include Maduwongga, Central West, Kalamaia Kabu(d)n and Gubrun. None of these claims are represented by the GLSC.

What the dismissal of claims means

1. Dismissal of the claims under section 190F(6) does not prevent the filing of new claims and/or heritage protection arrangements in the areas of the dismissed claims.
2. Dismissal of a claim brings to an end any current future act negotiations in a formal sense. However, this does not mean negotiations cannot continue. It just means that these negotiations are no longer able to be conducted under the *Native Title Act*.

What the GLSC will be doing now

3. The GLSC will be working towards the filing of new claims in the north-west Goldfields that are legally sustainable and anthropologically appropriate, and that avoid overlaps wherever possible. Further research work will be required before any new claims would be ready for filing.
4. The GLSC will be seeking to continue current mining negotiations with relevant companies in the north-west Goldfields area.
5. The GLSC is aiming to secure a moratorium on new mining tenements until adequate heritage protection arrangements with the State Government are in place in the north-west Goldfields area. The previous State Government indicated it was considering extending the heritage protection arrangements that currently apply in the former Wongatha trial area to the north-west Goldfields area. The GLSC is seeking to secure the new State Government's support for this position.

Note that two other land councils (Central Desert & Yamatji) also have jurisdiction over native title matters in parts of the north-west Goldfields and will have a role in the preparation and filing of new claims.

More information

The GLSC will continue to keep claimants informed of developments with regard new claims and unregistered claims yet to be considered by the Federal Court.

If you have any questions or want more information please contact Russell Trott (GLSC Deputy Principal Legal Officer) on (08) 9263 8700 or 0407 382735.