

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

WRITTEN QUESTION

Ms J Carney

to Minister for Indigenous Affairs

Aboriginal Land Act - Court Proceedings

1. Is the Government engaged in any court proceedings involving Aboriginal Land Right Act matters or matters under provisions of the Native Title Act?
2. If so, please detail the matters and when proceedings commenced before the courts?

ANSWER

1. *Aboriginal Land Rights (Northern Territory) Act 1976* - There are currently no ALRA matters the subject of court proceedings.

Native Title Act 1993 - As at 10 October 2005 there were a total of 202 active claims under the *Native Title Act* in the Northern Territory. This figure comprises 197 claimant applications for a determination of native title and 5 compensation applications. Attached is a list of these Native Title applications as provided by the Federal Court of Australia.

- 2A. By way of background, applications under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) are lodged with the Aboriginal Land Commissioner. The Aboriginal Land Commissioner must ascertain whether the applicants or any other Aboriginal people are the traditional owners of the land claimed. The Commissioner then reports his findings to the relevant Federal Minister. Although the Aboriginal Land Commissioner must be a judge of the Federal Court of Australia or of the Supreme Court of the Northern Territory, and the parties are generally represented by lawyers, the process under ALRA is administrative not judicial.

According to the Aboriginal Land Commissioner's Report for the year ended 30 June 2005 there were:

- (a) 22 applications, of which 5 are repeat applications, which could potentially proceed to an inquiry, in addition to the 11 applications which have commenced (see (c) below);
- (b) 138 applications (139 including Avon Downs, see (c) below) which have been wholly withdrawn or are regarded as not within the Commissioner's jurisdiction either because the claimed land does not come within the statutory description, or the application duplicates the application in another claim which has been dealt with and recommended for grant, or the applications relate solely to land held (validly) by the Northern Territory Land Corporation or the Conservation Land Corporation, or the claims are to the seabed below the low-water mark; and

- (c) 11 applications in respect of which inquiries have commenced but are incomplete. One application (Avon Downs) was subsequently withdrawn, and the hearing of another (Alcoota) has been completed but the report to the Federal Minister remains pending.

No new applications under ALRA have been made since the sunset clause took effect on 5 June 1997.

- 2B. Unlike the process with ALRA claims, all native title claims are filed in the Federal Court of Australia. The proceedings are therefore adversarial in nature as opposed to the ALRA inquisitorial proceeding.

Native title/related matters which have been heard (fully or in part) or are set down to be heard or are subject to an appeal or special leave applications are:

Federal Court

1. Larrakia Part A - this proceeding involves a consolidation of 19 separate native title claims over land and waters in the greater Darwin area by the Larrakia people and competing and overlapping claims by Tibby Quall for the Danggalaba/Kulimbirigin people. Closing submissions took place in June 2004 and the Court is scheduled to hand down its decision in April 2006.

2. Town of Timber Creek claims - this proceeding involved the hearing of 3 separate native title claims and commenced in Timber Creek on 1 March 2005, with closing submissions taking place on 28 and 29 April 2005. The Court has reserved its decision.

3. Yulara compensation claim - this is Australia's first claim seeking compensation for extinguishment of native title. The case comprises two components, the determination of native title rights and interests and the value of extinguishment of those rights and interests. The first component of the case has been completed and judgement reserved.

4. Newcastle Waters Test Cases - these cases involve six separate proceedings which are to be heard together and which seek to clarify areas of uncertainty with respect to the nature of native title rights and interests that survive the grant of a Northern Territory pastoral lease. This will be the first time that surviving native title rights and interests on a Northern Territory pastoral lease have been agitated in the context of a contemporary, functioning pastoral lease.

Full Federal Court

1. Blue Mud Bay and associated proceedings - this claim was filed on 27 November 2002 on behalf of 13 clan groups to an area over Grindall and Myaoola Bays and Aboriginal freehold vested in the Arnhem Land Aboriginal Land Trust in Blue Mud Bay in Arnhem Land. The Court has handed down its determination, and the matter is now subject to appeal and due to be heard in the Federal Court in August 2006.

High Court of Australia

1. Griffiths v Lands & Mining Tribunal and Minister for Lands Planning and Environment - this proceeding concerns a special leave application filed by the NLC which was heard by the High Court on 22 April 2005. The matter arises from a proposal to acquire land in Timber Creek, which prompted a native title claim and subsequently a challenge to the Territory's power to acquire native title rights and interests for third parties. The High Court adjourned the application until subsequent to a determination as to the existence of native title by the Federal Court in the Timber Creek matters (Federal Court File Nos NTD6016/99, NTD6008/00 and NTD6012/00).

2. Davenport/Murchison - a special leave application to the High Court of Australia was filed by the Territory on 26 August 2005. The special leave application is in respect of 3 aspects of the Full Federal Court's decision, namely (1) the existence of a native title right to "live on" the land which may encompass a right to live permanently, establish permanent communities and erect permanent structures; (2) the application of section 47B of the *Native Title Act* which requires prior extinguishment to be disregarded in certain circumstances; and (3) the conclusion that the claimants "occupied" the relevant area within the meaning of the *Native Title Act* at the time of the application.