

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.6

Question No. 37

Senator Crossin asked the following question at the hearing on 13 February 2007:

Bennell v State of Western Australia native title claim: Can the Department seek advice from the Western Australian authorities on the extent to which beaches within the claim area are covered by existing public access rights in accordance with Western Australian confirmation provisions enacted pursuant to subsection 212(2) of the Native Title Act?

The answer to the honourable senator's question is as follows:

As requested, the Department sought advice from the Western Australian Government Office of Native Title about the above question.

The Department has been advised that preliminary land tenure searches undertaken for the metropolitan Perth portion of the *Bennell v State of Western Australia* native title claim indicated that there are likely to be some coastal beaches which are unallocated Crown land.

If exclusive native title was recognised over beaches in Western Australia's south west, then the Office of Native Title is of the view that public access to such beaches would be permitted under section 14 of the *Titles (Validation) and Native Title (Effects of Past Acts) Act 1995* (WA) in conjunction with section 212 of the *Native Title Act 1993*. The Office of Native Title acknowledges that those provisions are yet to have their precise meaning and operation judicially considered, and the operation of the provisions may depend upon the facts of each particular case.