

GOLDFIELDS LAND AND SEA COUNCIL



RESPONSE TO REPORT OF THE NATIVE TITLE CLAIMS RESOLUTION REVIEW & FEDERAL GOVERNMENT'S RESPONSE

Overview

The GLSC and claimants it represents have long supported speeding up the resolution of native title claims and their resolution by negotiation, rather than litigation. Unfortunately, governments in particular (WA and Federal) have been lukewarm to negotiation and mediation of key claims.

Whilst supporting the report's general thrust toward these goals, the GLSC has significant concerns about some of the recommendations.

Greater NNTT involvement in mediation

Thus far, the NNTT's performance with mediation of claims has been unsatisfactory. NNTT personnel generally lack the required skills to mediate satisfactorily and get results in a reasonable time.

Although a NNTT-based mediation process is preferred, because it could be more hands-on and focussed (a specialist native title body), more flexible and cheaper for all parties than Federal Court mediation, the GLSC would only support NNTT-based mediation if this option was accompanied by considerable up-skilling of the current tribunal mediators and recruitment of Aboriginal mediators to provide balance within the Tribunal.

Setting of timelines for mediation proceedings is supported, provided they are realistic timelines. Timelines have been set by the Tribunal previously, but in the experience of the GLSC the State Government has rarely complied with them.

NNTT inquiry powers

Granting inquiry powers to the NNTT is supported. The NNTT is well placed to prepare reports for the Federal Court on claim overlaps, inter- and intra-indigenous disputes etc. These reports would greatly assist the Court in better understanding of claims and assist in earlier resolution of claims. The ability of parties to put their case to the Court fully, as a matter of justice, must be retained. Safeguards would be required to ensure information provided by parties to NNTT inquiries could not prejudice their position in later court proceedings.

Summary dismissal of claims

The idea of automatic dismissal of claims that do not pass the Tribunal registration test is absolutely opposed. This would not be justice. The registration test was never intended to be determinative. For example, some overlapping claims automatically fail the registration test, but still need to be carefully considered by a court, along with the competing claims. This proposal has not been thought through and would have disastrous consequences.

Good faith negotiations

The inference from some quarters that claimants have been frustrating the native title process by not negotiating in good faith is rejected. It is the GLSC's experience that governments and developers (eg. some industry representative bodies and mining companies) have been the worst offenders in refusing to negotiate soundly based native title claims. The State Government has vigorously defended most claims in this State and won none of them.

Curtailed government funding to third party respondents

Curbing government funding to incidental third-party respondents to claims is strongly supported. This is a major cause of delays with the resolution of claims and their high cost. The idea of

confining funding for third parties to where they are prepared to negotiate agreements is supported.

Further regulation of NTRBs

The GLSC opposes the suggestion in some media reports that the legislation proposed by the Attorney General should also include further regulation of NTRBs (Financial Review 21/08/06, page 1). NTRBs are already regulated under the Native Title Act, Aboriginal Councils and Associations Act, Commonwealth Authorities and Companies Act, and by their funding controller (Commonwealth Government).

In the context of improving the efficiency of the native title claims process, a higher priority for the Government should be to increase the funding available to NTRBs so that they might more readily fulfil their responsibilities under the Native Title Act.

The report itself acknowledged the importance of adequate resources for NTRBs at section 4.107: "It is essential that NTRBs are properly resourced so that they can engage experienced lawyers, anthropologists and other experts to ensure that those resources which they do have are efficiently used." From time to time, individual mining companies, mining company representative bodies and State governments have also acknowledged poor resourcing of NTRBs as a major impediment to the smooth operation of the native title process and timely resolution of claims.

Disbandment of claimants' right to negotiate

Since the release of the report last weekend there has been speculation that the Federal Government might go so far as to revisit the 1998 Amendments to the Native Title Act by removing the need for miners to negotiate with claimants when they want to obtain a mining lease.

The GLSC strongly opposes this suggestion. Native title has delivered very little for Aboriginal traditional land owners. Ever since the Mabo judgement there has been a steady erosion of indigenous people's rights and entitlements. The right to negotiate, which is designed to protect the status quo, pending determination of rights, is one of the few rights remaining, and the only one capable of delivering a modest benefit to indigenous people from development on their land.

Avoidance of re-registration where claims are altered

The report recommendation that re-registration of claims not be required where they are amended for: reducing the area; reducing the rights or list of interests; or removal of deceased names, is strongly supported.

However, the Attorney General's decision not to act on this recommendation at this time is short-sighted. The recommendation was designed to provide an incentive to claimants to make proper and reasonable amendments to their claim without the danger of failing the registration test.

Proceeding to legislation without public comment

The GLSC is very concerned at the Government's handling of the release of the report, Attorney General's response and announcement of plans to proceed to legislate, perhaps as early as this year.

The report findings are complex and far-reaching. Accordingly, the GLSC wants a formal public comment period to allow stakeholders to properly consider the findings and allow government to adequately gauge stakeholder views and amend the proposed legislation accordingly.

At the moment, public input is being conducted through the media alone.