

The result of the case is that the determination of native title rights will be in terms similar to those proposed originally by Justice Olney, namely:

- the native title rights do not confer rights to the exclusion of all others;
- the native title rights include free access to the sea and seabed within the claim area in accordance with traditional laws and customs for the purposes of:
  - travelling through or within the area;
  - fishing and hunting;
  - visiting and protecting places that are of cultural and spiritual importance; and
  - safeguarding cultural and spiritual knowledge.

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### **Indigenous Land Use Agreements: Parliamentary Joint Committee Recommendations**

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The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund recently released its second interim report as part of its ongoing inquiry under s.206(d) of the *Native Title Act 1993* (NTA). The second interim report concerns Indigenous Land Use Agreements (ILUAs). The report focuses on identifying ILUAs that have been negotiated and on examining the how ILUAs operate in practice.

The Committee examines in detail some areas of potential uncertainty in the intersection of the ILUA provisions and common law contract. It recommends three legislative changes in this regard:

- an amendment to s.24EA to make it clear that registration of an agreement is not intended to exclude the operation of the contractual remedies of rescission and termination, (Section 24EA at present relevantly provides that an agreement registered as an ILUA has effect as if it were a contract among the parties to the agreement.)
- replacing s.199C(3) with a more general provision so as to ensure that where an agreement has lost its contractual effect, for whatever reason, it can be removed from the register, and
- an amendment to show how an amendment can be made to a registered ILUA.

In relation to the funding of representative bodies, non-native title parties and native title body corporates in respect of the negotiation and implementation of ILUAs, the report states that there 'is overwhelming evidence that representative bodies are not receiving adequate funding to assist in the negotiation of ILUAs within the timeframes

proponents require or prefer' and that this is causing difficulties for both native title holders and proponents.

The Committee recommends;

- more financial resources be made available to native title representative bodies for the negotiation of ILUAs ( on top of the 'additional funding' provided in the 2001-2002 budget),
- the Guidelines for Provision of Financial Assistance be reviewed to ensure non-native title parties are receiving adequate assistance to facilitate their participation in the negotiation of ILUAs, and
- prescribed bodies corporate receive adequate funding to perform their statutory functions and that they receive appropriate training to meet their statutory duties. This training to include directors' duties, accounting procedures and land management.

The Committee also makes a number of recommendations proposing minor changes to the operation of the National Native Title Tribunal.

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### **Developments in Commonwealth agency coordination\***

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The *Native Title Act 1993* and the 1998 amendments provide a framework for dealing with native title that encourages the use of consensus-based mediation and agreement, rather than litigation.

The rules and administrative practices designed to achieve this outcome are continuing to evolve in response to a variety of factors, all of which present particular challenges. These include:

- a developing body of law that is both new and very complex,
- difficult legal issues that arise from some of the unique features of the legislation and its judicial interpretation,
- the distinctive characteristics of native title proceedings and mediation,
- the changing behaviour of governments as they adapt policy, practices and legislation to take account of native title, and
- the practical difficulties of drawing together the myriad of parties involved in achieving mutually acceptable native title outcomes.

Many parties play a role in the native title system – native title holders, governments at all levels, various respondent parties and the groups and agencies interacting with them. This paper focuses on developments aimed at building stronger interaction between key Commonwealth agencies involved in the native title system. These developments will improve the service to those who rely on that system to resolve native title issues.