BREAKING NEWS

A-G Announces reforms to Native Title System

On September 7 2005, Attorney-General The Hon. Phillip Ruddock announced a package of proposed reforms to the native title system as the "increasing number of native title determinations and agreements demonstrate that (although) the system is working…the current framework is still too costly and too time-consuming". The proposed reforms will address all aspects of the system and are "focused upon measures that encourage the resolution of native title issues through agreement making in preference to litigation wherever, possible".

"The six interconnected aspects to the reforms include:

- Measures to improve the effectiveness of Native Title Representative Bodies
- Amending the guidelines of the native title respondents' financial assistance program
- Preparation of exposure draft legislation for consultation on possible technical amendments to the Native Title Act to improve existing processes for native title litigation and negotiation
- An independent review of the claims resolution processes to consider how the NNTT and the Federal Court can work more effectively in managing and resolving native title claims
- An examination of current structures and processes of Prescribed Bodies Corporate (PBCs), including targeted consultation with relevant stakeholders
- Increased dialogue and consultation with the State and Territory Governments to promote and encourage more transparent practices in the resolution of native title issues" (Attorney-General media release 7/9/05).

The National Native Title Tribunal has welcomed "moves to increase transparency in the native title system and encourages participants to contribute to the reform process by being involved in the upcoming consultation processes". Details of the consultation process will be announced later this year.

The Mineral's Council of Australia have expressed their support for the reforms process: MCA Chief Executive Mitchell H Hooke said: "The Government's approach is consistent with the reform platform advocated by the Minerals Council of Australia. We are intent on improving the efficiency and operability of the native title system without diminishing the rights of Indigenous peoples to the mutual benefit of all parties" (MCA Press Release 7 Sep 2005).

Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma also welcomed the reforms. "This not only includes funding, but also capacity building for these organisations…The native title system could function more effectively if NTRBs, NTSs and PBCs were better equipped to do their work".

The Goldfields Land and Sea Council have also responded favorably to the announcement, in particular welcoming "the opportunity for addressing long-standing concerns about low-level funding provided to native title representative bodies…"Previous amendments to the Native Title Act (Wik amendments 1998) gave precedence to the concerns of pastoralists and miners. It is now time for the rights and concerns of Indigenous people to be given due consideration. We look forward to participating in the review," GLASAC CEO Brian Wyatt said" (GLSC Media Release 8/9/05).

The Consultation Process

The consultation process is different for each of the six aspects of the reforms:

- An announcement about NTRB reform will be made by Senator Vanstone later in 2005
- Key stakeholders will be consulted by government in relation to assistance to respondents in native title claims
- Comprehensive consultations with stakeholders regarding the proposed technical amendments to the Act will include public circulation of the exposure draft legislation for comment and will provide an opportunity for interested parties to provide the Government with additional suggestions for amendment

- Independent consultants will be engaged to undertake the Claims Resolution Review and the Review will involve appropriate consultations with native title stakeholders
- The Government will undertake consultation on the functions and governance model of PBCs with a range of stakeholders including existing PBCs, NTRBs, State and Territory governments and industry bodies. The consultations will be facilitated by a steering committee comprising the Office of Indigenous Policy Coordination, the Office of the Registrar of Aboriginal Corporations, and the Attorney-General's Department
- The Attorney-General convened a meeting of all State and Territory ministers with responsibility for native title on 16 September 2005 and promoted the benefits of positive and transparent behaviours by other jurisdictions. In addition the Native Title Consultative Forum, convened by the AGD three times a year, will continue to give all stakeholders an opportunity to share experiences and discuss challenges and opportunities for the native title system.

(Information about the Consultation Process from "Practical reforms to deliver better outcomes in native title", AGD, 7 Sep 2005).

For more information, the Attorney-General's media release and briefing document can be found by visiting the Attorney-General's Department website at http://www.ag.gov.au/nativetitlesystemreform

FEATURE

De Rose v State of South Australia (no 2) [2005] FCACF 110

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Backgound

The full Court of the Federal Court, comprising Wilcox Sackville and Merkel J handed down a determination in the De Rose Hill native title claim on 8 June 2005 in which non-exclusive native title was found to exist except in the area of improvements.

The claim by senior traditional owner Peter De Rose and others was over the De Rose Hill pastoral station in the far north of SA which consists of three separate pastoral leases. The respondent parties were the State of SA and the Fullers (and their private company) as holders of the pastoral leases.

The original decision by O'Loughlin J dismissed the claim after a trial lasting 68 days. The traditional owners had all left the station property, the last to leave being Mr Peter De Rose in 1978. The evidence of the Traditional Owners was that they were in effect forced off the station, sometimes at gunpoint, by Mr Fuller and that the traditional owners were scared to go back to the station. It was this loss of physical connection leading to a failure to live up to the responsibilities under traditional law and custom of a *Ngurarityja* (traditional custodian with respect to certain sites) that was focused on by the trial judge.

The Federal Court found that the trial judge had made errors of law and allowed the appeal on 16 December 2003 (De Rose appeal #1). A sad fact noted in the judgement was that of the twelve original applicants, two died before the trial and three more died after the judgement on appeal in December 2003. As O'Loughlin J had retired and the appeal court invited further submissions from the parties and proceeded to deliver the decision rather than send the matter back to the trial judge. During this process the native title applicants and the State had agreed what the determination should be assuming the Court was satisfied that Native Title did exist. With one exception this was also agreed by the respondent pastoralist.