

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

Sub Program 1.1.2

Question No. 39

Senator Barnett asked the following question at the hearing on 19 October 2009:

Was a report tabled at the Native Title Ministers meeting in August 2009? If so, can the Committee be provided with a copy of the report?

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

The Joint Working Group on Indigenous Land Settlements 2008-09 progress report, which was tabled at the Native Title Ministers' Meeting in August 2009, is provided at **Attachment A**. The report includes the Joint Working Group's Terms of Reference for 2009-10, which was endorsed by Ministers at that meeting.

**JOINT WORKING GROUP ON INDIGENOUS LAND SETTLEMENTS
2008-09 REPORT
NATIVE TITLE MINISTERS' MEETING**

Introduction

In 2008, Ministers established the Joint Working Group on Indigenous Land Settlements to develop innovative policy options for progressing broader and regional land settlements. Under the original Terms of Reference for the Working Group, members agreed that it would report to Ministers at the 2009 Native Title Ministers' Meeting.

Members agree that the Working Group has provided an ideal forum for close engagement and cooperation between Commonwealth, State and Territory governments. The Working Group has also been an important mechanism in facilitating the exchange of knowledge and expertise in native title matters. It has driven the development of policy initiatives that will contribute to an overall improvement in the operation of the native title system

Since its establishment, two key initiatives have been progressed by the Working Group, reflecting the broad priorities identified in its original Terms of Reference:

1. Guidelines for Best Practice in Flexible and Sustainable Agreement Making, and
2. a Native Title National Partnership Agreement.

Guidelines for Best Practice in Flexible and Sustainable Agreement Making

The Working Group has developed a set of Guidelines for Best Practice in Flexible and Sustainable Agreement Making (the Guidelines), to complement the Native Title National Partnership Agreement and meet its objective of achieving broader land settlements.

The Guidelines provide practical guidance for government parties on the behaviours, attitudes and practices that can achieve the efficient resolution of native title, from the early stages of negotiations through to implementation.

The Guidelines emphasise the desirability for government parties to provide broader practical and sustainable benefits attuned to the interests of Indigenous native title claimants.

In developing the Guidelines the Working Group sought the views of the Native Title Consultative Forum, which includes Native Title Representative Bodies (NTRBs) and a range of industry groups representing potential third party respondents to native title claims. While those consulted welcomed the Guidelines, many noted that they would only add value if effectively implemented by governments.

The Working Group will consider implementation issues, including whether to extend the application of the Guidelines to other interested parties, for example NTRBs and industry bodies.

Native Title National Partnership Agreement

The Commonwealth has previously offered States and Territories financial assistance to deal with native title compensation. A great deal has changed since the offer was first made over a decade ago. Accordingly, at the 2008 Native Title Ministers' Meeting, Ministers agreed to negotiate in good faith on a revised offer of Commonwealth financial assistance that could better facilitate State and Territory settlement of native title issues.

Negotiations on the revised offer were conducted at officer level via the Working Group on a 'without prejudice' basis, resulting in significant progress toward a draft Native Title National Partnership Agreement (NTNPA). The draft NTNPA seeks to efficiently resolve native title determination and compensation claims in a way that enhances the economic, cultural and social development of Native Title Claim Groups, recognises their relationship with their traditional lands and reduces the cost and time of native title litigation.

To achieve these objectives, the draft NTNPA provides for Commonwealth financial assistance to State and Territory governments to negotiate settlements that result in the full and final resolution of a claim or potential claim, and provide practical benefits to Native Title Claim Groups, for example land acquisition, the buy back of licences and opportunities to co-manage and access land. A key requirement would be that the settlement is sustainable over the longer term and contributes to the Council of Australian Governments' (COAG) 'Closing the Gap' targets, as set out in the National Indigenous Reform Agreement.

The Working Group engaged in extensive negotiations on the content of the NTNPA, resulting in significant progress towards its final form, noting that some jurisdictions still have outstanding issues to be resolved.

Future work plan – Effective implementation post-settlement

In light of the significant progress made by the Working Group over the last year, members have agreed to ongoing engagement to identify best practice approaches to the implementation of negotiated settlements, including the effective long-term management of practical and sustainable benefits for traditional owners. Key initiatives to be progressed by the Working Group are set out in the new Terms of Reference 2009 (at **Attachment A**).

This ongoing work plan can contribute to two of the 'building blocks' that underpin the Council of Australian Governments' (COAG) approach to Closing the Gap on Indigenous Disadvantage, as set out in the National Indigenous Reform Agenda:

i) economic participation, and ii) leadership and governance.

The Joint Working Group will report back to the Native Title Ministers' Meeting in 2010.

Recommendations

The Working Group recommends that Ministers:

1. endorse the Guidelines to provide a solid basis for governments dealing with native title, noting that governments' ability to enter into broader land settlements and effectively implement the Guidelines is impacted by funding constraints
2. note that the Commonwealth will continue to engage with States and Territories through the Working Group and explore funding options to underpin the draft NTNPA in the future, and
3. endorse the Working Group's future work plan (above) and Terms of Reference 2009 (at **Attachment A**).

JOINT WORKING GROUP ON INDIGENOUS LAND SETTLEMENTS

Terms of Reference 2009-10

In 2008, Native Title Ministers established the Joint Working Group on Indigenous Land Settlements to develop innovative policy options for progressing broader and regional land settlements. It was noted that the strategies, guidelines and principles developed by the Working Group should encourage flexible, quicker resolution of Indigenous land settlements.

At the 2009 Native Title Ministers' Meeting, Ministers acknowledged the cooperation of officials from the Commonwealth, State and Territory governments and the significant progress made in negotiations on key initiatives such as the development of *Guidelines for Best Practice in Flexible and Sustainable Agreement Making* and a draft Native Title National Partnership Agreement (NTNPA).

Ministers agreed that the Joint Working Group should continue to convene to explore funding options to underpin the draft NTNPA in the future and that the Commonwealth will advise State and Territory governments on future funding options.

Ministers also agreed that the Joint Working Group develop further policy options to effectively implement broader native title agreements so as to deliver practical and sustainable benefits for traditional owners.

Ministers noted that this ongoing work plan can contribute to two of the 'building blocks' that underpin the Council of Australian Governments' (COAG) approach to Closing the Gap on Indigenous Disadvantage, as set out in the National Indigenous Reform Agenda: i) economic participation, and ii) leadership and governance.

The Joint Working Group will foster intergovernmental and stakeholder cooperation and collaboration. It will share information and document best national and international practice in the following areas:

1. supporting and building the capacity of Prescribed Body Corporates (PBCs) to effectively manage the financial and non-financial benefits provided in native title agreements following settlement
2. designing culturally appropriate and effective corporate and governance structures to manage benefits provided in native title agreements, including cross-generational benefits, and
3. maximising economic development, leadership and governance opportunities through broader land settlements which benefit traditional owners and their communities.

In addition, the Joint Working Group will explore funding options to underpin an Agreement in the future.