

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

Sub Program 1.1.2

Question No. 67

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

The 2009-10 Budget provides an additional \$50.1 million over four years to build a more effective native title system. This consists of \$45.8 million to improve the capacity of Native Title Representative Bodies to represent native title claimants and holders and \$4.2 million to streamline the operation of the system and improve the rate of claim resolution.

- a) could you explain how this is expected to work, and
- b) please provide a status report, timeline and progress to budget and breakdown of how these funds will be used. Please provide expected progress and achievements to reduce the current backlog as a result of this expenditure.

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

The 2009-10 Budget provides additional funding of approximately \$50.1 million over four years to build a more efficient native title system. This funding followed a 2008 Review of the native title system, which identified a number of blockages in the system and recommended additional funding to improve its operation. At the time of the Review, the National Native Title Tribunal (NNTT) estimated it would take around 30 years to resolve the current claims in the system if they proceed in the same manner at existing resource levels.

Funding for Native Title Representative Bodies

a) The 2009-10 Budget provided \$45.8 million over four years to the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to improve the capacity of Native Title Representative Bodies (NTRBs) to represent native title claimants and holders. In conjunction with a further \$16.272 million diverted from other elements of the native title system, this funding is being provided to NTRBs to address chronic resource shortages, assist them to more efficiently and effectively participate in negotiation processes and respond to future act applications.

Addressing the under-resourcing of NTRBs will increase the rate of negotiation and resolution of native title claims and settlements, ensure claimants obtain recognition of their rights and the associated economic and social benefits and provide certainty to developers, miners and others with interests in land under native title claim. This improved capacity for NTRBs will also assist them to participate effectively in the negotiation of broader land settlements to resolve native title as an alternative to costly and time consuming litigation, achieving sustainable, long term economic and social benefits for Indigenous communities that target their critical needs – a priority focus for the Government in the area of native title.

b) Additional funding is being allocated to NTRBs under this initiative over the four years as follows:

| Year | Diverted funding (\$m) | New funding (\$m) | Total additional (\$m) |
|--------------------|-------------------------------|--------------------------|-------------------------------|
| 2009-10 | 3.858 | 3.143 | 7.001 |
| 2010-11 | 3.990 | 9.414 | 13.404 |
| 2011-12 | 4.139 | 15.983 | 20.122 |
| 2012-13 | 4.285 | 17.300 | 21.585 |
| Total over 4 years | 16.272 | 45.840 | 62.112 |

This will provide the following total resourcing for NTRBs:

| | 2008-09 Actual (\$m) | 2009-10 (\$m) | 2010-11 (\$m) | 2011-12 (\$m) | 2012-13 (\$m) |
|--|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| FaHCSIA Program 7.3 (Part) Native Title | 67.369 | 67.791 | 75.228 | 83.119 | 85.716 |

Since the 2009-10 Budget, FaHCSIA has considered submissions from service providers and agreed Operational Plans and allocations for 2009-10 and planning figures for the three forward years for each NTRB and Native Title Service Provider (NTSP). The distribution of additional resources reflected in allocations and planning figures for the three forward years is weighted on the basis of a broad assessment of the workload faced by individual NTRBs/NTSPs in each region.

Funding to improve the operation of the system and speed up the rate of claim resolution

a) The 2009-10 Budget also provided an additional \$4.3 million over four years to the Attorney-General's Department (AGD) to streamline the operation of the native title system and improve the rate of claim resolution. This original allocation has been reduced to \$4.2 million as a result of a general savings reduction to achieve program efficiencies as agreed by Government. This now comprises \$1.4 million in Administered funding to increase the quality and quantity of anthropologists and other experts working in the system, and \$2.8 million in AGD funding to develop and implement a range of measures, focusing on the following priority areas:

- greater involvement in negotiating and settling native title claims, promoting broader and more flexible native title settlement packages
- strengthening partnerships with State and Territory governments (particularly through the Joint Working Group on Indigenous Land Settlements) to effect behavioural change and facilitate the settlement of claims through broader and more flexible negotiated agreements, and
- ongoing monitoring and evidence-based policy development.

It is expected these initiatives will reduce the current backlog of claims in the system by:

- providing parties with real alternatives to technical approaches to native title
- increasing the quality and pace of native title outcomes through negotiated agreements
- reducing the expense and time required to collect and prepare connection evidence
- improving relationships between government parties and native title claimant groups, and
- increasing the number and quality of anthropologists working in native title.

b) The additional funding will be distributed to AGD for these measures over the four years as follows:

| | 2009-10 (\$m) | 2010-11 (\$m) | 2011-12 (\$m) | 2012-13 (\$m) | Total (\$m) |
|---------------------|--------------------------|--------------------------|--------------------------|--------------------------|------------------------|
| Departmental | 0.843 | 0.823 | 0.550 | 0.556 | 2.772 |
| Administered | 0.000 | 0.345 | 0.531 | 0.544 | 1.420 |
| Total | 0.843 | 1.168 | 1.081 | 1.100 | 4.192 |

AGD funding will be used to cover additional staffing, travel, meeting coordination, consultation and any negotiation and legal costs associated with implementing the measures outlined above. In addition, administered funding will be used for a range of measures aimed at addressing difficulties in attracting and retaining anthropologists in the native title system, including training in native title anthropological research, professional outreach and mentoring. Administered funding has been phased over the four years to allow for scoping, consultation and establishment of contracts to occur during the first year. AGD is currently consulting with relevant stakeholders including academics, NTRBs and professional officers working in the field to identify initiatives for further scoping.

AGD has also utilised funding to facilitate the appointment of a Director of Native Title Settlements, who will play a pivotal role in identifying and coordinating access to existing Commonwealth programs and resources that may be used to facilitate the settlement of native title claims.