From: Jennifer Clarke
Sent: Monday, 13 August 2007 4:58 PM
To: Legal and Constitutional, Committee (SEN)
Subject: Submission 54 and supplementary submission

Supplementary submission regarding FaCSIA's answers to s 51(xxxi) questions
I have noticed that some of FaCSIA's answers to the Committee's questions, now posted on the Committee's web page, suggest that the drafting of the compensation provisions is based on standard practice. I would take issue with this.

Part 2, Div 5 of the *Native Title Act*, for example, uses a provision like cl 60 of the NTNER Bill 2007 *as a backup* to other provisions which provide compensation by reference to other standards (eg the amount of compensation provided to other landowners under ordinary compulsory acquisition laws. This contrasts with the NTNER Bill, which actually *displaces* those ordinary compulsory acquisition laws). The *Lands Acquisition Act 1989* (see section Part VII) also refers to other standards, eg market value of the land.

When a clause like cl 60 NTNER is used in a law which operates nationally, we know (based on the *Newcrest* decision) that the Commonwealth is always obliged to pay 'just terms' compensation, even in territories. While there is a good chance that *Newcrest* and subsequent developments in the constitutional law of territories mean that the Commonwealth is similarly obliged when it legislates *only for the NT*, this is not guaranteed by *Newcrest*. Since the Commonwealth's normal approach, when acquiring land in a territory, would be to use the *Lands Acquisition Act* (ie, to treat territorians like other Australians), it should treat traditional Aboriginal owners like holders of freehold title in any other part of Australia when calculating what compensation they are entitled to. (Indeed, there is even a good argument that compensation for traditional Aboriginal owners should be *greater* than that accorded to other freeholders, based on their strong cultural attachments to the land.)

Regards from
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