

Chapter 1

Introduction

Terms of reference

1.1 On 15 September 2003, the Committee adopted the following terms of reference:

That, pursuant to paragraph 206(b) of the *Native Title Act 1993*, the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund inquire into and report on the capacity of Native Title Representative Bodies to discharge their responsibilities under the Act with particular reference to:

- (1) the structure and role of the Native Title Representative Bodies;
- (2) resources available to Native Title Representative Bodies, including funding and staffing; and
- (3) the inter-relationships with other organisations, including the strategic planning and setting priorities, claimant applications pursued outside the Native Title Representative Body structure and non-claimant applications.

1.2 The Committee was re-appointed in November 2004, and re-adopted the above terms of reference.

Conduct of the inquiry

1.3 The Committee advertised the inquiry on the Internet as well as writing to a number of interested organisations and individuals.

1.4 Public hearings were held in Canberra on 12 May 2004, Alice Springs on 19 July 2004, Broome on 21 July 2004, Perth on 19 July 2005, Brisbane on 21 November 2005 and Canberra on 29 November 2005. The Committee received forty-two submissions to the inquiry.

1.5 The Committee wishes to record its appreciation to all those who took the time to prepare submissions and appear before the Committee. The Committee wishes to particularly thank officers of the Office of Indigenous Policy Coordination and the Attorney-General's Department for their responsiveness in providing additional information to assist the inquiry.

Reviews of representative bodies

1.6 Representative bodies have been subject to a number of reviews concerning their efficiency and effectiveness. A brief summary of the main reviews is discussed below.

Parker report

1.7 In November 1994, ATSIC commissioned Guy Parker to chair a review committee to examine the effectiveness of representative bodies addressing staffing issues, measures which maximise appropriate native title services to Indigenous people, and the appropriateness of financial and administrative arrangements then in place for NTRBs.

1.8 The review noted that representative bodies had become 'the workhorses of the native title regime' and recommended, *inter alia*, that representative bodies should be the first point of contact for all Indigenous people seeking to have their native title recognised, that explicit mandatory functions should be established, and that representative bodies should be adequately resourced.¹

Love-Rashid report

1.9 In 1998, a report was commissioned by ATSIC to review the relationship between funding levels and functions of representative bodies and to assess their future funding and resource requirements in the light of the *Native Title Amendment Act 1998*. The review concluded that:

- the workloads of representative bodies were significantly higher than allowed for by the level of funding provided;
- many representative bodies were unable to fulfil their core functions and also provide professional management and administrative systems;
- corporate governance within representative bodies was generally deficient; and
- the shortcomings of the representative bodies imposed considerable costs on the wider community.²

Miller report

1.10 In July 2002, ATSIC commissioned Bill Miller to conduct a review of the representative body system at the request of the Minister in order to satisfy the Minister that he was meeting his obligations under the Native Title Act (NTA) with respect to representative bodies and in particular, to investigate the quality of their strategic plans and the system for distributing funds to representative bodies. The report concluded that:

- all the Minister's responsibilities under the NTA had been met, with the exception of the requirement to table annual reports of representative bodies in both Houses of Parliament;

1 G Parker *et. al.*, *Review of Native Title Representative Bodies*, ATSIC, Canberra, 1995.

2 Senatore Brennan Rashid, *Review of Native Title Representative Bodies*, ATSIC, March 1999.

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- the strategic plans of each NTRB met the requirements of the NTA but varied in quality, particularly in relation to information provided on objectives, strategies, performance and financial plans;
 - the strategic plans of NTRBs were predominantly general in nature and in the main did not contain output and outcome targets that enabled strategic workload planning;
 - neither the strategic plans, funding applications nor annual reports of NTRBs contained sufficient information to enable ATSIC to base its funding allocations on quantifiable outputs/outcomes; and
 - ATSIC funding to NTRBs addressed known native title funding needs but it raised concerns that such funding was not fairly distributed among NTRBs on the basis of relative need.

1.11 The Miller report also made a number of recommendations to improve the funding process for representative bodies. The recommendations contained a requirement for operational plans to be included in annual funding applications both to give effect to strategic plans and to provide much needed performance information.³

Other reviews

1.12 A number of other reports have addressed aspects of the operation of NTRBs.

PJC report on ILUAs

1.13 The PJC on Native Title published its report on Indigenous Land Use Agreements (ILUAs) in September 2001. The Committee found that NTRBs play a critical role in the negotiation of ILUAs, but that they are hampered by significant shortages of funds. As a result, they have been forced to rely on funding assistance from proponents as well as state and local governments. Accordingly, the Committee recommended an increase in funding to NTRBs. The Committee also noted difficulties that NTRBs have in securing qualified and experience staff to manage the processes for which the bodies are responsible.⁴

Prosser report

1.14 In August 2003, the House of Representatives Standing Committee on Industry and Resources tabled its report on resource exploration in Australia. The main findings of the report with respect to NTRBs were that current native title processes are leading to considerable delays, expense and uncertainty in determining

3 B Miller, *Review of Native Title Representative Body System at the Request of the Minister for Reconciliation and Aboriginal and Torres Strait Islander Affairs*, October 2002.

4 PJC on Native Title, *Second Interim Report for the s.206(d) Inquiry: Indigenous Land Use Agreements*, September 2001, pp.95-99, 112.

mining applications; and a significant cause of these problems is competing and overlapping native title claims. Accordingly, the report recommended that NTRBs be provided with additional funding, and that it be targeted and limited to support activities that facilitate negotiation processes.⁵

PJC report on the effectiveness of the NNTT

1.15 The PJC on Native Title published its report on the effectiveness of the National Native Title Tribunal in December 2003. The Committee noted that NTRBs have central responsibility for the resolution of overlapping claims and intra-Indigenous disputes. In this context the Committee explored the issues of duplication in the roles of the NNTT and representative bodies, particularly in relation to the registration of claims and mediation. In relation to resourcing, the Committee recommended that a further inquiry be conducted into the work demands and funding of NTRBs.⁶

ATSI Social Justice Commissioner reports

1.16 Since 1994, the Aboriginal and Torres Strait Islander (ATSI) Social Justice Commissioner has published an annual report into the functioning of the native title system. The 2001 report examined the role and functioning of NTRBs in some detail, highlighting funding shortfalls in particular. In the 2003 Native Title Report, the Commissioner briefly examined the operation of NTRBs and identified under-funding as undermining the agreement-making process. In the 2004 Native Title Report, the Commissioner examined how native title can be utilised to improve the economic and social conditions of Indigenous people.

Reforms to native title

1.17 In September 2005, the Attorney General announced a package of proposed reforms to the native title system, the aim being to improve the performance of the native title system. The reforms focus on measures that encourage the resolution of native title issues through agreement making in preference to litigation.

1.18 The reform proposals include:

- measures to improve the effectiveness of NTRBs;
- amendments to the guidelines of the native title respondents' financial assistance program;

5 House of Representatives Standing Committee on Industry and Resources (Mr G Prosser MP, Chair), *Exploring: Australia's Future – Impediments to Increasing Investment in Minerals and Petroleum Exploration in Australia*, August 2003, pp.85-99.

6 PJC on Native Title, *Effectiveness of the National Native Title Tribunal*, December 2003, pp.27, 50-54.

- an examination of the current structures and processes of Prescribed Bodies Corporate;
- a 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;
- technical amendments to the Native Title Act to improve existing processes for native title litigation and negotiation; and
- increased consultation with state and territory governments to encourage more transparent practices in the resolution of native title issues.⁷

The above measures as they relate to representative bodies are discussed in the report.

7 Attorney-General, 'Native Title Reform', *Media Release*, 7 September 2005. See also Minister for Immigration and Multicultural and Indigenous Affairs, 'Delivering Better Outcomes in Native Title – Update on Government's Plan for Practical Reform', *Media Release*, 23 November 2005.

