



Department of the Premier and Cabinet
Government of Western Australia

PARLIAMENTARY JOINT COMMITTEE ON
NATIVE TITLE AND THE ABORIGINAL AND
TORRES STRAIT ISLANDER LAND FUND

Our Ref:
Enquiries: Chris Richards – 08 9222 8970

REC'D:
FROM: WA DPAC
AUTHORISED FOR PUBLICATION:
SECRETARY:
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7 September 2005

Mr Jonathan Curtis
The Secretary
Parliamentary Joint Committee on Native Title
and the Aboriginal Torres Strait Islander Land Account
Department of the Senate
Parliament House
CANBERRA ACT 2600

Dear Mr Curtis

INQUIRY INTO NATIVE TITLE REPRESENTATIVE BODIES

I refer to the Parliamentary Joint Committee on Native Title's Inquiry into Native Title Representative Bodies (NTRB's).

The Office of Native Title has taken the opportunity to consider the other submissions received by the Joint Committee and notes the consistent message that NTRBs are required to undertake a wide range of essential functions under the *Native Title Act 1993* (NTA) and require sufficient funding to allow them to meet these statutory responsibilities.

However, I am very concerned regarding the comments made by the Association of Mining and Exploration Companies (AMEC) in relation to the Western Australian Government's process for assessment of connection outlined in the *Guidelines for the Provision of Information in Support of Applications for a Determination of Native Title* (Guidelines).

In section 7 of their Submission, AMEC makes a number of statements regarding the Guidelines that are incorrect as a matter of both fact and law. In particular, on page 13 of their Submission AMEC states that:

"In Western Australia, the State has prepared draft guidelines that will deny respondent parties to native title claims, including mining interest, from exercising their rights as part under the Act.

If the State chooses to negotiate a settlement, s 6 of its Guidelines prevent respondent parties from accessing these vital and fundamental connection reports...As a result, this denial of natural justice prevents industry from taking an informed view with respect to deciding whether or not to consent to a negotiated outcome. ”

AMEC appears to misunderstand the legal status of connection material and the State's role in relation to assessing such material. A connection report is not a statutory requirement, nor is there provision in the NTA for assessment by the State.

In fact, a connection report is a negotiating instrument between the State and the claimants. Pursuant to the Guidelines¹, the provision of evidentiary material by native title claimants is a necessary precondition to the State's participation in consent determination negotiations as the major respondent party.

This process does not, in any way, exclude other parties from negotiations with the claimants. Nor does it represent a denial of natural justice, as this legal safeguard applies only to govern decisions by judges or government officials when they take quasi-judicial or judicial decisions.

Further, section 6 of the Guidelines does not prevent other parties from accessing the connection report. Rather, section 6.2 of the Guidelines clearly states that:

“The onus is upon the native title claimants to provide sufficient information to other parties...to secure the agreement of those other parties.” The State leaves it open to other parties to request the connection report from the claimants if they choose to do so.

However, no party is excluded from the negotiation process as is suggested in the AMEC submission.

The primary purpose of the Guidelines is to provide all parties with a clear sense of the information the Government requires in order to make its decision about the possibility of settling a native title application by consent. From the State's perspective, the provision and assessment of connection materials is fundamental to determining whether an agreed determination of native title is possible.

While the Government is bound by its confidential undertakings to native title applicants regarding the provision of connection material, it is also acknowledged that applicants need to give consideration to providing sufficient information to other parties to secure their agreement to the terms of any proposed determination. However, it is the claimants' decision whether or not to provide connection reports to other respondent groups.

¹ s1.7 Guidelines for the Provision of Information in Support of Applications for a Determination of Native Title

Similarly, it is open to any respondent party to refuse to agree to a consent determination at their discretion.

Please do not hesitate to contact me on (08) 9222 9734 if you have any further queries in relation to this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'GARY HAMLEY', with a long, sweeping horizontal stroke extending to the right.

**GARY HAMLEY
EXECUTIVE DIRECTOR
OFFICE OF NATIVE TITLE**