

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

Program: 1.6

Question No. SBE15/033

Senator Canavan asked the following question at the hearing on 20 October 2015:

Senator CANAVAN: Finally, the \$17 million to support freehold or 99-year leases for willing Indigenous communities?

Mr Minogue: Again, the Prime Minister's portfolio.

Senator CANAVAN: That would be the Prime Minister and Cabinet. Presumably you are responsible for the Native Title Act itself though?

Mr Minogue: That is right. The Attorney administers that.

Senator CANAVAN: Have you yourself looked at this issue, which certainly received substantial commentary in the white paper, around the restrictive aspect of native title and the inability of native title holders to take their rights to the bank, so to speak? Because it cannot be sold or transferred, banks will not take native title as security, and therefore it limits their potential for investment and economic opportunity. Is that something you have looked at, or was it looked at through this process?

Mr Minogue: Through this process as well as the Council of Australian Governments current investigation into Indigenous land administration and use—and that is still an ongoing process that has not yet been resolved.

Senator CANAVAN: Presumably some of these aspects overlap with state and territory legislation?

Mr Minogue: They certainly overlap with state and territory interests. The Attorney maintains or hosts a national native title ministers meeting, and that has been held at various times over the last several years. That is essentially a working forum where jurisdictions put forward their views about aspects of the act that they feel could be improved—either aspects of administration or aspects of their legislation. It is informed by not only the Commonwealth's interest as a participant and party to litigation but also the states and territories, which have a greater exposure to native title administration and indeed support for Indigenous people on land, because it happens more often that states are more directly involved in that than the Commonwealth is.

Senator CANAVAN: The white paper mentions that Queensland has recently reformed its laws to allow conversion of Indigenous land to ordinary freehold and remove restrictions on commercial leasing. Are you aware of those particular changes?

Mr Minogue: Yes, that would be not necessarily a native title property right but some other property right under state legislation.

Senator CANAVAN: Sorry?

Mr Minogue: That would not necessarily be a native title right but some other property right under legislation.

Senator CANAVAN: Certainly there were many reforms to freehold and leasehold in Queensland—pastoral leases in particular in Queensland recently. So they could not do that because that would be still under the Native Title Act? It would have to be done—

Mr Minogue: No, the native title regime affects the rights of native title claimants to the extent that they have a native title property right. It is not always directly analogous to a common-law property right, if you like.

Senator CANAVAN: Let me put it more directly. If we want to get to a situation where native title holders can choose to put some kind of 99-year lease or lien over their property so that there is some transferable right that they can take to the bank, do there need to be any changes at the

Commonwealth level to allow that to happen, or can that be done just through state and territory law?

Mr Minogue: There would, but I probably should not go—that would be a question to ask the government.

Senator CANAVAN: I am not asking you whether you would support such a change, just to be clear. I am asking—and certainly that was the suggestion in the white paper—what would need to change to allow that to happen? Would there need to be changes to the federal Native Title Act?

Mr Minogue: There would certainly need to be some in terms of the process and the detail of the amendments that would need to be gone through should a government be interested in progressing that. I would have to take that on notice.

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

Common law native title rights and interests are recognised under the *Native Title Act 1993* and are inalienable - they cannot be transferred to persons outside the native title group. Allowing native title holders to put leases or liens over native title land would require legislative amendment, including potential amendments to the *Native Title Act*.