

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

Output 1.6

Question No. 31

Senator Ludwig asked the following question at the hearing on 24 May 2007:

Non-legislative recommendations of the Hiley-Levy report

a. Recommendation 4

Attorney-General Departmental submissions to the inquiry on the Native Title Amendment Bill 2007, states that the Department had begun to undertake work on the development of a code of conduct.

- (i) What stage is the development at?
- (ii) When can we expect to see a finalised version of the code of conduct?
- (iii) What forms of consultation is the Department undertaking with stakeholders on its development?

b. Recommendation 9

- (i) Are you able to indicate what stage the consideration of Recommendation 9 is at?
- (ii) What options are under consideration?
- (iii) Are you able to give us a timeframe for when you are expected to finalise consideration of these issues?

c. Recommendation 11

- (i) Is the Department able to indicate what the significant technical and legal issues associated with this proposal are?
- (ii) Has the Department sought further advice from the NNTT on this recommendation? If so, what was the outcome of that advice?
- (iii) Has any additional assistance been given to the NNTT in terms of the development of that material? If so, give details of what assistance has been provided – from whom and what is the nature of the assistance?

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

a. Recommendation 4

- (i) The former Attorney-General released the Mediation Guidelines in October 2007.

- (ii) The finalised Mediation Guidelines are available on the Attorney-General's Department and National Native Title Tribunal websites.
- (iii) The Department consulted a range of stakeholders in developing the Mediation Guidelines. These include the National Native Title Tribunal (NNTT), the Federal Court of Australia, the Human Rights and Equal Opportunity Commission, the then Department of Families, Community Services and Indigenous Affairs, native title representative bodies (NTRBs), State and Territory governments, and peak industry bodies.

b. Recommendation 9

- (i) Recommendation 9 proposed further consideration be given to how claims can be better particularised at an early stage of proceedings in order to assist in the identification of relevant issues. The recommendation also proposed a number of mechanisms that could be used to achieve this. It is anticipated various components of the reform package will assist in addressing the issues that prompted this recommendation.
- (ii) This recommendation is not presently being progressed. The Government will consider whether to explore options to further progress this recommendation.
- (iii) As noted above, this recommendation is not presently being progressed.

c. Recommendation 11

- (i) The NNTT has advised the Department that the availability of tenure information and indemnity issues pose practical difficulties for the achievement of a comprehensive and current database of tenure material. However, agreements have been achieved with responsible agencies from WA, Qld, NT and Victorian Governments to gain access to primary tenure data.

Aside from the issues of availability of current and historical tenure data in digital form and of regular updates, to date not all States have been prepared to provide tenure information in digital form to the NNTT, whether current or historical. The data that is available to the NNTT may also not include detail beyond the tenure classification. The NNTT has advised that, while the available information does provide a level of benefit for stakeholders in the native title system, the information obtained from a land tenure database maintained by the NNTT may never reflect the currency and detail of the information held by the States and Territories, as custodians of land administration records.

Any changes to land tenure records that impact on native title rights and interests would normally be conducted through the *Native Title Act 1993* process and these changes would be reflected in the data held by the NNTT.

- (ii) The Department sought advice from the NNTT on this issue in December 2006, May 2007 and January 2008. The NNTT's advice is reflected paragraph (i).
- (iii) No additional assistance has been provided to the NNTT in relation to development of a database.