Appendix 11
Recommendations

Twenty-five recommendations arise from this report, but overarching, there are two that stand out.

- Recommendation 1.1 deals with unscrambling the existing legislative gridlock in native title.
- Recommendation 1.2 proposes a national summit on the native title system.

The numbering of these recommendations reflects the chapter from which they arise (for example, 1.1 refers to Recommendation 1 in Chapter 1).

Chapter 1: Changes to the native title system

1.1 That the Australian Government immediately appoint an independent person to conduct a comprehensive review of the whole native title system and report back to the Attorney-General by 30 June 2010. This review is to:

- focus on delivering the objects of the Native Title Act in accordance with the preamble;
- seek significant simplification of the legislation, and structures so that all is in an easily discernable form; and
- call for wide input from all stakeholders in native title, especially ensuring that the voice of Indigenous peoples is heard.

1.2 That the government convene a national summit on the native title system with extensive representation.

1.3 That the Attorney-General monitor the 2007 changes to the Native Title Act and prepare a report to Parliament before the end of 2009, in such a way that it identifies:

- the extent to which Indigenous people are gaining recognition and protection of native title in accord with the preamble to the Native Title Act;
- the extent, if at all, to which the parties' rights are compromised by the changes; and
- the extent to which the new powers given to the National Native Title Tribunal are used.

Chapter 2: Changes to the claims resolution process

2.1 That funding be made available, for or through, the National Native Title Council to develop Plain English guides for Indigenous peoples to understand the recent changes to the native title system, and how to claim native title after the changes.

2.2 I support Recommendation 8 of the Senate Standing Committee on Legal and Constitutional Affairs, in its report on the Native Title Amendment Bill 2006, (February 2007).

That the Attorney-General monitor the operation of proposed Division 4AA of Part 6 of the Native Title Act (the review power) and prepares a report to Parliament after two years of operation to assess the following:

- the extent to which these measures are used;
- the effect they have on the cost and time for the resolution of claims;
- the extent, if at all, to which the parties' rights are compromised by this process; and
- the extent to which there is duplication between the functions of the Federal Court and the National Native Title Tribunal in this area.

2.3 That Section 94C of the Native Title Act be amended so that the Federal Court is not obliged to dismiss an application under Section 61 of the Act, in accordance with Section 94C.

Chapter 3: Changes to representative Indigenous bodies

3.1 That the Australian Government immediately initiate a review that is at arm's length from government, to recommend the level of operational resourcing for NTRBs to ensure that they are well able to meet their performance standards, and fulfil their statutory functions.

3.2 That the minimum recognition period for representative bodies be increased to three years.

3.3 That the Australian Government establish an independent panel to advise the Minister for Families, Housing, Community Services and Indigenous Affairs on recognition, re-recognition, and withdrawal of recognition, of NTRBs.

3.4 That the Native Title Act be amended to specify criteria for the exercise of ministerial discretion in recognition, re-recognition, and withdrawal of recognition, of NTRBs.

3.5 That statutory plans, requiring ministerial approval, be reinstated as compulsory, and the Aurora Project be funded to provide training to representative bodies on the preparation of statutory plans.

Chapter 4: Changes to respondent funding

4.1 That the Australian Government amend the Native Title Act and the Attorney-General's Guidelines (for provision of financial assistance pursuant to Section 183(4) of the Act), to ensure that funding is provided to assist only a party with a legal interest in proceedings where:

- the party's legal rights are not protected under the Native Title Act, or common law; and
- the party is not represented in the proceedings by a government party that is also party to the proceedings.

4.2 That the Attorney-General (as part of the department's annual reporting) monitor, assess, and report on the respondent funding scheme to determine the extent to which it meets the objects of the Native Title Act and how (if at all) it furthers the intent of the law as set out in the preamble. The reporting should consider:

- whether litigation or mediation is being supported by the scheme;
- the impact of the respondent party's participation in the proceeding itself and on the other parties involved;
- the type of interests the assisted party has in the proceeding;
- all parties' views of the contribution of the non-claimant party's participation; and
- an evaluation of the additional costs to all parties from having the non-claimant party participate.

Chapter 5: Changes to prescribed bodies corporate

5.1 That the Minister for Families, Housing, Community Services and Indigenous Affairs and the Attorney-General ensure that regulations which make provision for the development of a process – whereby requests to the registrar for an opinion about fees are made and considered – include a clear framework that:

- specifies a time period during which the registrar must give an opinion on whether a fee is to be paid;
- requires that the registrar's opinion about fees be accompanied by the reasons for the decision;
- when the registrar is to give an opinion about fees, PBCs may make submissions;
- provides for an appeal mechanism where there is disagreement with the registrar's opinion, or where the procedures in the regulations have not been complied with.

5.2 That the Native Title Act and Regulations be changed to specify default times and review processes for default PBCs.

5.3 That efficient use of resources and infrastructure be fostered by allowing an existing PBC to be determined as a PBC for subsequent determinations of native title.

5.4 That AIATSIS (with the support of ORATSIC) monitor the changes to PBC legislation as part of its Prescribed Bodies Corporate Project, and report on the effectiveness of the changes relating to PBCs.

Chapter 6: The CATSI Act

6.1 That ORATSIC report on the effects of the CATSI Act on under-resourced corporations, such as:

- land trusts, state and territory land rights corporations; and
- other corporations that hold title to Indigenous lands as a result of an Indigenous Land Corporation (ILC) divestment, or land purchase, or transfer of lands under land rights regimes.

6.2 That ORATSIC report on the financial burdens resulting from corporations redrafting their constitutions so that, if necessary, future Commonwealth budgets can increase funding for this work.

6.3 That the CATSI Act be amended so that:

- decisions of the registrar be open to review in the Administrative Appeals Tribunal;
- a requirement for appointment of a registrar must be that the applicant has a good understanding and experience of Indigenous peoples and communities; and
- the Minister for Families, Housing, Community Services and Indigenous Affairs does not have complete discretion in the appointment of a registrar.

6.4 That ORATSIC report on non-Indigenous and corporate membership of PBCs. The report should consider whether non-Indigenous, corporate members and directors exercise their powers detrimentally to their Indigenous corporations and the communities that the corporations serve.

Chapter 7: Selected native title cases: 2006-2007

(no recommendations)

8.1 That the Attorney-General use the power in Section 137 of the Native Title Act to ask the National Native Title Tribunal to hold a public inquiry:

- into how the compensation provisions of the Native Title Act are currently operating; and
- whether they operate to effectively provide for Indigenous peoples' access to their human right to compensation.

In undertaking the inquiry the tribunal collaborate with native title claimants, Indigenous communities, native title representative bodies, prescribed bodies corporate, registered native title bodies corporate, the Federal Court, and the federal, state and territory governments.

The tribunal present to Parliament specific options for reform:

- to ensure Indigenous people can effectively and practically access their human right to compensation; and
- to ensure the amount of compensation is just, fair and equitable.

8.2 That the Native Title Act be amended to insert a definition of 'traditional' for the purposes of Section 223 that provides for the revitalisation of culture and recognition of native title rights and interests.

8.3 That Section 82 of the Native Title Act be amended to include Subsections (1), (2), and (3) of Section 82 as it was originally enacted in 1993.

8.4 That the Attorney-General prepare guidelines for the Federal Court and parties to native title proceedings on the application of Section 82 of the Native Title Act. In preparing these guidelines the Attorney-General should consult closely with Indigenous peoples to ensure the guidelines reflect and respect the culture and practices of Indigenous peoples.

Chapters 9 to 12:

(no recommendations)