

WORKSHOP ON NATIVE TITLE CONNECTION REPORTS

Queensland Indigenous Working Group

The Queensland Indigenous Working Group in co-operation with the Central Queensland Land Council held a workshop in Mackay on 11th and 12th November 1999 on behalf of the combined Queensland Representative Bodies. The workshop was held to enable Queensland Representative Bodies to strategically consider current practice when providing evidence for native title processes. Participants met to establish best practice models which minimise the amount of evidence and associated costs required and which deal with issues of confidentiality and Aboriginal law regarding ownership of knowledge.

Well prepared briefing papers written by Peter Whalley and Bruce White were distributed to participants along with a range of relevant literature. The papers highlighted a perceived shift from the requirement of claimants to gain the Queensland Government's Executive approval to an internal Government Departmental assessment process regarding their credibility as applicants.

Of particular concern was the requirement of the Queensland Government for the compiling and presentation of Connection Reports as a prerequisite for negotiated and mediated agreements and for the Government's participation in such processes. The Reports are aimed at establishing applicant groups as the traditional owners of areas claimed.

The words 'Connection Report' do not appear in any legislation and their content is unspecified in statute. The Queensland Government requires that Connection Reports be forwarded to the Director of the Native Title Services, kept in a locked cupboard and assessed within the Historical and Anthropological Unit of Native Title Services within the Department of the Premier and Cabinet. A recommendation is then made to the Executive of the State Government confirming the identity of the applicant group as recognised traditional owners.

The Historical and Anthropological Unit is a multi-disciplinary team with expertise in history, anthropology, archaeology and linguistics. It has produced a document 'Compiling a Connection Report', the preface to which stresses that it is intended only as a 'guide' and that the information is not intended as a 'template'. Nonetheless the suggestions within are comprehensive and detailed, drawing upon all of the above disciplines and requiring both primary and secondary research. Dates for the establishment of British sovereignty are set between 1788 and 1879 depending upon location.

Participants at the workshop acknowledged that there was some benefit for applicants and other interested parties in the recording of at least some kinds of information required in Connection Reports. There were reports of applicants

being pleased with having such records for posterity and of their importance as a useful educational tool in mediation, negotiation and consent determinations. They may also provide an avenue for applicants to establish their bona fides outside a court hearing and a trigger for the positive participation of other non-indigenous parties.

But participants also had a number of concerns. In the first instance, the criteria for assessment is open ended and no clear direction is provided for the costly and time consuming processes implicated. The document states that the assessment process will involve examining the range of contemporary and retrospective sources used in its compilation, how that information has been reconciled to present a continuous record and how the sources have been analysed to interpret and support the claim.

Secondly, there is no uniformity of practice and standard across Representative Bodies surrounding Connection Reports. Because of the legal privilege which surrounds such documents and issues of confidentiality, CQLC have been unable to obtain copies of examples of Connection Reports; only one Representative Body responded to their request for even a list of contents for background material for the workshop.

Thirdly, the Government document gives no indication as to the extent and degree of detail of the research required. The criteria which forms the bases of requests to Representative Bodies for additional information is unknown. This leaves questions regarding what would constitute a reasonable request and how might Representative Bodies comply with such requests when compliance might come at considerable cost.

The Premier has recognised that the requirement of Connection Reports places a strain on resources, and has increased funding to the Historical and Anthropological Unit who are offering assistance to Representative Bodies in locating records and compiling reports although the extent of such assistance across the State is unclear.

Thus, there is considerable uncertainty amongst Representative Bodies surrounding the requirement for Connection reports. There are no transparent processes of requirements, no general agreements in emerging practice, no critical discussions about form and content and broadly, no shared information which could lead to the development of standards acceptable to all.

Given the limits of funding to Representative Bodies, there is also a potential for a shallow research base and minimal community consultation in their preparation. This is of considerable concern to applicants who are being forced to expose their evidentiary position in the mediation process prior to litigation

rather than presenting such information through the court processes within rules of law.

Connection reports might also be best prepared towards the end of the claims process, thereby allowing maximum time for research. It is through the claims process that the dynamics of the applicant group is established, presenting as it does, unique opportunities for applicants to meet and to share knowledge - in some instances, for the first time. During these processes they become more familiar with native title requirements and learn how to articulate relationships to land in legislative terms.

One school of thought at the Workshop held that the new more rigorous Registration Test for native title applicants might be seen as producing sufficient information to trigger mediation, particularly given that Representative Bodies must sign off on applications and that applicants have already signed affidavits. Other suggestions involved 'whole of region' reports and research processes.

The Combined Representative Bodies of Queensland, through the QWIG, are approaching the Native Title Services of the Department of Premier and Cabinet in an attempt to establish more acceptable practice, greater understanding and more transparency. Workshop proceedings are currently being prepared at the Central Queensland Land Council and it is hoped to activate a working group towards this end. Such workshops are crucial to the development of unified positions in the dealings of Representative Bodies with Governments.

Toni Bauman
Director, Dodson, Bauman & Associates
Legal and Anthropological Consultants Phone 0418-601285.

NATIVE TITLE IN THE NEWS - NOVEMBER & DECEMBER 1999

International

The Commonwealth Association of Indigenous Peoples (CAIP) was officially launched at the Commonwealth Heads of Government Meeting (CHOGM) in Durban, South Africa on 12 November 1999. CAIP's objectives include providing and promoting links between Indigenous People's of the Commonwealth and assisting in the development of sustainable solutions to land rights conflicts. (see article page 13) (*LRQ, Dec 1999, p16*)