To ensure the Australian Government engages with other stakeholders in a constructive and transparent way, I will be consulting with my ministerial colleagues about principles the Government will follow when undertaking future act negotiations.

Conclusion

As in all areas of the law, there are, and will continue to be, outstanding questions in native title. However, fifteen years of experience with the native title system should enable parties to accept that that an outcome does not have to be legally perfect to work in a practical sense. In particular, it is clear that in this area, there will sometimes not be clear cut legal answers or the court's decision will not be entirely predictable. So unless participants want to risk an all or nothing legal throw of the dice, there must be a will on both sides to devise workable solutions.

Through parties focusing on their interests in claims, and how these might be met in practice, it should be possible for parties to negotiate more timely and satisfactory outcomes.

Native title is uniquely placed - to acknowledge traditional laws and customs, and the relationship between Indigenous people and the country they have lived on for thousands of years; and to provide opportunities to the present day native title holders and their communities.

More that fifteen years on from Mabo, the native title system presents all parties with an opportunity to generate real and lasting outcomes. I would encourage all participants in the system to grasp those opportunities and ensure native title processes deliver real benefits for more Indigenous Australians. If properly done right native title can help develop positive and enduring relationships between Indigenous and non-Indigenous Australians. There is no point for it to be a point of division.

Native title negotiations get people talking – people who might otherwise have had no reason to sit around a table together. They can be a vehicle for reconciliation and ongoing positive relationships.

Strong relationships are the cornerstone to long lasting and effectively implemented agreements – and to wider partnerships as we build a modern nation better equipped to meet the challenges of the future – for all Australians.

This speech was delivered at the Negotiating Native Title Forum Lawson Ballroom, Level 2, The Novotel Brisbane 200 Creek St, Brisbane, 29 February 2008. The speech is available online: http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/Speeches_2008_29February2008-NegotiatingNativeTitleForum

What's New

Reforms and Reviews

Dept of Industry, Tourism and Resources. Leading Practice Sustainable Development Program for the Mining Industry: Working With Indigenous Communities

This handbook acknowledges the traditional and historical connection that Aboriginal people have to the land, and the effects of colonisation and development, including mining. It also addresses cross cultural issues and how mine operations impact on neighbouring Indigenous communities. Issues to do with the recognition of land rights and native title are discussed as well as how relationships are developed and fostered between mining companies and Indigenous communities through agreement making. Recognition of differences in culture, language, law and custom are an important part of these processes, and some principles of community engagement are discussed.

Recent Cases

Australia

Doyle & Ors on behalf of the Kalkadoon People #4 v State of Queensland *[2007] FCA 1941*

Directions hearing concerning the Kalkadoon People #4 claim. Prior to the lodgement of the claim there were a number of claims in existence that were withdrawn. The applicant (Mr Taylor) was a member of an applicant group in the withdrawn claims but was no longer a part of the Kalkadoon #4 claim. He filed a notice of motion seeking to be joined as a party to the proceedings and for an order that the proceedings be struck out got failing to comply with the authorisation requirements of the *Native Title Act 1993* (Cth). However Justice Dowsett found that the claim was properly authorised. His Honour noted that it was

clear that he was still a member of the claim group and it was open to him to convene a meeting and propose a solution.

Ngadjon-Jii People v State of Queensland *[2007] FCA 1937*

Native title consent determination.

Murgha v State of Queensland *[2008] FCA 33*

This decision considers the validity of land granted under a deed of grant of land in trust (DOGIT). It focuses on the irregularities in the application and the effect of these irregularities in the exercise of statutory power.

Wilfred Hicks and Others on behalf of Wong-goo-tt-oo/Mark Lockyer and Others on behalf of Kuruma Marthudunera/Western Australia/Mineralogy Pty Ltd *[2008] NNTTA 3*

This decision of the NNTT considered the proposed granting of exploration licenses attracting the expedited procedure and the subsequent application of native title parties objecting to the grant of the licenses. In reaching its decision the Tribunal considered whether the acts were likely to interfere directly with the carrying on of community or social activities; interfere with sites of particular significance; cause major disturbance to land or waters and whether the grantee party failed to consult the community adequately.

Naghir People #1 v State of Queensland *[2008] FCA 192*

Justice Greenwood considered a work plan for the Naghir People's Claim. He noted that the claim had been in mediation for the last 12 years, something that he considered to be unacceptable. Justice Greenwood ordered that the applicants file a Notice of Facts and Contentions detailing the following:

1. Description of the persons on behalf of whom the native title determination application is made (including the composition of the group, subgroups and criteria for membership)

2. Description of the society that subsisted at the time of sovereignty or annexation pursuant to whose laws and customs that native title rights and interests were held on the relevant land. This should also include a description of the 'current society'.

3. The connection or relationship between the original society and the current society from sovereignty to the present. Genealogical information should be included if possible.

4. The nature of or a list of rights and interests which are now claimed and the content as to where those rights existed and whether they confer occupation, use and enjoyment of the relevant area.

5. List of rights and interests that were held by the original society and the content of those rights and list of rights and interests of the current society.

6. Despription of the traditional laws and customs under which each of the rights and interests are said to derive in relation to both the original society and the progressively through to the contemporary society.

7. Outline of the facts that are relied upon by the applicant group to prove historical connection with the claim area.

8. Outline of the facts relied upon by the applicant to prove contemporary connection with the claim area including details of the current use.

Justice Greenwood also noted that he wanted the parties to be guided and informed by the schedule of proposed orders which have been circulate to parties which were the subject of the orders of French J in *Leo Akiba, Joseph Tabitii, George Meye and Napoleon Warria on behalf of the Torres Strait Regional Seas Claim v State of Queensland* (QUD6040/2001).

Professional Development

The Melbourne Law School Masters program is offering the subject Native Title Law and Practice in April/May 2008. The subject is taught intensively over a week commencing Monday 28 April.

Teachers in the subject include Graeme Neate, Angus Frith, Dr John Morton, Maureen Tehan and Pat Lane as well as practising barristers and Federal Court staff.

The subject focuses on current issues in native title and will include the following: the 2007 amendments to the Native Title Act, claims process, evidentiary issues including expert reports, State Governments' connection requirements, negotiated, mediated and litigated native title and non-native title outcomes, future acts, the right to negotiate, heritage, ILUAs and agreement making, and PBCs .

The subject can be taken by both lawyers and non-lawyers and may be taken as a single subject with or without assessment or as part of a Graduate Diploma in Energy and Resources Law ; Master of Commercial Law ; Master of Laws by Coursework (LLM) .

More information is available from the Melbourne Law Masters office at http://www.masters.law.unimelb.edu.au/go/about-us/melbourne-law-masters ; telephone 03 8344 6190 or from Maureen Tehan m.tehan@unimelb.edu.au

Native title in the News

National

01-Jan-08 NATIONAL **Debate Relying on Sound Advice** The Charles Darwin University, CSIRO, Griffith University, Land and Water Australia the North Australia Indigenous land and Sea Management Alliance and the University of Western Australia have come together under a $30 million dollar research initiative known as TRaCk. The program aims to explore traditional knowledge and custom in managing the natural fresh water resources in Northern Australia. *Irrigation and Water Resources* (National, 1 January 2008), 15.

08-Feb-08 NATIONAL **Internet saves court time and money** The Federal Court will extend an electronic trial system that allows the court to conduct live hearings over the internet. Judges sitting in remote areas, such as in native title cases, will also benefit from the system. *Australian* (8 February 2008), 39.

20-Feb-08 NATIONAL **Macklin signals review of leases** The new Labor Government will 'review the effectiveness of the controversial 99 year leases over communal Aboriginal land'. This announcement follows confirmation from the Opposition that any laws to reverse the leases will be blocked by the Coalition. Indigenous Affairs Minister Jenny Macklin said that 'the Australian Government will work with state and territory governments and in close partnership with traditional owners and their representatives to streamline leasing options'. As a part of the changes the Land Rights Act will be 'changed to allow shorter leases on Aboriginal land'. *Australian* (National, 20 February 2008), 6; 'Let us own homes: Mundine' *Australian* (National, 21 February 2008), 1; 'Some 'not ready' for Aussie dream' *Australian* (National, 21 February 2008), 1; 'Macklin Guarantees 99-year leases' *Australian* (National, 22 February 2008), 6; 'All Australians have right to own a home: paternalism blocks black Australian dream' *Weekend Australian* (National, 23 February 2008), 18; 'Macklin to free up land rights' *Australian* (National, 28 February 2008), 4; 'Demand for change to Land Rights Act' *Australian* (National, 29 February 2008), 4.

New South Wales

29-Jan-08 NSW **Darug left out of the picture** The Darug people have been offended by the 'Penrith council's refusal to help negotiate a long-running native title claim'. A native title application was original lodged over the Lower Portland area which was rejected by the Federal Court. Another claim was lodged in 1997 over the Sydney Metropolitan area and is currently in mediation. An indigenous land use agreement has been proposed between the Darug people and the State Lands Department. The Penrith council has opted against becoming a party to the agreement. *Penrith Press* (Sydney, 29 January 2008), 7.

09-Feb-08 NSW **Chinderah marina dead in the water** A native title case in the Federal Court has ended with parties withdrawing their applications for a declaration that no native title exists over the Tweed River bed. Plans to build a marina in the area have been halted until another case successfully extinguishes native title in the area. *Daily News* (Tweed Heads, 9 February 2008), 5; 'Marina plans still on hold' *Border Tweed Mail* (New South Wales, 14 February 2008), 26; 'Marina plans scuttled' *Tweed Sun* (Tweed Heads, 14 February 2008), 6.

Northern Territory

02-Jan-08 NT **Call for a fair go** Former Northern Land Council Chairman Galarrwuy Yunupingu said that 'indigenous people didn't just fight for land rights in the