

NTRB Knowledge Management Pilot: Agreement Making

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The NTRB Knowledge Management Pilot: Agreement making reached completion in October. We are now considering options for the next phase of the project, in terms of both securing the participation of more NTRBs/NTSPs and expanding the scope and content of the precedents database itself.

We launched online a prototype version of the database - the primary output of the knowledge management pilot - in September, and it has been undergoing testing by the Working Group since then. An important security feature of the database is that it is not accessible to unregistered users; at this point access is therefore limited to the NTRBs/NTSPs on the Working Group. The ultimate objective is to make the database available to all NTRBs/NTSPs, subject to the same conditions binding the existing participants.

The following is an overview of the current functionalities of the database:

- At this stage the database contains over 100 mining and exploration-related precedents, as contributed by the four NTRBs/NTSPs participating in the Working Group;
- Information retrieval options in the database allow these precedents to be retrieved via a variety of parameters including year, commodity, activity (exploration/mining etc) and native title category (claimed/determined etc);
- Particular categories of clause can also be browsed. Thus, for example, it is possible to isolate and display all land access or heritage clauses (to name a few - there are over 50 categories of clause so far included, containing around 1,500 separate entries);

- Finally, all of the information on the database is fully searchable by keyword or phrase, should the user seek a specific term rather than a category of information.

Feedback so far received from the Working Group following initial testing has been positive. We have received a large amount of information concerning potential revisions and additions. All of this feedback will be built into the project plan subject to settlement of the process for the next phase.

Looking ahead

The pilot phase tested whether the development of such a database was feasible. Further to the above, pilot outcomes included development and launch of a secure online database, sourcing of content from a subset of the intended user group (NTRBs/NTSPs), and dissemination of this content in a manner useful to users (the findings of the pilot phase will be presented in more detail in an upcoming pilot completion report). This evidences the feasibility of the basic concept. The project is now at a point where it can be rolled out on a larger scale, commensurate with inputs (primarily strategic, content and funding factors).

The next test – subject to the outcome of discussions around ongoing project funding – will be to determine whether the database can be expanded into a widely used live resource, able to maintain relevance over time. The first step in this process will be to canvass interest from the 10 NTRBs/NTSPs not currently involved in the project. In the mean time we will continue to test the database in its current form and carry out further updates and supporting research as required. We will also continue to examine possibilities for the inclusion of new categories of precedents and related information on the database, in collaboration with all NTRBs/NTSPs participating in or joining the project, and begin work on the second tranche of information gathering. We expect to formalise planning for the foregoing within the next six weeks.

Acknowledgments

I gratefully acknowledge the extensive assistance and strategic guidance provided by the Working Group members to date. Their input has driven the significant progress made so far in laying the foundations for this knowledge management system for NTRBs.

Contact:

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What's New?

Recent cases

Brown v State of South Australia [2010] FCA 875
13 August 2010
Federal Court of Australia, Adelaide
Mansfield J

This native title claim was close to being resolved through consent determination. The mining respondents wished to include a term in the determination whereby any compensation subsequently payable by them in respect of extinguished or impaired native title rights and interests would be applied in a specific way — it should be held by the Prescribed Body Corporate (PBC) for the purposes of benefiting the existing members of the native title claim group and their descendents. The native title claim group did not support the inclusion of such a term.

Justice Mansfield found that the parties have the capacity to agree on a sustainable benefit term as part of an ILUA or a consent determination, but none of the provisions of the *Native Title Act 1993* (Cth) (NTA) will allow for the inclusion of such a term where the parties are not in agreement about the inclusion of the term.

Justice Mansfield noted that, in any case, s. 56(3) of the NTA requires that the PBC hold the native title rights and interests on trust in accordance with

certain regulations. These regulations include some financial accountability obligations imposed under the *Corporations (Aboriginal and Torres Strait Islander) (CATSI) Act 2006* (Cth). In this regard, the NTA provides a detailed regime under which native title holders (through their PBC) will hold the benefit of native title rights and interests anyway. He also stated that the term that the mining respondents wished to include in the determination was not worded in a way that was easily understandable or enforceable and that he suspected underlying the mining respondents' contention was a series of more precise expectations of how the compensation should be applied.

As the Court had answered the question in issue, the parties were able to return to negotiations.

Rex on behalf of the Akwerlpe-Waake, Iliyarne, Lyentyawel Ileparranem and Arrawatyen People v Northern Territory of Australia [2010] FCA 911
7 September 2010
Federal Court of Australia, Singleton
Collier J

The native title claim group, the Northern Territory Government and the other respondents to the proceeding had reached an agreement as to the terms of a determination over an area of land that covers 2,949 square kilometres in the Northern Territory. The land is located 110 kilometres south of Tennant Creek and 310 kilometres north of Alice Springs. The group that holds the native title rights in relation to the area are members of the Akwerlpe-Waake, Iliyarne, Lyentyawel Ileparranem or Arrawatyen landholding groups by virtue of descent (including adoption) or those who are accepted as a member of one or more of the landholding groups by senior members by virtue of a non-descent connection to an estate.

The native title rights and interests in relation to the area include the right to access and travel over any part of the land and waters, the right to live on the land and for that purpose to camp, erect shelters and other structures, to hunt, gather, take and use the natural resources of the land and waters,