LEADR kon gres 2013
Presentation
17 September 2013
By
Raelene Webb, QC
President
National Native Title Tribunal
Native title disputes? – hold the line please!
Section 107
Establishment of the National Native Title Tribunal

A National Native Title Tribunal is established.
Present Statutory functions under NTA

Section 108

- Applications, inquiries, determinations
- Mediation for Federal Court proceedings
- Reconsideration of claims
- Assistance and mediation generally
- Research
Native title institutional reforms 2012–2013

- transfer of responsibility for mediation of native title claims to the Federal Court, along with the claims related ILUA negotiation assistance function

- transfer of the Tribunal to the Federal Court structure
Balancing act
It is particularly important to ensure that native title holders are now able to enjoy fully their rights and interests. Their rights and interests under the common law of Australia need to be significantly supplemented. In future, acts that affect native title should only be able to be validly done if, typically, they can also be done to freehold land and if, whenever appropriate, every reasonable effort has been made to secure the agreement of the native title holders through a special right to negotiate. It is also important that the broader Australian community be provided with certainty that such acts may be validly done.
Exploration activities
Mining activities
Compulsory acquisition of native title
Community and social activities
Sites of cultural significance
Major disturbance
Right to negotiate
Section 31(1)(b), *Native Title Act*

...the negotiation parties must negotiate in good faith with a view to obtaining the agreement of each of the native title parties to:

(i) the doing of the act; or
(ii) the doing of the act subject to conditions to be complied with by any of the parties.
Section 31(3), Native Title Act

If any of the negotiation parties request the [Tribunal] to do so, the [Tribunal] must mediate among the parties to assist in obtaining their agreement.
Mediation – Arbitration
Mediation – Arbitration
How difficult can it be?
Cross cultural communication

INTERNATIONAL ARRIVALS

WHAT DO I DO NOW?
WHEN IS HE GOING TO TAKE MY CARD?
HE SEEMS A BIT UNFRIENDLY?
WHAT IS PERSONAL SPACE INVASION?
I'M NEXT, WHAT SHOULD I DO?

Hongi
The Maori greeting where your noses touch as one through the hierarchical life of the Maori culture

www.global-inspiration.com
Section 109
Tribunal’s way of operating

Concerns of Aboriginal peoples and Torres Strait Islanders.

(2) The Tribunal, in carrying out its functions, may take account of the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders, but not so as to prejudice unduly any party to any proceedings that may be involved.
Intra-cultural mediation
Walpiri mediation
Critical success factors

- a thoughtful negotiation/mediation process designed
- careful and thorough preparation
- allocation of the right expertise/resources
- willingness to build relationships
- desire to work to an agreed outcome
Long distance mediation
Mediation medium .............

- Telephone conferencing
- Video conferencing
- Face to face
Benefits of telephone mediation

- The flexibility of a telephone conversation.
- The convenience of being in your own home to mediate a conflict (or any location you choose and feel more comfortable in for that matter)
- Safety concerns where telephone mediation will allow you to resolve your conflict without jeopardizing your security.
- Taking you away from the other party where you will not be overpowered and you can speak your mind honestly with confidence.
- Scheduling conflicts
- Convenience if you travel a lot
- Reducing the expense of travel and less time away from work
- Incapacity to leave home
Scenario – How do you successfully telephone mediate between 2 polarised parties

The Native title party (NTP) understands the granting of the future act is likely to proceed

- what are those things that are non-negotiable?
- what are those things they are willing to compromise on?
- what cost?
- In no hurry to finalise

The Miner understands the granting of the future act is likely to proceed

- He understands he will need to compensate the NTP for loss of enjoyment.
- How much $ & other benefits can he afford?
- The longer the negotiations take, the more it costs.
As the mediator, your role is to remain impartial and try to get both parties to come to a mutual understanding of both the issue and an appreciation of the impact of the future act for each of them. If at all possible an amiable resolution without Tribunal arbitration is the preferred option.
Feedback?........................

Other ideas?..................

Thank you.