



7th December 2005
The Secretariat
Native Title Claims Resolution Review
Attorney-General's Department
National Circuit
Barton ACT 2600.

Dear Mr Hiley (QC) and Dr Levy (RFD)

The Indigenous Facilitation and Mediation Project which is based in the Native Title Research Unit at AIATSIS has been researching best practice in native title mediation and facilitation for over two years. The Project which is funded by the native title section in the Office of Indigenous Policy Co-ordination concludes in June 2006.

I have enclosed copies of a range of research materials produced by IFaMP which are directly relevant to your inquiries.

In particular, IFaMP's research and consultations with a range of native title stakeholders has highlighted:

- conflict cannot always be resolved quickly and easily;
- the importance of process in delivering sustainable outcomes;
- good process will be cost effective and time effective in the long run;
- the need for transparent and inclusive Indigenous decision-making and dispute management processes to give rise to outcomes which are owned by native title holders and therefore sustainable;
- the diversity of mediation practices which are being conducted under the rubric of 'interest-based mediation' and a lack of common standards;
- the importance of preparation and securing the appropriate participation;
- the importance of processes building the capacity of parties to negotiate with each other and to make effective decisions;
- the effectiveness of co-mediation models (Indigenous and non-Indigenous/male and female); and
- the need for a fully supported and accredited national network of Indigenous mediators and facilitators who can make timely interventions to ensure that disputes do not escalate.

Currently, the legislation limits the ability of the Federal Court and NNTT to employ outside process expertise. Further, neither the Federal Court, the NNTT nor NTRBs have the resources or the time to address the number of disputes which are holding up agreements throughout the country, or in many instances, to undertake the longer term interventions which may be required.

The review team may wish to consider investigating options to enable the NNTT and Federal Court to secure such assistance particularly that of Indigenous mediators and facilitators.

I will be pleased to discuss the issues raised in the enclosed documents with you should you wish.



The IFaMP documents enclosed are:

Indigenous Facilitation and Mediation Project. 2005 *Building Indigenous Capacity in Consultation, Negotiation and Agreement-Brokering: The Need for Procedural Expertise* (Working Draft)

Indigenous Facilitation and Mediation Project. 2005 *Towards a National Network of Indigenous Process Experts in Agreement-Brokering, Decision-Making and Conflict Management* (Working Draft)

Bauman, T. 2005. Whose Benefits? Whose rights? Negotiating Rights and Interests amongst Indigenous Native Title Parties. *Land, Rights, Laws: Issues of Native Title* NTRU, AIATSIS, Canberra.

Kingham, F. and T. Bauman. 2005. *Report on Proceedings of Indigenous Native Title Mediation Practitioners Workshop 17 - 18 February 2005.*

Kingham, F. Bauman, T and M. Black. 2005. *Report on Proceedings of Workshop of Native Title Mediators 15 and 16 March 2005.*

Bauman, T. and R. Williams. 2005. *The Business of Process: Research Issues in Managing Indigenous Decision-Making and Disputes in Land.* Report No. 1.

Yours sincerely

Toni Bauman.