

Our ref: 14.14  
Your ref:

6 May 2020

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

[By email: legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Committee Secretary

## **Native Title Legislation Amendment Bill 2019 – Answers to Questions on notice**

### ***Background***

1. On 15 November 2020, Central Desert Native Title Services Ltd (**Central Desert**) provided submissions in relation to the *Native Title Legislation Amendment Bill 2019 (Bill)*.
2. On Tuesday, 10 March 2020 Central Desert appeared before a hearing of the Senate Legal and Constitutional Affairs Legislation Committee chaired by Senator Stoker (**Hearing**). Central Desert provides the following answers to questions on notice asked by committee members at the Hearing.

### ***Historical Extinguishment***

3. Part 1 of Schedule 3 of the Bill discusses historical extinguishment and includes an important provision relating to the proposed insertion of section 47C in the NTA. Central Desert takes this opportunity to again express its support in relation to this proposed amendment which will have the effect of enabling the historical extinguishment of native title rights and interests in relation to areas subject to national, state or territory parks to be disregarded to allow for the recognition of native title where the parties agree that that is appropriate.
  4. Senator Carr asked for comments on the submissions made by the State of Western Australia, specifically from paragraph 2.6 of those submissions as they relate to the
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State's conditional support for the enactment of section 47C: See page 13 of the Hansard Transcript of the Hearing.

5. Central Desert generally support the comments relating to section 47C in the State's submissions.
6. At paragraph 2.6(b) of the State's submissions there is a proposal to limit what can be included in a s47C agreement and, in particular, stipulate that it may include provision for an alternative future act regime and a proposal to dispense with the requirement for a future act regime for certain interests that currently are permissible in the park area. Central Desert does not support this proposal and believes that negotiations between the parties as to what is in the agreement should not be fettered in this way.
7. Central Desert otherwise has no comment on the State's submissions.

### ***Role of the Applicant***

8. Part 1 of Schedule 1 of the Bill contemplates amendments being made to allow conditions to be imposed on the person (or persons) who jointly comprise the applicant in native title claim applications or native title compensation applications brought under the NTA.
9. In particular, proposed section 251BA will allow native title claimants to impose limitations on the authority of the persons who comprise the applicant and for these limitations to be set out in the applicants' affidavit of appointment. At the Hearing, the question arose about the implementation of provisions relating to the proposed ability for decisions to be made by the majority of applicants (the so called "default rule").
10. Senator Siewart asked whether Central Desert would provide alternative drafting in relation the ability for the default rule to be avoided by native title claimant groups that have already imposed conditions on the authority of applicants: See page 14 of the Hansard Transcript of the Hearing.
11. Central Desert proposes the following amendments to clause 24 of the Bill "Application and transitional provisions":

(3) The amendments of sections 62A and 186 of the *Native Title Act 1993* made by this Part apply in relation to any authority given after the commencement of this item **but does not apply to any claims currently on the Register of Native Title Claims.**

(4) Section 251BA of the *Native Title Act 1993*, as inserted by this Part applies in relation to any authority given after **twelve months** of the commencement of this item.

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***Other procedural changes***

12. Part 2 of Schedule 6 of the Bill makes a number of changes to the normal negotiation procedures under section 31 of the NTA.
13. Senator Dodson asked whether the act of registration of a section 31 agreement would extinguish native title rights and interests: See page 18 of the Hansard Transcript of the Hearing.
14. The answer to that question is “No”.

Yours sincerely

**Jo Lanagan**  
CHIEF EXECUTIVE OFFICER

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