

31 January 2013

Ms J Dennett
Committee Secretary
Senate Standing Committee on Legal
And Constitutional Affairs
PO Box 6100
CANBERRA ACT 2600

Via email: legcon.sen@aph.gov.au

Dear Ms Dennett

**Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the
Native Title Amendment Bill 2012**

The National Farmers' Federation (NFF) welcomes the opportunity to make a submission to the above Inquiry.

The Australian Government has implemented a number of reforms in the area of Native Title as it affects landholders. The first was to cease funding to NFF's Members to assist coordinating landholder's legal representation of Native Title Determinations. This reform commenced on 1 January 2013. The NFF did not support this funding cut and will be continuing to make representations to reinstate funding for a further two years when most of existing native title claims will be settled. The NFF estimates that the total cost to government of supporting respondents over the next two years will amount to a total of \$2.2M. This appears an insignificant amount in terms of the federal budget and it seems nonsensical to put at risk the goodwill established over many years between claimants and respondents for the sake of such a small budget saving. Any support that can be provided through this Inquiry would be most welcome.

The second reform is to the *Native Title Act 1993* (Cth). The NFF previously made a submission to the exposure draft of this bill run through the Attorney-General's Department (A-GD). This Exposure Draft submission is attached for your information. The NFF are concerned that the proposal to disregard historical extinguishment of native title on park land will inadvertently include agricultural lands (freehold, leasehold and leased parks and reserves). The NFF raised these concerns in the Exposure Draft of the Bill. The Bill tabled in Parliament has not been amended since the Exposure Draft to specifically exclude agricultural land, i.e. these concerns have not been addressed in the final Bill.

Discussions have been held with the A-GD about the potential to inadvertently include agricultural land (including freehold and leasehold land and leased park land) within the definition of “park”. The Department advised that the definition has been purposefully designed to the “broad”. In addition, the Department had not fully investigated whether this may affect, for example, conservation covenants on private land. For the latter, the Department has simply assumed that the freehold test would mean that freehold land was unaffected.

While the NFF can continue negotiations with the Department, the Bill is now before the Parliament. Therefore, NFF is requesting both this and the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into this bill make recommendations to specifically exclude all freehold and leasehold land, and require leasees of any parks and reserves to be included in any negotiations to disregard historical extinguishment.

NFF would welcome the opportunity to appear before the Senate Inquiry to respond to any specific questions regarding this submission.

Yours sincerely

MATT LINNEGAR
Chief Executive Officer

ATTACHMENT 1



19 October 2012

Native Title Reform
Attorney-General's Department
Via email: native.title@ag.gov.au

Dear Sir/Madam

Native Title Amendment Bill 2012

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission on the proposed amendments to the *Native Title Act 1993*.

As indicated in our letter to the Hon Nicola Roxon, Attorney General for Australia dated 8 August 2012, the NFF raised a number of concerns about the proposed amendments.

In relation to the specific amendments, the attachment sets out where the NFF supports or has concerns in relation to the proposed amendments. However, the major concern for the NFF is in relation to the proposed historical extinguishment provisions over public lands. There are two areas of concern:

- i. There is an implied assumption that all existing public conservation land will remain public conservation land in the future. There is currently live discussions suggesting that one policy approach to climate change for biodiversity may be for governments to divest public lands in the future where these are no longer required (do not meet environmental objectives) and to acquire other land suitable for protected areas estate inclusion. For more on this, see the Productivity Commission Inquiry into Barriers to Effective Climate Change Adaptation Draft Report¹.
- ii. There is a real possibility that protected areas (voluntary and covenanted) on private land, including leasehold land, may be affected by the proposed historical extinguishment provision now.

The implication in both the above situations is that any extinguishment of native title brought about by the existing or previous tenure is disregarded. This could be an unwelcome complication in future dealings in relation to that land.

¹ Productivity Commission 2012, *Barriers to Effective Climate Change Adaptation, Draft Report*, Canberra, Chapter 11, pp 218-220

ATTACHMENT 1

The NFF suggests that the Government considers the implications in both these scenarios and includes provisions that exclude historical extinguishment over any private land (including leasehold and covenanted) and considers the implications for historical extinguishment on public lands where the future land use may change.

Yours sincerely

MATT LINNEGAR
Chief Executive Officer