



31 January 2013

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

and via email: legcon.sen@aph.gov.au

Dear Ms Dennett

Inquiry into the Native Title Amendment Bill 2012

Thank you for your letter of 3 December 2012 inviting the Society to give comments on the *Native Title Amendment Bill 2012 (the Bill)*. The Bill has been considered by the Society's Aboriginal Issues Committee and accordingly we provide the following comments.

Schedule 1 – Disregarding Historical Extinguishment

The Society notes that the proposed section 47C will apply only where it is agreed to in writing by the relevant Aboriginal representative (see proposed section 47C(c)(i)) and whichever of the Commonwealth, the State or the Territory government is affected.

This process for disregarding prior extinguishment is not consistent with sections 47, 47A and 47B. These sections also deal with disregarding historical extinguishment but in relation to each, once the relevant conditions have been objectively met, the sections apply without the need for agreement.

Schedule 2 – Good Faith

The Society supports these proposed amendments, which appear to provide clarification as to the relevant obligations relating to good faith negotiations.

Schedule 3 – Indigenous Land Use Agreements

To the extent to which the proposed amendments clarify existing contradictory legal authorities (such as with the proposed section 24CH(1), subsection 251A(2) and (3)), the Society supports moves to remove legal uncertainty.

The Society does not take a position on the issue of repealing the existing section 24CK and replacing it with a new section 24CK which no longer permits objections to relevant Indigenous Land Use Agreements (ILUAs). The goal of 'streamlining' the processes of authorisation and registration, chiefly by removing the capacity of frivolous objections to delay these processes, is a legitimate one. The Society draws the Senate Committee's attention to the need for a thorough consideration of the appropriate balance between the legitimate interests of parties seeking registration against those of parties wishing to raise legitimate objections in determining whether the change to section 24CK should be supported. The Society does not however suggest that an inappropriate balance has been struck in the bill.

The above relates to ILUAs comprising "area agreements". The Society welcomes the proposed amendments with regard to "body corporate agreements".

Schedule 4 – Miscellaneous - Body Corporate

The Society supports this proposed amendment. However, for the sake of clarification the Society suggests that "company" in section 47(1)(b)(iii) be deleted and "body corporate" be substituted.

I trust these comments are of assistance.

Yours sincerely

John White
PRESIDENT