

Answers to questions on notice

Warnpurru has been asked to provide comment on how they feel about submissions made by the State Government of Western Australia (**State**) proposing changes to those parts of the Bill intended to amend the *Native Title Act 1993* (Cth) (**NTA**) to introduce s 47C NTA, which would allow for the disregarding of native title extinguishment caused by tenure such as nature reserves. Warnpurru has a particular interest in these aspects of the Bill, due to the total extinguishment of native title caused by the Gibson Desert Nature Reserve (**Reserve**) and the significance placed upon the possible restoration of native title rights in negotiations with the State regarding native title compensation for the Reserve.

The State provided views in relation to the proposed s 47C NTA at item 2.6 of its November 2019 submissions. Warnpurru's response to those views, as requested by the Committee, is as follows.

1. In respect of (a):
 - (a) Warnpurru takes no issue with the amendment at (i);
 - (b) Warnpurru does not agree with the State's view at (ii) that a registrable Indigenous Land Use Agreement (**ILUA**) is not possible where native title does not exist anywhere in the agreement area, but takes no issue with it being made clearer that an ILUA can be negotiated for the purposes of the agreement contemplated by s 47C(1);
 - (c) Warnpurru agrees with the proposition that s 47C NTA should be available where a native title determination application is already on foot, including because that may avoid the need for further native title determination applications to be lodged (e.g. to overlap an existing determination) to attract the benefits of the section, which would involve additional resources.
2. In respect of (b), Warnpurru considers that the amendments proposed by the State are not necessary; the Bill's present drafting does not prevent the making of any such agreement, should the parties to any negotiation so decide.
3. In respect of (c), Warnpurru has no comment, as this issue does not arise in our negotiations with the State.
4. In respect of (d), Warnpurru supports this amendment, on the basis that it understands the State's reference to s 47C(1)(b)(ii) should instead be to s 47C(1)(b)(i) of the Bill.
5. In respect of (e), Warnpurru is not opposed to this amendment.
6. In respect of (f), Warnpurru has no comment, as this issue does not arise in our negotiations with the State.
7. In respect of (g), Warnpurru supports this amendment, on the understanding that the relevant section is now s 47C(6)(b). No person should have the ability to comment on the agreement unless they hold a right or interest in the area that may be affected by the proposed agreement. Such an approach would be more consistent with what is required for someone to be a respondent to a native title determination application (see s 84(5) NTA) and consistent with the main object in s 3(a) NTA of providing for the recognition and protection of native title, by reducing possible barriers to reaching agreement for the restoration of native title, wherever possible.
8. In respect of (h), Warnpurru supports the amendments proposed by the State.