

**Submission of Cape York Land Council Aboriginal Corporation to the Senate Legal and
Constitutional Affairs Committee and the House Standing Committee on Aboriginal and Torres
Strait Islander Affairs regarding the *Native Title Amendment Bill 2012***

31 January 2013

Background

The *Native Title Amendment Bill 2012* (the NTA Bill) was introduced into the House of Representatives by the Attorney-General on 28 November 2012, and referred the following day to the House Standing Committee on Aboriginal and Torres Strait Islander Affairs and the Senate Legal and Constitutional Affairs Committee.

These submissions are made to both Committees.

Cape York Land Council Aboriginal Corporation (CYLC) generally supports the proposed amendments, but maintains the position, as previously expressed to the Attorney-General's Department, that while the proposals may assist with some aspects of the native title process, they do not go far enough in addressing the complexities and difficulties embedded in the native title system. There has been considerable discussion in recent years amongst stakeholders within the system regarding the key concerns, and canvassing ways in which the process could be improved.

We will not provide detail of preferred substantive amendments in these submissions, but urge the Commonwealth Government to give consideration to the proposals previously made by the National Native Title Council, such as reversal of the onus of proof and a rebuttable presumption of continuity. There has been widespread acknowledgement of the ways in which the current provisions have operated unjustly, particularly in circumstances where Indigenous people are required to prove a connection to their land despite historical acts of government intended to sever that connection.

Without those more substantive amendments, it is unlikely that the amendments contained in the current Bill will significantly improve the current imbalance in the native title system which prevents native title holders from operating on a level playing field.

Good faith and related amendments

CYLC supports the proposed amendments.

47C provisions

CYLC generally supports the proposed amendments.

However, as suggested in previous submissions on these issues, CYLC submits that:

- the requirement for agreement before extinguishment is disregarded should be removed (noting that ss.47 to 47B do not contain such a requirement, and that any existing interests are not affected); and
- the proposed amendment should be expanded to include other tenures (again noting that existing interests would not be affected).

The Bill includes proposed notification requirements. CYLC submits that notification of a proposed agreement to disregard prior extinguishment is unnecessary, noting again that any existing interests will not be affected.

Improvements to ILUA registration

CYLC generally supports the proposals for simplifying amendments to ILUAs, broadening the scope of body corporate ILUAs and improving authorisation and registration processes.

However, CYLC is concerned about the possible practical ramifications of the proposed amendments in relation to opposing registration of an Area ILUA, on the basis that it is not at present clear what will be required for a group or individual opposing registration to establish a prima facie case that he/she/they may hold native title.