

CHAPTER 1

Introduction

Purpose of the Bill

1.1 On 12 May 2011, the Senate referred the Native Title Amendment (Reform) Bill 2011 (Bill) to the Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 20 September 2011.¹ On 20 September 2011, the Senate agreed to extend the reporting date until 3 November 2011;² on 3 November 2011, the Senate agreed to further extend the reporting date until 9 November 2011.³

1.2 The Bill was introduced into the Senate on 21 March 2011 as a private senator's bill by Senator Rachel Siewert, Australian Greens.⁴ According to the Explanatory Memorandum (EM), the Bill 'implements important reforms to the *Native Title Act 1993* to enhance the effectiveness of the native title system for Aboriginal and Torres Strait Islander peoples'.⁵ The EM describes these reforms as addressing either procedural issues relating to the future act regime or barriers in making a case for a determination of native title rights and interests.⁶

1.3 The key provisions of the Bill aim to:

- strengthen heritage protection for areas, or sites, of particular cultural significance;
- reinstate application of the non-extinguishment principle to compulsory acquisitions of land;
- extend the 'right to negotiate' to offshore areas;
- strengthen the requirement to negotiate in good faith;
- enable the arbitral body to determine profit-sharing conditions;
- provide for prior extinguishment to be disregarded by agreement;
- shift the burden of proof by creating a presumption of continuity, rebuttable by evidence of significant disruption;

1 Journals of the Senate, No. 30-12 May 2011, p. 909.

2 Journals of the Senate, No. 54-20 September 2011, p. 1517.

3 Journals of the Senate, No. 63-3 November 2011, p. 1739.

4 *Senate Hansard*, 21 March 2011, p. 1298.

5 Explanatory Memorandum, p. 2.

6 Explanatory Memorandum, p. 2.

- define the meaning of the word 'traditional' in the definition of 'native title' and 'native title rights and interests'; and
- provide a mechanism for the recognition of commercial rights.

1.4 Another objective of the Bill, as stated in its objects clause, is to refer to the United Nations Declaration on the Rights of Indigenous Peoples (Declaration) and to provide for principles of the Declaration to be applied in decision-making under the *Native Title Act 1993* (Act).⁷

1.5 In her Second Reading Speech, Senator Siewert foreshadowed the possibility of further reforms aimed at creating 'simpler legislation which produces more meaningful outcomes in a more timely fashion'. However:

In this first Bill, we have sought to address some of the 'low-hanging fruit' of native title reform—by targeting some of the areas of native title law where relatively simple amendments have been identified that could have far-reaching implications for addressing some of the current barriers to effective native title outcomes.⁸

Conduct of the inquiry

1.6 The committee advertised its inquiry in *The Australian* on 25 May 2011, 8 and 22 June 2011, and 6 and 20 July 2011. Details of the inquiry, the Bill and associated documents were placed on the committee's website. The committee also wrote to 70 organisations and individuals, inviting submissions by 29 July 2011. However, the committee continued to accept submissions until the date of tabling.

1.7 The committee received 38 submissions and four form letters signed by a total of 13 individuals, which are listed at Appendix 1. Submissions authorised for publication are available on the committee's website at http://www.aph.gov.au/senate/committee/legcon_ctte/index.htm.

1.8 The committee held a public hearing in Canberra on 16 September 2011. A list of witnesses who appeared at the hearing is at Appendix 2, and copies of the *Hansard* transcript are also available on the committee's website.

Acknowledgement

1.9 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

7 Clause 4 of the Bill.

8 *Senate Hansard*, 21 March 2011, p. 1298.

Scope of the report

1.10 Chapter 2 provides a brief overview of the Bill. Chapter 3 discusses the key issues raised in submissions and evidence, as well as providing the committee's conclusions and recommendations.

Notes on references

References in this report are to individual submissions as received by the committee, not to a bound volume. References in this report to the *Committee Hansard* of 16 September 2011 are to the official *Hansard*.

