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No. 101 2003–04

Extension of Sunset of Parliamentary Joint Committee on Native Title Bill 2004

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 101 2003–04

Extension of Sunset of Parliamentary Joint Committee on
Native Title Bill 2004

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4 March 2004

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Extension of Sunset of Parliamentary Joint Committee on Native Title Bill 2004

Date Introduced: 19 February 2004

House: House of Representatives

Portfolio: Attorney-General

Commencement: On Royal Assent

Purpose

To extend the statutory deadline curtailing the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund from 23 March 2004 to 23 March 2006.

Background

The current provisions governing the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (the 'PJC') provide that the Committee expires on 23 March 2004. This Bill, which proposes to extend the time-line for two years, was introduced to the House on 19 February 2004, leaving just over two weeks for Parliamentary consideration of the matter.

History of the Relevant Provisions

The original provisions which established the PJC were inserted into the *Native Title Act 1993* (NTA) towards the end of the debate around the Bill. There seems to have been a minimal discussion of the matter on the floor of the House (or the Senate), and, given the timeframes involved, this was to be expected. The provisions stemmed from a recommendation of the Senate Standing Committee on Legal and Constitutional Affairs, which recommended both that the Bill be enacted before the end of the current sitting period and that the 'legislation should be monitored after enactment.'¹ The Committee went on to say:

This monitoring should be done by a Joint Parliamentary Committee which should report to Parliament on implementation and operation of the legislation. The

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Committee should consult extensively with Aboriginal groups, industry groups and all levels of government about the implementation and operation of the legislation.²

The then Prime Minister, Mr Keating, commented at the time that: ‘This is a unique piece of legislation and a formal monitoring mechanism seems appropriate,’³ while Senator Gareth Evans, referring to the pressure under which the Parliamentary consideration was taking place, said of the provisions:

The other argument I want to address is the importance of passing this legislation this year. I think it was adequately dealt with in the legal and constitutional affairs committee report. It will be a lost opportunity for Australian society to make a new start in Aboriginal relations if this bill is not passed. We must, and we can, deal with the legislation and pass it this week. The argument has been put that we must get it right, and I agree, but there are mechanisms for dealing with any errors or unintended consequences. The legal and constitutional affairs committee, of which I am a member, supports the need to review and monitor the legislation. I think that is a sensible step to take.⁴

The first time-frame for the existence of the Committee was for five years. The 1998 amendments to the NTA created a further 5 years for the Committee’s existence. At the time the Government commented:

Provisions establishing the PJC were included by the Senate in the Native Title Bill in December 1993 to ensure Parliamentary oversight of the implementation and operation of the Act. The operation of the PJC was limited by a sunset provision of five years on the assumption that any ‘bugs and flaws’ in the Act would have been identified by early 1999 and the implementation phase completed. This assumption can now be seen as overly optimistic. It is arguable that only over the next few years will sufficient experience with the operation of the Native Title Act have been gained for the PJC to make the inquiries it has been given a statutory obligation to undertake.⁵

The current amendment seeks to extend the term of the Committee by two years. The Explanatory Memorandum does not comment on the chosen time-frame.

Monitoring the Native Title Act 1993

Part 12 of the NTA sets out the provisions governing the PJC, and includes the list of topics that the PJC should consider in its work. In particular section 206 stipulates that the PJC’s duties are to report on the implementation and operation of the NTA, and Part 4A of the *Aboriginal and Torres Strait Islander Commission Act 1989* dealing with the Indigenous Land Corporation and the Aboriginal and Torres Strait Islander Land Fund. In doing this the PJC is asked to consult extensively with:

- (i) groups of Aboriginal peoples and Torres Strait Islanders; and
- (ii) industry organisations; and

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- (iii) Commonwealth, State, Territory and local governments; and
- (iv) other appropriate persons and bodies.

It is also instructed to report on annual reports of the National Native Title Tribunal and under Part 4A of the ATSIC Act.

Finally, it is instructed to report where appropriate on:

- (i) the effectiveness of the NNTT; and
- (ii) the extent to which there are recognised State/Territory bodies; and
- (iii) the appropriateness of powers of delegation exercisable by the Registrar under this Act; and
- (iv) the extent of extinguishment or impairment of native title rights and interests as a result of the operation of this Act; and
- (v) the operation of the National Aboriginal and Torres Strait Islander Land Fund established by Part 10; and
- (vi) the effect of the operation of this Act on land management; and
- (vii) the operation of the Indigenous Land Corporation and the Aboriginal and Torres Strait Islander Land Fund established by Part 4A of the Aboriginal and Torres Strait Islander Commission Act 1989.⁶

At the same time as establishing the PJC to have oversight of the results being achieved under the NTA, provisions were also inserted stipulating that the Aboriginal and Torres Strait Islander Social Justice Commissioner should provide a report on the operation of the NTA, with particular attention to be paid to the effect of the Act on the exercise and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders.⁷ This function will be performed by the Australian Human Rights Commission in the event that the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner is abolished.⁸

The complex nature of the native title legislation and the changes brought about by the 1998 amendments has meant that the provisions of the NTA are still in the relatively early stages of operation. Judicial decisions have led to further issues about the recognition and extinguishment of native title being raised, while the provisions for compensation and the use of indigenous land use agreements have not been fully explored by stakeholders. Consequently there are still likely to be issues which may need to be addressed by an appropriate body overseeing the operation of the NTA. The Aboriginal and Torres Strait Islander Social Justice Commissioner's 2002 'Native Title Report' outlined some of the on-going issues of concern, while Mr Ruddock in his Second Reading Speech observed that: 'The numbers of determinations of native title and indigenous land use agreements are growing at an increasing rate.'⁹

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The three Reports tabled by the PJC since February 2002 have been:

- Effectiveness of the National Native Title Tribunal in fulfilment of the Committee's duties pursuant to subparagraph 206(d)(i) of the Native Title Act 1993 — tabled 4 December 2003
- Examination of Annual Reports 2001-2002 — tabled 25 June 2003, and
- Report on the Examination of Annual Reports for 2000-2001 in fulfilment of the Committee's duties pursuant to s.206(c) of the Native Title Act 1993 — tabled 12 December 2002.

Main Provisions

The relevant amendment made by the Bill is to extend the operation of the PJC to 23 March 2006 – extending it from 23 March 2004 – by amending section 207 of the *Native Title Act 1993* (item 1 of the Schedule).

Concluding Comments

The reasons for the various time-frames chosen for the PJC's existence are difficult to discern, and the possibility of having a non-time limited Committee does not seem to have received consideration.

Endnotes

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- 1 Native Title Bill 1993, Report by the Senate Standing Committee on Legal and Constitutional Affairs, December 1993, p. 27.
 - 2 *ibid.*
 - 3 The Hon PJ Keating, House of Representatives, 'Native Title Bill: Consideration of Senate Message', *Debates*, 22 December 1993, p. 4541.
 - 4 Senator the Hon Gareth Evans, 'Second reading Debate: Native Title Bill 1993', Senate, *Debates*, 14 December 1993, p. 4581.
 - 5 House of Representatives, *Debates*, 03 July 1998, p. 6026. This quote is taken from the Supplementary Explanatory Memorandum H88.
 - 6 Section 206 of the *Native Title Act 1993*.

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- 7 Section 209 of the *Native Title Act 1993*.
- 8 Item 57 of Schedule 1 and item 24 of Schedule 2 to the *Australian Human Rights Commission Legislation Bill 2003* currently before the Parliament.
- 9 Mr Philip Ruddock, Attorney-General, 'Extension of Sunset of Parliamentary Joint Committee on Native Title Bill 2004: Second Reading', House of Representatives, *Debates*, 19 February 2004, p. 24851.

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