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Friday, January 19, 2007

Ms Jackie Morris
Acting Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Morris

Inquiry into the Native Title Amendment Bill 2006

I write this submission on behalf of the Jagera People #2 registered Native Title Claimant Group in response to the proposed amendments to the Native Title Act 1993.

Our submission is brief, due to the short timeframe allocated for the receipt of submissions and the reality that we have no available resources to enable us to respond to the proposed amendments comprehensively.

As registered native title claimants we consider it vital that we are well informed of what the intent of the proposed amendments will mean and whether the proposed amendments will provide adequate processes and resources to enable all parties with the support needed to develop mediated outcomes.

Currently the Jagera People #2 Native Title claim is progressing slowly but steadily through mediation with respondent parties. We have chosen to utilise the mediation process as a more effective means of securing recognition of the Jagera People outside of a court determination. The Jagera People have the passion, vision and patience to see mediation through, but have had no resources or support available to us to progress the mediation process in a timely and efficient manner.

The Jagera People also resource their native title claim process, without resources allocated from any other source. Even though we are aware that the Native Title Representative Bodies (NTRBs) or other entities contracted to fulfill the NTRBs functions are funded to resource registered claim groups; but, with respects to the Jagera People's claim, resources and support has not been forthcoming since the Jagera People began preparation of their claim in 1999.

To date we have resourced the preparation, authorisation and registration of our claim, claimant group meetings, and meetings with respondent parties, mediation, anthropology research and legal advice (where able). So without question

we are interested in what enabling tools the proposed amendments will provide to ensure that we can continue mediation with respondent parties.

With respects to making a submission in response to the proposed amendments, I have had approximately 24 hours to read through the Native Title Amendment Bill, review the proposed changes and read through the two submissions received and posted on the commonwealth website. It is important for me to state that I am not a lawyer and without appropriate legal advice I am only able to submit a response within the limitations of my understanding. However, we need to ensure that our interests with regards to the proposed amendments are heard and considered by the Standing Committee on Legal and Constitutional Affairs in their deliberation on the Native Title Amendment Bill and as to whether those proposed amendments will provide sufficient direction for all parties concerned.

1. The Jagera People's submission in response to Native Title Amendments Bill

National Native Title Tribunal (NNTT)

(i) We support the proposed amendments with respects to role of the NNTT and believe that the role of the NNTT in mediation and reporting to the Federal Court will better assist us where mediation is required so that the good faith of the parties is objectively monitored and recorded for submission to the Federal Court to better assist directions. We support the proposal to improve the relationship and communication between the NNTT and the Federal Court.

Native Title Representative Bodies (NTRBs)

(ii) We support the proposed amendments with respects to NTRB areas, greater accountability and reporting requirements and the appointment of 'person or entity' to fulfill NTRB functions where required.

(iii) We do have issue with the fact that NTRBs (or where there is a 'person or other incorporated entity' appointed) are not given clear direction by requiring the NTRBs to undertake mediation or mediation support as a primary function. This is needed to support the proposed amendments to NNTT's role in mediation.

(iv) We note that the proposal to provide financial resources to respondent parties is considered, so as to enable respondent parties to seek mediation rather than litigation. However, the registered native title claimants require the same support to enable them to successfully engage respondent parties in mediation. Due to the fact that the financial resources provided to registered native title claimants is intended to be provided through the NTRBs, it then appears necessary that NTRBs include mediation as one of their primary functions.

(v) We support the proposed amendments enabling the appointment of 'persons or incorporated entity' to be appointed to fulfill the functions of a NTRB, where a NTRB has proven to be unable to perform the functions of a NTRB under the Native Title Act.

Prescribed Body Corporate

(vi) We support the proposed amendments regarding greater flexibility of a Prescribed Body Corporate

(vii) In principle we support that a Prescribed Body Corporate should be accepted as any incorporated entity, incorporated by the successful Native Title Claim Group.

2. Jagera Proposal

The Jagera People submit a proposal for change to the Native Title Act 1993 that will allow support for progressive claims that are not receiving support through the process designed in the Native Title Act 1993.

Currently the process provided for resourcing registered native title claims is limited. Support for claims is subject to the agenda of the relevant NTRB and if support is not forthcoming, then the claimant group is required to progress their claim through the legal system on their own.

If a registered claim is promising, in that it is consistently progressive, entering into or continuing successful mediation and is supported by the relevant respondent parties (e.g. relevant state government or local councils), then it should be encouraged to progress by providing an alternative support route, where the current process under the Act is not working.

Mediation is expensive and time consuming. Where there is no support from the NTRB, the mediation process is slowed and parties become discouraged. The registered native title claim group is left to respond to multiple future act notifications as well as organize continued authorization and participation in mediated outcomes.

The Jagera People propose amendments to be made to the Native Title Act 1993, but are not included in the Native Title Amendments Bill to include the following:

1. An alternative process is created to allow progressive registered Native Title Claims to continue where there is no support from the NTRB or where a 'person or incorporated entity' is appointed over the area in which the progressive claim is located.
2. That a form of 'special funding' is provided and housed within either the NNTT or Attorney General's Office for progressive claims to submit an application unto.
3. That progressive claims be determined case by case, assessed for their merit (in that the claim is promising and likely to achieve an outcome e.g. court determination, consent determination or withdrawal subject to Indigenous Land Use Agreements with the relevant State and/or Local Councils), has the support of the relevant respondent parties and subject to meeting specific criteria for special funding.

The Jagera People believe that if an alternative process is created, whether it is via the current proposed Native Title Amendment Bill or other, then mediated outcomes between registered native title claim groups and the respondent parties will be more successful and not delayed or withheld due to other agendas.

If required we look forward to providing the Committee with further information. If you wish to discuss any aspect of our submission, please do not hesitate to contact me.

Yours Sincerely,

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