



18 December 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Via email: legcon.sen@aph.gov.au

Dear Sirs,

Courts and Tribunals Legislation Amendment (Administration) Bill 2012

Thank you for the opportunity to provide comment on the Courts and Tribunal Legislation Amendment (Administration) Bill 2012 (**the "Bill"**).

The Role of NTSCORP Limited

NTSCORP Limited ("**NTSCORP**") is funded under section 203FE of the *Native Title Act 1993* (Cth) ("**NTA**") by the Commonwealth Government's Department of Families, Housing, Community Services and Indigenous Affairs, to carry out the functions of a native title representative body in NSW and the ACT.

The functions, powers, roles, and responsibilities of NTSCORP are set out in section 203B-BK of the NTA. The definitions and conditions affecting the performance of NTSCORP's functions are contained in Part 11 Divisions 1 to 7 (inclusive) of the NTA. In summary the functions and powers of NTSCORP as defined in section 203 of the NTA are:

- Facilitation and assistance;
- Dispute resolution;
- Notification;
- Agreement making;
- Internal review; and
- Other functions (see s203BJ in particular).

We hope that this submission will assist the Senate Committee ("**the Committee**") consider the concerns that NTSCORP holds in relation to the Bill and the effect it will have on resolving native title matters for Aboriginal Traditional Owners ("**Traditional Owners**") in NSW and the ACT.

Legislative Background

NTSCORP understands that the Bill aims to reduce the National Native Title Tribunals' ("**NNTT**") administrative responsibilities under the *Financial Management and*

Accountability Act 1997 (Cth) and the Public Service Act 1999 (Cth). We understand that the NNTT's responsibilities under these acts are to be transferred to the Federal Court of Australia ("FCA") in an attempt to increase administrative efficiencies between the FCA and NNTT. These reforms align with the Attorney General's announcement to transfer the NNTT's budget, staff and some mediation and negotiation functions to the FCA.

Transfer of NNTT Functions

Prior to the implementation of overarching institutional reforms to the NNTT's core functions, the majority of native title claims in NSW were being successfully mediated by the NNTT. Whilst NTSCORP is broadly supportive of legislative and administrative reforms that allow for increased efficiency and effectiveness in the resolution of native title matters in NSW, we are concerned that these reforms may not assist Traditional Owners in NSW to reach comprehensive native title outcomes. NTSCORP submits that Native Title Representative Bodies should have been afforded an opportunity to comment on the institutional changes before they were announced and implemented.

We note that a number of the outcomes achieved by the FCA in the last 12 months have been the culmination of many years of focussed assistance by the NNTT and in many cases, as a result of the stage of the matters.

NTSCORP is concerned that the FCA is focused on resolving native title determination applications as quickly as possible without due regard for the way in which Traditional Owners negotiate settlements with respondent parties, particularly the State government. The NSW State government negotiates Consent Determinations and Indigenous Land Use Agreements with Traditional Owners on the basis that these agreements amount to full and final native title compensation settlements. As a result, ILUA negotiations in NSW must be conducted in a culturally sensitive manner that allows Traditional Owners time to properly consider and negotiate a comprehensive settlement package.

The role of the NNTT when it mediated native title determination applications in NSW included undertaking engagement with non-State respondent parties, providing assistance to the parties with timetabling and work planning, and facilitating on Country mediation/negotiation meetings between the State, native title claimants and their legal representatives. NTSCORP is concerned that the FCA does not have the expertise or resources to adequately provide this level of assistance to the parties.

NTSCORP has particular concerns in relation to the proposed amendment to section 203BK(3) of the NTA which provides that the Commonwealth rather than the NNTT may provide assistance to Native Title Representative Bodies in dispute resolution. Specifically we note that the Commonwealth is often a respondent party to native title applications and that the NNTT has the skills and perceived independence in the area.

In addition, the NNTT contribute resources to on country mediation including venue hire and catering.

Reforms contemplated by the Bill

Although NTSCORP does not support the overall reforms to the functions of the NNTT, we support legislative measures being adopted to assist it in continuing to exercise its remaining functions. We suggest that any savings arising out of these changes should be



reinvested into better achieving effective native title outcomes rather than being diverted to separate non- native title programs.

We thank you again for this opportunity to provide comment on the Bill. Should you wish to discuss these matters further, please do not hesitate to contact NTSCORP Solicitor

Yours faithfully,

Natalie Rotumah

**Acting Chief Executive Officer
NTSCORP Limited**



