Attention, Secretariat,
Senate select committee, Native Title Amendments 2009

Dear Senators

I write this from a differing angle to those expert in Native Title legislation. I write as a citizen never required to make an Oath to the Crown.

In my "plain english", I describe Native Title as lands where the Crown has not interfered, to date, and a group of citizens can prove continual connection to these lands since prior to 1788, or 1830ish, for WA. In such instances Common law property rights apply.

However, should many types of development be decided upon for some areas of a Native Title, and should such developments require a Planning Permit, the crown interferes by granting such a permit, thus extinguishing Native Title. Thus, we have the Futures Acts regime, to at least give traditional owners some semblance of recognition of it being their lands. In 1992/3, The High Court determined that compensation is payable in such situations, yet the Crown has never paid a cent whenever the Futures Act have been used, to the best of my knowledge.

An alternative model for development to occur on Native Title lands, one in which traditional owners are treated as functional owners even when development occurs, is for the Crown to establish a "shell company" that abides by the planning regimes of the relevant state or territory, in such a way that The Crown is not interfering, so no compensation is payable for extinguishment, and the special relationship of traditional owners to the land is more fully recognised and compatible with our legal systems.

By using such a shell company, dignity is restored to traditional owners, rather than the present dilemma that creates an either/or

decision for traditional owners of Native Title lands. Either they can act as owners, or they can have development, but not both.

I am unsure of the ramifications of the Crown establishing a "shell company", but do not believe it to be any admission of liability beyond what already exists. It is intended as a mechanism to move forward, offering dignity, respect and partnerships between government, traditional owners, and developers.

Additionally, I believe that PBsC should be allowed to embrace Limited Liability Partners into their communal title.
Such partners could be entrepreneurial, or private homeowners, all included in the one legal entity that owns and manages the Native Title lands in a manner more akin to 'self determination".
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I have also written to Minister Macklin's office about a new Planning Regulation in Victoria, called Clause 55. This Clause specifies how second, third, tenth private houses can be sited on the same Lot. I call this "Private homes on Communal Title".
My motivations in lobbying for such a Clause is so that a group of houses can share micro=generation of electriity, and water re-use systems, but see the applicability of such arrangements for first nations cultures.
Other states and territories may need something similar to Victoria's Clause 55, so as to allow private homes to be constructed on communally owned land, if such provisions do not already exist.

Whether the current recommended changes to Native Title are approved by the senate or not, I believe it imperative that something other than "unspecified compensation" payable "sometime" whenever the Futures Act is invoked, needs to be introduced. A "shell company" established by the crown could be such an alternatve.

Whether the Commonwealth of Australia is capable of implementing such a “shell company” whether in concert with our states and territories or not, I remain unsure.

Should the consent of her Majesty, Queen of Australia, Elizabeth 1, be required, or her Excellency the Governor general, Quentin Bryce can authorise such an innovation is beyond my comprehension.
Thus I write to your committee in the hope that this alternative to the Futures Acts can be explored. It is worth remembering that Westminster legislated to prevent citizens of Australia from appealing to the Privy Council, with a year of the 1967 referendum to grant citizenship to aboriginal Australians.
Short of a proper Treaty, a “shell company’ established by The Crown seems like the next best thing.

yours in good faith
Graeme Taylor

ps I do not identify with, nor knowingly am I directly related to any aboriginal or torres strait islander persons,
just a concerned citizen