

17 December 2012

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

**RE: Inquiry into Courts and Tribunals Legislation Amendment
(Administration) Bill 2012**

AIATSIS welcomes the opportunity to provide input to the Committee in its inquiry into Courts and Tribunals Legislation Amendment (Administration) Bill 2012 ('the Bill'). The following comments relate only to Schedule 1–Amendments for the National Native Title Tribunal (NNTT) and the Federal Court of Australia (FCA). We offer these comments in our capacity as the leading proponent of legal and policy research in the native title sector. A key focus of the AIATSIS Native Title Research Unit over the past five years has been agreement making and mediation in the native title sector, and we have particular expertise in this area.

The draft Bill achieves the desired objectives of streamlining administrative structures and processes of the NNTT and the FCA, and we note from the transcript of a roundtable hearing convened 30 November 2012 by the House of Representatives Standing Committee of Social Policy and Legal Affairs into the Bill that the proposed amendments are broadly supported by both the FCA and the NNTT.

AIATSIS also offers our broad support for these amendments to the *Native Title Act 1993* (Cth) which bring into effect reforms to the operation of the NNTT and the FCA announced in June 2012. We note that these reforms include:

- the transfer of the Tribunal's native title claims mediation functions and resources to the Federal Court, and
- consolidation of the corporate services areas of the two agencies

We note that the proposed amendments to the Bill do not transfer all native title mediation functions to the FCA. Specifically, Section 203BK allows for the NNTT to retain its existing capacity to enter into agreements with Native Title Representative Bodies (NTRBs) to assist with NTRB dispute resolution functions. NTRB dispute resolution functions primarily involve assisting with the resolution of intra-Indigenous disputes within and between native title claim groups.

We also note, however, that under proposed amendments to s203BK, NTRBs are liable to pay FCA for any services provided under those agreements. The current legislation also imposes this liability but directs payments to the NNTT.

Given the well-established fact that NTRBs struggle to perform their statutory functions due to chronic underfunding,¹ this appears an inefficient and unjust measure. We suggest that, on the face of it, it is appropriate to remove altogether any requirement that NTRBs are liable to pay either the FCA or the NNTT for assistance with performing dispute resolution functions.

We appreciate, however, that there may be reasons other than the imperative of cost-recovery that informs the inclusion of this clause, and the Committee may wish to explore this issue more fully during the course of the inquiry.

AIATSIS would like to thank you for the opportunity to provide input to this inquiry. If you would like further information on this submission, please contact Dr Lisa Strelein, AIATSIS Director of Research,

Yours sincerely,

Dr Lisa Strelein
Director, Research, Indigenous Country and Governance

¹ A review of funding in the native title system in 2008 found that the level of resources available to the system was inadequate for effective operation, and that additional funding was needed to increase the rate of resolution of native title claims. In particular, the review found that NTRB were substantially under-resourced for the tasks they were expected to perform in the system. See Attorney-General's Department, *Fact Sheet: Closing the Gap - Funding For the Native Title System*, <<http://www.ag.gov.au/Publications/Budgets/Budget2009/Pages/ClosingtheGapFundingFortheNativeTitleSystem%28AdditionalFundingandLapsing%29.aspx>>

About AIATSIS

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) was established in 1964, under Commonwealth legislation. Over the last 45 years AIATSIS has established itself as Australia's premiere Indigenous research institute, manages world class collections of cultural and research material, houses the Aboriginal Studies Press and engages in numerous partnerships with research and government institutions and Indigenous communities.

AIATSIS has a research focus on the governance and operating environment of Registered Native Title Bodies (RNTBCs) and their land and water management aspirations. RNTBCs are established to hold and manage native title and any benefits flowing from activities on native title land. Our work in this area is undertaken by the Native Title Research Unit (NTRU).

The NTRU has taken the lead in providing resources and support to native title holding groups and their corporations as a part of its RNTBC Support Project. AIATSIS has been working with native title holding groups since 2006 and has convened two national meetings of RNTBC representatives to discuss their needs, challenges and aspirations. Discussions with RNTBCs have revealed that enterprise development, economic opportunities and improving the wellbeing of individuals within their groups are key aspirations for native title holders in addition to carrying out their roles and responsibilities as custodians of country. However, the capacity of RNTBCs and native title groups to access programs and resources is currently inhibiting them from achieving these aspirations.

AIATSIS is in a unique position to assist the Australian Government, the native title representative body system and native title holders and claimants in developing, analysing and evaluating policy and practice in an Indigenous context and coordinating information and resources throughout the native title system.