

11 January 2013

The Secretary  
Joint Select Committee on  
Constitutional Recognition of  
Aboriginal and Torres Strait Islander Peoples  
PO Box 6100 Parliament House  
CANBERRA ACT 2600

Via email: [jscatsi@aph.gov.au](mailto:jscatsi@aph.gov.au)

Dear Committee,

### **Inquiry into Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012**

Thank you for the opportunity to comment on the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 (“**the Recognition Bill**”).

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).

### **Recognition of Aboriginal and Torres Strait Islander Peoples**

NTSCORP supports and commends the Parliament on the statements of recognition contained within the preamble and section 3 of the Recognition Bill. These sections appropriately acknowledge the unique place of Aboriginal and Torres Strait Islander People in Australia including their continuing relationship with their traditional lands and waters.

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We are pleased to note that recognition of Aboriginal and Torres Strait Islander Peoples aligns with our corporate vision to promote social justice and economic, cultural and social independence for Aboriginal Traditional Owners.

NTSCORP has previously written submissions in support of constitutional recognition and the removal of racially discriminatory clauses within the constitution and we believe that the Recognition Bill is an important and necessary step towards constitutional reform. We emphasise that constitutional recognition is the ultimate goal, and statutory recognition should only be an interim measure in the process towards achieving constitutional recognition.

### **The Recognition Bill as a tool for gaining momentum**

NTSCORP notes that constitutional recognition is unlikely to be achieved without bipartisan support and nation-wide consensus. Moreover, a referendum should not be held until such a time as it has the most chance of success. NTSCORP acknowledges that at the present time there is insufficient support to ensure success at such a referendum.

NTSCORP generally supports the Recognition Bill as a means of gaining support for constitutional change. However, we are concerned that the Recognition Bill will be ineffective in achieving its purpose and will be merely symbolic without a broader recognition campaign.

NTSCORP notes that section 4 of the Recognition Bill requires the review to consider, amongst other things, levels of support amongst Aboriginal people, the wider Australian public and state and territory governments. NTSCORP seeks clarification as to how levels of support for constitutional change will be measured. Details about the review process should be set out prior to its commencement.

NTSCORP considers that the review should be accompanied by an active education and awareness campaign in order to increase support for constitutional change. It is not clear on the wording of the Recognition Bill that such a campaign is intended. The requirement for this to occur, and process for ensuring that it does should be set out in the draft bill. Without positive action, the Recognition Bill and its accompanying review runs the risk of being merely symbolic.

Bipartisan support is also crucial for constitutional recognition to succeed at a referendum. NTSCORP supports the referral of this matter to the Joint Select Committee and we view this as a positive step forward to reaching bipartisan support.

### **The Sunset Clause**

NTSCORP notes that a sunset clause is contained within section 5 of the Recognition Bill. We acknowledge that the intention of this provision is to ensure that the recognition of Aboriginal and Torres Strait Islander Peoples does not become entrenched in legislation at the expense of constitutional change however we are concerned that

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despite its inclusion, the Recognition Bill does not establish a process to take place following the expiry of the Act.

### **Consultation with Aboriginal and Torres Strait Islander People**

NTSCORP notes that the review must consider the levels of support for constitutional change amongst Aboriginal and Torres Strait Islander People. However, the Recognition Bill and Explanatory Memorandum do not set out processes for engaging with and consulting with Aboriginal and Torres Strait Islander Peoples. Meaningful engagement is necessary in gauging the level of support amongst Aboriginal and Torres Strait Islander Peoples. An appropriate framework for engagement should be established prior to the commencement of the review. Such a framework should be established in co-operation with Aboriginal and Torres Strait Islander leaders.

We hope that the Joint Committee will consider suggestions made in this submission. Should you wish to discuss these matters further please do not hesitate to contact Merinda Dutton at NTSCORP on (02) 9310 3188.

Yours faithfully,

Natalie Rotumah

**Acting Chief Executive Officer  
NTSCORP Limited**

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