

UNCLASSIFIED



Australian Government

Department of the Prime Minister and Cabinet

ANDREW FISHER BUILDING  
ONE NATIONAL CIRCUIT  
BARTON

Ms Lyn Beverley  
Secretary  
Senate Finance and Public Administration Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Ms Beverley

Thank you for your email dated 12 May 2017 to Dr Martin Parkinson AC PSM, Secretary of the Department of the Prime Minister and Cabinet, inviting a submission regarding the Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017 (the Bill).

The Bill amends and in some cases repeals legislation in the Prime Minister and Cabinet portfolio. The Bill, Explanatory Memorandum and Second Reading Speech outline the Government's position in relation to the measures. The Department provides the following information to further assist the Committee.

***Indigenous affairs legislation measures***

Schedule 1 of the Bill repeals the Indigenous Business Australia (IBA) corporate plan tabling requirements under the *Aboriginal and Torres Strait Islander Act 2005*. Repealing these provisions will remove the duplication of corporate plan tabling requirements separately provided under the *Public Governance, Performance and Accountability Act 2013*.

Schedule 2 of the Bill amends the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005* (the ATSIC Amendment Act).

Subitems 200(1) and (2) of the ATSIC Amendment Act require that, where a person or body acquired an interest in land using money granted by ATSIC, that person or body must not dispose of the interest without obtaining the written consent from the appropriate consenting authority. The normal mechanism for the Commonwealth to protect its interests in property is through the use of a caveat on the land title deed.

The consenting authorities are the Commonwealth, IBA and the Indigenous Land Corporation.

## UNCLASSIFIED

We estimate there are more than 4,500 assets held by Aboriginal and Torres Strait Islander organisations across Australia affected by this legislation.

In practice, any organisation which obtained property (generally land) using ATSIC funds has to get permission from the Commonwealth to dispose or deal in the property. The organisation cannot sell, lease, transfer or change the use of their freehold title without the specific agreement of the Commonwealth.

Under the current legislation, the Commonwealth cannot waive its interests in these properties. The Commonwealth can only act in relation to a specific property on request from the organisation that owns the property. It cannot act in a proactive way to provide up front consent. This limits organisations from readily maximising the economic and social use of their assets.

The proposed amendments to the ATSIC Amendment Act will enable the Commonwealth to waive the exercise of its statutory consent power by providing written notice to the organisation that consent is no longer required.

This change will allow the Commonwealth to remove the consent requirement in particular cases. This will support an increase in autonomy and economic independence for Indigenous organisations, reduce red tape, and better enable them to more freely use their land for economic development.

The interests acquired using ATSIC grants are historical in nature and were funded between 15 to 40 years ago. Value for money has been achieved and organisations should be free to manage their own land.

Additionally this form of perpetual Commonwealth interest is not in line with any other form of grant funding undertaken today.

The Commonwealth will adopt a risk-based approach to determine if its interests should be waived. The key criteria to be applied to this decision will be: the age and value of the original grant, value of the land to the Indigenous estate, and the governance and organizational capability of the land holder.

The Government has consulted with Indigenous stakeholders (see below list), the Indigenous Land Council and Indigenous Business Australia on this amendment which reaffirms the Government's commitment to work with Indigenous people to empower Indigenous organisations and communities.

National Native Title Council	Noongar Mia Mia Pty Ltd
National Congress	Aboriginal Housing Office NSW
Prime Minister's Indigenous Advisory Council	Murdi Parki Regional Assembly
Aboriginal Housing Victoria	Beenleigh Housing & Development Co. Ltd
Black Community Housing Service (Qld) Ltd	Twofold Aboriginal Corporation
Goolum Goolum Aboriginal Co-operative Ltd	

Schedule 3 of the Bill repeals certain spent Indigenous Affairs portfolio legislation.

## UNCLASSIFIED

### *Auditor-General Act amendments*

Schedule 4 of the Bill would amend the *Auditor-General Act 1997* to restore the ability of the Auditor-General to present the Australian National Audit Office annual report directly to the Parliament.

### *Royal Commissions Act amendments*

Schedule 5 of the Bill would amend the *Royal Commissions Act 1902* to (1) give Commissioners the power to compel the provision of a written statement; (2) increase the penalty for failure to comply with a summons or notice to produce; (3) update references so that penalties now expressed in dollar value are instead expressed as penalty units consistent with current legislation drafting practice; and (4) allow the Secretary of the Attorney-General's Department to be given custody of Royal Commission records by regulation.

Proposal (1) implements a recommendation of the report of the Royal Commission into the Home Insulation Program. Mr Ian Hanger AM QC recommended that the Royal Commissions Act be amended '*to empower a Royal Commission to compel the provision of a statement by a potential witness*' (page 12 of the report). Commissioner Hanger supported the rationale for a similar recommendation made by the Australian Law Reform Commission in its 2009 *Making Inquiries Report*. The ALRC considered that the power to require written statements '*... may reduce the need for hearings and examinations and enable more flexible, less formal and more cost-effective inquiry procedures*' (page 271 of the report).

Proposal (2) implements recommendation 78 of the final report of the Royal Commission into Trade Union Governance and Corruption. The Hon John Dyson Heydon AC QC recommended that the Royal Commissions Act be amended '*to increase the penalties for a failure to comply with a summons to attend, a failure to comply with a notice to produce, a failure to be sworn or answer questions, and a failure or refusal to provide documents to at least a maximum penalty of 2 years' imprisonment or a fine of 120 penalty units or both*'.

In making that recommendation, Commissioner Heydon observed that the existing penalty for those offences is 'inadequate' and explained that a penalty of up to 2 years' imprisonment is consistent with the penalty applicable to a failure to comply with notices issued by the Australian Security and Investments Commission.

Proposal (3) updates penalty provisions in the Bill so that they are expressed in equivalent penalty units instead of dollar amounts. This is consistent with current legislation drafting practice.

Proposal (4) would amend the Royal Commissions Act to allow regulations to be made to give the Secretary of the Attorney-General's Department custody of records of a Royal Commission. Records of a Royal Commission are deemed to be Commonwealth records when they are no longer required for the purposes of the Commission (section 22(2) of the *Archives Act 1983*). Section 9 of the Royal Commissions Act enables regulations to be made providing for the custody, use or transfer of, or access to, records of Royal Commissions. That provision prescribes certain persons and bodies that may be given custody of Royal Commission records (section 9(3) of the Act).

**UNCLASSIFIED**

Currently, the only Commonwealth Department of State that can be given custody of Royal Commission records is the Department of the Prime Minister and Cabinet (the Secretary is the prescribed person for that purpose). The proposed amendment to add the Secretary of the Attorney-General's Department gives more flexibility to determine an appropriate custodial agency within the Commonwealth.

The Department is happy to give further assistance to the Committee.

Yours sincerely

Elizabeth Kelly  
Deputy Secretary  
Governance  
31 May 2017