

Native Title Legislation Amendment Bill 2019

Submission to Senate Legal and Constitutional Affairs
Legislation Committee

28 November 2019

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the review of the Native Title Legislation Amendment Bill 2019 ('the Bill') being conducted by the Senate Legal and Constitutional Affairs Legislation Committee ('the Committee').
2. By way of introduction the ALA submits that the amendments are limited in reach and do not adequately address the systemic disadvantage and discrimination of First Nations peoples perpetuated in the *Native Title Act* ('NTA') and related legislation.
3. However, the ALA welcomes the reforms that expand the historical extinguishment provisions and which give greater flexibility to native title claimants to set limits on the conditions of the applicant's authority. The ALA also welcomes the creation of new pathways to address native title related disputes following a native title determination.
4. The ALA submits that several much-needed proposals for reform have remained unaddressed in the Bill. In particular, the Bill has failed to address the need to amend the NTA to confirm that a native title right may be exercised for commercial purposes and extending the right to negotiate to sea country. The ALA submits that this is crucial to the recognition and protection of native title.

The need for funding for Prescribed Body Corporates

5. The ALA notes that the Bill seeks to enhance the role of Prescribed Body Corporates ('PBCs'). The ALA submits that any reforms that seek to enhance the management capabilities of PBCs must be accompanied by long term and concrete funding for PBCs to enable them to build their technical, governance and financial capacity to effectively represent common law holders of native title.

The need for greater accountability for Indigenous Land Use Agreement authorisations

6. The ALA is concerned that the Bill fails to include integrity and accountability provisions for Indigenous Land Use Agreement (ILUA) authorisations. The ALA notes that the Bill seeks to repeal ss 24CD(2)(a) and 251A(2) introduced by the *Native Title (Indigenous Land Use Agreements) Act 2017* which permit an authorising group to nominate something less than a

majority of the persons who comprise the registered native title claimant for the group to be a party or parties to an area agreement ILUA. This acknowledges the principle that traditional owners alone have the authority in relation to agreement making, not the applicants chosen to prosecute their native title claims. The ALA submits that the authorising group must retain the ability to nominate or determine that only one of the persons who comprise the registered native title claimant should be the party to area agreement ILUAs.

Conclusion

7. The Australian Lawyers Alliance (ALA) welcomes the opportunity to comment on the Native Title Legislation Amendment Bill 2019 ('the Bill'). The ALA is available to provide further assistance to the Committee in its consideration of the Bill.

Andrew Christopoulos

President

Australian Lawyers Alliance