Submission to the Senate Legal and Constitutional Affairs Committee:

Inquiry into the Native Title Amendment Bill 2006

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1. I have been a consultant anthropologist in native title since 1998. Previous to that I held the academic positions of lecturer, senior lecturer and Professor of anthropology at various Universities in Australia and the UK. I have published extensively on a wide variety of anthropological topics in the area of my first field research, highlands Papua New Guinea, and since 1998, on Australian Aboriginal native title and cultural heritage matters from an anthropological perspective.

2. My native title experience includes the authoring of connection material, peer review of other anthropological reports, anthropological assessment of claims to country in the matters of overlapping native title claims, and review of State guidelines for the production of connection reports. My experience so far has been exclusively in settled eastern Australia, chiefly in Queensland and more recently in Victoria.

3. My comments on specific items in the proposed Native Title Amendment Bill 2006 are written from the point of view of an expert who provides anthropological analysis of Aboriginal social and cultural formations in regard to various applications for native title.

4. In regard to the proposed changes to s.203AF of the *Native Title Act (1993)* [hereafter NTA], I believe that this can have positive outcomes on a number of claims in Queensland for example that currently straddle the jurisdictions of two NTRBs. The recent trend in judicial interpretations of native title is to prefer to identify the *locus* of

law and custom at the most inclusive regional level and this means that large, regionally coherent potential native title claim groups may be disadvantaged due to the inability or difficulty encountered by neighbouring NTRBs to agree on an effective policy of joint management of such claims. In the same vein, any legislation that will make more effective the ability of an NTRB to operate in an adjacent area, as described in s.203BD, will also be to the benefit of these groups straddling two NTRB jurisdictions.

5. In regard to improving the effectiveness of the NNTT, I agree with the proposal to strengthen the powers and the involvement of the NNTT in the native title process. I refer here to the proposed amendments outlined in Items 37, 38, 41 and 42 of the "Explanatory Memorandum" to the Native Title Amendment Bill 2006. In my previous submission to the Senate Parliamentary Committee on the Effectiveness of the NNTT, I suggested that the NNTT be encouraged to make use of the provisions in s.131A and s.132 of the NTA to utilize independent consultants. These consultants may provide independent assessments in the matter of, for example, overlapping or disputed claims where for a variety of reasons, the consultants and/or staff personnel employed by the relevant NTRB are unable to reach agreement. This would also provide some measure of protection to independent consultants employed by NTRBs, who by and large have very little support if they find themselves involved in a difference of opinion with NTRB personnel in regards to the strategy or conduct of a native title application. My earlier submission to the Senate Parliamentary Committee dealt primarily with the shortcomings of the Registration Assessment procedures that were extant at the time. The proposed amendments outlined in Item 53 of the Explanatory Memorandum provide for the holding of a native title application inquiry—that is, of applying independent substantive assessments of the merits of an application. This is also repeated in paragraph 2.152 under Items 54, 55 and 56 of the Explanatory Memorandum.

6. Two provisions seem to me to raise potential future risks: One, under s.203FE(2), is the provision of NTRB functions to independent persons or organizations where "a representative body has refused to provide assistance" (p. 7, Explanatory Memorandum). This could seriously undermine the functions of existing NTRBs, as it will encourage disgruntled applicants to seek assistance elsewhere to lodge break-away claims in the knowledge that funding will be provided. It will, in other words, place further fissiparous pressures on claim groups already struggling to maintain collective unity in the face of a variety of native title related demands. Some NTRBs in Queensland have already expended much time and resource dealing with such "dissident" factions. These s.203FE(2) provisions, in other words, potentially will hold up the native title determination process rather than expedite them it in many cases.

The first review of NTRBs in 1995 [Parker, G. (Chair) 1995. Review of Native Tittle Representative Bodies, 1995, ATSIC, Canberra] at para 3.70 p. 40 recommended to the government that ".... each NTRB should have sole regional jurisdiction over its determined area in the role of representing indigenous Australians about native title matters. Sole representative jurisdictions for NTRBs should be accompanied by mandatory NTRB functions, well-developed representative structures and strict accountability requirements". Nearly 12 years on these views remain pertinent and the current proposed amendments thus contravene the recommendations of the earlier review.

7. The second is the manner in which Prescribed Bodies Corporate will be supported in the provision of their management functions in the post determination phase, as described in Section 3 of the Explanatory Memorandum. Centralization of PBC administration, as suggested in paragraph 3.6 on p. 74 of the Explanatory Memorandum may encourage a degree of amalgamation of authority at odds with the more locally-acquired and exercised forms of authority more in keeping with Aboriginal law and custom as it operates today. It may also lead to the rise of another layer of Aboriginal administration that in time could rival the NTRBs in terms of jurisdiction and authority. This could be ameliorated by the consideration of provisions that would promote the smoother integration and coordination of PBC and NTRB functions. Apart from this, PBCs will require some level of financial aid (again recommended in the 1995 review), either from within or external to the NTRBs, as local Aboriginal native title holding bodies will be otherwise unable to fulfill the highly complex and regular administrative and organizational tasks required of them.

8. I would be happy to meet with the Committee to expand upon these and any other matters in regard to the proposed legislative amendments.