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**REPORT OF THE PARLIAMENTARY JOINT
COMMITTEE ON NATIVE TITLE AND THE
ABORIGINAL AND TORRES STRAIT ISLANDER LAND
FUND: EFFECTIVENESS OF THE NATIONAL NATIVE
TITLE TRIBUNAL IN FULFILMENT OF THE
COMMITTEE'S DUTIES PURSUANT TO
SUBPARAGRAPH 206(d)(i) OF THE NATIVE TITLE
ACT 1993**

REPORT OF THE PARLIAMENTARY JOINT COMMITTEE ON NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND: EFFECTIVENESS OF THE NATIONAL NATIVE TITLE TRIBUNAL IN FULFILMENT OF THE COMMITTEE'S DUTIES PURSUANT TO SUBPARAGRAPH 206(d)(i) OF THE NATIVE TITLE ACT 1993

Government Response

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (the Committee) is required under subparagraph 206(d)(i) of the *Native Title Act 1993* to inquire into and report to both Houses of the Parliament on the effectiveness of the National Native Title Tribunal (the Tribunal).

2. The Committee's Report on its inquiry into the effectiveness of the National Native Title Tribunal was adopted unanimously by the Committee and was tabled in both Houses of Parliament on 4 December 2003.
3. The Australian Government welcomes the Report.

The Committee's recommendations

4. The Committee's Report makes nine recommendations, the majority of which relate to the manner in which the Tribunal and the Native Title Registrar carry out statutory functions under the Native Title Act. Accordingly, this response to the Report incorporates advice provided to the Government by the Tribunal and the Registrar in relation to those recommendations.

Recommendation 1

The Committee recommends that the Registrar or his delegate, in the written reasons for decisions taken in the registration tests include for unsuccessful applications, a brief plain English explanation as to the decision making process for the application.

5. The Government accepts this recommendation. The Native Title Registrar has advised that a plain English explanation as to the decision-making process is now being provided in the written reasons for applications that are unsuccessful under the registration test. This information is being provided in addition to all information currently provided to unsuccessful applicants. A similar explanation of the decision-making process is now being provided to applicants who are successful in having their native title claim registered as a result of the registration test.

Recommendation 2

The Committee recommends that the Registrar, in consultation with the Native Title Representative Bodies, should give consideration to notifying the native title parties of outcomes from the Tribunal.

6. The Native Title Registrar has considered this recommendation but notes that section 203BG of the Native Title Act places specific statutory obligations on Native Title Representative Bodies with respect to notification. These obligations would continue to exist as a matter of law, even if

the Native Title Registrar were to assist. The Government is not presently minded to accept this recommendation.

Recommendation 3

The Committee recommends, that at the completion of the terms of the current members of the Tribunal, the Government gives consideration to the appointment of an increased number of indigenous members in accordance with the provisions of the Act.

7. The Government notes this recommendation. The Government recognises the benefit of having indigenous people involved in the work of the National Native Title Tribunal and welcomes applications for Tribunal membership from indigenous people. However, the essential criterion for appointment to the Tribunal has been and should continue to be one of merit, having regard to the criteria for appointment in the Native Title Act.

8. In August 2004 Mr Robert Faulkner, an Anaiwon man from northern New South Wales, was appointed as a part-time member of the Tribunal. His term will not expire until August 2009. Dr Gaye Sculthorpe, also an Indigenous member, was appointed to the Tribunal in February 2000. Originally a part-time member, Dr Sculthorpe was appointed as a full-time member on 2 February 2004. Dr Sculthorpe's term will not expire until February 2008.

Recommendation 4

The Committee recommends that ATSIIS, to assist Native Title Representative Bodies to implement a performance based assessment scheme, consult with them to develop templates as models for their 2005-2006 (and out years) budget proposals and the management of work priorities.

9. The Government accepts this recommendation. On 1 July 2004 the ATSIIS Native Title and Land Rights program was incorporated into the then newly created Office of Indigenous Policy Coordination (OIPC) within the Department of Immigration and Multicultural and Indigenous Affairs. OIPC advises that it has consulted with Native Title Representative Bodies and developed the relevant template.

Recommendation 5

The Committee recommends that the National Native Title Tribunal continue to explore partnerships to develop programs aimed at capacity building within organisations involved in the native title process.

10. The Government notes this recommendation and the importance of the Tribunal achieving its core statutory functions. Capacity building is not a role solely for the Tribunal. For example, OIPC runs a capacity building program for Native Title Representative Bodies. Capacity building programs involving the National Native Title Tribunal must be complementary to the work of OIPC and other organisations to ensure the greatest benefit for the native title system. The Tribunal has advised that, consistent with its statutory functions, it will continue to look for partnership opportunities to develop capacity-building programs within organisations involved in the native title process. Those capacity-building programs will be linked closely to assisting parties and their representatives to take an effective part in processes involving the Tribunal.

Recommendation 6

The Committee recommends that a further inquiry be conducted into the work demands and funding needs of Native Title Representative Bodies.

11. The Government notes that the Committee has initiated an inquiry into the capacity of Native Title Representative bodies to discharge their responsibilities under the Native Title Act. The Government looks forward to the Committee's report from the inquiry.

Recommendation 7

The Committee recommends that within the next 12 months and on both a national and state/territory basis, the National Native Title Tribunal should develop a broad framework for setting priorities that includes consultation with each of the "stakeholders".

12. The Government notes this recommendation. The Government supports the Committee's wish to see the development for broad frameworks for setting priorities in dealing with native title matters and notes that the Federal Court has the primary role in the management of applications and the setting of priorities with respect to cases. The Tribunal has advised that it participates in forums in every State and Territory where it discusses priority setting with the Federal Court and principal parties to the proceedings. The Tribunal will continue to take part in, or initiate, these discussions.

Recommendation 8

The Committee recommends that the National Native Title Tribunal should, within the time limits set by the *Native Title Act 1993*, seek to reduce the time lines associated with the registration of Indigenous Land Use Agreements.

13. The Government accepts this recommendation. The Tribunal advises that it is seeking to improve its performance standards for registration of Indigenous Land Use Agreements (ILUAs). The Tribunal is considering a proposal to revise its current performance indicator from 70 to 90 per cent of ILUA applications registered within six months of lodgement (including the three month notification period) where no objection or bar to registration is lodged.

Recommendation 9

The Committee recommends that the National Native Title Tribunal amend the guidelines on acceptance of expedited procedure objection applications to include a provision that a registered native title party wishing to lodge an objection may discuss, within the time limits set by the *Native Title Act 1993*, issues related to compliance with the appropriate tribunal member.

14. The Government accepts this recommendation. The Tribunal advises that it is already common practice for registered native title parties to discuss objections and requirements for acceptance with the Tribunal. For example, when an objection is lodged before the closing date and is not in a suitable form to be accepted, then the Tribunal contacts the objector to point out the defects and to provide an opportunity for rectification. The Tribunal has accepted the Committee's recommendation and amended its guidelines to reflect the current practice that discussions may be held with a Tribunal member.