

Draft Terms of Reference

REVIEW OF THE NATIVE TITLE ACT 1993

I, Mark Dreyfus QC MP, Attorney-General of Australia, having regard to:

- the 20 years of operation of the *Native Title Act 1993* (the Act)
- the importance of native title to Indigenous Australians, including the capacity of native title to support Indigenous economic development and generate long-term benefits for Indigenous Australians
- the need to ensure that the native title system delivers practical, timely and flexible outcomes for native title parties; including through faster, better claims resolution
- significant and ongoing stakeholder concern about barriers to the recognition of native title, particularly with respect to the connection requirements in the Act, and
- delays to the resolution of claims and significant litigation relating to the authorisation and joinder provisions of the Act.

REFER to the Australian Law Reform Commission for inquiry and report, pursuant to subsection 20(1) of the *Australian Law Reform Commission Act 1996*, the native title system in relation to two specific areas, as follows:

- connection requirements relating to the recognition and scope of native title rights and interests, and
- the identification of barriers, if any, imposed by the Act's authorisation and joinder provisions to claimants', and potential claimants':
 - access to justice, and
 - access to and protection of native title rights and benefits.

In relation to both issues and in light of the Preamble and Objects of the Act, I request that the Commission consider what, if any, changes could be made to improve the operation of the native title system.

Scope of reference

In performing its functions in relation to this reference, the Commission will consider:

- (a) the Act and any other relevant legislation
- (b) any relevant case law

- (c) previous reports, reviews and inquiries regarding the native title system and the practical implementation of recommendations and findings
- (d) opportunities presented by native title processes for Indigenous communities, through a range of native title and native title related outcomes (such as sustainable Indigenous economic development, heritage protection, employment and housing opportunities), and
- (e) any other relevant matter concerning the operation of the native title system.

Consultation

In undertaking this reference, the Commission will identify and consult with key stakeholders, including:

- (a) relevant Commonwealth, State, Territory and local Governments and agencies
- (b) the Federal Court of Australia and the National Native Title Tribunal
- (c) Indigenous groups, Native Title Representative Bodies and Prescribed Bodies Corporate
- (d) industry, including the agriculture, pastoral, fisheries, minerals and energy resources industries, and
- (e) any other relevant groups or individuals.

Dated [insert date] 2013

Mark Dreyfus QC MP
Attorney-General