CENTRAL DESERT NATIVE TITLE SERVICES

Our ref: 14.1.2.A1
Your ref:

28 February 2018

Native Title Unit
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

By Email: native.title@ag.gov.au

Dear Madam/Sir
**Submissions on the Reforms to the Native Title Act 1993**

1. This submission is being provided by Central Desert Native Title Services Limited (**Central Desert**) in response to the "*Reforms to the* Native Title Act 1993 *(Cth)*" Options Paper (**Options Paper**) published in November 2017 by the Attorney-General's Department (**AGD**).

***Central Desert***

2. Central Desert is the recognised Native Title Service Provider (**NTSP**) for the Central Desert Native Title Representative Body Region of Western Australia (**Central Desert region**), pursuant to section 203FE of the *Native Title Act 1993* (Cth) (**NTA**). The Central Desert region is vast, covering nearly 830,935 square kilometres of regional and remote Western Australia. There are currently twelve prescribed bodies corporate (**PBCs**) within the Central Desert region and several recent determinations for which PBC-nomination is upcoming.

3. Central Desert's vision is that the Indigenous Peoples of the Central Desert are using their traditional lands to fulfill their highest social, cultural and economic aspirations. Our mission is to ensure that solid foundations are laid for the peoples of the Central Desert to determine and build their own social, cultural and economic futures.

***General comment***

4. Central Desert has previously made submissions on similar proposed reforms in 2012 in response to the *Native Title Act Amendment Bill 2012* (**NTAA Bill**) and the 2015 Review of the Native Title Act 1993 undertaken by the Australian Law Reform Commission (**ALRC Review**).

5. It is disappointing to see that six years on the from the NTAA Bill and three years on from the ALRC Review, comments are again being sought on substantially the same reform options as covered by the previous two reviews. Also disappointing is that many of the substantial proposals, such as those relating to the nature and content of native title, connection with land and waters and the codification of 'good faith' requirements, have been left out of this Options Paper. It is Central Desert's submission that the Act and the amendments proposed in the

Options Paper still fall short of achieving "the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world",[1] as set out in the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by Australia in April 2009.

6. As a matter of priority, Central Desert still considers that the NTA should be amended so as to reverse the onus of proof in native title determination applications and to provide for a rebuttable presumption of continuity. The Greens Bill[2] proposed amendments, which would implement suggestions made by Chief Justice French of the High Court[3] (while a judge of the Federal Court), and would make the NTA the "beneficial legislation" it purports to be, reduce the time and costs (both financial and human) of prosecuting a native title claim and would significantly improve Australia's human rights record.

7. Implementing proposals such as these will significantly reduce the human and financial costs associated with progressing and determining native title determination applications. It will also ensure that the Act truly operates as beneficial legislation; provides redress for the progressive dispossession of Aboriginal and Torres Strait Islander Peoples of their lands; implements international standards for the protection of universal human rights; further advances the process of reconciliation and provides a 'just and proper' process for Aboriginal and Torres Strait Islander Peoples to have their native title recognised.

***This submission***

8. This submission responds to each proposal made by the AGD, however those of a higher priority in the view of Central Desert are highlighted and discussed in more detail.

9. This submission responds to the ideas and concepts proposed in the Options Paper, however Central Desert reserves its position in relation to the actual legislation that is drafted on each of the ideas and concepts proposed.

***Section 31 Agreements***

10. Central Desert supports the proposal[4] to amend the NTA to confirm the validity of section 31 agreements made prior to the *McGlade*[5] decision. This amendment would resolve any uncertainty that has arisen following the *McGlade* decision, in relation to the authorisation (and therefore validity) of particular section 31 agreements.

11. With regards to the execution of section 31 agreements, it is Central Desert's view that Option 3[6] is the preferred option provided that there is a level of flexibility regarding the requirement for an authorisation process before a section 31 agreement is executed.

12. In the Central Desert region, and throughout WA, section 31 agreements are, for the most part, signed as part of the conclusion of the negotiation process for the grant of Mining Leases (as that

[1] United Nations Declaration on the Rights of Indigenous Peoples, Article 43
[2] Native Title Amendment Reform Bill (No.1) 2012
[3] Justice R French, "Lifting the Burden of native title – some modest proposals for improvement" (Speech delivered to the Federal Court, Native Title User Group, Adelaide, 9 July 2008
[4] Question 1 on p6 of the Options Paper
[5] *McGlade v Native Title Registrar* [2017] FCAFC 10.
[6] p5 of the Options Paper

term is defined in the *Mining Act 1978 WA)* in conjunction with an "ancillary agreement" between the native title party and the grantee. It is within these ancillary agreements that matters such as compensation and heritage protection are dealt with. In these instances, native title claim group meetings are already held to authorise entering into what is usually referred to as a "future act" or "mining" agreement in which the parties agree that section 31 agreements will be entered into simultaneously with the mining agreement or at a later date when requested by the grantee party.

13. Because the State of Western Australia applies the expedited procedure to the grant of prospecting and exploration licences, section 31 agreements are not entered into unless the native title party has successfully objected[7] to the inclusion of the statement that the expedited procedure applies, and have negotiated an outcome with the grantee party. The cost and logistics of convening an authorisation meeting to execute a section 31 agreement for a prospecting or exploration lease would impose an unreasonable burden on the native title party, as well as the grantee party, who generally are relied upon to assist with the cost of negotiations and meetings.

14. Option 3 should therefore allow native title parties, at duly convened native title claim group meetings, to provide standing instructions/authorisations for particular types of section 31 agreements thereby reducing or removing the need for multiple costly authorisation processes.

15. Additionally, authorisation to enter into the section 31 agreements should be provided by the native title claim group and not a broader group of people "who may hold" native title rights and interests in the area (as was the interpretation of[8] the authorisation requirements for making an ILUA by the Federal Court in *Kemp*). It is Central Desert's view that the status quo should be maintained in terms of persons who must authorise a section 31 agreement, and that it is not appropriate to import the requirements suggested in *Kemp* into the section 31 agreement authorisation process proposed in Option 3.

***Applicant and Authorisation***

16. Central Desert submits that it is already common practice amongst many native title claim groups to define the scope of the authority of the Applicant and therefore is supportive of the proposal to provide statutory confirmation that a native title claim group is able to define the scope of authority of the Applicant.[9]

17. Providing native title claim groups with a legislated ability to define the scope of the Applicant's authority will provide additional safeguards for the native title claim group and will likely imbue those comprising the Applicant with a greater sense of accountability to the native title claim group and a clearer understanding of the role as Applicant.

18. It would seem logical, following the *McGlade* decision and the subsequent amendments to the NTA[10] to provide clarification that an Applicant can act by majority unless the native title claim

[7] pursuant to section 32(3) of the NTA
[8] *Kemp v Native Title Registrar [2006] FCA 939*
[9] Proposal A1 on p20 of the Options Paper.
[10] Native Title Amendment (Indigenous Land Use Agreements) Act 2017

group specifies otherwise[11]. The preference that there is consensus of both the native title claim group and the Applicant in a decision making process that is in accord with traditional law and custom.

19. CDNTS supports the proposal[12] that the composition of the Applicant can be changed without a s66b reauthorisation process where a member of the Applicant is no longer willing or able to perform the functions, by:

(a) allowing the remaining members of the Applicant to continue to act without reauthorisation unless the terms of the authorisation provide otherwise; and
(b) applying to the Federal Court for an order that the remaining members constitute the Applicant.

20. The proposal is essentially an administrative process designed to ensure certainty of the standing and legal status of the Applicant pending a native title claim group meeting where a new Applicant can be authorised. Consideration should be given to ensuring timely (but not unduly restrictive) application to the Federal Court for such orders to be made.

21. Central Desert notes that a distinction should be made, and particular consideration in drafting given to the difference, between: an unwilling member of the Applicant, who no longer wishes to participate at all as a member of the Applicant; and a member of the Applicant who does not wish to participate in a particular decision or authorisation due to a belief that it is not an appropriate decision or authorisation, or who refuses to sign a document or otherwise follow the directions of the native title claim group. The former could conceivably be subject to an amended NTA allowing the Applicant to continue acting; the latter should still require a section 66B application to resolve the issue.

22. Central Desert submits that caution should be exercised in providing a wider scope which allows the composition of the Applicant to be changed without authorisation, such as provided by the "Proposal in Practice" example at page 8 and Proposal A4 of Attachment A. There are a myriad of factors that may intervene to make such an authorisation redundant or no longer appropriate. While succession planning is an important task for groups to contemplate and undertake, it should not detract from ensuring that authorisation of the Applicant remains current and appropriate at any given point in time.

23. Central Desert supports the proposal to impose a statutory duty on the members of the Applicant to avoid obtaining a benefit at the expense of native title holders[13]. We note the recent decision in *Gebadi v Woosup* [2017] FCA 1467 where a fiduciary relationship was recognised as existing between the Applicant and the holders of the common or group rights and interests the subject of the native title determination application. While this decision is useful Central Desert also supports the express creation of a statutory duty to this effect.

24. The members of the Applicant are authorised by the native title claim group to do certain things on behalf of the group (subject to any limitations on this power imposed by the group). A statutory duty to avoid obtaining a benefit at the expense of the native title claim group would

[11] Proposal A2 on p20 of the Options Paper.
[12] Proposal A3 on p21 of the Options Paper.
[13] Question 3(d) on p9 of the Options Paper.

make it incontrovertible that decisions made, and actions taken, by the members of the Applicant are for the native title claimants collectively, not individual members of the Applicant.

25. While Central Desert supports the proposal that the members of the Applicant have a statutory duty to the native title claim group, we however note that it is also important to consider the situation where the current composition of the claim group may not be the same as the native title holders (as finally determined), and whether a member of the Applicant also has a statutory duty to the ultimate native title holders (at the expense of which the member must not obtain a benefit).

26. Central Desert therefore submits that the member of the Applicant would not be required to consider whether a duty is owed to the claim group, or the native title holders (where they differ), but simply to ensure that s/he does not obtain a benefit at the expense of either group.

27. Central Desert supports the proposal that amendments regarding authorisation should have prospective effect only[14].

***Agreement making and future acts***

28. Central Desert holds the view that the current native title system already allows for some flexibility in agreement-making, and does not entirely support the creation of an alternative agreement-making mechanism.[15]

29. Central Desert notes that the entire future acts regime imposes high costs on native title groups who have limited funding and resources available to them to assist in participation in the process. However, these high costs are not only financial and in time; these costs are also human costs in terms of social, political and economic effects on individuals, communities and native title groups. Therefore, Central Desert is generally in support of implementing amendments that reduce transaction costs for native title and other parties, but not if it does not assist in reducing these human costs or is detrimental to the protection of native title rights and interests.

30. There are a number of processes that are currently used by native title groups in the Central Desert region to improve efficiencies and attempt alleviate some of the burdens that the future act regime imposes. These include providing Central Desert (as their appointed representative) and the Applicant with explicit instructions on how to deal with a particular type of future act, standing instructions to solicitors on contract negotiations and nominations of sub-committees to deal with particular issues that may arise. It is Central Desert's view that all of these processes assist with flexibility and reducing transaction costs, and fit within the current regime.

31. Briefly, Central Desert supports the proposal to consider options allowing a PBC to contract about future acts and compensation (including to contract out of future acts and compensation provision of the NTA),[16] but does not otherwise support the proposals that would take away the

[14] A6 of Attachment A at p22 of the Options Paper
[15] Question 4 on p12 of the Options Paper.
[16] Proposal B3 on p23 of the Options Paper.

ability of the native title holders to participate in the process.[17] Addressing the possible exceptions set out in the Options Paper, Central Desert notes that even in the situation where individual native title holders were the proponents, or the joint proponents, it is necessary for the PBC to consult with the appropriate native title holders with authority for the relevant area.

32. Section 211 protects the native title rights and interests of native title holders and ensures that native title holders are not required to obtain licences and permits in order to exercise their native title rights and interests. Central Desert notes that the Government has attempted to water down the protections afforded by s211 in amendments proposed in 2009, 2012 and again in the Options Paper. The NTA is beneficial legislation and Central Desert questions the rationale of the proposed amendment[18] beyond providing another mechanism by which native title rights and interests can be further eroded by non-native title parties.

33. In addition, Central Desert notes that section 211 of the NTA does not, in fact, extend far enough in its protections of native title rights and interests. It has been demonstrated and understood that native title rights and interests extend to using those rights for any (including commercial) purposes, yet section 211 still places restrictions on those rights. It is Central Desert's view that section 211 should be brought into line with the beneficial purpose of the NTA and amendments should be made to remove the restrictions as to purpose from the section.

34. Quite correctly, the NTA currently provides that after a native title determination is made, state and territory governments and proponents cannot rely on section 24LA and must enter into an ILUA in order to carry out so-called "low-impact" future acts. The section is intended to address those acts which will not continue to impact native title rights and interests following the formal recognition by the Court of those rights and interests. The proposal put forward in the Options Paper[19] completely ignores this aspect of the section and is not supported by Central Desert.

35. Native title holders should retain their right to consent and enter into an ILUA in relation to acts that impact their recognised native title rights and interests. Although Central Desert is in support generally of reducing transaction costs, it should not be at the expense of the protection of native title rights and interests.

***Streamlining existing agreement making***

36. As a general proposition, Central Desert is in support of streamlining the agreement process in order to reduce onerous financial and time obligations on native title parties. However, of paramount concern is always the protection of native title rights and interests, and striving for efficiency and expeditious resolution should not be prioritised over this protection.

37. For ease of reference and clarity, Central Desert responds to each of the proposals set out in Attachment C of the Options Paper in the same format as the proposals are presented. This table can be found at Annexure 1 to this submission.

***Transparent Agreement Making***

[17] For example, proposal B1 on p23 of the Options Paper.
[18] As proposed in proposal B2 on p23 of the Options Paper.
[19] Proposal B4 on p24.

38. Central Desert does not support the proposal that there be registration of section 31 agreements, and a Register kept.[20]

39. In Western Australia, a section 31 agreement tends to be a very standard and generic document, the template of which is available online to all parties, allowing those who are entering into new agreements to compare terms. The useful details (from a future act negotiation point of view) of an agreement are contained in the private agreement between the native title party and the grantee party, and would not form part of the proposed register.

40. There would be very little to be gained by having a register of s31 agreements and setting out further details. Central Desert queries whether a vague Register with limited detail and therefore limited usefulness is an effective use of scarce time and money resources of the NNTT.

41. Following on from our comments on Question 6(a), Central Desert does not support the proposal that ILUAs and other agreements made under the Act be publicly accessible.[21] Parties are already accountable under the agreement to each other, with the added protection of section 24EA of the NTA.

42. The Options Paper notes that the issue with ILUAs not being publicly accessible is that they bind anyone who holds native title within the area of the ILUA, even if they are not a party to the agreement. The proposal to make the ILUA (albeit with commercially or culturally sensitive material redacted) available to the public in the name of transparency is not the way to resolve this identified issue. Central Desert may be interested to see a proposal for allowing access to an ILUA to affected native title parties, subject to commercial confidentiality requirements of the agreement, and cultural confidentiality requirements under traditional laws and customs.

***Indigenous decision-making***

43. The success of a native title claim is based upon the proof of ongoing traditional law and customs by the persons who are making the claim; this demonstration of traditional laws and customs is the foundation of native title. While obviously a native title claim group is entitled to make decisions and pursue its claim in the manner it considers most appropriate, it is the view of Central Desert that - where a traditional decision-making process exists under traditional laws and customs - it should be used by the native title claim group for decisions relevant to the native title claim based on those traditional laws and customs. Therefore, Central Desert does not support the proposal that amend the NTA and the PBC Regulations to allow native title claim group and native title holders to determine their decision-making processes.[22]

44. Central Desert notes that there may be specific types of decisions - generally non-native title decisions - for which a traditional law and custom does not provide a decision-making process and therefore a decision-making process would need to be determined. However, the Options Paper focuses on decisions that Central Desert would consider to be decisions to which a traditional law would apply.

[20] Question 6(a) on p16 of the Options Paper.
[21] Question 6(b) on p16 of the Options Paper.
[22] Question 6 on p17 of the Options Paper.

45. Taking the "Proposal in Practice" as an example, it seems that a decision made in the circumstances outlined where, conceivably, none of the Elders approved of the decision (suggesting it was not made in accordance with traditional law and custom), but the decision was still validly made because the majority agreed (and had the capacity to bind the group). In this situation, a decision has been made that does not accord with the traditional law and custom on which the native title claim that gave rise to the right to make that decision relies. It is Central Desert's view that this does not accord with the overarching purpose of the NTA and the basis on which native title claims are made.

46. Central Desert wishes to make it clear however that where a traditional decision-making process is not available for a particular decision, either because a group does not have a process at all, determines the process on a case-by-case basis, or does not have a process for a decision of the type to be made, the group should be entitled to agree and adopt a process by which the decision may be made.

**Improving the efficiency and effectiveness of claim resolution**

47. The Options Paper provides a number of proposed amendments to address issues which prevent or hamper the efficient and effect resolution of native title claims.

48. For ease of reference and clarity, Central Desert responds to each of the proposals set out in Attachment E of the Options Paper in the same format as the proposals are presented. This table can be found at Annexure 2 to this submission.

49. Central Desert would particularly like to highlight proposal E6, which has previously been proposed as the introduction of a section 47C to the NTA. Central Desert refers to the *Native Title Amendment (Reform) Bill 2011* (**NTA Reform Bill**) introduced to Parliament by Greens Senator Rachel Seiwart and in particular the provisions relating to the introduction of a section 47C of the NTA that provides a mechanism by which prior extinguishment may be disregarded.

50. Central Desert supports the proposed section 47C provisions as set out in the NTA Reform Bill. As the situation currently stands, many native title claimants are unable to have their native title rights recognised due to the prior extinguishment of native title rights and interests by the vesting of a state or territory national park or nature reserve. In circumstances where that extinguishment occurred before the enactment of the *Racial Discrimination Act 1975* (Cth) that extinguishment may not be compensable.

51. In the Central Desert region, there are approximately 7 large nature reserves/national parks over which native title is purportedly extinguished because of the vesting of a national park or nature reserve. In the *Martu* determination[23], Justice French stated, referring to Karlyamili (formerly Rudall River) National Park

> There is a limitation on the recognition which can be granted under the *Native Title Act.* The relationship of the people to their country in those areas is not changed by the limits that the Act or the common law place on recognition. If it is their country under their traditional law and custom it remains so under their law and custom whatever the Act or the common law say about recognition.

[23] *James on behalf of the Martu People v State of Western Australia* [2002] FCA 1208 at paragraph 12

52. Central Desert also supports the proposal in the NTA Reform Bill that any other extinguishment can be disregarded by the agreement of the Applicant and the Government Party.

**Post-determination dispute management**

53. The Options Paper provides a number of proposals aimed at increasing *transparency* of PBC conduct to the native title holders with the intent that this reduces disputes, and providing a wider scope of mechanisms for addressing disputes.

54. It is Central Desert's strong view that these types of changes are not made by adding additional legislative requirements, making more onerous obligations on PBCs. This is more appropriately and effectively done by equipping PBCs to function efficiently, with transparency, skills and proper communication with native title holders. This requires additional funding and training for PBCs, and adequate oversight and guidance.

55. For ease *of* reference and clarity, Central Desert responds to each of the proposals set out in Attachment F of the Options Paper in the same format as the proposals are presented. This table can be found at Annexure 3 to this submission.

***Additional State and Territory proposals***

56. Central Desert makes the following brief submissions on the State and Territory proposals set out in Attachment G to the Option Paper.

57. Generally it notes that, although some of the proposals are relevant and well-thought out, several proposals amount to wishlist items for States with little effort to carefully address the issue or method or practical consequences of proposed amendments.

*Section 31 Agreements*

58. Central Desert does not support the proposal[24] to shorten the objection period for acts which the government party considers attract the expedited procedure from 4 months to 35 days. While this proposal may reduce the time associated with the doing of the act for the government and/or grantee parties, it does not prioritise the protection of the rights of the native title holders. In areas where there is extensive future act activity, reducing the objection period places an unreasonable and unjust burden on native title parties.

59. Central Desert is strongly in support of ensuring that all notifications of impacts on native title rights and interests are properly and accurately made. Proposal G2[25] suggests that minor defects would not invalidate a notice "if there is no detriment to the native title party" and suggests amending the NTA so that a party would not need to re-notify if a defective notice was initially provided. Central Desert does not support this proposal. There is, after all, little point in setting out procedural requirements in legislation if there is no requirement, or no consequences, for failing to comply with them.

[24] Proposal G1 on p35 of the Options Paper.
[25] Page 35 of the Options Paper.

60. Central Desert has already discussed the substance of proposal G3[26] above at C10 on page 9. While broadly in support of this proposal, we note that many of our constituents do not have regular online access, and that email and online notice should not replace current notice requirements except in situations where eg. native title holders are represented by a PBC which has nominated email notice. Where online public notification is given, government parties should bear the burden of proving that adequate notice was given to the public, taking into account the general levels of access in the area to which the notice applies.

61. Central Desert agrees that section 141(2) of the NTA could be amended to clarify that only native title parties who have objected under s32(3) of the NTA are parties to an inquiry.[27] This is a good example of a proposed amendment that makes no positive contribution to addressing the substantial issues associated with the operation of the NTA.

62. Central Desert does not have a view on whether any changes made to the section 31 agreements authorisation requirements should also be framed to capture agreements made under alternative state regimes.[28]

*The Applicant and authorisation*

63. The affidavits produced by each member of the applicant group, which are provided to the Court with the Form 1, should already state the member's belief as to their authority in relation to the claim. Central Desert is not opposed to a legislative requirement which requires the affidavit to state this or to state that the Applicant has full powers,[29] but would caution against a broad provision which allows for the assumption that the Applicant has full powers unless notified via the Form 1.

*Agreement-making and future acts*

64. Clarification is required about whether the amendment sought is to replace the three (3) month notification period under section 24CH with a one (1) month notification period as is found in section 24BH.[30]

65. Sub-section 24JAA(1)(d) provides that certain acts related to public housing or other infrastructure for the benefit of Aboriginal people may be undertaken provided certain parties are notified and given the right to comment and request (and receive) consultation. This sub-section only applies to these acts if they are commenced (or completed for certain acts) prior to December 2020. Proposal G8[31] suggests that this be extended indefinitely, allowing the sub-section to apply to similar acts that are commenced (or completed) after December 2020. Central

[26] Page 35 of the Options Paper.
[27] Proposal G4 on p35 of the Options Paper.
[28] Proposal G5 on p35 of the Options Paper.
[29] As suggested by Proposal G6 on p35 of the Option Paper.
[30] Proposal G6 on p36 of the Options Paper.
[31] Page 36 of the Options Paper.

Desert is in support of any processes that allow native title holders to use their traditional lands to fulfill their highest social, cultural and economic aspirations.

66. Section 24MD(3) provides that the non-extinguishment principle applies to any future act to which sections 24MD(2) and 24MD(2A) does not apply and, that the native title holders are entitled to compensation even if ordinary title holders would not be entitled to compensation under any other law for the act.[32] Compulsory acquisition of native title, other than under sections 24MD(2) and 24MD(2A) does not extinguish native title but rather renders it wholly ineffective in relation to the act. The grant of a new interest, or conferral of rights on other persons, is technically a separate act, as presumably the grant of the new interests or conferral of rights could not have occurred without first compulsorily acquiring existing rights and interests. The question then becomes the extent to which the grant of a new interest, or conferral of rights on other persons, is a future act, being an act that affects native title.

67. Central Desert notes that this is one of many instances where it would have been useful for the Options Paper to have used the correct terminology from the NTA and referred to either those defined terms (or defined terms within the Options Paper). The "act" referred to here by the States and Territories is presumably a "Future Act", and the question relevant to whether the act impacts native title rights and interests and causes various consequences under the NTA as a Future Act. This is not clear on the face of the proposal and makes a response to the proposal difficult and potentially irrelevant if an incorrect definition is assumed.

68. Neither section 24MD(6B) nor section 253 defines "waste facilities", and waste facilities are not included in the definition of "infrastructure facility" found in section 253 so it is unclear what is proposed by Proposal G10.[33] If the suggestion is that the legislation should broadly allow the creation of rubbish tips and other waste disposal facilities, without common law holder consultation, consent, and - where appropriate - an ILUA, then Central Desert does not support this proposal. To the extent that it is suggested that the creation of a rubbish tip or other waste disposal facility is simply a minor addition to a separate future act, Central Desert also disagrees.

69. The explanatory memorandum (presumably) referenced[34] in Proposal G11[35] states:

> Paragraphs 24KA(8)(c) and 24KA(8)(d), as amended by items 36 and 37, would provide that where there is not a RNTBC for the whole of the affected area, notice should be given to the representative body and any registered native title claimants for the area not covered by a RNTBC.

On this basis, if any word is to be inserted into that section, it should be "and" not "or", as the intention was explicitly to require notification of both the representative body(ies) and the registered claimants.

70. It is unclear whether proposal G12[36] is intending that a RNTBC be bound by all arrangements negotiated prior to a determination or merely ILUAs negotiated in accordance with Division 3,

[32] Page 36 of the Options Paper.
[33] Page 36 of the Options Paper.
[34] It is Central Desert's understanding that the proposal would be referring to the Explanatory Memorandum produced when sections 24KA(8)(c) and (d) were amended by the *Native Title Amendment (Technical Amendments) Bill 2007*. See Explanatory Memorandum at [1.110]-[1.114].
[35] Page 36 of the Options Paper.

Subdivision C of the NTA. If the latter, the individuals who hold native title in relation to the relevant area for which there is now a RNTBC would be bound by the terms of the ILUA. Presumably, as is standard in agreements and any contract negotiations, the parties have included appropriate assignment or novation clauses to address the transition from claim to determination.

71. If the suggestion made by proposal G13[37] is that section 211 of the NTA be watered down to allow for additional government regulation, Central Desert refers to its submissions above at paragraph 33 and reiterates that section 211 was included for the protection of traditional laws and customs and should not be amended to reduce those protections. If the suggestion is to extend section 211 to matters that are expressly prohibited by law (rather than permissible only with a license etc) then this matter requires substantial additional discussion - including that native title holders be able to hold specific native title rights in national parks (through the introduction of section 47C of the NTA).

72. The issues which affect the validity of the relevant mining leases in *Forrest & Forrest Pty Ltd V Wilson & Ors*[38] relate to non-compliance by the applicants for the mining leases under the Mining Act 1972 (WA). Introduction by the West Australian Government of legislation to validate those mining leases should not negate, or remove, the obligations on the State and the grantee party to properly comply with the provisions of the NTA and the NTA should not be amended to allow legislation validating these mining leases without any requirement for the native title process to be properly complied with. The requirements for the application and grant of the tenements were not complied with, therefore making any other parallel processes, such as those under the NTA, null and void. Central Desert repeats its previous comments that mining and other acts that have any impact on native title should be done in accordance with legislation and held to a high standard of accuracy and compliance (as native title holders themselves are required to do when proving a claim). Central Desert does not support the Western Australian government proposed amendment and considers that the proposed amendments would be detrimental to our clients' rights and interests.

73. Proposal G15[39] purports to provide the same allowances in relation to renewal of a right to mine, as is already provided to leases (under s26D(1)(a)(i) of the NTA) - namely that the replacement of a single right to mine with multiple (or vice versa) should be considered a "renewal" and not subject to the right to negotiate. Central Desert does not consider this was the intention of the drafting and does not see that it is an appropriate amendment.

*Claim resolution*

74. Although Central Desert does not oppose - in theory at least - the hearing of native title and compensation applications together,[40] at the request of the Applicant, it cautions against a provision similar to section 67 of the NTA under which the Federal Court *must* make orders (as it finds appropriate) that the matters be heard together or any suggestion that the option being available means that a native title party is required to consider both contemporaneously.

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[36] Page 36 of the Options Paper.
[37] Page 36 of the Options Paper.
[38] [2017] HCA 30
[39] Page 37 of the Options Paper.
[40] See Proposal G16 on page 37 of the Options Paper.

75. It is unclear what the purpose of proposal G17[41] is; to allow the making of a claim over a PEPA area would simply allow a claim to be made where the only possible result is a determination of no native title (see section 23C of the NTA). The NTA already addresses an exception for any PEPAs to which sections 47, 47A and 47B apply.

76. Central Desert is generally in support of the proposal[42] to amend the NTA to state that the only respondent parties who are required to consent to an agreement in relation to part of the proceedings are those respondent parties whose interests relate to that part. This amendment would streamline this process and make it more efficient and cost-effective for all parties. From a drafting point of view, it may be more appropriate to make the necessary changes in section 87(1)(a) and (b) of the NTA, rather than section 87(3).

77. Central Desert is in support of clarity of drafting and, to the extent it is necessary for clarity and does not purport to limit the access of native title holders to section 47B, does not oppose proposal G19.[43] Central Desert notes that any changes made to section 47B should also be made to sections 47 and 47A for consistency.

78. It is Central Desert's understanding that (in most circumstances), a non-claimant application is a necessary first step in obtaining section 24FA protection, so claimants would necessarily be "using both". If the intention of proposal G20[44] is to encourage a non-claimant to make - and not pursue - a non-claimant application solely for the purpose of obtaining section 24FA protection, Central Desert does not understand how this would be an efficient use of the Court's, government's or potential native title holders' time and money. The current process is designed to ensure the protection of native title rights and interests is paramount, and any attempt to reduce these protections is not supported by Central Desert.

79. Similarly, although Central Desert is in support of administrative efficiency and cost-reduction and notes that Federal Court Rule 9.09 generally allows for transfer of the role of Applicant to the new holder of an "interest", it cautions against broad drafting[45] allowing the transfer of a non-claimant application from Applicant to Applicant based on a general interest in the land itself, rather than a specific lease/license or other formal "interest" in the land that can be transferred between parties.

80. Central Desert notes and generally supports the submissions made by the Federal Court of Australia, dated 18 January 2018, as to proposal G22.[46] Where there is only one remaining "part" of a claim and the proposed orders will resolve that entire part, section 87 of the NTA should be used; this seems to be the most efficient, timely and cost-effective interpretation of section 87 and 87A.

81. It is unclear why the Commonwealth Minister - having previously intervened in a matter and then withdrawn - would not be content to sign a consent determination at the time it was made.[47]

[41] Page 37 of the Options Paper.
[42] Proposal G18 on page 37 of the Options Paper.
[43] Page 37 of the Options Paper.
[44] Page 37 of the Options Paper.
[45] As proposed by proposal G21 on page 37 of the Options Paper.
[46] Page 38 of the Options Paper.
[47] Proposal G23 on page 38 of the Options Paper.

With regards to timing, cost, and convenience to the Applicant, it would obviously be of use to limit the additional work required in obtaining a signature, however it is Central Desert's view that the Commonwealth's signature is required on the consent determination and no additional work should flow to the Applicant because of it.

82. Central Desert supports the requirement for all respondent parties to be required to provide a valid address for service.[48]

*Prescribed bodies corporate*

83. A PBC has obligations to represent the interests of the common law holders for whom it holds native title in trust or as an agent. It is Central Desert's opinion a default corporation should be "nominated" simply until a PBC with membership of native title holders is nominated and that (at least in the case of the ILC) the proposed amendments are not possible, or pragmatic (in the case of the North End (Default PBC/CLA) (Aboriginal Corporation).

84. Central Desert is completely in support[49] of increased PBC funding by the Commonwealth (and the States), particularly broad funding that supports not only start-up, administration and compliance, but also ongoing business costs. Whether this funding is provided directly to the PBC or through a NTRB or NTSP should be determined on a case-by-case basis, looking at the individual requirements and capabilities of the specific PBC. To the extent that it is necessary to facilitate this additional funding by amending the NTA to ensure that the Commonwealth may fund a PBC for various purposes, Central Desert is in support of the proposal.

85. Although Central Desert notes that Part 11, Division 3 of the NTA already makes explicit reference to the functions performed by representative bodies in relation to persons who may hold native title (see section 203BB(1)(b)), it is not opposed to clarifying that this assistance extends to alternative processes such as the *Traditional Owner Settlement Act 2010*.[50] However Central Desert cautions against too broad a statement which would lead to confusion as to how far outside the NTA, the responsibilities of the representative body extend.

***Conclusion***

86. Central Desert considers that NTA - as beneficial legislation - should have as a paramount concern, the protection of the rights and interests of native title holders (whether before or after recognition). Any amendments to streamline the NTA, and the procedures under it, should look first to protecting those rights and interests, and then to the effective and efficient operation of the NTA for all involved parties. Although Central Desert notes that some useful suggestions have been made throughout the Options Paper, it does not consider that the proposals have prioritised the protection of native title rights and interests, and the development and support of entities to assist in this protection after recognition.

87. Furthermore, and particularly in Attachment G, the Options Paper has set out "wish list" proposals from the States or other parties, addressing very specific issues that are already adequately covered by the NTA, but not regulated or perhaps even understood properly by the

[48] Proposal G24 on page 38 of the Options Paper.
[49] This is our understanding of what proposal G26 on page 38 of the Options Paper is suggesting.
[50] As proposed in proposal G27 on page 38 of the Options Paper.

parties involved. These issues are more properly dealt with by additional funding and training, provided to native title holders and the organisations that assist them in the protection of their native title rights and interests. Additional, and more complex, legislation on matters that are already dealt with in the NTA and the PBC Regulations is an unnecessary expense both for the legislators, but also those organisations and entities on which additional unnecessary obligations would be imposed.

88. In terms of options within the paper, Central Desert strongly supports the introduction of section 47C as outlined at paragraphs 49-52 above. Central Desert strongly opposes the Options Paper proposed amendment to and the WA State government's attempt to have the NTA amended to validate mining leases invalidly granted as a result of the *Forrest* decision.

89. Central Desert is in support of proposals that provide a more streamlined, and time- and cost-effective process for native title holders, but not at the expense of the protection of native title rights and interests or the human toll on the individuals involved.

Sincerely

Ian Rawlings
Chief Executive Officer

**Annexure 1**

| # | Proposal | Source(s) | Central Desert Comment |
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| C1 | Allowing body corporate ILUAs to cover areas where native title has been extinguished. | COAG Investigation, Table 1, Item 14<br><br>Native Title Amendment Bill 2012, Schedule 3 | Central Desert supports the proposal made by the Native Title Amendment Bill 2012, Schedule 3 notes the statement, at page 20 of the Explanatory Memorandum for the NTAA Bill that the amendments would mean:<br>*"that Subdivision B ILUAs can be made over areas which are wholly determined, but include areas where native title has been extinguished. It also provides that Subdivision B ILUAs can be made in the situation where an area has been excluded from a determination, and native title would have been held by the relevant native title group had native title not been extinguished over that particular area."* |
| C2 | Allowing minor technical amendments to be made to ILUAs without requiring reregistration. | COAG Investigation, Table 1, Item 14<br><br>Native Title Amendment Bill 2012, Schedule 3 | Central Desert:<br>(a) supports the proposal to allow minor technical amendments to be made to ILUAs without requiring re-registration. This proposal will reduce the expense of time and resources by all parties involved;<br>(b) suggests that there is a requirement for consent of all parties to the amendment, and a formal process of recording changes on the Register may be appropriate. Guidelines as to what constitutes a "minor technical amendment" would be necessary, and no amendment allowed under the proposed changes should result in greater impact on native title rights and interests. |
| C3 | Removing the requirement that the Registrar give notice of an area ILUA if it was not satisfied the ILUA could be registered. | COAG Investigation, Table 1, Item 14<br><br>Native Title Amendment Bill 2012, Schedule 3 | Central Desert supports the proposal to remove the requirement that the Registrar give notice of an area ILUA if it was not satisfied the ILUA could be registered. This is an appropriate way to reduce the unnecessary use of resources in complying with procedures which cannot result in the anticipated outcome for all parties. |

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| C4 | Removing the requirement for PBCs to consult with NTRBs on native title decisions such as prior to entering an Indigenous Land Use Agreement in the PBC regulations. | Commonwealth proposal | Central Desert does not support removing the requirement for PBC's to consult with NTRBs on native title decisions. It allows the NTRB to be cognisant of the general approach of the PBC to native title decisions, and the extent to which the native title holders rights are being protected. This is a particularly important 'back up' mechanism to protect native title rights and interests particularly where PBCs are new, inexperienced, lack resources or don't adhere to the proper processes for other reasons. |
| C5 | Amend the Native Title Act to ensure that the future acts regime applies to land and waters to which section 47B applies to disregard previous exclusive possession acts on vacant crown land. | COAG Investigation, Table 1, Item 12 | Central Desert supports the proposal to amend the NTA to ensure that the future acts regime applies to land and waters to which section 47B applies to disregard previous exclusive possession acts on vacant crown land. This is appropriate given that native title rights and interests are capable of being recognised over that land, and therefore are vulnerable to impacts by future acts. |
| C6 | Amend section 24EB of the Native Title Act to allow parties to an ILUA to agree that the ILUA does not provide compensation for a future act. | COAG Investigation, Table 1, Item 13 | Central Desert supports the proposal to amend section 24EB of the NTA to allow parties to an ILUA to agree that the ILUA does not provide compensation for a future act. Where parties - properly advised and with free, informed and prior consent - are content to address compensation at a later date, and have otherwise agreed on the terms of an act, they should not be prevented from reaching that agreement. |
| C7 | Consider amending section 199C of the Native Title Act to clarify that removal of details of an ILUA from the Register does not invalidate a future act that is the subject of the ILUA. | COAG Investigation, Table 2, Item 2 | Central Desert supports the amendment of section 199C of the NTA to clarify that removal of details of an ILUA from the Register does not in itself invalidate a future act that is the subject of the ILUA, however this does not mean that the future act may not be invalid for other reasons. |

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| C8 | Consider amending section 30A of the Native Title Act so that Government parties are not required to be a party to a section 31 agreement (for example, an agreement about mining). | COAG Investigation, Table 1, Item 17 | Central Desert does not support the proposed amendment to section 30A of the NTA that would allow a government party to not be a party to a section 31 agreement. The grant of a mining tenement is done by the government party. It is therefore proper that government party enter into an agreement for the grant of the tenement. Ideally, government parties would take a more active involvement in negotiations, however, just because it is policy of at least the WA government to not actively participate, doesn't mean that this should be enshrined by legislative change. |
| C9 | Consider options for amending the objection process created by section 24MD (6B), which applies to some compulsory acquisitions of native title and the creation or variation of a right to mine for the sole purpose of constructing an infrastructure facility. | COAG Investigation, Table 2, Item 4 | Central Desert agrees that amendments are required to section 24MD(6B) to clarify the outcome where a native title holder makes an objection but does not request for the objection to be heard by an independent person. However, Central Desert does not agree with the amendments proposed by proposal C9, which would allow the act to proceed.<br><br>Moreover, the types of activities that are permissible under s24MD(6B), and which occur in the WA context, are often large scale and it is Central Desert's view that the s29 right to negotiate provisions are actually more appropriate.<br><br>If the Independent Person provisions remain, consideration should be given to bolstering the requirement to "consult with". Central Desert notes the decision of Heath SM (Independent Person) in *Gobawarrah Minduarra Yinhawanga People & Innawonga People v Western Australia* 2 May 2005, in which he provided guidance about what s. 24MD(6B) required of the party obliged to consult, which includes:<br>● allowing sufficient time and making genuine efforts so that consultation is a reality, not a charade;<br>● not merely telling or presenting;<br>● ensuring the party consulted is to be 'adequately informed so as to be able to make intelligent and useful responses';<br>● keeping an open mind and being ready to change or even start afresh while still being |

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| | | | allowed to have a plan in mind at the outset.<br><br>It is the view of Central Desert that provisions should be included in the NTA to identify what is required of a party obliged to consult.<br><br>Additionally, if the Independent Person provisions remain, then - to avoid the difficulty identified in the Options Paper - provisions should be included which allow the other parties to refer the matter to that person, where an objecting native title party has not done so. |
| C10 | Consider options to encourage electronic transmission of notices including amending sections 29 and 6(1)(a) of Native Title (Notices) Determination 2011 (No 1) to provide that notices can always be transmitted electronically. | COAG Investigation, Table 2, Item 7 | The proposal that the public notification process is modified by allowing summary notices to be published in newspapers which refer to comprehensive notices available online or the option of being sent in the mail a copy of the comprehensive notice is supported.<br><br>However, notices should still be provided in hardcopy via post: see discussion regarding G3. |
| C11 | Amend section 251A to clarify who must authorise an ILUA as a person or persons who may hold native title, being a person or persons who can establish a prima facie case to hold native title. | Native Title Amendment Bill 2012, Schedule 3, Items 13-16. | Central Desert's preference is the interpretation of s251A in *Kemp.* Given the nature of ILUAs, it is important in the interests of justice that all parties who hold or may hold native title provide authorisation, that is, a potentially wider group than comprises a registered claim. There may be myriad reasons why people have not been included in a claim that has passed the registration test, but who are native title holders for that area. Not having a registered claim is not a barrier to being found to be native title holders, and given that ILUAs bind not only the parties, but all persons holding native title in the area covered by the ILUA who are not already parties, these persons should provide authorisation of the ILUA. |

**Annexure 2**

| # | Proposal | Source(s) | Central Desert submission |
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| E1 | Section 138B(2)(b) of the Native Title Act, which provides that the Federal Court may only direct that a native title application inquiry be held if the applicant agrees to participate, should be repealed. | ALRC Report, Rec 12.4 | Supported, but noting the additional cost to Applicants and whether the Court is required to take into account their view (on the matters set out in s138B(2)) on whether an inquiry should be held. |
| E2 | Section 156(7) of the Native Title Act, which provides that the National Native Title Tribunal's power to summon a person to appear before it or produce documents does not apply to a native title application inquiry, should be repealed. | ALRC Report, Rec 12.5 | . |
| E3 | Amend section 47(1)(b)(iii) of the Native Title Act to permit the making of a determination that native title co-exists with a pastoral lease held by the claimants where claimants are members of a company that holds the pastoral lease. | COAG Report, Table 1, Item 6<br><br>NTAB12, Schedule 4, Item 1 | Central Desert supports the proposal which allows historical extinguishment to be disregarded provided that the company hold the pastoral lease is in some way controlled or owned by a member of the native title group regardless of the corporate structure |
| E4 | Consider amending Part 2, Division 5 of the Native Title Act to allow a PBC to be the applicant on a compensation claim. | COAG Report, Table 1, Item 8 | Central Desert is not opposed to the proposed amendment in theory however it notes that this matter could raise many issues and require complex drafting. |
| E5 | Amend reg 3 (and reg 8) of the PBC Regulations to clarify that the decision to make a compensation application is a | COAG Report, Table 1, Item 8 | Central Desert supports this proposal. |

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| | native title decision. | | |
| E6 | Introduce a new section into the Act allowing for historical extinguishment over areas of national, state or territory parks to be disregarded, where the parties agree, for the purposes of making a native title determination | NTAB12, Schedule 1, Items 1-15 | This is a priority matter for Central Desert. Please see comments at paragraphs 50-53 |

**Annexure 3**

| # | Proposal | Source | Central Desert submission |
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| F1 | It is recommended that the Registrar's compliance powers be expressly expanded to include matters of procedural compliance with the *PBC Regulations*, in particular to ensure that PBCs are fulfilling their obligations to common law holders to the same extent as members. | COAG Report, Table 2, Item 8 and<br><br>Technical review report recommendation 44 | Central Desert supports imposing a specific requirement to check compliance with PBC Regs, as well as CATSI legislation, and is of the view that ORIC should already be doing this. We note however that ORIC staff should undertake specific training on Native title and PBC requirements and how they may differ from, or, vary obligations under the CATSI Act. |
| F2 | It is recommended that the *CATSI Act* be amended to provide a power for the Registrar to refuse to amend a PBC's rule book in circumstances where the amendment would result in the PBC no longer meeting the requirements of regulation 4(2) of the PBC Regulations. | COAG Report, Table 2, Item 10 and<br><br>Technical review report recommendation 54 and<br><br>State and Territories proposal | Central Desert supports this proposal and would go so far as to say that the Registrar must refuse to amend the rule book where the amendment means that the PBC is no longer in compliance with regulation 4(2) of the PBC Regulations. |
| F3 | Introduce a requirement that the dispute resolution provision in the PBC rulebook specifically addresses arrangements for resolving disputes about membership (clarifying that such disputes can arise between members and directors, between native title holders, and between native title holders and the PBCs and its members and directors). | COAG Report, Table 2, Item 10 and<br><br>State and Territories proposal | Good governance would suggest that where there is the ability to deny someone membership to the PBC, that there is a process by which this decision can be disputed and a process set out for resolving the dispute. This would appropriately fit within the rules surrounding membership and don't necessarily have to be within the dispute resolution provisions of a rule book, in order to provide clarity |

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| | | | around different processes.<br><br>Central Desert does not support this proposal exactly in its current form, but does support the requirement that a PBC Rulebook sets out processes for resolving membership issues. |
| F4 | Remove the directors' discretion to refuse membership to a person who meets the PBCs membership criteria other than in exceptional circumstances | COAG Report, Table 2, Item 10 and<br><br>State and Territories proposal | Central Desert supports this proposal. Given that a PBC is nominated by the native title holders to look after their native title interests, all native title holders should be given the right (subject to bad behaviour or other exceptional factors) to be a member of the PBC. |
| F5 | Limit the grounds for cancellation of PBC membership to ineligibility or misbehaviour.<br><br>Require the process for cancellation of membership to include a general meeting | COAG Report, Table 2, Item 10 and<br><br>State and Territories proposal | Central Desert supports this proposal and is of the view that drafting should specify that misbehaviour extends to behaviour detrimental to the PBC, not just criminal/civil issues or breaches of Rulebook. |
| F6 | It is recommended that the *CATSI Act* be amended to empower the Registrar to amend a CATSI corporation's Register of Members where, following appropriate consultation with the Corporation, the Registrar considers it reasonably necessary to ensure that rule books are complied with in relation to the revocation of membership of individuals. | COAG Report, Table 2, Item 10 and Technical review report recommendation 53 | Central Desert generally supports this provision, however it should really be incumbent on the PBC to undertake this possibly by way of orders from the Registrar, which non-compliance subject to penalty. Corporations need to be provided with the mechanisms to ensure they are responsible for compliance, and not rely on the Registrar to step in and do the work for them. |

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| F7 | It is recommended that the *CATSI Act* be amended to require PBCs to set up and maintain:<br><br>(a) 'Register of Native Title Decisions'; and<br>(b) 'Register of Trust Money Directions'.<br>It is recommended that the *CATSI Act* be amended to require the Register of Native Title Decisions to include copies of documents created to provide evidence of consultation and consent in accordance with the PBC Regulations.<br><br>It is recommended that each of the Register of Native Title Decisions and the Register of Trust Money Directions be available for inspection by:<br><br>● members;<br>● common law holders.<br>It is recommended that PBCs be required to provide an extract of the Register of Native Title Decisions or the Register of Trust Money Directions to any person having a 'substantial interest' (within the meaning of that phrase as used in the PBC Regulations) in the relevant decision.<br><br>It is recommended that the Registrar should have the same powers in relation to the Register of Native Title Decisions and the Register of Trust Money Directions as in relation to the Register of Members (and the Register of | COAG Report, Table 2, Item 8 and Technical review report recommendations 55 - 59 | Central Desert does not support this proposal as it amounts to additional work for PBCs and no additional benefit. Decisions about native title and trust money are made, or should be made, via resolution and noted in minutes, or via circular resolution outside of a meeting and then endorsed at the next meeting. A Register of these decisions does not add anything to this process, other than another onerous obligation on the PBC.<br><br>As noted above, the real requirement here is greater and enforced oversight, and additional funding for capacity building for PBCs. |

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| | Former Members). | | |
| F8 | It is recommended that the *CATSI Act* be amended to require PBCs to keep separate financial records and reports in relation to 'native title benefits' (as defined by the *Income Tax Assessment Act 1979* (Cth)) received by the PBC. | COAG Report, Table 2, Item 9 and Technical review report recommendation 62 | Central Desert doesn't object to this proposal, although as matter of good practice, records of this should already be kept by PBCs. |
| F9 | Introduce a requirement that the common law holders be consulted on the investment and application of native title monies so that the obligation to seek direction from the common law holders is met (whether or not the monies are held by the PBC). | COAG Report, Table 2, Item 9 | It is Central Desert's view that there should be some direction by and consultation with the native title holders about the investment and applications of monies. However, Central Desert considers that this would be a matter of good practice and oversight of PBCs, rather than by the provision of additional legislation. |
| F10 | Amend the definition in reg 3 of group of common law holder to clarify that it refers to the determined native title holding group(s) for which the PBC acts as agent or trustee. | Commonwealth proposal | Where a PBC acts for multiple determination groups, then Central Desert would suggest that this regulation (and the general understanding of how the NTA and PBC Regulations interact) already adequately states that a PBC need only consult with the relevant determination group (and within that group, only consult |

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| | | | in accordance with traditional laws and customs).<br><br>Where a PBC acts for a determination that contains various sub-groups, Central Desert suggests that a functioning, funded, and trained PBC would consult in accordance with its Rulebook, and traditional law and custom, and consult with those persons whom it is required to.<br><br>Neither circumstance is improved by an amendment to the NTA or PBC Regulations, rather by additional funding and capacity building for PBCs. |
| F11 | NNTT: Create a broader role in post-determination disputes by:<br><br>● allowing PBCs or individual native title holders to approach the Tribunal for dispute resolution assistance directly<br>● providing a new arbitration power to the Tribunal e.g. to deal with questions of fact regarding membership.<br>Federal Court: Expanded role by making the Federal Court's jurisdiction exclusive in relation to *CATSI Act* matters that affect PBCs. | COAG Report, Table 2, Item 10 | Central Desert doesn't support expanded powers for the NNTT.<br><br>Central Desert would caution against allowing individual native title holders approaching the Tribunal with regard to the assessment or management of mischievous or unwarranted requests.<br><br>Central Desert doesn't see how the Tribunal would be any better equipped to manage membership questions than ORIC currently is.<br><br>Central Desert would support an expanded role for the Federal Court which could include those functions envisaged for the NNTT. The Federal Court is more familiar with the issues and the environment within which PBCs are engaging. |