11 December 2018

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

By email to: Native.title@ag.gov.au

Dear Sir/Madam

Native Title Legislation Amendment Bill 2018 and Registered Native Title Bodies Corporate Legislation Amendment Regulations 2018

This is a submission by AMPLA Limited in respect of the public consultation paper outlining proposed reforms to Native Title Legislation Amendment Bill 2018 (**the Bill**) and the Registered Native title Bodies Corporate Legislation Amendment Regulations 2018 (**the Regulations**).

Summary of AMPLA's Position

AMPLA is strongly supportive of most of the Bill and the Regulations reforms. There are however, three areas where we suggest further attention or amendment is required of the proposed reforms.

About AMPLA

AMPLA Limited is a not for profit association established to advance the knowledge of law associated with the energy and resources sector. AMPLA was established in 1976 and is the leading peer group association for energy and resources lawyers in Australia, and has a branch office in Singapore.
Native title law is of particular interest to our membership, given its relevance and importance to the energy and resources sector, which as an industry probably has more interactions with native title claimants and holders than most. Many of AMPLA's members practice in this area of law and are regarded as experts in this field.

Comments on reforms to Native Title Legislation

We set out our high level comments on the proposed individual reforms, referenced against the summaries in the public consultation paper.

	Reform Proposed	AMPLA Response	AMPLA Comments
1	Allowing claim group to place conditions on the authorisation of the applicant.	Supported	This provides greater control over the applicant by native title claim group.

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2	Allowing majority of the applicants to make decisions or sign Native Title Agreements rather than requiring all members of the applicants to act together, if this is something that claim group wants.	Supported	This is a sensible reform and gives the native title claim group control over how decisions can be made.
3	Making it simpler for the claim group to replace individual members of the applicant if a member becomes too ill to perform their duties or has passed away including through pre-agreed succession planning arrangements.	Supported	This is an essential reform and the concept of succession planning has been missing in native title group claims procedure.
4	Confirming the validity of existing section 31 agreements where at least one member of the applicant has signed the agreement.	Supported	A majority of the Applicants signing an agreement is preferable and this reflects the McGlade ILUA amendments and is required to cure any potential invalidity of s31 deeds.
5	Clarify that the removal of an ILUA from the Register if ILUA's does not invalidate future acts subject to that ILUA	Requires change	One reason an ILUA may have been removed is where a native title 'party would not have entered into the agreement but for fraud, undue influence or duress by any person (whether or not a party to the agreement)': s199C(1)(c). In such case any validation stated in that agreement should not continue.
6	Allowing extinguished Native Title to be revived in National & State Parks as long as all the parties agree.	Supported	These areas are often very significant to native title groups and this reform is a good recognition of that.
7	Allowing Body Corporate Indigenous Land-use Agreements to be made over areas where Native Title has been extinguished.	Supported	This recognises that traditional rights and interests likely remain in areas where native title rights and interests have been extinguished.
8	Clarify that the Commonwealth Minster, as an intervener, is required to consent to agreements reached under section 87.	Not supported	Certainly, where the Commonwealth is a *party* to litigation, its consent should be (and is already) required. But if the Commonwealth's status is only as intervener (e.g. where it has no interest which will be affected by a determination in the proceedings), then its consent should not be compulsory to an outcome agreed by all the litigants to the proceeding.
9	Simplifying and clarify the registration process for Indigenous Land-use Agreements.	Supported	This assists in an efficient process for registration.

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10	Prescribed Body Corporate reforms – dispute resolution pathways, increase transparency and accountability, assistance of the NNTT.	Supported	A good reform, but will need to be backed with resourcing or training to ensure outcomes.
11	PBC Governance – Determining membership.	Supported	No comment.
12	Providing for standing instructions for PBC's in relation to entering into certain agreements.	Supported	A sensible addition to PBC powers.
13	Requiring a certificate from the PBC for Native Title decisions including the details of consultation and consent process.	Supported	This will ensure processes undertaken by PBC are recorded appropriately.
14	Enabling PBC's to lodge compensation claims where Native Title has been fully extinguished.	Supported	This appears to rectify an oversight in original drafting.
15	PBC designed dispute resolution processes.	Supported	No comments.
16	Provision of a new ground for appointment of a special administrator for where PBC was conducting affairs in a way that was contrary to the interests of the Native Title holders.	Supported	No comments.
17	Changes to the way courts can hear and determine PBC related court cases to limit these to only be heard in Federal Court.	Supported	The use of specialist courts is supported.
18	Providing that the NNTT can provide direct assistance to PBC and Native Title holders.	Supported	The NNTT is well placed to provide this assistance.
19	Repeal sub-regulation 8(5) of the PBC Regulations so that PBCs would no longer be required to identify and consult with groups of common law holders whose native title rights and interests would be affected by the proposed native title decision.	No supported	We are unaware of any court decision to the effect of the Consultation Paper's statement that this part of the 'current PBC Regulations implicitly require PBC's to identify sub-groups with particular rights and interests across the determination area'. Sub-regulation 8(5) would apply to where a PBC acts for more than one holding group, where there have been different determinations with different groups in different areas (under reg5). In such a case, it is

			appropriate, identifying the PBC need only consult those affected. Even if sub-regulation 8(5) does apply to groups within a single determination, where these have been specifically identified within the determination (as many have – e.g. in *Murray (Yilka) v WA (No 6)* [2017] FCA 703, [38]-[41]), the current requirement seems appropriate in explaining the PBC only need consult those affected.

Thank you for the opportunity to make this submission on these proposed amendments.

Yours faithfully

Per

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