

## **Submissions on Exposure Drafts of the Native Title Legislation Amendment Bill 2018 and Registered Native Title Bodies Corporate Legislation Amendment Regulations 2018**

**10 December 2018**

Marrawah Law supports most initiatives presented in the Exposure Drafts of the Native Title Legislation Amendment Bill 2018 and Registered Native Title Bodies Corporate Legislation Amendment Regulations 2018.

However, some concerns have been identified. Please find these considered separately below. Suggested changes to the draft Amendment Bill and Regulations are included where appropriate.

### **1. Exposure Draft – Native Title Legislation Amendment Bill 2018**

#### **Schedule 1 – Role of the applicant**

No concerns or changes suggested.

#### **Schedule 2 – Indigenous land use agreements**

No concerns or changes suggested.

#### **Schedule 3 – Historical extinguishment**

No concerns or changes suggested.

#### **Schedule 4 - Allowing a registered native title body corporate to bring a compensation application**

It is submitted that section 5(1) and (1A) include the words “*native title rights and interests on trust*” after “registered native title body corporate holds” and before the subsequent comma.

#### **Schedule 5 - Intervention and consent determination**

No concerns or changes suggested.

#### **Schedule 6 - Other procedural changes**

There is a lack of clarity in section 1 as to who the ‘independent person or body’ may be and what experience or qualifications they would need to have. This should be clarified further in the legislation, regulations or guidelines.

#### **Schedule 7 - National Native Title Tribunal**

No concerns or changes suggested.

#### **Schedule 8 - Registered Native Title Body Corporates**

There are several concerns with this section of the Exposure Draft.

1. In respect of section 1, there is a lack of clarity as to how is a class of the common law holders of native title is to be defined. This should be clarified further in the legislation, regulations or guidelines.
2. In respect of section 9, clarification should be provided through legislation, regulations or guidelines as to the type of disputes between the corporation and a common law holder that the corporation's constitution must provide for. For example, does the type of dispute envisioned include:
  - a) disputes in relation to the management of native title land?
  - b) disputes in relation to the negotiation of native title agreements?
  - c) consultation processes?
  - d) compensation payments under a native title agreement?
  - e) decisions of the corporation not related to a native title decision?
  - f) corporate governance of the corporation?
3. In respect of section 12, it is submitted that the eligibility requirements must be linked to the native title determinations for which the corporation is the trustee or agent. This should be changed in the legislation or clarified by regulations or guidelines.
4. In respect of section 14, it is submitted that eligibility and representation of common law holders must be in accordance with traditional laws and customs and linked to the determinations for which the corporation is the trustee or agent. This should be changed in the legislation or clarified by regulations or guidelines.
5. In respect of section 16: a corporation needs to have the ability to terminate or suspend a common law holders' membership for bad behaviour. It is submitted that the amendments should include a description of what constitutes bad behaviour; otherwise, there are no consequences for members who continually disrupt and cause disputes when things do not go their way.
6. In respect of section 20: for the same reasons outlined in respect of section 16 directly above, the amendments considered in section 20 should allow for cancellation of membership for bad behaviour in addition to non-payment of membership fees.

## **2. Exposure Draft – Native Title Bodies Corporate Legislation Amendment Regulations 2018**

### **Schedule 1 – Amendments: *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017***

In respect of Section 3 – 55A(1)(a), significant extra information should be provided either in the Regulations or via guidelines. The information requiring clarification includes at the very least:

- a) how the Registrar is to assess the certificate;
- b) the evidence the Registrar will be seeking;
- c) what is meant in section 55A(1)(a)(ii) by the term “*a person who has a substantial interest in the decision*”.

It is further submitted that the ability to request an assessment of certificate compliance should be limited to those persons (common law holders or persons who have a substantial interest in the decision) who are immediately affected by the decision.

### **Schedule 1 – Amendments: *Native Title (Indigenous Land Use Agreements) Regulations 1999***

No concerns or changes suggested.

### **Schedule 1 – Amendments: *Native Title (Prescribed Bodies Corporate) Regulations 1999***

There are two areas of concern with this part of the Schedule.

1. In respect of section 30 – new regulation 9(3)(b), clarification should be provided either in the Regulations or via guidelines as to:
  - a) how much detail will be expected to be provided as to *‘the details of the process of making the decision’*; and
  - b) where a decision is made in accordance with traditional laws and customs, is it sufficient to state in the certificate that this is the case, or is more details required?
2. In respect of section 34, it would be more appropriate to include reference to *‘a common law holder immediately affected by the decision’*. Again, a definition regarding the meaning of *‘a substantial interest’* is required.