



6 December 2018

Wayne Beswick
Assistant Secretary
Land Branch I Housing, Land and Culture Division
Department of the Prime Minister and Cabinet

Dear Mr Beswick,

MG Corporation submission on proposed amendments to *Native Title Act 1993 (Cth)* and *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2018 (Cth)*

MG Corporation welcomes the opportunity to further review and improve the planned amendments to the Commonwealth native title legislation and appreciates the opportunity to comment on this exposure draft. Overall, our view of these amendments is positive, though we would like to highlight a couple of issues relevant to our situation and, most likely, similar entities to our own.

Part A. *Native Title Act 1993 (Cth)* (Act)

a. Applicant decision-making

In light of the potential for a faction within a broader claim group to become recognised as applicants, our view is that further consideration needs to be given to the proposal to allow an applicant to act by majority by default when exercising a power or performing a function under the Act. The impracticalities emerging from the *McGlade* ruling are recognised as unworkable, but our view is that a higher threshold of community consensus still needs to be applied than that of a simple majority. We request that more thought is given to new s62C (item 32, Part 2, Schedule 1), as currently drafted.

We suggest that a more appropriate position may be that all those members of the claim group alive at the time of the decision are initially required to sign. If in ninety days from the date of intended signing, some signatories cannot be found, then the signatures of a special majority of the group (75%) would at least go some way toward supporting consensus decision making and minimising the impacts of factionalism.

b. Replacement of Applicant

We agree that to lay out in advance the rules whereby a replacement applicant can be recognised, as proposed in new subsections 66B(2A), (2B), (2C) (Item 42, Part 3, Schedule 1) is a particularly helpful amendment and will encourage succession planning among the community.

c. Disregarding historical extinguishment of native title over areas set aside for an environmental purpose

MG Corporation welcomes this innovative proposal and looks forward to working with State and Federal authorities to restore native title rights to the various relevant areas under the determination areas administered by the MG PBCs. MG Corporation looks forward to working for the rapid restoration of native title over Mirima National Park as well as WA State Reserve 31165 south of Lake Argyle. It also looks forward to working with State and Federal Government in the future to restore MG native title over other land areas, such as those excluded for other purposes such as water storage and agriculture. As a result, we warmly welcome the inclusion of new section 47C (Item 2, Division 1, Part 1, Schedule 3).

d. Dispute resolution assistance from the National Native Title Tribunal to RNTBCs and Common Law Holders.

While the MG PBCs may welcome assistance from the NNTT in matters of clarifying native title matters, we are concerned that current or prospective common law holders may exploit this assistance to create unwarranted financial liabilities for RNTBCs for the costs of NNTT involvement. This amendment may create a mechanism for common law holders to begin spurious applications, largely to financially disadvantage a particular RNTBC. Our view is that only the RNTBC itself should be able to call in the NNTT. We would suggest not inserting new section s60AAA at this time. Instead we would rather give the proposed amendments to ensure proposed dispute resolution pathways for (non-member) common law holders (s66(1)(3A) are given time to be proven.

e. Appointment of a special administrator by the Registrar of Indigenous Corporations

In a similar vein to the proposed NNTT intervention above, MG Corporation is of the view that forcing an RNTBC to be placed under special administration if not considered to be conducting its affairs in the interests of the common law holders is another avenue for disquieted members to severely disrupt the operations of RNTBCs. This amendment should also be paused until the effectiveness of planned PBC dispute resolution pathways is tested and evaluated.

Part B. Registered native title bodies corporate legislation amendment regulations 2018 (Cth)

a. Enhance certification requirements for certain PBC decisions

The change from five members being required to certify a native title decision to a majority of PBC directors is of concern to MG Corporation (r9). While this will lead to administrative efficiencies and mean that the PBCs have direct oversight of consent processes, it may act to disempower common law holders by lessening their formal role in the consultation process. It could also lead to unscrupulous PBC directors signing off decisions in another person's country without their explicit authority, in contravention of traditional lore where one must not speak for another's country. On balance, MG Corporation would recommend that the requirement for the written approval of five common law holders of the specific rights and interests in question is retained as is.

b. Remove the requirement to consult with Native Title Representative Bodies

MG Corporation welcomes the removal of this unnecessary extra step in PBC decision making (r8(2)). The NTRB is not a final arbiter of native title and so should not retain a paternalist responsibility to provide its view on the native title decisions of MG people.

MG people look forward to continuing to work closely with this process and appreciate the good work that the department is putting in to support this legislative reform process.

Yours sincerely,

Lawford Benning

Executive Chair

MG CORPORATION and MG PBC #1 and #4

Telephone: 0439 605 918

E-Mail: chair@mgcorp.com.au