



25 February 2010

The First Assistant Secretary
Social Inclusion Division
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

[By Email: native.title@ag.gov.au](mailto:native.title@ag.gov.au)

Dear First Assistant Secretary

Submissions on the proposed amendment to the *Native Title Act 1993* (Cth) to enable the historical extinguishment of native title to be disregarded in certain circumstances

The brief submissions attached to this letter, at Attachment A, are made by Central Desert Native Title Services Ltd (**Central Desert**), a native title service provider recognised under section s203AFE of the *Native Title Act 1993* (Cth) (**NTA**) to perform the functions of a native title representative body, including providing assistance to a number of native title claimants and native title holders to which these proposed amendments to the NTA would apply.

The areas within our representative region possibly affected by these amendments are:

- Gibson Desert Nature Reserve (A34606);
- Neale Junction Nature Reserve (A34720);
- Great Victoria Desert Nature Reserve (A30490);
- Plumridge Lakes Nature Reserve (A34605);
- Yeo Lake Nature Reserve (A36271);
- Queen Victoria Spring Nature Reserve (A30491); and
- Rudall River National Park (A34607).

Central Desert makes these submissions on its own behalf and not necessarily on behalf of any claimants or native title holders it represents.

If you have any queries please contact me on (08) 9425 2000.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Malcolm O'Dell', written in a cursive style.

MALCOLM O'DELL

Principal Legal Officer

ATTACHMENT A

Submission from Central Desert

As the situation currently stands in the NTA, many native title claimants are unable to have their native title rights recognised due to the prior extinguishment of their 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. Consequently, not only have the native title claimants lost their rights and interests in their land, they also have no recourse to the state or territory government to compensate them for their loss. Perversely, in some circumstances, the indigenous inhabitants continue to live a traditional lifestyle in the very areas where they no longer hold any native title rights.

Sections 47, 47A and 47B of the NTA provide *as a matter of law* for any prior extinguishment of native title to be disregarded in certain circumstances, e.g. pastoral leases that are held by a native title claimant, unallocated Crown land or reserves for the use and benefit of indigenous people. The proposed amendments provide for prior extinguishment to be disregarded *by agreement* with the government party in “areas set aside or vested by a Government law for the purpose of preserving the natural environment of the area, such as a State or Territory park or reserve”.

We submit that this proposed amendment would beneficially assist our clients and constituents in negotiating positive outcomes in the recognition of their traditional rights in their lands and waters. Central Desert foresees three possible scenarios under the proposed amendments:

1. The worst case scenario for our clients is that they would be no worse off than they are under the current legislative regime.
2. The most likely scenario is that state governments would agree to disregard prior extinguishment but essentially suppress the effect of that native title in favour of the purposes underlying the original vesting, in most cases the conservation purposes associated with a national park or nature reserve. This would be of symbolic value to our clients and constituents but of limited other value.
3. A third, perhaps less likely, scenario may be that the capacity to disregard prior extinguishment of native title would lead to more progressive negotiations between the state and our clients or constituents leading to outcomes such as joint management or designated living areas.

Negotiation is always a preferable option, due to its lesser time and resource costs, and less adversarial nature. Allowing the state or territory to disregard the historical extinguishment would mean they were not forced to rely on

precedents set by case law. In theory, native title claims could be more speedily and satisfactorily concluded, to the benefit of all involved.

To aid this purpose, it is suggested that the explanatory memorandum contain a statement that the intention of the Commonwealth is for the amendments to encourage more creative and progressive negotiation.