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Reference
CSO 106520
FINAL SUBMISSION RE S 47C

31 March 2010

Crown Solicitor's Office

Native Title Section

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

Dear Ms Jones

Re **Proposed NTA amendment to enable historical extinguishment of native title to be disregarded, by agreement, over parks and reserves**

Thank you for the opportunity to comment on a proposed draft amendment to the Native Title Act 1993 (NTA) that would allow parties to agree to disregard the historical extinguishment of native title in certain circumstances over State or Territory parks and reserves. If implemented, the amendment would take the form of a new section 47C, with consequential amendments to other provisions of the Act.

While South Australia supports the principle behind the proposed amendment, namely that negotiation rather than litigation should be the primary mechanism for resolving native title claims, it considers that greater flexibility should be built into this particular proposal. For example, it should be possible for the parties to an agreement under section 47C to agree on whether *all* prior extinguishment or only *some* prior extinguishment is to be disregarded - i.e. to identify which native title rights revive and which do not.

The way the clause stands at present, it seems to be presumed that all native title rights will revive, equating in most instances to exclusive possession. This may not be tenable in particular cases and may therefore limit the ability of States and Territories to agree to use this provision.

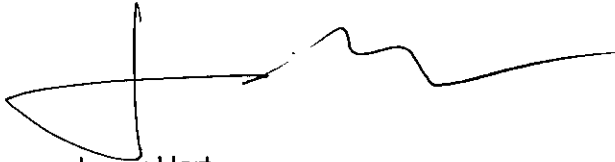
Secondly, it is proposed that the parties will agree in writing to invoke the provision. For the sake of certainty and consistency, such an agreement should, in our view, be in the form of an Indigenous Land Use Agreement. This may require consequential amendment to the ILUA provisions.

Finally, this provision will be beset by the same uncertainty as existing section 47B in relation to the validity of any "prior" interest (s.47C(4)(b)). Does this include interests created after the claimant application or revised native title determination application is made, but before it is determined?

I would be happy to discuss the draft proposal with you or your officers at any time.

Thank you for the opportunity to comment.

Yours faithfully,

A handwritten signature in black ink, consisting of a large loop on the left and a series of smaller, connected loops extending to the right.

Jenny Hart

**Assistant Crown Solicitor
Native Title Section
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