



14 May 2104

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

Dear Sir / Madam

Review of the Native Title Act 1993

On behalf of Alan Cleland, Chairman PGA Native Title Committee, Jenni Stawell, PGA Director and I, the opportunity to talk with Professor Lee Godden and associates on 3 April about the Issues Paper was appreciated. I trust that the points we raised about a range of matters were useful for their gaining an understanding of the WA pastoralists' perspective. In this regard, the following outline of issues responds to the helpful email correspondence of 8 April from Justine Clarke, Senior Legal Officer.

At the outset, the PGA opposes the proposal for a '*Presumption of continuity*'. Pastoralists see no need for changing clauses in the Act because (1) more than any other respondents in the Federal Court, they have to live the longest with outcomes of native title determinations, (2) they want to continue interacting with the Traditional Owners who become Native Title Holders whose evidence proves their being the rightful people for the country around their station, (3) access to information for pastoralists about the connection of claimants to claim areas has become increasingly constrained by the Commonwealth Attorney-Generals Department, the State of Western Australia and Native Title Representative Bodies. An example of proving claim group composition, which continues unresolved in the Federal Court, was given to Professor Godden : *Roberts v Western Australia [2010] FCA 1483*.

Proposals for changes to the Act are not acceptable which (i) restrict the joinder of parties to an application for determination from all people with an interest to only the Applicants and State, and / or (ii) limits the involvement of respondents in the proceedings. Pastoral lessees are the most affected by native title determinations and have a legal right to be informed about claims, and to have their positions heard in the Federal Court.

The PGA has direct experience with the question raised in clause 33 of the Issues Paper '*...do financial and capacity constraints pose a barrier for ... respondents in relation to native title determinations?*' The Commonwealth Attorney-Generals Department Native Title Respondent Funding Scheme for many years allowed for the representation of pastoral respondents. After the scheme was cut in January 2013 and the 2014 scheme instigated, the availability of funds have declined for solicitors and group representatives like the PGA.

Your consideration of these points will be appreciated.

With regards,

Dr Henry Esbenshade
Senior Native title Director

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