GOVERNMENT OF
WESTERN AUSTRALIA

Productivity Commission

Inquiry into Regulation of Agriculture

Submission prepared by
the Western Australian Government in response to the Draft Report

31 August 2016

Western Australian Government Submission

Productivity Commission

Inquiry into Regulation of Agriculture, 2016.

In response to the Productivity Commission's Draft Report on the Inquiry into Agricultural Regulation, the following submission has been prepared on behalf of the Western Australian Government.

The Western Australian Government re-emphasises that the local agricultural sector is predominately export-focused with competitiveness determined by what other major exporting countries are able to achieve in markets targeted by Western Australian exporters. Consequently, the Western Australian Government is firmly of the view that the Productivity Commission should continue to focus on policy or regulatory priorities which will enhance the agricultural sector's export competitiveness.

In this regard, it was pleasing to note that a number of the Commission's draft recommendations will have a positive impact on export competitiveness.

The Western Australian Government again encourages the Productivity Commission and Federal Government to utilise national bodies, such as the Regulation Reform Task Group under the AGSOC umbrella, to assist in developing consensus positions.

Background

Agriculture is one of the priority areas identified in the WA State Government's Regulatory Reform Policy Statement, which was released in September 2015. The Department of Agriculture and Food Western Australia (DAFWA) has made significant changes that align with the Government's reform priorities, such as working with the Department of Transport to simplify vehicle licensing processes for agricultural transporters and repealing the Genetically Modified Crop Free Areas Act. DAFWA is progressing the deregulation of the potato industry and the Department of Finance is providing some advice on transitional assistance, particularly in respect of a set of principles that can be broadly applied across government to guide decision making on transitional assistance.

The Western Australian Government has committed significant resources to reducing red and green tape, and associated business and community costs, which is being driven through a Ministerial Taskforce on Approvals, Development and Sustainability (MTADS). A supporting Director General level taskforce includes a focus on reducing business costs across the agriculture and food sector, and reducing impediments to new business development.

The Western Australian Government is committed to creating a better business environment to enable businesses across the State's export-focused sectors to compete more successfully against overseas competitors. The Government is concentrating on an on-going review of relevant legislation and processes.

The State Government has commissioned targeted reviews of ineffective and unnecessary regulation and inefficient agency processes, with a view to removing those which impose administrative or financial burden beyond adequate benefits. This work is identifying inefficiency and business impacts across all levels of government, and includes provision for specific recommendations for improvement to relevant Ministers and agencies.

Some important reforms have already been achieved, such as amendments to clearing permit regulations. In addition, the Economic Regulation Authority has released a report on its enquiry into Microeconomic Reform.

An important Western Australian initiative was the partnership of the Department of Agriculture and Food Western Australia with CCIWA to reduce business costs in agriculture where poor awareness of processes such as regulatory applications or applicant regulator relationships or other issues impede progressive business development and operation.

In Western Australia, the State has adopted a Lead Agency Framework http://www.dsd.wa.gov.au/7633.aspx to handle areas of multiple jurisdictions.

DAFWA has provided a service for the past 3 years assisting agribusiness proponents to:

- Understand their regulatory requirements in the early stages of business planning, enabling business to have a 'full handle' on what is expected prior to commencement.
- Compile development applications, to meet the existing requirements of regulators, in an integrated format.
- Progress their development applications through the regulatory pipeline (chaperoning).
- Find appropriate sites that meet functional requirements with both adequate servicing and separation distance.
- The provision of these services has led to DAFWA functioning as a one stop shop for agribusiness proponents.

Parallel to this, DAFWA is working on reducing the compliance load on business by investigating a model that allows a state regulator and an industry standards organisation to superimpose compliance approaches, reducing compliance audits to a single pass.

Local Government should also be encouraged by the Australian Government to participate constructively in the process of streamlining application processes. Adequate resourcing is a particular issue for this tier of government.

Comments have been received from a number of Agencies within the Western Australian Government and these are presented below.

Regional Issues

The Department of Regional Development (DRD) administers the State's Royalties for Regions fund that facilitates the economic, business and social development of regional Western Australia. The fund to date has invested $6.9 billion over more than 3,700 projects towards providing additional infrastructure and services that develop and broaden the economic base in regional areas, driving business and job creation.

Royalties for Regions supports the development of the State's agriculture industry through Water for Food and other programs under the $350 million Seizing the Opportunity Agriculture initiative. Supporting agricultural industry development, particularly in new precincts in the north of the State, will create long term job and business opportunities for regional residents and secure additional export income as Australia positions itself to meet growing world demand for high value food products.

The Minster for Regional Development recently released the Regional Development Strategy 2016-25, affirming the direction of driving investment and removing barriers to growth in the regions.

DRD emphasises on addressing the key regulatory issues that impact agricultural investment and regional development policy. The issues are in investment areas related to land and water. In addition, foreign investment and animal welfare can be seen to have potentially negative regulatory impacts.

The agricultural industry is entering a new phase of development and project proponents favour a streamlined project approvals process, not just in the agricultural sector, but in other industry sectors as well. Protracted planning and environmental approvals increase project risk through higher project costs and longer timeframes required in bringing projects to fruition. Improved coordination across government departments and reduced duplication is supported by proponents. Good, transparent regulation is critical to success of the agricultural industry, but must be founded on good policy and appreciation of industry factors.

A number of studies have been undertaken on the regulation burden facing primary producers, including the Action plan for transforming agriculture in South West Western Australia completed by Deloitte Access Economics in February 2015. The Plan identified reducing unnecessary red tape and streamlining regulatory processes

as one of five transformative areas to be acted upon, and would be a useful for the Productivity Commission.

- Water

Water rather than land availability could be considered the biggest constraint to agricultural development in Western Australia. The ability to deliver water to existing and new agricultural enterprises is critical to further development. Water allocation policy is based on a licensing system rather than the market based methods used in other jurisdictions.

- Land

The Productivity Commission has raised state based land tenure regulation in relation to pastoral leases as an area State and Territory governments should reform.

The State is involved in the funding of development of new land opportunities for agriculture through the Water for Food program, through the Departments of Regional Development, Water, Lands and Agriculture and Food. This involves establishing a pathway for tenure conversion from Crown land (leased or unallocated) to freehold, based on proponents progressing to establish intensive, irrigated agriculture projects.

- Foreign Investment

The reduction of the threshold for foreign investment into agricultural land in Australia to $55 million we understand is seen by foreign investors as a potential impost to investment. DRD is concerned that investment opportunities will be missed as mixed messages are being sent to investors by the change in policy, which in turn disadvantages Australian agriculture. The Productivity Commission has recommended the threshold be reset to $252 million, which is supported.

Transport.

The draft report notes on page 295: “Local governments (except those in Western Australia) can also make decisions on heavy vehicle access and conditions, which adds further regulatory complexity.”

While the Commissioner of Main Roads has the delegated authority to make access decisions in WA, Local Governments may place additional restrictions on travel that need to be accounted for by heavy vehicle operators. It would be appropriate to amend the statement in the Report, noting that WA is not an exception in this case.

The Great Southern Development Commission has commented that 24/7 access to Albany Port is supported and should be protected. The Productivity Commission's

draft finding that privatisation of major ports has the potential to increase economic efficiency provided the public interest is protected is noted. However, privatisation of regional ports is a potentially sensitive issue among local stakeholders.

Native Title

In its February 2016 submission to the Productivity Commission's Inquiry into the *Regulation of Australian Agriculture* the Western Australian Government:

- discussed the significant impact native title has on the State of Western Australia;
- supports the comments in the Productivity Commission's Issues Paper (Dec 2015) that costs and delays in complying with the *Native Title Act 1993* (Cth) (NTA) can make 'some proposed developments unviable or unattractive";
- notes that compliance with the NTA differs from other statutory approval processes in that generally there is no statutory time frames or guidance provided for agreement-making;
- outlines the status of claims resolution in Western Australia; and
- proposes to amend the Low Impact provisions of the NTA (Sub-division 24LA) to reduce the regulatory burden on agriculture.

The above comments are reiterated in this submission.

Additionally, the Western Australian Government wishes to clarify that:

- Australian courts have confirmed that native title is a bundle of rights and interests but is not a property right; and
- the work that has already been undertaken to identify technical changes to the NTA that would improve the regulation of agriculture.

1. <u>Native Title is not a property right</u>

- The Productivity Commission's July 2016 Draft Report cites Honore's 1961 essay on ownership to describe freehold, leasehold and native title as 'property rights' that confer a "'bundle of rights' on the titleholder, and can include the right to use, transfer, manage or possess land…" (p 60). It is noted that since Honore's essay was published many years prior to Australia's 1992 Mabo decision it is not a useful source to clarify the nature of native title in Australia.
- The specific nature of native title in Australia has been clarified by the High Court's 1992 Mabo decision and by subsequent case law. In the 2002 Ward decision, the High Court clarified that native title is not a property right in land in the way that is applied by common law to freehold and leasehold land.
- Native title does not originate from, but is recognised by, common law and is fundamentally a right to use the land and waters for traditional purposes. It is not a right of possession to the land itself, or to things in, or under it. Unlike other interests in land, native title is not capable of being alienated or transacted except by surrender to the Crown.

2. Technical changes to the NTA to improve the regulation of agriculture

- The operation of the NTA is a key legislative constraint to improving productivity involving tenure reform on lands where native title exists. Compliance with the NTA is typically costly and inefficient.
- During 2013 and 2014 States and Territory jurisdictions worked together on a specific project to identify technical changes to make the administration of the NTA more efficient and effective.
- The proposed changes are based on many years of experience State and Territory jurisdictions have with managing the day-to-day operations of the NTA.
- Some of the changes proposed aim to clarify the meaning of clauses to remove uncertainty; others are intended to improve the processes involved and some aim to clarify the roles and responsibilities of parties.
- The proposed amendments are modest and technical and will assist native title holders, State and Territory governments and other proponents in improving productivity.
- The Western Australian Government considers that the Productivity Commission's Inquiry should specifically consider proposing amendments to the NTA, including those previously put forward by States and Territories (**Att A**) that would improve the regulatory burden on farm businesses and improve Indigenous economic advancement in regional and remote Australia.

3. Correction to previous submission

- The WA Government wishes to clarify in respect to its previous submission (February 2016) that the procedural right to negotiate under the NTA only applies to compulsory acquisitions and not to Indigenous Land Use Agreements.
- As such, there is a 6-month minimum statutory timeframe associated with negotiations in good faith, pursuant to s 29 of the NTA (not no statutory timeframe as incorrectly stated on the previously submitted table).

It is pertinent to note that while there is discussion of the impact of the native title future act regime on pastoral lease tenure in the body of the Productivity Commission report, e.g. "Reforms may also trigger native title processes (box 2.2)", p. 64, this discussion is not sufficiently developed or reflected in the key points, recommendations or findings.

The recommendation for state and territory land administration to be streamlined where possible, particularly in the time taken to change tenure and complete land assembly processes but considers that a similar reform focus should also be levelled at the Commonwealth native title regime.

Ag Vet Chemicals.

Section of the report, “6.2 Access to agricultural and veterinary chemicals”, raises a couple of issues

The report poses the following question/recommendation:

“INFORMATION REQUEST 6.1
How well does the regulatory framework for technologies and agvet chemicals perform? Are the institutional arrangements and regulatory objectives underpinning the OGTR and APVMA appropriate and up to date? What improvements could be made?”

“DRAFT RECOMMENDATION 6.3
The Australian, state and territory governments should expedite the implementation of a national control-of-use regime for agricultural and veterinary chemicals (which includes increased harmonisation of off-label use provisions), with the aim of having the regime in place in all states and territories by the end of 2018.”

The Agvet Chemical Task Group is responsible for assisting the Agriculture Senior Officials Committee and the Agriculture Ministers’ Forum in developing strategic policy for the national agricultural chemical and veterinary medicine regulatory system. This includes overseeing the development and implementation of strategic plans that determine national chemical use, registration and assessment policy and support nationally consistent agvet chemical regulation.

There should be acknowledgment of progress made in some areas of control of use in national agvet chemical reform. For example, the harmonisation of WA’s off-label use regulations was completed in 2011 for agricultural chemicals and 2006 for veterinary medicines. Also WA licenced pest management technicians already meet the minimum training requirements. Drafting instructions have been prepared for aerial operators to also meet these requirements. Both these groups already include national record keeping requirements.

Delays have occurred in developing harmonised measures due to the complex overlaying controls on agvet chemicals from other areas, such as health and training.

- The “*Review of Medicines and Poisons Scheduling Arrangements*” is also looking at the same set of chemicals for options to make poisonous chemical controls more nationally consistent. This included Schedule 7 poisons and those in Appendix J of the Standard for the Uniform Scheduling of Medicines and Poisons.
- There have been changes to mutual recognition with recognition of licensing arrangements under the *Mutual Recognition (Maritime and Other Occupations) Declaration 2009*. The purpose of the instrument is to declare a range of equivalent occupations across states and territories, including pest

and weed controllers. The Mutual Recognition Declaration was not identified or considered during the development of the original regulatory model.

- The Australian Government also proposed a National Occupational Licensing Authority to take over licensing responsibilities from jurisdictions. After several years this proposal was dropped but delayed discussion/implementation of minimum state/territory licensing controls for commercial agvet chemical operators.
- More recently there has been a greater focus by government on "Red Tape Reduction". This will mean using innovation to achieve the same regulatory outcome without a greater burden on industry.

It should be noted that the working groups of the Agvet Chemical Task Group have recently renewed their work plans and timeframes. With adequate resources they should be able to meet the revised timeframes.

On the question of potential improvements, it is noted that Option D in the 2013 Regulation Impact Statement was for vertical integration of the national agvet chemical scheme (referral of all state and territory control-of-use functions to the Australian Government). This was supported by WA and some other states but was not supported by the Commonwealth which, perhaps, could be revisited.

Animal Welfare

There are strong arguments that farm animal welfare and environmental regulation are among a number of potential imposts that could best be streamlined by having national standards that are universally applied. Such an approach would assist in generating confidence for industry and major investors, that when dealing with different jurisdictions, and managing agricultural enterprises across jurisdictions, there are not a range of anomalous regulatory regimes to consider.

The Department of Agriculture and Food Western Australia (DAFWA) agrees that there is a lack of statistically relevant and sufficient evidence of community values and expectations in relation to animal welfare regulation as set out in the Draft Report. Understanding of community expectations is necessary to evaluate the effectiveness of animal welfare regulation and assist in the development of evidence-based animal welfare policy.

DAFWA is in the process of developing a strategic plan and policy framework for animal welfare in Western Australia, followed by a review of the *Animal Welfare Act 2002*. These initiatives are part of the implementation of 19 recommendations made by the Independent Review of the Investment in and Administration of the Animal Welfare Act 2002 in Western Australia (Easton Review), published in 2015. It is

noted that the Easton Review addresses some similar issues raised by the Draft Report.

There is a need for greater clarity in the development of animal welfare standards and guidelines and the avoidance of overt influence from any one group. Standards and guidelines need to be supported by animal welfare science and research and identified community values and expectations. This matter of governance and process for development of animal welfare standards has previously been looked at by a consultancy group reporting to the Animal Welfare Task Group which reports to the National Biosecurity Committee. See: http://www.agriculture.gov.au/Style%20Library/Images/DAFF/__data/assets/pdffile/0009/2344968/review-animal-welfare-standards-guidelines-development-process.pdf

There is limited value in the establishment of an independent body tasked with developing national standards and guidelines for farm animal welfare. The current system is adequate, as concluded in the above Review.

The necessity of adequate resourcing to support effective discharging of animal welfare monitoring and enforcement activities has been recognised by the Western Australian Government following the Easton Review and DAFWA supports this initiative.

Land Use.

The Draft Report covers a range of issues relating to land use regulation;.

Comments under this heading are focused on *Chapter 2: Land Use Regulation*, under the WA Department of Land's (DoL) jurisdiction in the State of Western Australia. A summary of the key points identified in Chapter 2, with DoL comments, especially in the context of Rangelands Reform discussions, follows.

Page 31, Draft Finding 2.1 – 'Pastoral leases offer less security of tenure than freehold land, creating uncertainty for leaseholders and investors, which can deter investment.'

The Draft Report expresses concern that pastoral lease conditions restrict the use of land for non-pastoral activities and that additional approvals are often required for these activities (i.e. permits, etc). The Draft Report also finds that a lack of security of tenure can also have perverse effects on land management decisions e.g. a lessee may have less incentive to manage the land if there is uncertainty about whether the lease will be renewed.

DoL commends the Draft Report for acknowledging the various initiatives being undertaken as part of the Rangelands Reform program, including reformed pastoral lease arrangements as well as the proposal to introduce a rangelands lease to operate alongside the pastoral lease regime. However, the Draft Report incorrectly cites the proposal for a perpetual pastoral lease in Western Australia at pages 65 (Box 2.5) and 67 (third bullet point).

These erroneous references appear to be taken from outdated documentation from 2011. Documentation from 2015/16 clearly articulates the reasons for not proceeding with the proposed perpetual pastoral lease (i.e. the amendment to provide for a perpetual lease would be a native title future act requiring agreements to be negotiated with all native title interests in the Western Australian rangelands, who would be unlikely to support such an amendment).

As the initial WA Government submission to this inquiry noted, the WA government has examined the security of tenure and "bankability" of pastoral leases a number of times across the last few decades. These examinations consistently identified that the main concern of the financial institutions was the lack of statutory certainty around the renewal for pastoral leases and the transfer of permits.

The Western Australian Department of Lands' Rangelands Reform program is progressing legislative changes to the *Land Administration Act 1997* (LAA) that seek to improve the pastoral lessees' security of tenure, including provisions for:

(i) a statutory right of renewal if the lessee is compliant with the conditions of the lease and the relevant provisions of the LAA;

(ii) an extension of the term of the pastoral lease to the maximum term of 50 years, noting that this would be a future act under the NTA; and

(iii) transfer of diversification permits.

DoL has also increased certainty for investors and pastoral lessees through administrative reform, including the adoption of the Pastoral Purposes Framework (attached). This framework provides clarity in relation to the activities permitted under the definition of 'pastoral purposes' and outlines the required permissions for a variety of non-grazing activities on pastoral land.

Additionally, the statistical information in respect of land use, sourced from ABARES (Table 2.1 of the Draft Report – *Catchment Scale Land Use in Australia*), appears to be incorrect in relation to Western Australia. Specifically, the ABARES figures designate 69.77 per cent of the land mass of Western Australia as being for grazing native vegetation. In reality, only approximately 34 per cent of the State's land mass is under pastoral lease (i.e. grazing native vegetation), while approximately 38 per cent is unallocated Crown land (i.e., it is allocated for no use at present) and should consequently be classified as minimal use.

Page 57, dot point four, sub-point three – 'In general, where reforms to Crown land confer additional property rights on a landholder, that landholder should pay the higher value of the land and any costs associated with the change.'

This is consistent with the proponent pays principle that the WA Government has endorsed in respect of the Water for Food program and that will guide the rollout of rangelands leases, should the WA Parliament enact the Rangelands Reform proposals, including the market value of the land.

One example of this is around carbon sequestration, which the Draft Report touches on a number of times, including at page 135. The WA Government is currently developing a pathway enabling proponents to conduct carbon sequestration projects in the rangelands. The rangelands lease proposed as part of the Rangelands Reform program has been designed to allow for carbon sequestration as a potential use. The

WA Government is currently addressing the policy issues resulting from the interactions of the NTA, LAA and *Carbon Rights Act 2003 (WA)*.

Page 60, first paragraph of section 2.2 How is land us regulated? Sentence – 'Broadly speaking, private interests in land can be held as freehold, leasehold or native title.

Unlike the Commission's 2002 Research Paper, there is very little recognition of native title being a key element in changes to existing land use and the implications of complying with the Commonwealth *Native Title Act 1993* (NTA) to give effect to tenure changes.

Further, the use of the term "land rights" is considered to be problematic, due to its historical association with the movement for Indigenous rights to their traditional lands. The term, "rights and interests in land" should be used, as it is a more accurate characterisation of the variety of tenures and other forms of rights to access and/or utilise land in Australia.

Some native title parties, having already had their native title rights and interests formally recognised by the Federal Court, have more recently become frustrated by the lack of economic advancement for their people resulting from those rights and interests. The WA Government is aware that pressure to have native title rights and interests recognised as a form of 'bankable' and 'Torrens system' tenure, is building.

However, following *Mabo (No 2)*, and after some uncertainty about the nature of native title, the High Court in *Ward* made clear that native title is not property in land in the sense known to the common law. The High Court moved away from the recognition of rights held under traditional laws and customs as comprising an estate in land of the type familiar to the common law, instead confirming that native title comprises a set of rights in relation to land or waters – that is, native title as recognised by the common law is fundamentally a right to use land and waters for traditional purposes; it is not a right of possession to the land itself, or to things in, on, or under it.

At present, native title has been determined on approximately half of Western Australia's land. Approximately one third of determinations have been for exclusive possession, implying much greater right and expectations for dealings.

The majority of WA will ultimately be covered by native title rights and interests, and given above, seeks to explore innovative ways in which these title rights and interests can be effectively used in the long-term, in partnership with other land users and land holders, to create better social, cultural and economic outcomes for the State's Aboriginal people.

Page 66, paragraph four, sentence – 'There are however trade-offs associated with improving security of tenure for pastoralists. Long tenure periods can 'lock-up' land, preventing it from being put to an alternative use that is potentially more valuable.'

These trade-offs are necessary in respect of pastoral tenure, in order to ensure that long-term planning and investment can occur, which generally results in better land management outcomes. The longer the tenure, the less likely the lessee is to overstock the land under the lease, because the imperative to reap large dividends over a short timeframe is removed. Lessees can take a longer view of their business and, as a result, factor in seasonal factors and management of the land asset. This

has been recognised in policy, with pastoral lessees now able to destock for up to five consecutive years without a requirement for prior permission or notification.

However, the rangelands lease or pastoral lease is still subject to forfeiture (or other regulatory action) if the provisions of the lease and the LAA are not complied with. Other mechanisms also exist to convert pastoral lease tenure to higher and better use, such as:

(i) Acquisition by agreement – the WA Government, via its Royalties for Regions funded Water For Food program, has established a land tenure pathway for intensive agriculture precincts on land currently covered by pastoral leases. Under the proposals, in cases where the pastoral lessee is not the project proponent, third parties can acquire land currently under pastoral lease for higher use, provided an agreement can be reached with the pastoral lessee, native title parties and other interest holders (including mining companies).

(ii) Compulsory acquisition – under the LAA, the Western Australian Government can acquire land compulsorily where it is required for a public work, or for a use that is of significant economic or social benefit to the State or the relevant region or locality of the State. However, in such cases the State is required to pay compensation commensurate to the loss of rights and interests over the land acquired.

As a result, the land is never entirely "locked up", but able to be used for different purposes under certain circumstances, subject to existing interest holders being appropriately compensated for the loss of that interest.

Further, Western Australian pastoral leases do not confer exclusive possession on the lease holder, meaning other interests and uses can coexist, such as mining and Aboriginal access for hunting and gathering purposes.

Page 68, Draft Recommendation 2.1 – 'Land management objectives should be implemented directly through land use regulation, rather than through pastoral lease conditions. State and Territory governments should pursue reforms that enable removal of restrictions on land use from pastoral leases.'

Rather than remove land use restrictions from pastoral leases, the Rangelands Reform program has proposed a new form of broadscale tenure option called a rangelands lease. The proposed rangelands lease prescribes no specific form of land use, except insofar as the proposed land use is consistent with the preservation of the natural vegetation as a resource. Pastoral leases in their current form will remain.

The land management objectives contained within the legislative proposals in the Rangelands Reform program, include common provisions for land condition management and monitoring of both pastoral and rangelands leases. Failure to comply with these provisions may lead to forfeiture or other regulatory action.

Page 70, first paragraph, second and third sentences – 'Prima facie, the conversion of pastoral leases to freehold land will encourage investment and allow land to be put to its highest value use. However, in some instances, it may be appropriate for the Crown to retain ownership of land,…'

While the report at pages 62 and 63 acknowledges that the co-existence of native title rights and interests with pastoral leases '…*may also mean that changes to*

existing land uses, including regulatory reform, may be constrained by native title interests.', the report does not expand on this constraint nor does it suggest any solutions such as recommending a review of the relevant Commonwealth and State legislation to seek more effective and efficient improvements to land tenure while balancing and recognising the rights and interests of native title parties across all jurisdications. This is a significant omission in this report.

Further the Draft Report does not discuss in any meaningful way the significant policy or legal issues in converting pastoral leases to freehold including:

(i) the continuing co-existence of native title and the freehold tenure and a more recent push by native title advocates to apply the non-extinguishment principle in relation to native title under freehold tenure;
(ii) the considerable costs, resources and timeframes involved in complying with the complex processes of the NTA, including development of Indigenous Land Use Agreements and related compensation negotiations;
(iii) the likely response of the resources sector where the West Australian Minister for Mines, under section 16(3) of the Mining Act 1978 (WA) is required to give approval for the issue of tenure in a declared Mineral Field. The majority of Western Australia is a declared Mineral Field, and in general the Minister for Mines denies the approval of freehold and exclusive leasehold tenure that may affect the ability to exploit mineral or petroleum resources; and
(iv) the significant public policy issues around "locking up" such large tracts of land as freehold – for example, DoL has a range of examples of freehold land that has been 'banked' for some future use by the private sector, constraining the opportunity for others to make productive use of the land in the interim. Additionally, with freehold the State has less ability to ensure the condition of the land is managed in line with public expectations around preservation of the natural environment for future generations.

Page 71, Draft Recommendation 2.2, dot point two – 'set rent payments for existing agricultural leases to reflect the market value of those leases, with appropriate transitional arrangements.'
This supports the current regime of the Valuer General setting the pastoral lease rentals, rather than the Minister, as articulated in section 123 of the LAA. Doing otherwise will result in the incremental cost of converting leases to be artificially inflated.

Land Use Planning.

- Draft finding 2.2 – Regulation and policies aimed at preserving agricultural land per se can prevent land from being put it its highest value use.

This finding, while understood from an agricultural perspective, broadly conflicts with established land use planning regimes, which assist land uses based on the most suitable use of the land, to achieve broad economic, environmental and social balance. While all planning regimes involve direct consultation with landowners, and

aim to meet the interests of all parties, land use planning exists because the 'market' by itself is not generally capable of managing competing interests.

- Draft findings 3.1, 3.2 and 3.3 – Regarding environmental regulation and clearing of native vegetation

The Productivity Commission should be aware of the potential benefits of Strategic Assessments undertaken under Part 10 of the *Environmental Protection and Biodiversity Conservation Act 1999*. The Strategic Assessment currently underway in Perth seeks to integrate State environmental and land use planning obligations. Although it does not directly address agricultural development, this project may provide a model for other assessments as it has the potential to offer significant improvement in regulatory efficiency and alignment between multiple arms of government.

Balancing between social, economic and environmental factors needs to be done within a framework of meeting the long term objectives of all three considerations, especially in relation to non-renewable and finite resources such as threatened species and communities. Landscape scale (or strategic assessments) can assist with this but environmental assessments are sometimes necessary at multiple scales to deal with the different information that is available at different scales and at different times. It is important that multiple environmental assessments be undertaken in a complementary manner within a shared framework and to avoid duplication.

The Western Australian Planning Commission's *State Planning Policy 2.8 - Bushland Policy for the Perth Metropolitan Region* recognises the protection and management of significant bushland areas as a fundamental consideration in the planning process whilst also seeking to integrate and balance wider environmental, social and economic considerations. This balance is generally performed well in the Metropolitan Region.

Attachment 1: Proposed technical amendments to the Commonwealth's *Native Title Act 1993*

The following table sets out suggested technical amendments to the *Native Title Act 1993* (NTA). The suggested amendments are based upon the many years of experience of the Native Title Senior Officers Group and are aimed at improving the efficiencies and removing the uncertainties related to the operation of the NTA.

No.	PROVISIONS OF THE NTA AFFECTED	ISSUE	SUMMARY OF CASE LAW AND LEGAL ADVICE IN SUPPORT OF ISSUE	PROPOSAL	BENEFITS
1.	Part 2, Division 3, Subdivisions B and C (body corporate and area indigenous land use agreements)	Indigenous Land Use Agreement (ILUA) amendments proposed in Schedule 3 of the *Native Title Amendment Bill* 2012 ("2012 Bill") are generally supported, subject to further consideration of amendments with respect to parties to area agreements and authorisation of area agreements.		Schedule 3 Items 1 – 12 of the 2012 Bill are supported in their terms; Schedule 3 Items 13 - 16 of the 2012 Bill need further consideration with respect to who are the parties to an area agreement and who must authorise an area agreement. It is not clear that the amendments currently proposed address uncertainties arising from the QGC decisions.	Supported items streamline processes associated with ILUA negotiation and registration, thereby reducing negotiation costs for all parties, National Native Title Tribunal (NNTT) administration costs, and enabling faster delivery of agreed outcomes. Specifically Item 2 – allows Body Corporate ILUA to be used to deliver benefits to native title parties including over areas where native title has been extinguished. Will reduce use of Area Agreements to enable inclusion of areas where native title has been extinguished and associated lengthy, costly notification processes (NNTT). Item 4 – ensures resource intensive notification processes are only triggered when the Registrar is satisfied an agreement satisfies the requirements of subdivision C, thus avoiding costly duplication of processes. Items 6, 7 8 and 9 – repeals objections process against Area Agreements certified by a

No.	PROVISIONS OF THE NTA AFFECTED	ISSUE	SUMMARY OF CASE LAW AND LEGAL ADVICE IN SUPPORT OF ISSUE	PROPOSAL	BENEFITS
					representative body and enables objection process for uncertified applications instead of current requirement to counter with a new claim. Hence introduces a less resource intensive option, faster outcome, and will limit filing of new claims for progression through the Federal Court. Item 12 – limits requirement for amended ILUAs to be re-registered where amendments are technical and have no greater effect on rights than the original agreement. Reduces NNTT process costs and delay to parties benefitting.
2.	Part 2 Division 3 Subdivision C When an ILUA is part of a consent determination process	The registration of an ILUA, as part of a consent determination process, may be subject to a public notification process resulting in time delay. As the Federal Court judge, as part of a consent determination of native title, is identifying who are the native title holders, this should be sufficient to avoid the need to further notify the ILUA (and consequently the time and cost delay) where the ILUA has been made/authorised by those persons as part of the consent determination of native title.		It is suggested that section 24CH be amended to remove the need for public notification where the ILUA is being done as part of the consent determination of native title. Instead require that process under section 24BH be applied.	Proposal streamlines notification process associated with Area Agreement negotiations where the correct parties are identified for the purposes of the consent determination. Reduces costs for all parties, NNTT administration costs, and enables faster delivery of agreed outcomes in accordance with Federal Court requirements.

No.	PROVISIONS OF THE NTA AFFECTED	ISSUE	SUMMARY OF CASE LAW AND LEGAL ADVICE IN SUPPORT OF ISSUE	PROPOSAL	BENEFITS
3.	s 24EB(4)	Sub-sections 24EB(4), (5) and (6), when read together with 24EB(7), appear to restrict the RNTBC/claimants who have authorised the making of the agreement and are entitled to benefits from it to compensation provided for in the agreement; i.e. assessment and payment of compensation cannot be deferred even if the impact of the doing of acts in the future is not ascertainable at the time of consenting to a class of acts.		In order to provide certainty for future act proponents and native title holders, an amendment to the NTA that allows for sections 24EB(4), (5) and (6) to be disapplied by agreement is desirable.	Negotiation of agreements delayed or derailed because of uncertainty about interpretation of this clause. Interpretation that s 24EB(4) limits ability to make a compensation claim in the future does not accord with the intent of the NTA and limits usefulness of ILUA provisions.
4.	Part 2 Division 3 Subdivision E Seal of registration for an ILUA	Where the State or Territory is not a party to an ILUA, apart from considering the Register Extract available on the NNTT website, it does not know if it has been provided with a true and correct copy of the registered ILUA.		It is suggested that an ILUA once registered should be stamped with a seal of registration by the Registrar.	Provides certainty and limits likelihood of challenge.
5.	s 24IC(1)(b)(iii)	Where a lease is validly granted after 23 December 1996 over a pre-23 December 1996 reservation pursuant to s 24JA and the pre-23 December 1996 reservation ceases to exist but the lease continues, the only way in which to renew that lease is by way of an ILUA. This is because		Amend s 24IC(1)(b)(iii) to allow a lease to be renewed where the original lease was created by an act covered by s 24JA. This is simply an addition to s 24IC(1)(b)(ii) which already includes leases created by acts under ss24GB, 24GD, 24GE and 24HA.	Clarificatory measure enabling more efficient processes without abrogating rights.

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		once the reservation ceases, s 24JA cannot be relied upon for a future renewal.			
6.	s 24JAA	Include an "opt out" provision for circumstances in which native title holders themselves commission the construction of the relevant facilities.		Amend s24JAA to provide that notification, consultation and reporting in accordance with s24JAA (10) – (19) are not required where the native title holders request that the infrastructure be provided, and the compensation entitlement under s24JAA (8) and (9) is satisfied by the provision of the infrastructure in such a case.	Minimises process costs (parties, NNTT) and aids efficient service delivery to Aboriginal communities. Settles compensation liability.
7.	Additional to above, new provision to be drafted	Allow a Registered Native Title Body Corporate (RNTBC) on behalf of native title holders to opt out of any or all of the provisions of the future act regime and compensation entitlement for identified future acts.		When a RNTBC on behalf of determined native title holders makes written request to the Native Title Registrar (in accordance with any requirements set out in legislative instrument) that: • any of the notification and comment, consultation or RTN provisions of Part 2, Division 3 with respect to specified future acts or classes of future acts; and • the requirement for compensation – do not apply to those specified future acts or classes of future acts undertaken in the determined native title claim	Minimises process costs (parties, NNTT) and maximises benefit to native title holders. Settles compensation liability.

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				area, those provisions cease to apply to that area. There must be an entry on the National Native Title Register to this effect with respect to that Determination.	
8.	s 24JAA(1)(d)	Deletion of sunset clause, given usefulness of this provision.		Delete section 24JAA(1)(d)(i) and (ii).	Benefits derived from 2010 amendment will continue in perpetuity. Universally supported process minimises costs and aids efficient service delivery to Aboriginal communities.
9.	s 24LA	Ability to continue undertaking low impact future acts, which are generally acts done by government employees (such as, for example, conservation officers spraying weeds) post-determination. Only other way to continue such activities is by compulsory acquisition of native title rights and interests or by an ILUA.		An amendment that allows low impact future acts to continue post-determination. With respect to low impact future acts that provide for health and safety (e.g. clearing of noxious plant species, bushfire and environmental management) no notification or opportunity for comment is required. For all other low impact future acts post-determination, the RNTBC must be notified and given an opportunity for comment consistent with s 24HA.	Activities licensed or undertaken pursuant to s 24LA pre-determination can continue validly post-determination without interruption or re-negotiation via ILUA/compulsory acquisition. Minimised process costs (parties/NNTT) and maximised efficiency. Health and safety is not compromised by uncertainty as to ability to validly undertake activities. Procedural rights are not abrogated –amendment proposes identical, or augmented rights, to those pre-determination.

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10.	S 24MD(3)	It is arguable that the acts of compulsory acquisition contemplated by section 24MD(3) require the relevant act to be the single act of acquiring interests and creating a new interest such that, in the WA context, one Notice of Intention to Take must both take and confer the relevant interests. This does not work in practice when different legislative provisions relate to acquiring and conferring interests, and there is more likely than not to be a temporal gap between the two.		Reintroduce a provision similar to the pre-1997 amendment section 23(3) that made it clear that the Non-extinguishment principle (n.e.p.) applied to the acquisition, but that an act done in giving effect to the purpose of the acquisition is valid and the n.e.p. continues to apply.	Streamlines processes and provides certainty for parties without abrogating rights. Avoids resource intensive challenges to validity of creation of interest.
11.	s24MD(6B)	It is currently not clear that the Government Party can proceed to do the future act if an objection is not referred to an Independent Person.	•	• The amendment should stipulate that after an objection is lodged, the State must consult with the native title party for a specified period – e.g. 3 months. • Within a specified time after the close of the consultation period (e.g. 1 month), if there has been no referral to the Independent Person, the State can proceed with the future act. • Should also provide that a party other than the native title party (NTP) may refer matters to the independent person.	Permits efficiency and certainty for all parties in shorter timeframes without abrogating rights.

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				• The amendment should be clear that it is not mandatory for every objection to be referred to an Independent Person.	
12.	s 29 and/or new provisions	The intent of the s 29 notice period is to provide time for any new native title claimants to file a claim and become registered. If the future act is proposed in an area where native title has been determined, this intent falls away and a standard period of 35 days should be fixed where this circumstance arises.		Objection period in the expedited procedure should be amended to 35 days after notification of the proposed future act where the entire area affected by the act is subject to a native title determination (including areas within the external boundary of the determination area where native title does not exist) and a RNTBC is established.	Promotes timely outcomes and cost-effective process where native title holding group is determined.
13.	s 29	Strict application of s 29 notification requirements in circumstances where no party suffers a detriment.		Amend NTA provisions to provide that notification requirements have been met: **In Determined area** – where, even if there is a defect in the notice or notice has not been given: • There is a s31 Agreement; • There is a s35 Determination, or • Where the NTP has exercised their right to object; in relation to the future act for which notice has, or should have been, given.	Reduction in administration costs for parties. No prejudice to any parties, promotes efficient, effective outcomes. Limits circumstances in which NNTT will be required to consider if it has jurisdiction to accept an arbitral application where notice is defective.

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				In Non-determined area – where: • Public notice has been given in accordance with NTA requirements; And in relation to defects in personal notice or notice has not been given, where: • There is a s31 Agreement; • There is a s35 Determination, or • Where the NTP has exercised their right to object; in relation to the future act for which notice has, or should have been, given. In addition, consider option for Court to make a finding on the validity of the act on application based on a 'no detriment' test. Such findings should also be able to be made with respect to future acts that have already been done, but for which validity is in doubt because of a defect in notification.	
14.	S 29 and cl 6(1)(a) of *Native Title (Notices) Determination*	• Currently, it is necessary for Notices of Intention to Grant Mining Tenement applications to be published by several paper		Amendment to confirm that notices to identified parties may be made by email and public notice able to be given online.	Enables use of a more efficient, timely, and inexpensive notification option.

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	2011 (No 1)	advertisements (public notice) and some must be given by post involving multiple letters and plans to be sent to various parties. • There are obvious time and resource benefits if notices could be sent electronically with links to digital maps. • Native Title Representative Bodies (NTRBs) have been requesting an electronic service for years.		Consequential amendments providing that notice of an email address required for register information.	
15.	s 47(1)(b)(iii)	Proposed Schedule 4 Minor technical amendments in 2012 Bill to include members of a body corporate as well as shareholders.		Proposed amendment supported.	Practical amendment to support commonly encountered barriers to application of s 47. Provides certainty and is beneficial to native title parties without abrogating other Indigenous interests.
16.	s 47B	Clarity is sought regarding the operation and scope of section 47B to remove the uncertainty about doing land and resource dealings on unallocated State land (vacant Crown land) in the period post-claim but pre-determination where native title is extinguished but is subject to native title claim. The NTA seems silent on how to address native title for dealings done in this period where section		An amendment is sought to clarify how to address native title for dealings done during this period in terms of process, validity and effect One way in which to do this is to clarify that dealings done in this period are valid subject to compliance with the future act provisions (Part 2, Division 3). The effect of those acts on native title done in this period will also	Clarificatory amendment to confirm processes required.

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		47B may operate, in a situation where extinguishment could otherwise be relied upon to address native title to do the dealing. Dealings done in this period also cannot be future acts (by definition) as native title is extinguished.		need to be addressed. NB. Whilst most future acts have the effect of the non-extinguishment principle, some acts have the effect of extinguishment (eg. public works on a pre-Wik reserve and compulsory acquisition of native title).	
17.	Part 2 Division 5 and PBC Regulations	Part 2 Division 6 of the NTA defines the role of the Prescribed Body Corporate (PBC). As currently structured, the NTA allows the PBC to hold determined native title interests of the native title holders on trust (s56(3) and r.6 of the Regulations) or to act as agent for the native title holders in relation to those native title rights and interests (s.57(3) and r.7 of the Regulations)). It becomes the Registered Native Title Body Corporate (RNTBC). The Regulations state that the PBC is to manage the native title rights and interests of the common law holders (r.6(1)(a) and r.7(1)(b)), but they do not currently address the issue of compensation for previously extinguished native title (except	•	• Amend the NTA and the *Native Title (Prescribed Body Corporate) Regulations* 1999 (the Regulations) to allow the RNTBC to be the applicant on an application for compensation under s.50(2) (even in circumstances where a further native title determination is required to determine the location of the areas of compensable extinguishment (see s.13(2) and the consequent requirements of ss.61(2) and 62(3)[1]). • Allow the RNTBC to make a compensation claim over areas that fall within the external boundaries of a determination, but that have not been	Procedurally fair and in accordance with the intent of the NTA.

[1] Strict application of s.61A means there are a number of areas where determinations simply exclude those areas where the parties have agreed extinguishment has occurred.

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		to suggest that the PBC holds any monies received as payment for compensation: r.6(1)(c) and r.7(1)(c)). The RNTBC has no clear role in relation to extinguished areas, even where the areas of extinguishment were determined by the Court in proceedings in which the compensation applicants were found to be the native title holders over the surrounding or adjacent non-extinguished areas.		determined by virtue of the fact that they could not be claimed when the native title claim was brought (s.61A NTA)[2]. • Change the Regulations (including new sub-clauses under r.6 and r.7 stating that the PBC is empowered to manage all aspects of the common law holders' compensation entitlements).	
18.	Section 61A(2)/87/225 (also related to item 16)	Strict application of s.61A means areas where the parties have agreed extinguishment has occurred are excluded from determinations. Clarity is sought regarding the Federal Court's jurisdiction as part of a native title claim proceeding to consider areas where native title is extinguished within the external boundary of a claim (even where that claim is to be dismissed). States and Territories carry a significant burden in the analysis	•	• The Federal Court should be given (or this should be clarified to put it beyond doubt) the jurisdiction and be required to determine the extinguished areas within a claim at the time it recognises native title or prior to dismissal of a native title claim (where the tenure material is already tendered as evidence as part of the claim proceeding).	Minimises litigation and associated costs, and ensures certainty.

[2] Better yet would be to provide the Court with clear jurisdiction (and a requirement) to determine the extinguished areas within a claim at the time it recognises native title.

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		of current and historical tenures as part of the native title claims process. This due diligence is required to meet the State's obligation as a party to the native title claim proceedings, and to protect the interest of the State and third parties. The NTA is clear in section 61A of the NTA that an area subject to a PEPA cannot be claimed unless the section 47 suite applies. Due to this, the practice seems to be to simply exclude the areas agreed between the parties on the basis that they are PEPAs but there is no actual determination then made by the Court that the relevant interests/works are PEPAs. There are conflicting decisions of the Federal Court, which are adding to uncertainty and processing costs, as to whether the Court can make this finding of extinguishment when it has sufficient evidence before it. This matter should be put beyond doubt.			
19.	S 190C	Where a registered ILUA that validates past or future acts is subsequently removed from the		Amend s.190C of the NTA to clarify that validation of acts effected by ILUA is effective and	Clarificatory amendment to limit uncertainty and consequent court processes to confirm validation.

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		register for reasons unrelated to the validation, it should be clear that the validation effected upon registration of the ILUA in the first instance nevertheless remains effective.		can survive any subsequent de-registration of the ILUA for other reasons.	
20.	Part 11 Division 3	Victoria has a different statutory regime provided by the Traditional Owners Settlements Act (Vic) (TOS Act). To ensure Traditional Owner Corporations receive equivalent treatment to RNTBCs in relation to functions of NTRBs/Native Title Service Providers (NTSPs).		Victoria's key suggestion for amendments to the NTA is that the functions of the **NTRBs** and **NTSPs** under Division 3 of Part 11, including if functions are expanded or otherwise amended in future, should make explicit reference to such functions being performed in relation to: • persons who may hold native title *including where they seek a recognition and settlement agreement* under the TOS Act; and • in relation to *traditional owner group entities* who have reached a recognition and settlement agreement under Victoria's TOS Act.	The benefit is consistency and equity in the services NTRBs/NTSPs provide to traditional owner corporations, regardless of whether traditional owners hold rights pursuant to a NTA or TOS Act settlement or through a traditional owner group entity or RNTBC. This amendment supports the ongoing viability of Victoria's alternative approach to native title settlements under the TOS Act. The benefits of the alternative framework include: access to and transfer of land; simplified procedures for the future use of public land; payment of funds into the Victorian Traditional Owners Trust (to support the corporation's core functions and economic development); use, access and participation in the management of natural resources; and, agreement for joint management of conservation areas.

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					TOS Act settlements are designed to build sustainable traditional owner corporations, which is beneficial to Indigenous person, families and communities, government and industry.
21.	New provision similar to s 203FE	The future of the native title system lies with independent and sustainable RNTBCs. RNTBCs should be directly assisted, through funding, training and other means, not via NTRBs and NTSPs.		New provision similar to s 203FE that confirms that the Commonwealth may fund a PBC for various purposes including start-up and administrative/compliance costs.	Addresses post-determination issues where PBC is not affiliated with a NTRB or seeks independence but has no resources to manage its native title, engage with Cth, State or private stakeholders, or comply with the requirements of the CATSI Act. Eliminates double-handling of support funding currently provided via NTRBs, administration of and reporting against same. Enables RNTBCs to engage specialist expert advice relevant to their needs, rather than utilising the limited resources of NTRBs not equipped to manage the post-determination environment.
22.	S 211	It is currently unclear whether parties to an ILUA can vary the effect of s 211 in terms of the ability of native title holders to carry on traditional hunting, fishing, gathering, cultural or spiritual activities without a licence. The High Court's recent		Amend the ILUA provisions and/or section 211 to clarify that ILUAs can be used to vary the effect of the right to exercise native title rights to hunt, fish, gather or practice cultural or spiritual activities without a licence, where the parties so	Confirmation or clarification that native title holders can, if they wish to, agree via ILUA to the manner in which traditional hunting, gathering and fishing rights, along with the practice of cultural or spiritual activities will be exercised. The aim of this is to allow Governments

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		interpretation of this provision (particularly s 211(1)(ba)) is problematic viewed in the context of a wide range of existing State legislation that regulates the ability of all persons to (for example) take undersized fish or light fires on a day of total fire ban, albeit with a general power of exemption.		agree.	to negotiate with native title holders in an effort to overcome the difficulties posed by one sector of the community not being bound by some important laws of general application. It does not alter the balance of rights under the NTA as it would be up to the native title parties to decide on a case-by-case basis whether to agree to whatever is provided in an ILUA or not.
23.	s 253	The definition of "infrastructure facility" should be expanded to include rubbish tips and other waste disposal facilities including dredge spoil areas and waste rock dump areas.		Amend definition to include "waste facilities"	Existing definition includes any other thing similar to the things defined but only to the extent that the Cth Minister determines so. This ignores on-ground reality as, for example, dredge spoil and waste areas are commonly part of mining activities. Current definition of infrastructure facility which includes such activities requires the proponent to abide two NTA processes (RTN and no RTN) which leads to delays and increased costs which impact on economic development opportunities for proponents and native title parties. Similarly, the amendment would ensure certainty of process for the creation of tenure for rubbish tips, thus alleviating critical waste management issues in remote

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					communities.
24.		Where a NTRB incorporates a default PBC the membership should include not only the executive of the NTRB but also the native title holders, or at least some of them.		Introduce provisions for the establishment and membership of PBCs ensuring that native title holders are represented on any default PBC.	Proposed in the interests of fair representation. Will limit disputes and delays, and costs associated with dispute resolution processes.
25.	Section 141(10) CATSI Act New provision in Division 66 of CATSI Act	The current provisions allow for arbitrary exclusions of rights-holders (whether the holders of native title rights under the NT Act or the holders of traditional owner rights under the TOS Act) from a corporation that will have been established to hold and manage their rights. This rule is currently not even replaceable. Also, the current provisions limit requirements for dispute resolution rules to disputes between members, when disputes about membership are fundamental to the capacity of a corporation to act for rights-holders. Rules regarding membership disputes could include either party to such a dispute being able to refer the dispute to ORIC, whose functions already include assistance with the resolution of disputes between a corporation		Victoria seeks amendment of the *CATSI Act* in relation to membership applications as follows: • to remove the capacity of directors to refuse to accept membership applications even where applicants apply in the required manner and meet eligibility for membership requirements; and • to expand the internal governance rules requirements in relation to the resolution of disputes so that they deal not only with disputes internal to the corporation (between members), but also to disputes between the corporation and persons who have applied to become members of the corporation. These suggestions are considered important in relation	Benefits arise from reduced litigation, mediation, facilitation and community meeting costs: • disavowed native title holders represent a significant drain on native title resources, including those of RNTBCs, NTRBs/NTSPs, State Government Solicitor's Office, State Departments with role in administering NTA • these resources are directed away from the resolution of other native title claims and the resourcing of existing traditional owner corporations • disenfranchised native title holders may bring court proceedings (e.g. discrimination proceedings in Victorian Civil and Administrative Tribunal) or

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		and others - see s.658-1 (1)(f)(ii).		to corporations on the Register of Native Title Claims under the NTA as well as corporations that have entered into a recognition and settlement agreement under the TOS Act.	pursue native title claims to the Federal Court (e.g. Jupagulk claim) Benefits arising from addressing lateral violence resulting from native title processes: • the 2011 Native Title Report starts the conversation on lateral violence and recommends that the Australian Government pursue legislative and policy reform that empowers Indigenous peoples and their communities to create a just and equitable native title system (p. 188-189). An amendment to the CATSI Act to remove the capacity of directors to refuse eligible membership applications may be consistent with this recommendation. Benefits for individual native title holders denied RNTBC membership: • when native title holders are denied RNTBC membership, they are effectively disavowed of their native title decision-making powers An amendment to the CATSI Act

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					to remove the capacity of directors to refuse eligible membership applications will address the arbitrary exclusion of right holders from a corporation established to hold and manage their rights.
26.	Taxation re payments by payees	To clarify the tax deductibility for the payee of payments made to a native title party under an ILUA and the payee's costs incurred in negotiating the ILUA. This is directed at reducing or exempting GST liability on a transaction (whether land or otherwise) as part of an ILUA process to assist stakeholders. There have been a number of recent and very useful reforms by the Australian government as to how native title fits within the tax system and charity regime. Previous advice was this could only be done on a case by case basis.		An amendment is sought to clarify this issue to support stakeholders participating in the ILUA process.	Clarificatory amendment will enable more efficient and effective agreement-making.