



Submission - Public Housing and Infrastructure - Native Title Amendments

1. Background

- 1.1. For over a century the Local Government Association of Queensland (LGAQ), as the peak body and official voice of Queensland councils, has been representing and supporting Queensland local government.
- 1.2. Local government in Queensland consists of 73 Councils, including 16 Indigenous Councils.
- 1.3. The majority of Indigenous Queenslanders do not live within Indigenous local government areas, though many live in outer regional, remote and very remote parts of Queensland. *Annexure One* summarises the Indigenous population distribution throughout Queensland.
- 1.4. Local Government is the key provider of public amenities to the Queensland community and for many years has been complying with the complex future act framework in the *Native Title Act 1993*. *Annexure Two* breaks down the 06/07 Queensland local government expenditure by purpose, illustrating that 30% of expenditure in that financial year was spent on housing and community amenities (including water & waste water). This proportion has probably increased since then.
- 1.5. Too frequently local government must extinguish native title in order to provide community services such as housing and community amenities; and also in order to provide for future economic development, for example by establishing an industrial estate.
- 1.6. Queensland local government preference is to reach agreement about the acquisition of native title, rather than exercise its compulsory acquisition powers.
- 1.7. Experience however illustrates that both the resources and time involved in negotiating and registering an Indigenous Land Use Agreement (ILUA) is too great, given both the type of public development proposed by local government and also the time frames attached to associated grants the local government often rely upon. Consequently Queensland local government will usually compulsorily acquire native title [and compensation is then paid in accordance with the *Acquisition of Land Act (Qld) 1967*].

2. Future Acts Process for Public Housing and Infrastructure

- 2.1. Local government is very aware of the uncertainties currently arising under the current future act regime as outlined in both the discussion paper and the additional information attached to it, and also the costs attached to related due diligence. Local government has had to manage this uncertainty since 1993.

Extend the Application of the Non-Extinguishment Principle

- 2.2. Queensland local government considers the non-extinguishment principle should apply more broadly than is either currently possible under the *Native Title Act 1993* or could be possible under the proposed amendments; particularly with regard to public services including public housing, infrastructure and community economic development initiatives.
- 2.3. There are instances, for example the construction of a water treatment plant, where there seems to be no need to extinguish native title. It would be preferable (though it is not legally possible at present) for native title to have the capacity to revive, if only in the

distant future, should the location of the related infrastructure change or in the event there is no need to continue a particular public services.

Extend the Application of the Proposed Amendments

- 2.4. The discussion paper suggests the proposed amendments would only apply to public housing and infrastructure in “remote Indigenous communities”. There is no indication of how this phrase will be defined and therefore the extent of the areas that will be affected, save that the paper states that these *include* locations covered by the National Partnership on Remote Service Delivery.
- 2.5. In the Budget 2009-10¹ the National Partnership locations in Queensland were identified as Mornington Island, Doomadgee, Hope Vale and Aurukun (together with continuing work in Mossman Gorge and Coen which are also part of the Cape York welfare reform trial).
- 2.6. In Queensland most Indigenous Australians do not reside in the National Partnership locations nor do they reside in Qld Indigenous local government areas.
- 2.7. Overcrowding and poor standards of housing and public infrastructure are problems in many areas throughout Queensland. Local government regularly considers how to obtain the resources needed to improve the standard of living for all its constituents, and in particular Indigenous people.
- 2.8. By way of an example, Boulia Shire Council is currently preparing a Community Plan for the township of Urandangie where there is a high percentage of Indigenous residents. The plan will identify a range of measures aimed at improving the facilities available to that community. The suggested amendments should apply to any public housing and infrastructure that is planned in Urandangie. It should also apply to similar initiatives throughout Queensland.
- 2.9. An artificial attempt through legislation to limit the area to which the proposed amendments apply will be confusing and will result in uneven delivery of public works and infrastructure to Indigenous people. The proposed amendment should apply to all public housing and infrastructure initiatives throughout Australia.
- 2.10. Limiting the areas to which these proposed amendments apply also fails to acknowledge that the provision of public housing, infrastructure and economic development anywhere benefits either directly or indirectly any Indigenous Australian who is a member of the relevant community.

Economic Development

- 2.11. Whilst housing and public infrastructure is needed in many remote areas of Queensland; if there is no opportunity for economic development within such communities a high dependence on government assistance will continue into the future.
- 2.12. Many communities with a high proportion of Indigenous residents are seeking out private investments and assistance with a view to stimulating economic development.
- 2.13. The uncertainties of the future act regime are a significant deterrent to private investment anywhere, and more particularly in those areas of most need. Whilst this may not be an issue that can be readily addressed in the proposed amendments, LGAQ considers it is an issue that all Government must face and will require further amendments to the *Native Title Act 1993* to properly address.

3. Proposed Amendment - Response to Questions Posed

- 3.1. *Would the addition of a specific native title process for public housing and infrastructure in remote Indigenous communities assist the supply of adequate housing and raise the standard and range of services delivered to Indigenous families in remote communities?*

¹ Source: http://www.ato.gov.au/budget/2009-10/content/ministerial_statements/indigenous/html/ms_indigenous-03.htm
LGAQ Submission - Native Title Amendments - 04 September 2009

Native title compliance is only one of a large range of statutory compliance issues that apply when housing and infrastructure is constructed. In general, compliance is also only one aspect of project management and service delivery, and other issues may also delay the delivery of housing and other services.

By way of an example, in Queensland the recent Commonwealth funding allocations for public housing and infrastructure has triggered Queensland State government land tenure reforms that affect all Queensland Indigenous local government areas. The legal and operational outcomes of these land tenure reforms remain uncertain. Indigenous Councils are unclear about who will be responsible for social housing in the future, and how to introduce the collection of levies and service charges.

Local government experience is that if *all* other aspects relating to a project are efficiently attended to, the amendments proposed could reduce the time and resources expended on native title compliance, *if* strict time frames apply to the consultation.

3.2. What particular requirements about consulting with native title holders would ensure native title is taken into account in engagements between governments, service providers and Indigenous communities about the design and delivery of housing and infrastructure services?

There are a number of Court and Tribunal decisions relating to consultation/negotiation under the *Native Title Act 1993* (and relating to Indigenous heritage processes) that should inform consultation requirements.

From a practical perspective, the consultation process will only provide the efficiencies sought if:

3.2.1. A strict time frame applies to the consultation process.

3.2.2. The consultation requirement is only triggered in areas where there are either recognised native title holders or registered applicants. In this regard, it would be desirable to specifically state that there is no requirement to consult with all claim group members.

3.2.3. Should an Indigenous party fail to respond within a specified time frame during consultations, then the consultation requirement should be deemed to be met.

3.2.4. If an agreement cannot be reached within a specified time frame because of intra-Indigenous conflict (arising from overlapping registered claims), then the consultation requirement should be deemed to be met.

3.2.5. Any appeal or grievance mechanism included must be quick and simple (the experience of the National Native Title Tribunal could perhaps be drawn upon).

The engagement between governments, service providers and Indigenous communities about the design and delivery of housing and infrastructure services should be kept completely separate and distinct from native title consultation. An Indigenous community will include many residents who are not living on their traditional country and therefore whilst not involved in native title consultation, should be included in broader engagement.

3.3. Are any concerns raised by the Government's proposed positions, that:

(i) The 'non-extinguishment principle' should apply to acts covered by the new process

No. As indicated in a separate section of this submission, LGAQ considers this principle should apply even more broadly.

(ii) Compensation should be available for any impact on native title of acts validated by the new process, and

No, as long as the current compensation provisions within the *Native Title Act 1993* continue to apply.

(iii) *Heritage protection through other legislation should be a precondition to the new process being available?*

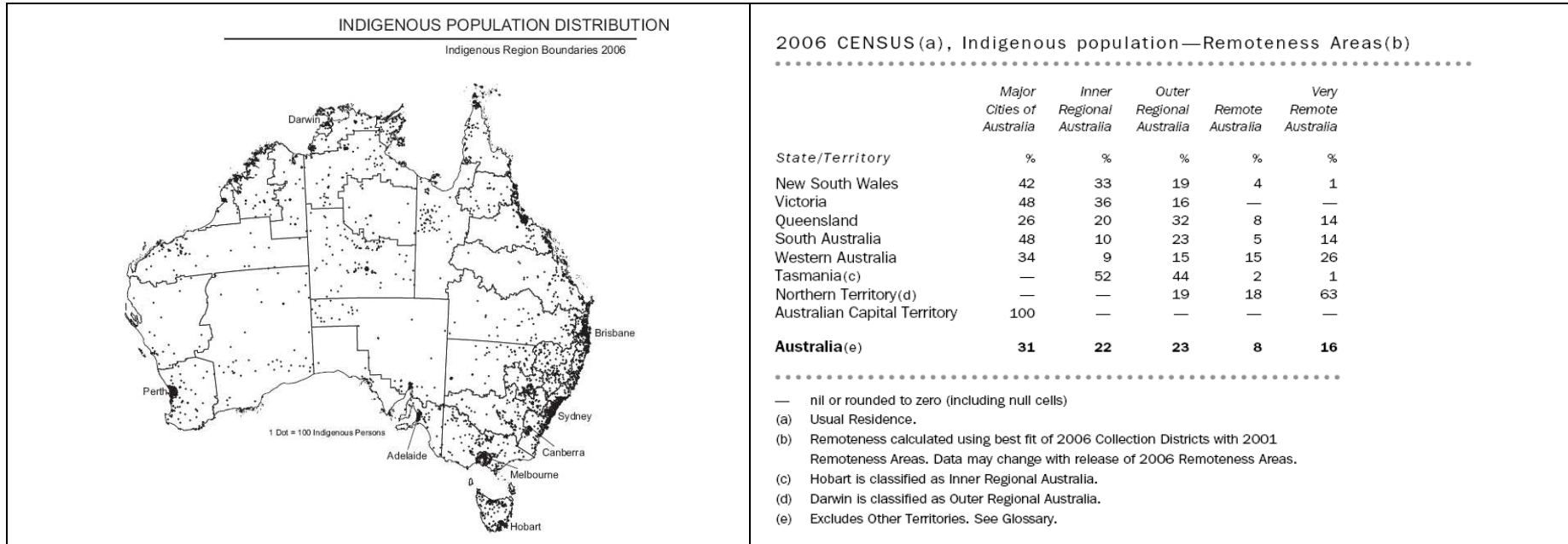
The provisions of the *Aboriginal Cultural Heritage Act (Qld) 2003* and *Torres Strait Islander Cultural Heritage Act (Qld) 2003* apply regardless. In the Queensland context, it isn't necessary to include this precondition.

4. Summary

- 4.1. The amendments proposed to the *Native Title Act* should not be restricted to “remote Indigenous communities” (however that is ultimately defined). The amendments should apply throughout Australia, without distinction.
- 4.2. As a matter of broad principle, local government supports the proposed amendments. However the amendments proposed do not go far enough.
- 4.3. The proposed amendment Bill should extend the scope of the proposed amendments so that:
 - 4.3.1. The non-extinguishment principle applies to all public housing and infrastructure unless a form of perpetual tenure/ownership is sought or necessary.
 - 4.3.2. The amendments apply to all public housing and infrastructure initiated by Commonwealth, State or Local governments.
- 4.4. The proposed amendments will only simplify and expedite the current compliance process if:
 - 4.4.1. all other aspects of project management are streamlined and actions are completed in a timely manner; and
 - 4.4.2. what constitutes satisfactory consultation is clearly articulated and includes time-frames and the deeming provisions detailed in paragraph 3.2.
- 4.5. The proposed amendments may assist in increasing the speed in which public housing and infrastructure is constructed in the short-term. However the amendments do not address the issue of how to attract private investment into areas of need when the current future act compliance regime deters such investment. This is an issue that must also be addressed in order to achieve the long term objectives of the “Closing the Gap” strategy.

Appendix One - Indigenous Population Distribution

Source: Australian Bureau of Statistics *Population Distribution, Aboriginal and Torres Strait Islander Australians 2006*
 [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/377284127F903297CA25733700241AC0/\$File/47050_2006.pdf]



INDIGENOUS STATUS - QUEENSLAND					PROPORTION OF POPULATION	
Geographic Region (Queensland)	Indigenous (no.)	Non Indigenous (no.)	Status Unknown (no.)	Total (no.)	Indigenous (%)	Status Unknown (%)
Brisbane	41 369	2 403 934	145 040	2 590 343	1.6	5.6
Cairns	18 267	166 260	15 733	200 260	9.1	7.9
Cape York	6 944	4 922	821	12 687	54.7	6.5
Mount Isa	6 998	18 853	3 100	28 951	24.2	10.7
Rockhampton	15 114	365 438	22 248	402 800	3.8	5.5
Roma	12 247	279 986	14 012	306 245	4.0	4.6
Torres Strait	7 106	1 242	225	8 573	82.9	2.6
Townsville	19 039	300 418	22 314	341 768	5.6	6.5

Annexure Two

Queensland Local Government

Expenditure By Purpose 2006 - 2007 (Source: ABS Cat. 5512.0, 2006/07)

2006/07	\$ million	%
General public services	\$1,511	25.1%
Public order and safety	\$103	1.7%
Education	\$2	0.0%
Health	\$41	0.7%
Social security and welfare	\$50	0.8%
Housing/community amenities (incl. water & waste water)	\$1,840	30.6%
Recreation and culture	\$574	9.5%
Fuel and energy	\$3	0.0%
Agriculture, forestry and fishing	\$29	0.5%
Mining, manufacturing and construction	\$91	1.5%
Transport and communications	\$1,387	23.1%
Other economic affairs	\$131	2.2%
Public debt transactions	\$179	3.0%
Other	\$75	1.2%
Total Expenditure	\$6,016	100.0%

(Source: ABS Cat. 5512.0, 2006/07)