



Ms Caroline Edwards  
Manager - Land Reform Branch  
FaHCSIA  
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Dear Ms Edwards

Thank you for the opportunity to make comments on the possible amendment to the *Native Title Act 1993 ("NTA")* as outlined in the discussion paper *Possible Housing and Infrastructure Native Title Amendments*.

As you are aware, Western Australia is keen to expedite infrastructure and new housing development in Aboriginal communities. The requirement to develop Indigenous Land Use Agreements in order not to extinguish Native Title is a lengthy process resulting in delays in new housing construction.

The key issues for the Department of Housing are:

- The length of time to develop Indigenous Land Use Agreements, particularly where the resident population is not entirely made up of members of the native title claim group or the native title holders' prescribed body corporate.
- The cost of developing Indigenous Land Use Agreements.

The Department is keen to ensure that genuine consultation precedes land and infrastructure development. The *Aboriginal Heritage Act 1972* establishes a process that requires the Department to engage with the Traditional Owners as well as the local population before any development. Usually, this consultation would occur as part of the process to identify an appropriate location for the housing and infrastructure development. The Department of Housing supports a process that would recognise that consultations to meet *Aboriginal Heritage Act 1972* requirements have occurred prior to NTA future act notification.

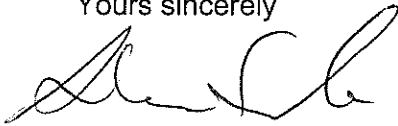
It is understood that the Commonwealth position is that Indigenous Land Use Agreements are the preferred approach and that the proposed alternative approach is used to expedite works when an Indigenous Land Use Agreement cannot be developed quickly enough to meet agreed program milestones. This will not solve the current problems. The Department of Housing would argue that a more simple and expeditious mechanism that included the non-extinguishment principle coupled with consultation around location, use and heritage impacts is sufficient. This is the Department of Housing's preferred mechanism, with Indigenous Land Use Agreements only used where due to complexities this approach cannot be used.

It is understood that the Commonwealth is seeking to tie these changes to the current policy priority on remote areas. The Department of Housing is not keen to see legislation codify a separation between Aboriginal people living in remote areas from those in non remote areas. The Department supports the use of a more simple and expeditious mechanism to support social housing and infrastructure development for all Aboriginal people in Western Australia. Policy priorities can drive investment, leaving the legislation broad enough to include all Aboriginal Western Australians.

It is further understood that the Commonwealth proposes to manage the issue of compensation by leaving it open. The Department of Housing views compensation as not being required for social housing provision as social housing provides a direct benefit for the community. The Department recognises that there may be more complex issues around compensation in situations where the Traditional Owners are not members of the community and will not derive a direct value from the social housing provided.

The Department of Housing supports moving quickly on developing these proposed amendments to enable new housing development to proceed at a faster pace. We look forward to commenting on the next set of papers.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Searle', written in a cursive style.

Grahame Searle  
**DIRECTOR GENERAL**

4th September 2009