



Government of Western Australia
Department of the Attorney General

Office of Native Title

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Our Ref : 2009/01538; 2009/004158

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Ms Caroline Edwards
Manager – Land Reform Branch
FaHCSIA
PO Box 7576
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Dear Ms Edwards

**RE: COMMONWEALTH DISCUSSION PAPER ON POSSIBLE HOUSING AND
INFRASTRUCTURE NATIVE TITLE ACT AMENDMENTS**

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

The State Government has already indicated to the Commonwealth that it would welcome amendments to the NTA to expedite the construction of new housing and infrastructure development in Aboriginal communities.

Aboriginal communities, in Western Australia are generally located on Crown reserves for the use and benefit of Aboriginal inhabitants managed by the Aboriginal Lands Trust (ALT), a statutory body established under the *Aboriginal Affairs Planning Authority Act 1972 (WA)*, and other Crown lands.

The State Government is committed to improving the delivery of public housing and infrastructure to Aboriginal communities.

However, the lack of appropriate and efficient processes under the existing future act subdivisions of the NTA, the legal uncertainty of the application of Subdivision J to ALT reserves, and the consequent requirement to negotiate and register Indigenous Land Use Agreements (ILUAs) in order to apply the non extinguishment principle, has resulted in delays in the construction of public housing and infrastructure.

With regard to the specific proposals outlined in the discussion paper, it seems especially important that any amendments to the NTA should maintain the integrity and consistency of the future act processes as they currently exist in the future act subdivisions of the NTA.

In the particular circumstances of Western Australia a possible solution would be the amendment of Subdivision J of the future act subdivisions of the NTA to make clear that it applies to Crown reserves for the use and benefit of Aboriginal persons (a general form of words to apply it to "Aboriginal land" could be used), and that the non extinguishment principle would apply to the construction of any "public works" such as housing and infrastructure. Such an amendment should not, however, affect the ability of other State Government agencies to rely on Subdivision J .

The procedural rights currently available under Subdivision J would apply, ensuring consistency of approach within Subdivision J.

The type of amendment proposed here would assist with smaller projects where the State has to deal with an immediate need, allowing ILUAs to be used where there is a large project or where more complex issues are involved.

This approach would seem preferable to inserting a new future act subdivision in the NTA.

Likewise, attempting to define genuine consultation as part of the applicable procedural rights afforded to native title parties would be inconsistent with existing future act subdivisions of the NTA.

The State believes that genuine consultation already needs to take place, pursuant to the relevant State legislation, particularly the *Aboriginal Heritage Act 1972 (WA)*, making such consultation necessary even in the absence of a NTA future act process.

It is also noted that the amendments envisaged in the discussion paper appear to relate only to "remote" communities – a distinction that does not currently exist in the NTA.

Introducing such a definition in the NTA would effectively create two classes of native title parties when it comes to the delivery of State housing and infrastructure in Aboriginal communities.

From the Western Australian perspective, amending Subdivision J to allow for the construction of public housing and infrastructure in Aboriginal communities on ALT reserves, without regard to geographical location, would be a more logical approach.

If you have any questions about any of the matters raised please contact Mr Trevor Ramsden, Future Acts Director on telephone (08) 9222 9840 or via email Trevor.Ramsden@justice.wa.gov.au.

Yours sincerely



GARY HAMLEY
EXECUTIVE DIRECTOR