



Yamatji Marlpa
ABORIGINAL CORPORATION

Our Ref: GEN377:SUBMISSIONS:MM:vd

4th September 2009

Caroline Edwards
Manager – Land Reform Branch
FaHCSIA
PO Box 7576
Canberra Mail Centre ACT 2612

Dear Caroline,

RE: DISCUSSION PAPER ON POSSIBLE AMENDMENTS TO THE NATIVE TITLE ACT FOR HOUSING AND INFRASTRUCTURE

Thank you for the opportunity to comment on the Government's proposal to amend the Native Title Act to include a specific process to permit public housing and infrastructure in remote Indigenous communities. My response is as follows:

Q. 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?

It would be useful to have a process which can enable such matters to occur in a way that is faster than what is required for an ILUA, but this should be done in a way to ensure that the native title claimants consent to it and are not merely consulted. If the matter is really in their interests, one would imagine that consent should be forthcoming quickly.

Q. 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?

This can be done by providing for a future act process along the lines suggested (i.e. non-extinguishing, subject to compensation and usual heritage protection) but with the amendment that instead of only requiring the government to consult, that it require an agreement between the registered native title claimants and the State. The mechanism provided for can be that where the parties enter into and lodge an agreement with the NNTT, then the act may be done. To provide further protection in case claims are not yet registered, there could be

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the notification process as for RTN future acts, and consideration can be given to making that period shorter. If there is a disagreement, then there is still the option of an ILUA.

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

- (i) The 'non-extinguishment principle' should apply to acts covered by the new process
- (ii) Compensation should be available for any impact on native title of acts validated by the new process, and
- (iii) Heritage protection through other legislation should be a precondition to the new process being available?

I consider that the application of the "non-extinguishment principle" and ensuring that compensation be available for any impact on native title of acts validated by the new process indicate that the government is genuine about minimising the impact of public housing and infrastructure on native title.

Finally the retention of Heritage Protection under existing state legislation is critical to the success of the program as it enables the traditional owners to make sure that "the country is safe" and can be used for the intended purpose. Adequate heritage protection provisions which include arrangements for the provision of heritage surveys can be adequately provided for in the agreement between the native title claimants and the state referred to above.

Yours faithfully,



MICHAEL MEEGAN
PRINCIPAL LEGAL OFFICER