



Hon Stephen Robertson MP

Member for Stretton
Ref CTS 13015/09



**Minister for Natural Resources,
Mines and Energy and
Minister for Trade**

Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on
Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Hallahan

Inquiry into the Native Title Amendment Bill (No 2) 2009

In response to your invitation, the Queensland Government makes this submission to the Standing Committee on Legal and Constitutional Affairs' inquiry into the Native Title Amendment Bill (No 2) 2009.

The State's submission is directed at a deficiency identified in the Bill which may frustrate part of the Bill's policy objective identified by the Commonwealth Attorney-General when he introduced the Bill into the House of Representatives.

That part of the Bill's policy objective relates to assisting the timely provision, establishment and operation of a limited class of community facilities on Indigenous lands – that is, public education facilities, health facilities, police facilities and emergency facilities - by providing a new simple native title process in proposed section 24JAA.

The deficiency in the Bill is that the new staff housing which is required to deliver services and to operate the types of facilities specified is not addressed by the new simple native title process. In particular paragraph 1.6, first dot point, of the Explanatory Memorandum specifically identifies that housing for community service staff is not covered.

In some cases it may be possible to argue that new staff housing is in fact 'incidental' to the use of the community facility in accordance with paragraph 1.6, second dot point, of the Explanatory Memorandum, especially where the housing is collocated with the facility. However this argument becomes tenuous when town plans might dictate that community service staff housing not be collocated but integrated within the Indigenous community. In this case the policy objective of the Bill may be frustrated because the operation of the facility is compromised by the timeframes necessary to address native title either by an Indigenous land use agreement or by compulsory acquisition for the required staff housing.

A second issue is in relation to any consultation which may be requested by a registered native title claimant or registered native title body corporate following notification. While section 24JAA(14) in the Bill provides some guidance about the nature and purpose of the consultation, it does not state that the consultation should be undertaken with a view to reaching agreement to the doing of the act. This is something that could be set out explicitly in the legislative instrument to be made by

Level 17
61 Mary Street Brisbane 4000
PO Box 15216 City East
Queensland 4002 Australia
Telephone +61 7 3225 1861
Facsimile +61 7 3225 1828
Email nrmet@ministerial.qld.gov.au

the Commonwealth Minister. This, we believe, is consistent with the expectation of “genuine consultation” raised in the discussion paper released in August 2009.

It would be disappointing to say the least, if the State found itself in the circumstance where infrastructure necessary to “close the gap” could be provided but the operation of that infrastructure was frustrated because of the timeframes required to address native title for staff housing.

Thank you for providing the opportunity to make this submission.

Yours sincerely



STEPHEN ROBERTSON MP



DESLEY BOYLE MP