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Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100 Parliament House,
Canberra ACT 2600

Sent via email to: legcon.sen@aph.gov.au

Dear Ms Morris

Inquiry into the Native Title (Technical Amendments) Bill 2007

Thank- you for the opportunity to comment on the above Bill. There is one substantive submission which the Local Government Association of Queensland (LGAQ) wishes to make not only on behalf of its own members but also local government throughout Australia.

In its submission of January 2006 regarding technical amendments to the *Native Title Act* 1993 (the Act), LGAQ suggested that section 24LA of the Act be amended to ensure its operation continues after a native title determination recognising native title is made (Attachment A outlines the relevant submission). In the second related discussion paper released by the Government on 22 November 2006 this proposal was adopted with minor changes as detailed in Attachment B.

The Committee is strongly urged to ensure the current Bill *does* include the section 24LA amendment proposed. This does not appear in the current Bill.

In summary, section 24LA of the Act currently allows local government and others to proceed with 'low impact' work without prior compliance with any procedural requirement. The type of Council work covered by this section does *not* include any major building, infrastructure work, or significant interference with the land as such categories of Council work is mostly captured by section 24KA of the Act which is titled 'Facilities for services to the public'.

A 'low impact' act is not defined in the Act, however section 24LA(2) makes it clear that it can only be activity that is carried out:

- because it is reasonably necessary for the protection of public health or public safety,
- for ordinary operational tree lopping on any land,
- for the clearing of noxious or introduced animal or plant species,
- for foreshore reclamation, or
- for regeneration or environmental assessment or protection activities.

It is our submission that on balance there is a medium to high risk that the delays arising from meeting prior native title procedural requirements before a Council commences needed work will result in harm to public health or public safety; and there is an extremely remote risk that 'low impact' acts as currently described in the Act would interfere with any recognised native title right that is not of an exclusive nature.

Until now, in the limited number of consent determinations that have been made in Queensland, Councils have entered into a separate Indigenous Land Use Agreement to ensure native title procedural requirements don't prevent Councils from taking prompt action to protect the public, and to ensure Council can continue to carry out day-to-day low impact activities without the burden of prior notification to native title holders.

Every Australian Council will be faced with two options if the proposed amendment to section 24LA is not made. Either a Council will have to enter into negotiations with each claimant group in its local government area (in Queensland this is at least five groups per Council) to ensure the intent behind the current section 24LA remains in force post determination, and then record any agreement reached in an Indigenous Land Use Agreement. That Agreement must firstly go before the relevant claim group for authorisation (an expensive exercise) and then be considered by the National Native Title Tribunal for registration (a minimum 6 month process). Alternatively once a determination is made a Council will always need to issue notices to native title holders at least 28 days prior to undertaking any 'low impact' work regardless of public health and public safety or the type of work being undertaken.

Either option represents a significant outlay of resources, significant loss of productive time, and an onerous administrative burden. This is unjustifiably burdensome given the sort of community focused work under consideration, its 'low impact' nature, and the possible risk to public safety and health. It is also worthy of note that there is separate State and Commonwealth legislation pertaining to Indigenous cultural heritage that must still be complied with when a Council undertakes a 'low impact' act, notwithstanding the provisions of the Act.

In summary, it is submitted that the Bill must include necessary amendments to section 24LA of the Act such that:

a) Section 24LA(1)(a) is removed. This subsection restricts the application of this section to acts performed prior to a determination of native title.

b) There is no restriction on the ongoing application of section 24LA(2)(a). This subsection refers to excavation or clearing reasonably necessary for the protection of public health or public safety.

c) There is no restriction on the ongoing application of section 24LA(2)(b) unless an exclusive native title right is recognised in the proposed work area, in which case a procedural requirement to notify similar to section 24KA would apply. This subsection refers to the other types of 'low impact' acts described earlier in this submission.

I appreciate the opportunity to address the Committee on this issue which has broad implications for local government throughout Australia. For further information please do not hesitate to contact **Steve Greenwood, Manager Environment & Planning** on 07 3000 2237 or steve_greenwood@lgaq.asn.au

Yours sincerely

Greg Hoffman PSM
DIRECTOR
POLICY AND REPRESENTATION
dc:sm

LOCAL GOVERNMENT
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Submission on Technical Amendments to the *Native Title Act* 1993

Section 24LA Low impact future acts Local governments regularly conduct low impact acts. These are sometimes done with either administrative State permission or under an administrative agreement with the State, for example: destroying noxious weeds on State land. These acts are inevitably always conducted for community benefit and some such as tree lopping or drainage clearance ensures public health and safety. Until a native title determination there is no prior notification procedure for low impact acts. Post native title recognition the Act is silent on the necessary process. In some instances s24KA may apply, otherwise it will be necessary for each Council and native title holders to agree on a low impact act procedure and record this in an ILUA.

It is suggested that this section should be amended to allow local government bodies to continue carrying out low impact future acts after native title rights are recognised without any notice requirement if these acts benefit the public, or are of the nature of the acts currently detailed in the s24LA(2). As the acts are 'low impact' in nature there is a negligible risk that these may even temporarily impact on native title rights; whereas the risk that delays caused by native title processes/negotiation could result in public or individual harm is far higher.

Requiring an additional process in such circumstance is also excessive given that all parties are both time and resource constrained and native title claimants and native title holders are struggling to cope with significant future acts as well as cultural heritage administrative processes.

In summary, as the nature of the acts involved are necessary, routine, low impact and for community benefit and/or safety there should never be any native title act process applicable, unless one is voluntarily agreed between the parties. The potential delays and associated risks, plus the cost and time involved in complying with native title processes not otherwise agreed is unwarranted in for this such acts.

Technical amendments to the *Native Title Act 1993*
Second Discussion Paper

Section 24LA: allow government bodies to continue to carry out certain acts for community benefit or public safety following a determination of native title

1. Section 24LA permits certain future acts which have a minimal effect on native title to be done without the need to comply with any procedural requirements. Section 24LA(2) relevantly allows excavation or clearing undertaken for the protection of public health or safety, or for environmental protection, to be carried out as a low impact future act. However, such acts may not be carried under the authority of this provision after a determination native title exists over the land. It has been suggested the authority to conduct such acts for public health or environmental protection should continue to apply after a native title determination has been made. This is considered preferable to requiring parties to conclude an Indigenous Land Use Agreement, which will take considerable time and may not be practicable in urgent circumstances.

2. The proposed amendments to the NTA will include an amendment to allow such acts to be carried out by or on behalf of Government authorities for reasons of public health or safety or environmental protection, but only in circumstances where the determined native title holders do not have exclusive rights over the relevant land. Where the native title holders have exclusive rights (akin to those of freehold owners or exclusive lessees) then the relevant government bodies should be required to consult the native title holders through the prescribed body corporate before undertaking such activities on the land. Where the relevant rights are not exclusive, authorities should remain able to conduct activities necessary for public health or safety and for protection of the environment.