



THE CABINET OFFICE  
NEW SOUTH WALES


TCO/15162

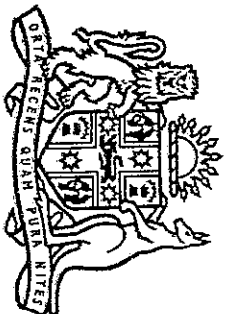
Senator Guy Barnett  
Committee Chair  
Standing Committee on Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Senator Barnett

Please find attached the NSW Government's submission in relation to the Inquiry into the Native Title Amendment (Technical Amendments) Bill 2007.

Yours sincerely,

  
J.L. Schmidt  
Acting Director-General



NSW GOVERNMENT

SUBMISSION

INQUIRY BY THE SENATE COMMITTEE ON LEGAL  
AND CONSTITUTIONAL AFFAIRS INTO THE  
COMMONWEALTH NATIVE TITLE AMENDMENT  
(TECHNICAL AMENDMENTS) BILL 2007

INQUIRY INTO THE COMMONWEALTH NATIVE TITLE  
AMENDMENT (TECHNICAL AMENDMENTS) BILL 2007

SUBMISSION FROM THE NSW STATE GOVERNMENT

1. Proposed technical amendments contained in the *Native Title Amendment (Technical Amendments) Bill 2007*

In general terms, the NSW Government has no objections to the amendments to the *Native Title Act 1993* (the NTA) proposed in the *Native Title Amendment (Technical Amendments) Bill 2007*. The amendments are considered to be minor, non-controversial, technical amendments.

2. Additional suggested technical amendments

In addition to the amendments set out in the *Native Title Amendment (Technical Amendments) Bill 2007*, the NSW Government makes the following suggestions for technical amendments designed to improve the operation of the NTA. Some of these were contained in the NSW Government's previous submission to the Commonwealth Attorney General's Department and some were canvassed in the second Discussion Paper. The NSW Government believes these minor, technical amendments are important and should be reconsidered for inclusion in the Bill.

2.1 Amendment of Section 190A

The NSW Government supports the proposed amendments to section 190A so as to exempt from the operation of the registration test amendments to applications that merely reduce the area of a native title application.

In addition, the NSW Government submits that the proposed amendments should be expanded to exclude from the requirement to apply the registration test amendments to the application to remove the name(s) of deceased claimants from the application, or to make purely procedural changes such as changing the address for service. These amendments to a native title application do not affect the substance of the claim and re-applying the registration test in these circumstances will protract the native title process.

2.2 Amendment of Indigenous Land Use Agreement (ILUA) provisions

The NSW Government submits that the proposed amendments to the ILUA provisions in the *Native Title Act 1993* raised in the second Discussion Paper (paragraphs 22-24) be adapted to clearly provide that minor amendments

(such as a change of address or change of contact details) can be made to an ILUA without the need for the ILUA to be taken from the Register, re-authorized and re-registered.

In its current form, the *Native Title Act 1993* does not expressly provide for minor amendments to be made to ILUAs. This is clearly not a workable situation given that changes of contact details and other minor amendments to ILUAs become necessary on a regular basis.

### **2.3 Consistency between subsection 24MD(6B) and Subdivision P**

Subsection 24MD(6B)(a) of the NTA provides that, where certain types of acts are proposed over land or water (for example, compulsory acquisitions by governments for the benefit of third parties), the consequences listed in subsections 24MD(6B)(c)-(g) apply. Subsections 24MD(6B)(c)-(g) set out a consultation and objection process for registered claimants.

A note in the NTA to subsections 24MD(6B)(a) and 24MD(6B)(b) adds that the acts covered by those paragraphs are not covered by Subdivision P (the right to negotiate).

However, subsection 26(1)(c)(iii)(A) (contained in Subdivision P) provides that Subdivision P (the right to negotiate) will apply to future acts unless the purpose of the compulsory acquisition is to confer rights or interests on the government party and the government party makes a statement in writing to that effect before the acquisition takes place.

Given that these provisions appear to be contradictory, an amendment should be made to clarify the provisions.

### **2.4 Allowing government bodies to carry out certain acts for community benefit or public safety**

The NSW Government notes that amendments to section 24LA which were proposed in the second Discussion Paper (at paragraphs 30-31) to allow government bodies to continue to carry out certain acts for community benefit or public safety following a determination of native title have not been included in the draft Bill.

The NSW Government submits that the proposed amendments contained in the second Discussion Paper to section 24LA should be re-considered for inclusion in the Bill as these will allow the Government to act in the interests of the community and public safety where such action may be required in urgent circumstances.