

**Parliamentary Joint Committee on  
Native Title and the Aboriginal and  
Torres Strait Islander Land Fund**

***OPERATION OF THE NATIVE TITLE ACT***

**Inquiry Into The Effectiveness Of  
The National Native Title Tribunal**

**Submission No:16**

**Mr Greg Hoffman PSM**

**Director, Policy and Research**

**Local Government Association of  
Queensland Inc.**

**PO Box 2230**

**FORTITUDE VALLEY BC QLD 4006**

**☎ 07 3000 2222 📄 07 3252 4473**

**E-mail:**

**LOCAL GOVERNMENT  
ASSOCIATION  
OF QUEENSLAND INC.**

ABN 11 010 883 293



Local Government House  
25 Evelyn Street Newstead Qld 4006  
PO Box 2230 Fortitude Valley BC Qld 4006  
Phone (07) 3000 2222 Fax (07) 3252 4473

17 October 2002

Mr Peter Grundy  
Secretary  
Parliamentary Joint Committee on Native Title  
and the Aboriginal and Torres Strait Islander Land Fund  
Parliament House  
CANBERRA QLD 2600

Dear Mr Grundy

**Submission To Inquiry Into The Effectiveness Of The National Native Title  
Tribunal**

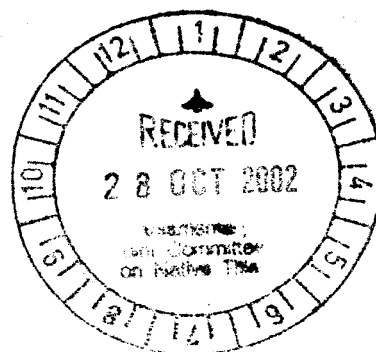
I refer to current Inquiry by the Parliamentary Joint Committee on Native Title and the  
Aboriginal and Torres Strait Islander Land Fund into the effectiveness of the National Native  
Title Tribunal.

The LGAQ welcomes the opportunity to provide the enclosed submissions for consideration  
by the Committee.

Yours sincerely

GREG HOFFMAN PSM  
DIRECTOR  
POLICY AND RESEARCH

dc:ras  
attach





## **Submission to the Parliamentary Joint Committee on Native Title and Aboriginal and Torres Strait Islander Land Fund**

### **Inquiry into the Effectiveness of the National Native Title Tribunal**

#### **Background**

Local Government in Queensland consists of 125 individual Councils under the Local Government Act 1993, and also 15 Aboriginal and 17 Island Community Councils under the related Community Services Acts 1984.

The Local Government Association of Queensland (LGAQ) was established in 1896 and it is the peak body representing Queensland local government in dealings with other Governments, unions, business and the community. Membership of the Association has always been voluntary.

Currently, every individual Council is an LGAQ member, as well as 10 Community Councils and the Aboriginal Coordinating Council<sup>1</sup>.

The LGAQ Executive administers the Association's activities and consists of a President, two vice Presidents, a Treasurer and 13 other Members. Members represent geographical districts spread throughout Queensland. The Association is funded by subscriptions from Member Councils, revenue from business initiatives and government grants.

#### **Overview of Local Government and Native Title**

Of the 157 Councils in Qld, only seven of these do not have a native title claimant application ('claim') covering at least part of its local government area. The extent that individual local governments are effected by native title varies significantly through-out the State depending on a variety of factors including the stage of each claim, and the number of claims over an individual local government area ('LGA'). As an example there are 32 LGAs covered by 1 Claim and 1 LGA covered by 30 claims<sup>2</sup>; and of the 187 claims currently active in Queensland there are 63 that have yet to be notified and 188 are currently in mediation<sup>3</sup>.

The LGAQ is in receipt of Commonwealth financial assistance to support native title projects that are undertaken by an officer dedicated to this work. The project work includes the provision of assistance and training, ongoing distribution of information, the preparation of a work procedures manual and other best practice tools, and liaison with other bodies including the National Native Title Tribunal.

<sup>1</sup> The Aboriginal Coordinating Council is the body established under the Community Services (Aborigines) Act 1984 to represent the 15 Aboriginal Community Councils in Queensland.

<sup>2</sup> Based on data provided by the National Native Title Tribunal. In some instances a claim may only cover a very small proportion of the LGA.

<sup>3</sup> Data sourced from National Native Title Tribunal home page 16 October 2002.

The LGAQ also provides a free Native Title Legal Advisory Service to all its Members (for up to 4 hours). In addition, individual Councils receive Commonwealth financial assistance in order to instruct private solicitors.

### **National Native Title Tribunal**

Against the background just provided, the National Native Title Tribunal ('Tribunal') has contact with both the LGAQ and also individual local governments to varying degrees and for a variety of purposes.

The Tribunal carries out the following work that directly impacts on local government:

- Public notices about claims, non-claimant applications and Indigenous Land Use Agreements ('ILUAs')
- Maintains data sources including Registers and geo-spatial information
- Mediates claims and generally assists with native title negotiations
- Makes a decision about the registration of ILUAs
- Makes a decision about the registration of claims
- Provides general assistance and information
- Conducts training and information sessions

The Tribunal is less involved in local government 'future acts' as most of these do not involve the 'right to negotiate' provisions of the Native Title Act 1993. Therefore the Tribunal rarely assists with any associated negotiations, unless these relate to an ILUA; or issues about the validity of such acts are raised during claim negotiations.

### **Organisation Level**

These comments refer to the contact and relationship between the Tribunal and LGAQ.

Both the principal registry and the Qld registry of the Tribunal are the source of valuable information and support to the LGAQ. This is illustrated by the following practical examples:

- The data published on the Tribunal home page, and various publications (particularly the recent 'Hotspots') is a useful reference source. Relevant links and articles are also posted on the LGAQ intranet to ensure this information is also easily accessible to all our members.
- The Tribunal provides LGAQ with advance notice of all public notices so that this can be distributed to all our members. In addition, when general rather than individual notice can only be provided, the Tribunal has recently agreed to discuss 'best options' with the LGAQ beforehand.
- Recently the Tribunal agreed to participate as a presenter in a series of LGAQ training session planned throughout Qld in 2003. This is not the first time this has occurred. A partnership approach to training and education is highly beneficial as it enables experts from a number of areas to provide integrated and relevant training in remote areas.
- The principal registry has been an extremely valuable source of data and maps. The LGAQ is in the process of analysing and presenting this data so that Qld local government has ready access to significant native title related

information for each local government area. Without this data source, LGAQ could not make this level of information available to its members. The final reports (when completed) and all maps provided are available to all LGAQ members on the LGAQ intranet.

- The Tribunal and the LGAQ discuss strategic and policy issues of relevant to local government when appropriate. This contact is always informative and worthwhile.

In summary, the LGAQ has a productive relationship with the Tribunal, and Tribunal officers have always been both helpful and professional in their conduct. From the LGAQ perspective the Tribunal performs an important role both in the provision of information, and because of it's willing to enter into partnerships for example to assist in training and workshops.

### ***Operations Level***

These are general comments about the contact and relationship between the Tribunal and individual local governments. As the peak body for all Qld local government, these comments are only of a general nature based on past experience and member feedback.

Generally, many Councils have yet to become actively engaged in native title mediation, and often-local government issues are treated as a lower priority than those directly involving the State government.

Currently, native title impacts most on local government development and planning. If the proposed work involves the acquisition of native title Councils remain frustrated by the time and work involved in securing the registration of an agreement through an ILUA, and for purely pragmatic reasons therefore are now more inclined to consider compulsory acquisition when this is possible. Whilst this is largely beyond the capacity of the Tribunal it can indirectly influence views about the effectiveness of that body and the system itself.

An LGAQ survey conducted almost 12 months ago illustrated that at that point many Councils had not sought out external assistance for native title issues (in fact only half of the 51 Councils involved in the survey). Of those who had sought assistance, the Tribunal was the most utilised source (27.4%).

With respect to mediation, individual local governments hold mixed views about the Tribunal, assumedly reflecting both personal experience and local factors. Some local governments recognise the Tribunal as a source of mediation expertise, others have indicated that they would be reluctant to engage further with Tribunal Members. A view has been expressed that in some instances Council's opinion or circumstance has not been properly addressed and one Council has suggested a breach of confidence occurred during mediation.

The incapacity of the Tribunal to always provide personal notice of claims is an issue that has been discussed with the Tribunal and the cause is understood. This matter has been of concern to those Councils affected, and it also strains resources as both Councils and the Tribunal respond to queries from local residents. A consequence is that at the LGAQ 2002 Annual Conference the following motion was passed and the relevant State Minister has been informed of this.

"That the Local Government Association of Queensland seek additional funding from the Queensland Government for the Department of Natural Resources to ensure that, in future, entities with proprietary interests as recorded in the existing Land Cadastre data base in land under claim by Native Title Claimants, are able to be notified when a claim goes to notification stage under the Native Title process"

### **General Comment**

The Tribunal appears to be the best resourced of all those involved in the native title system. The effectiveness of the Tribunal particularly in its mediation and assistance work is however in part dependent on factors external to the Tribunal.

Whilst it is appreciated that the issue of 'resources' is beyond the scope of this inquiry, it cannot be ignored that the effectiveness of the Tribunal and the entire native title system is hampered by the incapacity of all parties to engage in a timely fashion (either in negotiations or litigation). This in part is a reflection of a shortfall in resources - both professional expertise and financial - available to many of the parties including native title claimants.

It also corroborates the expensive nature of native title negotiations. For example: despite financial assistance provided, Councils still find it difficult to cope when key officers are required to focus a considerable amount of time on native title issues (rather than their usual duties) for little progress. Also, Councils are unable to meet the expectations of many native title parties when negotiating about the use of an area for local government works. As these impasses are not conducive to future relationships Councils are often reluctant to take action that may hinder local community relationships. As a consequence development is often delayed and there appears little anyone, including the Tribunal is able to do to avoid this.

### **Summary**

Overall, the Tribunal is most effective in the area of information provision, general assistance and training. It also plays a critical role in maintaining national Registers and administering the registration of claims and ILUAs. A number of recent Tribunal initiatives have been welcomed (e.g. new regular publications and an updated home page). LGAQ would support further public access to data held by the Tribunal such as introducing a capacity to search Tribunal Registers on-line and also an on-line capacity to visually identify the specific location of a particular claim.

The Tribunal's effectiveness in the area of mediation is more difficult to measure and as discussed is partly a consequence of factors beyond Tribunal control. If measured purely on the basis of the number of concluded agreements every (say) six months, then probably the real outcomes would be small and achieved at a high cost.

From a local government perspective the progress of claims either by way of negotiated agreement or litigation has been extremely slow. This situation is a reflection of the entire native title system, however it also raises legitimate questions about whether the current Tribunal approach to mediation is effective; whether the Tribunal, at least as currently structured, is best equipped to undertake this work; and indeed whether alternate dispute resolution mechanisms should be investigated and tested.

\*\*\*\*\*