Native Title Amendment Bill 2012

SUBMISSION

Local Government Association of Queensland Ltd

31 January 2013

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individuals needs. LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

Executive Summary

1. The LGAQ has already made a specific submission on the aspect of the *Native Title Amendment Bill 2012* proposing a new section 47C. That submission is dated 18 October 2012 and is separate to this submission. A copy of that submission is contained in Schedule 1.

2. On 29 November 2012, the Senate referred the Native Title Amendment Bill 2012 for inquiry and report to the Senate Standing Committee on Legal and Constitutional Affairs.

3. The Bill seeks to amend the *Native Title Act 1993* to improve the operation of the native title system. The amendments focus on enhancing agreement-making, encouraging flexibility in the resolution of claims, and promoting sustainable outcomes.

4. A number of native title related issues affecting Queensland local governments are now coming to a head and one of them is particularly urgent. Accordingly, the LGAQ takes this opportunity to make further submissions to the Senate Committee – on this occasion specifically in respect of future reform of the native title process to improve the operation of the system and ensure sustainable outcomes .

5. This submission deals with the following topics:-

5.1 Local government involvement in the native title process.

5.2 Changes to the administration of the *Native Title Assistance Scheme* established under s213A of the *Native Title Act 1993* (Cth) which are detrimentally affecting the involvement of local government parties, native title parties and other parties in the process (this is urgent).

5.3 Need to better coordinate developments in law and policy and resourcing for local governments and registered native title body corporates ("RNTBCs") affected by native title matters.

Native Title Amendment Bill 2012

1. Local Government Involvement in the Native Title Process

1.1 In his second reading speech on 16 November 1993 in respect of the initial *Native Title Bill 1993*, Prime Minister Keating made the following comments:-

> *"Today is a milestone. A response to another milestone: the High Court's decision in the Mabo case…….Mr Speaker, some seem to see the High Court as having just handed Australia a problem. The fact is that the High Court has handed this nation an opportunity. When I spoke last December in Redfern at the Australian launch of the International Year for the Worlds Indigenous People, I said that we could make the Mabo decision an historic turning point: the basis of a new relationship between Indigenous and other Australians……..*
>
> *Mr Speaker this has been a huge undertaking on a subject of immense complexity. The rewards for the nation of getting it right are also immense. To retreat from this challenge, to say that this opportunity is beyond our reach as a nation, beyond the limits of our collective intellect and goodwill, would be to betray not just the Indigenous people of Australia but ourselves, our traditions and our future".*

1.2 Since then no level of government, and indeed few non-Indigenous stakeholders in the native title process, have worked harder or arguably more effectively than local government to achieve the vision laid out by the then Prime Minister.

1.3 In Queensland, with the assistance of the organising efforts of the LGAQ, local governments have been parties to most native title claim resolution processes in the State. Consistent with the statutory scheme and in particular the requirements for native title determinations to determine native title and its relationship with all affected non-native title rights and interests in claim areas, Councils have joined as respondents to claims to ensure proper recognition and protection of the non-native title interests they and their communities hold.

1.4 However, their participation in the process has gone far beyond that. Quietly, proactively, constructively; using relationships between Traditional Owner groups, councillors, council officers and other community members which are always strongest and most productive at the local community level; councils have done much more than just protect interests.

1.5 The nature, extent, importance, benefit and indeed potential for further benefit coming out of local government involvement has perhaps largely escaped the attention of other levels of government, particularly the Australian Government. That is no doubt because so much of the work for so long has been done behind the scenes in private mediations and through local communications undertaken out of the media glare.

1.6 Committee members are urged to read the National Native Title Tribunal's publication *Negotiating Native Title and Local Government*. Committee

members are urged to view the case study on the Narungga local government Indigenous land use agreement ("ILUA") negotiated in respect of native title on the Yorke Peninsula, South Australia, by the Yorke Peninsula Region of Councils. Above all, committee members are urged to read Chapter 11 of the Australian Human Rights Commission Native Title Report 2007 to the Australian Parliament.

1.7 To provide a sense of the nature and extent of local government involvement in native title claim outcomes in Queensland, the LGAQ points out the following:-

(a) Local governments have been parties to almost all consent determinations so far in Queensland.

(b) In many cases, it was the local government respondents which were the first to reach mediated agreements with native title parties, often providing a mediation path forward for agreement between the native title parties and other respondents.

(c) Almost all consent determinations in Queensland are accompanied by local government-related ILUAs which not only support the determination (they contain much of the detail about local government and community interests and their relationship with native title), but provide other "value added" benefits as well.

(d) The "value added" benefits include local government involvement in local policies and programs to promote involvement by native title holders in economic development, land management, environmental protection and local arts and cultural initiatives.

(e) Local government (Torres Shire Council) involvement in a State/council/native title holder ILUA for the Kaurareg People's native title claims, was the precursor of ILUAs that have been used for "tenure resolution" purposes in Queensland (i.e. provision of mainstream title to native title holders over some parts of their traditional land). This can sometimes involve local governments negotiating the release of some of their own reserve land for that purpose.

(f) Local government involvement in claims often results in ILUAs which establish ongoing (post-determination) consultative committees at the local level. These are often the only formal communication forums between particular native title holders and any level of government that continue post-determination.

(g) Local government involvement as respondents to claims often enables the local government to advocate for the interests of community groups which have their own interests in claim areas. This maximises the prospect of agreement about those issues and provides substantial efficiency gains and cost savings because the separate community groups do not then join as respondents in their own right.

(h) Native title is a key issue that needs to be addressed when land tenure changes (particularly the grant of freehold title) are made for urban and township expansion purposes. This is a pressing issue in Queensland given growth pressures in communities which service the energy and

resources sector. Queensland local governments have played a critical role in addressing native title to enable urban and township expansion to occur. That is often done through local government agreements with native title parties specific to the purpose, often initiated through claim resolution processes. This aspect can require councils to address substantial native title compensation liabilities.

(i) Queensland has 16 Indigenous local governments. Council members are elected by the electors in the Indigenous communities. The Indigenous councils are often the holders, as trustee, of ordinary land title over almost all of the land in the communities and that land title co-exists with native title. The Indigenous councils play a vital role in the development and operation of community infrastructure and the management of almost all housing for Indigenous residents.

(j) The Indigenous councils play a vital role in implementing the *National Partnership Agreement on Remote Indigenous Housing* and the *National Partnership Agreement on Remote Services Delivery.* That role includes the grant of land tenure (such as 40 year social housing leases) to the Queensland Government, a threshold requirement for the renovation of existing homes and the construction of new homes. They also grant land tenure over sites proposed for new community infrastructure facilities and "home ownership" leases to individual Traditional Owners. All of those land dealings generally require native title to be addressed. The Australian Government's initiative in enacting section 24JAA of the *Native Title Act 1993* is unpopular in some Indigenous communities because it avoids any need for agreement making with native title holders. Queensland local governments, such as the Torres Strait Island Regional Council, have been proactive in negotiating housing and infrastructure ILUAs as a means of addressing native title by agreement.

(k) In Queensland, the *Aboriginal Land Act 1991* (Qld) ("ALA") and the *Torres Strait Islander Land Act 1991* (Qld) ("TSILA"), provide a State-based statutory scheme for grants of ordinary land title, particularly a form of inalienable freehold title, over certain lands and waters to Traditional Owners. In Queensland the number of successful determinations of native title claims is accelerating. That is giving rise to ever greater RNTBCs which hold the native title on trust or as agent for the common law native title holders. Under the ALA and TSILA, grants of inalienable freehold are increasingly being made to RNTBCs. The areas of those grants contain extensive local government interests which are often the subject of "lease back" arrangements to the council. Native title needs to be addressed in respect of those leases and any easements, licences and other "future acts" which are needed to provide tenure security for local government and other community interests.

(l) In 2012 seventeen determinations of native title were made in Queensland, all by consent. It was a record number. Local government respondents participated in all of them. Eleven consent determinations are already scheduled in Queensland for 2013 with local government respondents currently participating in all of them. As more and more native title claims are successfully determined, the number of RNTBCs

in Queensland is rapidly growing. Whether it be in relation to native title "future act" matters, Aboriginal cultural heritage matters (there are vital compliance links between the *Aboriginal Cultural Heritage Act 2003* (Qld) and the *Native Title Act 1993* (Cth)) or ALA and TSILA matters, local governments increasingly need to be able to deal efficiently and effectively with RNTBCs.

(m) Of the four hundred ILUAs in Queensland registered to date, some seventy eight have local government parties and a large proportion of the ILUAs involve the resolution of native title claims.

(n) In Queensland, native title claims are increasingly being successfully determined in metropolitan areas. On 4 July 2011, a native title claim by the Quandamooka People was the subject of a consent determination over areas only a short distance from metropolitan Brisbane. Local government, in that case Redland City Council, played a vital role. On 20 November 2012 the Jinibara People had their native title claim near the northern outskirts of Brisbane successfully determined and again local government respondents played an important role. Native title is an issue which affects Queensland local governments from country to city.

(o) In November 2012, the Queensland Government released a discussion paper on *Providing Freehold Title in Aboriginal and Torres Strait Islander Communities*. This is likely to be an alienable form of freehold title different to that provided for in the ALA and the TSILA. If the policy objective outlined in the discussion paper is legislated, almost all freehold grants will be in respect of parcels of land where the ordinary title is currently held, as trustee, by an Indigenous council or an RNTBC. Native title will almost always need to be addressed before such grants can be made. The discussion paper envisages a significant role for local government in the grant process.

1.8 The LGAQ submits that the way in which the Australian Government currently regulates and administers the native title process fails to adequately take account of all of these affects and implications, many of which are specific to Queensland local government.

1.9 Whilst councils generally welcome the opportunity to play a constructive role, and indeed such a role is vital if the opportunities Prime Minister Keating referred to are to be realised, the Australian Government must:-

(a) ensure that there is reasonable assistance and support for local government; and

(b) ensure that there is proper support for the resourcing and capacity and capability building of RNTBCs.

1.10 No matter what future reforms are made to the native title process, or indeed in respect of other Indigenous interests in land, there is no doubt that real, practical opportunities at the coalface will require local governments, native title claim groups and increasingly RNTBCs, to work together. It is essential for them to be appropriately supported by Commonwealth and State governments in that work.

2. Assistance to Local Government under the Native Title Assistance Scheme

2.1 From the points made in the preceding paragraphs, it can be seen that local governments are very substantially affected by, and involved in, matters relating to or arising out of the resolution of native title claims.

2.2 That is particularly the case in Queensland where local governments have a much larger range of statutory responsibilities and interests capable of being affected by native title determinations, than in other States and Territories. In respect of Queensland's Indigenous councils there are the affects native title has on all of the usual local government interests and its affects on the particular interests of those councils as trustees of forms of ordinary land title. Those land titles, typically called deeds of grant in trust, usually apply to almost all land in the local government area and co-exist with native title. Indigenous councils have very few revenue raising opportunities of their own through municipal rates and charges.

2.3 When the *Native Title Act 1993* was first enacted by the Australian Parliament, the legislature recognised that addressing native title claims would impose cost burdens on those whose interests are affected by determinations. They include legal costs associated with participation in the claim resolution process and the negotiation of ILUAs. Consequently, from the outset the legislature ensured that the *Native Title Act 1993* contained provisions under which the Commonwealth Attorney-General can provide assistance to such persons. The only statutory requirement is that they are a party to native title claims or intend to become a party to ILUAs. Those statutory provisions remain and are contained in section 213A.

2.4 For many years, local government respondents have qualified for such assistance. Section 213A empowers the Attorney-General to develop and administer guidelines which until 1 January 2013 allowed both professional legal costs and outlays to be covered. For well over a decade, the work of local government in addressing the matters, achieving the outcomes and realising opportunities of the kind referred to in paragraph 2.7 of this submission, have only been possible because of that assistance.

2.5 During the more than a decade in which assistance has been provided, the LGAQ and Queensland local governments have worked with the Attorney-General's Department in ensuring the most efficient and cost effective assistance arrangements. Some details of the arrangements have changed over the years, but have included the following:-

(a) Local governments commonly affected by a particular claim are grouped together. The whole group has only one legal representative.

(b) The group of councils negotiates claim resolution outcomes in common. The outcomes are generally recorded in a single local government ILUA.

(c) The assistance covers only professional costs and disbursements of the legal representative, with other expenses being met by the Councils themselves. The legal costs and disbursements are capped at rates far below standard commercial legal rates.

(d) Through the Attorney-General's Department, the assistance arrangements are tightly regulated, fully accountable and completely transparent. Native title claimants have their own Commonwealth assistance for costs involved in the claim resolution process through native title representative bodies funded by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs.

(e) Assisted groups of local governments continue to bear their own in-house expenses. Also, the scheme assistance does not cover any council legal or other costs associated with addressing particular future acts or other native title compliance matters.

(f) Local governments have worked with the Attorney-General's Department over the years to make the scheme ever more efficient and to achieve reductions in the quantum of assistance provided. For example, the scheme initially covered the cost of industry bodies, such as the LGAQ, employing "group representatives" to perform policy, administrative and logistical tasks associated with claim resolution. As a cost saving measure, that function was abolished some years ago.

(g) Only highly specialised native title legal representatives appointed to a Native Title Practitioner's Panel by the Attorney-General's Department can provide legal services to assisted respondents.

2.6 In late 2012, after a process of review in which the LGAQ on behalf of local government's participated, the Attorney-General decided to change the guidelines under which the scheme is administered. The main outcome was to effectively abolish assistance for all respondents in respect of legal costs, other than in exceptional circumstances.

2.7 The LGAQ submitted to the Attorney-General that the particular position of local government respondents in the claim resolution process means that, as a class of respondents, they are the subject of exceptional circumstances and on that basis full assistance should continue. The Attorney-General did not support that submission. The assistance for local government respondents in respect of legal costs effectively came to an end on 1 January 2013.

2.8 As at the date of this submission, local governments remain respondent parties to almost all native title claims in Queensland. Pending final efforts to have the decision reversed they must either withdraw as parties or endure an invidious position. The 2013 Court year will soon commence. From that point case management of claims by the Court will continue. Court orders will be made and directions given which local government respondents will need to comply with and incur costs in so doing, unless they become self-represented.

2.9 Local government respondents are placed in a very difficult position. Their choice is to withdraw as a party to the claim where there is no other party to address their interests and often in matters where negotiations, mediations and Court processes are part way through, to represent themselves in Court in circumstances where they do not have the specialist legal expertise to do so or entirely fund legal costs themselves. Particularly for smaller councils in rural and regional Queensland, bearing all of the costs themselves is unsustainable.

2.10 The Attorney-General's decision reflects a lack of understanding of the practicalities of the claim resolution process and does not give due weight to the serious adverse consequences for local governments and the communities they represent or indeed for native title parties. In addition to this submission to the relevant Standing Committee of the House of Representatives, the LGAQ is writing to all Queensland Senators with full details of the situation. A copy of that letter is contained in Schedule 2.

2.11 The situation has also been the subject of judicial comment in native title claim proceedings in the Federal Court. The Honourable Justice Logan made the following observations at a directions hearing on 4 April 2012 in Queensland Native Title Determination QUD6244/1998 (Birriah People):-

> *"**His Honour:**……..the funding is obviously a matter for the executive government to make value judgements and I do make this observation though, for whatever assistance it provides the executive government in that process, in that it assists immeasurably in the resolution consensually of a very important area of this Court's jurisdiction that the pastoralists have the benefit of legal representative, and that, for what it's worth, my considered opinion is that it would be a false economy to do anything other than to ensure access to competent legal representation, that is what pastoralists have enjoyed via your appearances and advice. The consequence of non-representation, I am quite sure, would be the incurring by the Commonwealth in other heads of expenditure of unnecessary expenditures, either in terms of Court time, or funding for other parties to native title proceedings which is rendered unnecessary when parties are available to be advised as to the strengths and weaknesses of particular native title cases by persons who are experienced in that jurisdiction*
>
> *……..*
>
> ***Mr Boge:** Yes, it's just the difficulty is we just don't know whether we should put in place alternatives and…….there is a large list of parties, not just in this claim but on other claims on your docket* (affected in the same way)……
>
> ***His Honour:** Well, it truly would be false economy in so many ways because there is great progress, and I have occasion to remark on that in respect of other cases on the list today, and that is a progress that is a result of cooperation between well-advised parties and it leads to consent determinations and removes uncertainties which attend the use of land in this State. It's hard to think of a more important jurisdiction, for that reason. And, insofar as the same is necessary, you have leave to obtain a copy of this transcript today and to make use of it as you may be advised.*
>
> *……..*

> ***Ms Cartledge:*** *Your Honour, I might note that the local governments are in exactly the same position so I would seek your leave for the transcripts for their use as well.*
>
> ***His Honour:*** *Well, it's readily granted.*
>
> *……..*
>
> ***His Honour:*** *The same applies in respect of a number of respondents. It's a jurisdiction that the Parliament, in its wisdom, conferred on the Court as a sequel to the High Court's Judgement in Mabo and then later by amendment in Wik, and it is a jurisdiction that impacts greatly on the use that Aboriginal Australian's that may make of land, Torres Strait Islanders may make of land and all other Australians who want to use land – its hard to think of a more important jurisdiction, for that reason and that's why I have made the observation that its truly false economy and productive of, I am quite sure, unnecessary delays in the use of land for other than the funding that has occurred for representation to continue.*
>
> ***Mr Hardie:*** (the legal representative for the native title party): *Your Honour, in terms of a practical observation, I might indicate that – to do with this claim, I might indicate that there is a commitment on behalf of the local government authorities to commence negotiations with the very people after the conclusion of the local government elections, and Your Honour heard this morning that we have an agreement with one major pastoralist in the claim area. I have found that Mr Boge, in my dealings with him, has been very conducive to getting his clients to discuss negotiated outcomes with native title holders.*
>
> ***His Honour:*** *Yes. Well, it's a matter of public record that the Australian Government wishes to encourage consensual determinations of native title and that's a sentiment that's shared by the Court. Of course, if there's a controversy, I am duty bound, as are the other Judges, to resolve that, but its much better if public money can be expended in other ways than having to hear cases where, with competent representation, they would resolve themselves".*

2.12 Given all of the above, there is now a very pressing urgency that committee members, and indeed all members of Parliament, impress upon the Attorney-General the importance of restoring the assistance which until now has applied to local governments under the Native Title Assistance Scheme. It is submitted that the committee make the strongest possible representations to the Attorney-General to that effect on a very urgent basis.

2.13 It is specifically requested that the committee strongly urge the Attorney-General to determine that Queensland local governments as a class, continue to qualify for both costs and disbursements under the Native Title Assistance Scheme by reference to the *"exceptional circumstances"* provisions of the new scheme guidelines. If that does not occur, the following serious ramifications will start to unfold:-

(a) Some local government respondents that can not afford the costs themselves will become self-represented in the Court. That will give rise to the incurring of other heads of expenditure by the Commonwealth and the sort of false economies referred to by the Honourable Justice Logan in the transcript extract contained in paragraph 3.11. This will present new potential risks to the ongoing improvements seen over recent times to the claim resolution process as a whole.

(b) Some local government respondents that can not afford to be represented are likely to withdraw as respondents all together. There will be no other party that will ensure local government interests and their relationship with native title are determined as section 225 of the *Native Title Act 1993* requires. Where separate community groups with relevant interests have had a local government respondent to advocate for them and it now withdraws as a party, the groups may seek late joinder as respondents in their own right. They would likely be unrepresented respondents, giving rise to the sort of problems referred to in paragraph (a).

(c) Where local government respondents are unrepresented or withdraw as parties to claims, there is likely to be no advocacy before the Court about things like the extinguishment of native title over areas where there are local government public works. There is a high risk that determinations could be made recognising native title over areas where in fact it has already been extinguished at law.

(d) It is highly likely that the very strong record of Queensland local government in negotiating ILUAs, both in respect of claim resolution matters and a whole range of "value added" outcomes, will substantially reduce and potentially stop all together.

(e) The use of ILUAs by local governments to coordinate the application of separate laws relating to Indigenous interests in land, establishing consultation forums with RNTBCs and programs for Indigenous economic, social and cultural development will similarly substantially reduce or stop. These outcomes currently provide tremendous leverage on the very modest Commonwealth investment in the assistance scheme as it relates to Queensland local government.

(f) Potentially most importantly, the sort of opportunities which Prime Minister Keating referred to in the native title context, will be greatly diminished. That will have adverse implications for RNTBCs post-determination. The reduction in local government involvement in claim resolution outcomes means that there simply will not be a post-determination foundation for local government/RNTBCs relationships and joint action in all the fields where Queensland local governments play such a vital role (land use planning, land ownership and trusteeship, land management, environmental management, local economic development and so much more).

3. Coordinating Developments in Law and Policy on Native Title and other Indigenous Interests in Land

3.1 2012 was the twentieth anniversary year of the High Court's *Mabo Decision*.

3.2 In Queensland, the anniversary year coincided with a landmark grant of inalienable freehold title under the *Torres Strait Islander Land Act 1991* (Qld) ("TSILA") over what for the previous 100 years had been a reserve under the trusteeship of the Queensland Government. The grant was made over land on Mer Island (previously called Murray Island), the place for which the original Mabo decision was made.

3.3 The grant process was supported by the Torres Strait Island Regional Council and it played a vital role in the outcome. The result is that the RNTBC for Mer Island now holds, on behalf of the Meriam People, both native title and ordinary land title over the majority of the Meriam traditional lands. Unlike native title which cannot be the subject of the grant of lease or other interest which can back economic development or "home ownership", the TSILA freehold grant can be used for those outcomes.

3.4 The case is however representative of the way in which law and policy in respect of Indigenous interests in land has developed over the last two decades in a largely uncoordinated and piecemeal fashion. The result is an array of laws relating to Indigenous interests in land which have created what must surely be one of the world's most complex and arguably disjointed land law systems.

3.5 Although the system, if it can be mastered by those who must use it, can give rise to potential opportunities, including economic development opportunities, they are not easily won. In fact as the system currently exists, opportunities can only ever be realised if the main users of the system, particularly RNTBCs and local governments, can access the professional, administrative and logistical support needed to counteract the complexity of the system.

3.6 Local governments and RNTBCs, especially in remote, rural and regional Queensland, now confront the following web of interconnected but largely uncoordinated laws:-

(a) Complex Commonwealth laws in the *Native Title Act 1993* and associated regulations relating to:-

i) The making and determination of native title claims over land and waters; and

ii) the valid undertaking of any activities which affect native title, local governments being amongst the largest proponents of such activities (future acts). Those activities can include land tenure dealings, statutory approvals, land management activities and infrastructure and service provision.

As noted in paragraph 3, the program of assistance for local government in such matters effectively ended on 1 January 2013. RNTBCs often rely entirely on assistance provided through native title

representative bodies whose key focus is the resolution of native title claims and which themselves have limited resources.

(b) Complex land title (i.e. non-native title) laws which may provide for the grant of other interests in land to RNTBCs, which interests often then co-exist with native title. In Queensland these laws include the following:-

i) ALA and TSILA and related regulations. These complex laws provide a process separate to the native title claim process, under which inalienable freehold title can be granted over certain types of State land and then leased or otherwise dealt with in prescribed ways by RNTBCs or other Traditional Owner grantees. These laws particularly apply to Queensland's Indigenous communities in respect of land where Indigenous councils have extensive interests which need to be addressed in the grant process. Native title compliance requirements under the *Native Title Act 1993* always need to be dealt with for purposes of the grant process.

There is no dedicated program of resourcing for either local governments or RNTBCs.

ii) Land titles and other interests in land can be granted to RNTBCs and local governments under the *Land Act 1994* (Qld) and, in respect of non-freehold land, native title frequently needs to be addressed to enable the dealings to occur. In Queensland, "tenure resolution" processes in respect of State land may be undertaken using this legislation, particularly section 18A headed *"Grant of Lease of Unallocated State land in consideration of surrender of native title".* The processes can often involve land where local government has interests. RNTBCs can also be the grantees under such processes.

There is no dedicated program of resourcing for either local governments or RNTBCs.

iii) In November 2012 the Queensland Government released a discussion paper on *"Providing Freehold Title in Aboriginal and Torres Strait Islander Communities"*. This is likely to result in additional laws providing for a new system of land title grants. Again native title will generally need to be addressed to enable the grants to be made. The discussion paper envisages significant roles for both local governments and RNTBCs.

There is no indication of a program of resourcing for either local governments or RNTBCs.

(c) Aboriginal cultural heritage can comprise land and waters which are particularly significant to Indigenous people and objects of particular significance to them. There are separate legislative systems for protecting Indigenous cultural heritage at both Commonwealth and State/Territory levels:-

i) At the Commonwealth level applications for Ministerial declarations and other declarations can be made under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) in relation to particular cultural heritage threatened with harm.

ii) In Queensland the *Aboriginal Cultural Heritage Act 2003* (Qld) and the *Torres Strait Islander Cultural Heritage Act 2003* (Qld) and related guidelines, provide blanket protection for all Aboriginal cultural heritage in Queensland. There are options for often quite complex processes that can be used to ensure compliance, one of which involves the use of ILUAs under the *Native Title Act 1993*. The Queensland legislation links the identity of the Aboriginal party who must be dealt with for cultural heritage compliance purposes to a registered native title claimant or RNTBC. Local governments are perhaps the single largest class of proponents when it comes to the extent of activities which need to comply with the legislation.

There is no dedicated program of resourcing for either local governments or RNTBCs.

(d) There are other specifically applicable laws relating to Indigenous interests in land which apply in Queensland in particular locations or in particular circumstances. They include the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (Qld) and the *Aurukun and Mornington Shire Leases Act 1978* (Qld). Of course other Commonwealth laws in relation to Indigenous interests in land apply outside Queensland and other States and Territories have their own laws relating to Indigenous interests in land. There is again a general lack of dedicated resourcing programs for either local governments or RNTBCs where they are affected.

3.7 This submission does not complain about any of the individual laws themselves. All of them have been developed over time, in their own historical contexts, to address issues which are at least to some degree separate and discrete, though often interconnected. All of them individually have no doubt contributed to a system of laws about Indigenous land interests which has, albeit slowly and imperfectly, generally advanced the interests of, and opportunities for, Indigenous people.

3.8 The difficulties are as follows:-

(a) Although many of the laws are interconnected, they remain largely uncoordinated.

(b) The combined complexity and weight of the laws taken together is inimical to realising the opportunities which the laws separately or together could give rise to.

(c) Those most affected by the laws, Traditional Owners, their RNTBCs and local governments are simply not adequately resourced to perform their roles, functions and responsibilities under the combined laws, let alone realise the opportunities which they may be intended to create.

(d) The separate administration of the laws, such as native title claim resolution and ALA and TSILA land grant processes in Queensland, can involve duplication of some administrative processes and hence the inefficient application of resources. The template local government ILUA in Queensland was designed with the particular objective of streamlining at least some native title and Aboriginal cultural heritage legal compliance processes.

(e) Where some laws do involve direct duplication of subject matters (such as the Commonwealth and State cultural heritage laws), government reviews to try and deliver some measure of better coordination are often interminable. The Australian Government's long ongoing review of the *Aboriginal and Torres Strait Island Heritage Protection Act 1984* is an example.

3.9 Given political and jurisdictional differences between the governments responsible for making and administering the laws, it is perhaps unrealistic to expect any substantive legislative reforms for better coordination and streamlining in the foreseeable future.

3.10 However there is something which the Australian Government, working with State and Territory governments, can immediately do to help relieve the burden on local governments and RNTBCs. It is the provision of adequate support and assistance to them to enable the proper performance of roles, responsibilities and requirements and at least a possibility for the realisation of some opportunities.

3.11 Although there may in some cases be a few other sources of support, such as energy and resource proponents supporting native title parties who have projects proposed for some traditional lands, the reality is that those resourcing avenues are not widespread, rarely provide long term and sustainable resourcing outcomes and generally extend only to RNTBCs, not local governments.

3.12 The LGAQ submits as follows:-

(a) The circumstances set out above are further grounds for restoring to local government full assistance under the Native Title Assistance Scheme.

(b) The committee should recommend that the Council of Australian Governments ("COAG") pursue a high priority reform agenda dedicated to the following:-

i) Establishing and coordinating Commonwealth, State and Territory resourcing programs for local governments and RNTBCs in respect of their roles, responsibilities and requirements under the various legislative schemes relating to Indigenous interests in land; and

ii) better coordinating the various legislative schemes and the policies behind them to improve the operation and efficiency of the administration of those schemes.