

27 July 2010

Senate Legal and Constitutional Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

**RE: Submissions on the Native Title Amendment (Reform) Bill 2011**

Dear Sir/Madam

The Torres Strait Regional Authority (TSRA) supports the *Native Title Amendment (Reform) Bill 2011 (the Bill)*. The Bill recognises the United Nations Declaration on the Rights of Indigenous Peoples and acknowledges that for many centuries, Aboriginal and/or Torres Strait Islanders have used the land for cultural and commercial purposes. The Bill also balances the legal requirements of Traditional Owner's with negotiating parties and recognises that culture is not stagnant and changes over time.

### **1. Recognition of the United Nations Declaration on the Rights of Indigenous People's**

The TSRA supports the incorporation of the principles contained in the Declaration into the Native Title Act (**the Act**). These principles are useful in informing the interpretation of the Act. It should be noted however that a number of provisions of the Act are not consistent with the declaration and we note in particular the recently enacted *Native Title Amendment Act (No. 1) 2010* which inserts a new subdivision JA in Division 3 of Part 2 of the Act. The new Subdivision JA in relation to the matters to which it applies provides for an expropriation of native title rights and interests without consent.

### **2. Non-Legislative Acts**

The TSRA welcomes the amendment of Section 24MB of the Act as it clarifies and places clear emphasis regarding the preservation of important/sacred sites of Indigenous peoples and strengthens the non-extinguishment principal.

### **3. Repeal of section 26(3) of the *Native Title Act 1993 (Cth)***

The TSRA supports the repeal of the subsection so that the beneficial provisions of Section 26 apply also to areas below the high water mark. Torres Strait Islanders have a strong maritime tradition and use the sea and land for many purposes.

#### **4. Negotiation Procedure**

Clarification of what is meant by negotiating in good faith by introducing the concept of 'using all reasonable efforts' strengthens the position of native title parties in negotiations with government and commercial parties. The threshold to arbitral jurisdiction under the Act has been a matter of key concern although the substitution intended of a new Section 38(2) is also relevant to ameliorating the concern.

#### **5. Application for arbitral determination**

The TSRA supports that a party cannot obtain arbitral determination unless they have negotiated in good faith and have used "all reasonable efforts" in negotiations.

#### **6. Kinds of Arbitral Determinations**

Section 38(2) of the Act presented an anomaly whereby the matters for negotiation provided for in the Act could not form part of arbitration determinations. The repeal of Section 38(2) and the proposed replacement Section which permits the inclusion of substantive matters into arbitration determinations including profit sharing is welcomed by the TSRA.

#### **7. Continuing Connection**

The reversal of the onus relating to proof of connection is a significant step in creating a fair and effective approach to native title applications. The TSRA supports this amendment.

#### **8. Traditional Laws and Customs**

The TSRA supports the amendment of the definition of traditional laws acknowledged and traditional customs observed. The new definitions are important because they effectively authorise the dynamic nature of traditional laws and customs. These amendments recognise that culture and tradition is not stagnant and that over time traditions and culture do change as does the society we live in.

#### **9. Rights and Interests**

The TSRA supports the amendment of the definition of "rights and interests". Both the inclusion of fishing and that the rights and interests that Indigenous people have may be of a commercial character acknowledges that for centuries Aboriginal and/or Torres Strait Islanders have conducted trade in a commercial manner.

Indeed for the Torres Strait both sets of rights and interests are of major significance and consistent with the aspirations of all Torres Strait Islanders.

Yours sincerely,

John. T. Kris  
Chairperson  
Torres Strait Regional Authority