



**CAPE YORK LAND COUNCIL
ABORIGINAL CORPORATION**

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10 August 2009

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By Email: legcon.sen@aph.gov.au

Dear Sirs,

RE ACCESS TO JUSTICE (CIVIL LITIGATION REFORMS) AMENDMENT BILL 2009

We enclose for your information Cape York Land Council Submission in relation to the above matter.

Thank you for agreeing to accept this submission after the requested date of 31 July 2009.

Should you have any further queries please do not hesitate to contact us.

Yours faithfully,
CAPE YORK LAND COUNCIL

**PETER CALLAGHAN
CHIEF EXECUTIVE OFFICER**

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Cape York Land Council Submission

Access to Justice (Civil Litigation Reforms) Amendment Bill 2009

Cape York Land Council generally supports the amendments proposed by the *Access to Justice (Civil Litigation Reforms) Amendment Bill 2009* ("the Bill"). We have raised concerns previously about the native title claim process, particularly in relation to the length of time involved in resolving such claims, and we support the efforts being taken to improve the efficiency of Federal Court processes in that regard.

However, we have some concerns about possible consequences of the practical application of Section 37N, which requires a party's legal representative to "take account of" the duty imposed on a party to act consistently with the "overarching purpose". It is possible that notwithstanding the provision of advice in accordance with that duty, a client may not accept the advice. A conflict may arise between the obligation of the legal representative in respect of the duty imposed, and the instructions given by the client. The situation may be complicated by the unique role played by Native Title Representative Bodies, including obligations imposed by the *Native Title Act 1993 (Qld)* to assist native title parties and the limited funding and resources available.

We suggest that some clarification or limitation be included in the provision to take account of the particular complexities of the native title system.