



Yamatji Marlpa

ABORIGINAL CORPORATION

Our Ref:
Your Ref:
Office: Perth

18/08/2017

Australian Government
Attorney-General's Department
Robert Garran Offices
Barton ACT 2600

By email: native.title@ag.gov.au

To whom it may concern,

S24JAA OF THE NATIVE TITLE ACT DISCUSSION PAPER – FUTURE ACTS FOR INDIGENOUS PUBLIC HOUSING

24JAA was created ostensibly in relation to the National Partnership agreement on Remote Indigenous Housing, which was to run from 2008 for 10 years. 24JAA was created in 2010 to last 10 years; it will automatically expire in 2020, unless otherwise extended.

24JAA creates a fairly extensive consultation process to grant land interests for the purpose of building housing in indigenous communities. The process requires **the body** proposing to build the housing to:

- give notice to the native title holders, and invite the native title holders to comment;
- if requested, the body must consult with the native title holders about the act;
- the consultation must involve discussion of ways of minimising the act's impact on native title;
- the body must prepare a report detailing the notice, any comments, and any consultation. The report must be provided to the commonwealth minister;
- the time period for the act is 2 months, if no native title party asks to be consulted, and 4 months if they ask to be consulted. It appears that whatever happens, 4 months after the notification period commences, the act can be done.

The National Partnership is winding up, and 24JAA is approaching its sunset. The discussion paper asks whether 24JAA should be allowed to expire, be extended or be made permanent. If 24JAA is allowed to continue, should it be amended?

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YMACs 2009 submission

In 2009, YMAC considered that it may be appropriate to create a process other than an ILUA to effect aboriginal housing, however our preference was it be:

- done by consent, rather than with consultation – the native title party would have the final say as to whether it would occur. An agreement with the native title party would be lodged with the NNTT before the act could be validly done; and
- there be a notification period in which a new claim could be lodged and registered, similar to under the right to negotiate scheme.

Use of 24JAA in YMAC region

I am only aware of YMAC receiving three 24JAA notices since it was introduced in 2010. The notices were in relation to the following claims (and communities):

- Wajarri Yamatji (Pia aboriginal community)
- Yinhawangka (Wakathuni)
- Nyiyaparli (Jigalong)

I spoke with Cameron about his Wajarri Yamatji experience, and Kate about her Yinhawangka experience. I did not speak to Kate about her experience with Nyiyaparli.

In both cases, the process was effective, and supported by the claim group. In both cases, the working group wanted the act done quickly and did not require an extensive consultation process. Neither lawyer had a concern with how the process was used in those cases.

Consideration of YMAC's 2017 proposal in relation to 24JAA

While the use of 24JAA has not been controversial, our 2009 submission remains fundamentally sound. In each case examined, the proposed act was strongly supported by the native title party. If consent was required, it would have been given without adding further delay.

Requiring a notification period could create problematic delays. For time critical infrastructure and housing, the 2 or 4 month delay imposed by the existing 24JAA can already cause a problem (Cameron observed that the quickest way to have 24JAA apply was to ask to be consulted, then say the consultation has been sufficient). It would be ineffective for a notification period to be much shorter than the right to negotiate period of 4 months. If the consent of the native title party was only sought after 4 months, it could change the timeframe for approval of the act from 2-4 months to 6-8 months. Even if there was already a registered claim, whose members supported the act, the notification period might need to be let to run its course in case another claim was lodged and registered. Meanwhile, in 2017, there are very few areas in YMAC's NTRB regions that are not covered by determinations or registered native title claims.

I propose that we reiterate the consent aspect of our 2009 proposal. In short:

- The body must consult with, and obtain the consent of, the native title party before the act be done. Before the act can be done, an agreement executed by the native title party should be lodged with the NNTT.

Yours faithfully



Simon Hawkins
CHIEF EXECUTIVE OFFICER