Chuulangun Aboriginal Corporation
PMB 30 | Cairns Mail Centre | Qld 4892 | Australia
Email CEO: chuula@bigpond.com | **Admin:** chuulangun@gmail.com
Web: www.kaanjungaachi.com.au | **YouTube:** ChuulaMedia
Phone: 07 4060 3240
ABN: 74 277 585 078 | **ICN:** 4024

7 September 2018

Committee Secretary
Economics and Governance Committee
Parliament House
BRISBANE, QLD 4000

Via email: egc@parliament.qld.gov.au

Dear Sir/Madam

Re: Revenue and Other Legislation Amendment Bill 2018 (ROLA Bill)

Thank you for the opportunity to provide a submission to the ROLA Bill. This submission provides comment on the proposed amendments to the *Aboriginal Cultural Heritage Act 2003 and Torres Strait Island Cultural Heritage Act 2003* (the Acts).

Firstly, whilst the opportunity to provide comment is appreciated, it is concerning that Chuulangun Aboriginal Corporation[i] received an email on the afternoon of 30 August 2018 simply saying, "Please find attached a factsheet on the proposed amendments to the *Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Cultural Heritage Act 2003*." There was no information - not even a salutation - in the email, or any advice to alert me that a Bill had been introduced. The fact sheet gave a position on the effect of Supreme Court ruling on the Nuga Nuga Aboriginal Corporation decision, and it was not until I actually went into the Economics and Governance Committee website that I found that submissions were being sought on proposed amendments and would close at midday on 7 September - providing just one week to consider the effect of the amendments on the rights and aspirations of Traditional Custodians of country, and draft a submission to the Committee. Sadly, this reeks of the same convenience that the Act sets out to achieve for government decision makers and corporations wishing to exploit the resources on the traditional country of Aboriginal peoples, rather than an objective to appropriately address an underlying issue about real engagement with and respect for the governance traditions and underlying land ownership of Aboriginal people.

This Bill presents an opportunity to right some wrongs - not at the expense of corporate interests - but to ensure native title interested parties are adequately identified and give real certainty to those corporate interests. Sadly, the proposed amendments set out to re-establish the status quo, validate past practices and perpetuate the wrongs the Court identified.

Many corporate interests do work in a meaningful way with Traditional Custodians, taking their social licence to operate on traditional lands seriously. These companies work together with Traditional Custodians to establish appropriate governance with communities, engage Traditional Custodians in the collection of cultural heritage knowledge, negotiate in good faith to ensure cultural heritage values are maintained and even provide meaningful employment

opportunities and economic benefits for communities. However, the Acts, and the amendments in the Bill, enable those that do not genuinely seek to identify the common law holders of native title to capitalise on a lack of western knowledge of that land and connections, and to achieve approval based on the lack of capacity of often disjunct and disadvantaged communities to engage, or worse, to exploit a small number of people to achieve approval, and alienate the wider Traditional Custodians group. Too often, particularly in the case of Cape York, they have relied on so-called 'umbrella' organisations with respect to Indigenous interests, without the understanding or agreement of actual Traditional Custodians.

In terms of consultation with respect to the Bill and proposed amendments to the Acts, it is noted in the Explanatory notes that Mayors of the nine discrete Indigenous communities were consulted. Whilst Mayors of Aboriginal communities may be able to provide comment on local government issues, they are not necessarily the experts on specific Indigenous Cultural Heritage matters concerning these communities. Other Indigenous groups on Cape York, such as Indigenous organisations with a history of making submissions to such inquiries, cultural heritage bodies and land trusts, should have been consulted as well.

Since its incorporation in 2002, Chuulangun Aboriginal Corporation has been a strong advocate for the recognition of the correct governance and decision-making processes for Cape York and we have made this stance clear in the many submissions made to Bills and inquiries of government over some 16 years. To achieve this, we have consistently proposed that clan-based mapping be developed in consultation with Indigenous communities, for incorporation into spatial mapping products to inform, through appropriate governance arrangements, a wide range of permits, development applications, land uses and agreements. We have recommended, indeed even successfully trialed, the Indigenous Reference Groups (IRG) process to ensure a world best practice engagement model that ensures the correct Traditional Custodians are speaking for country and give real certainty to Traditional Custodians, governments and corporate interests in their dealings, particularly with respect to cultural heritage matters.

Such governance arrangements would provide the capacity for communities to participate directly in the agreements that impact on the Biocultural Values of their country. Such arrangements would also help to ensure *real* free prior and informed consent, with Traditional Custodians as partners not just bystanders to negotiations on their traditional lands. As an example, in recent years, Chuulangun Aboriginal Corporation undertook a federally funded World Heritage Consultation project, the outcomes of which included the development of a culturally appropriate consent mechanism for the consideration of World Heritage over the Payamu (wider Lockhart River area) Biocultural Landscape.

The Act imposes a duty on all land users to take all reasonable and practicable measures to avoid harming Aboriginal cultural heritage. That duty of care extends to identifying the Traditional Custodians of country - not simply the last claim standing - and proper, established Aboriginal governance arrangements would assist in addressing this.

It is understood that existing arrangements for corporate interests and land users may be at risk and previous cultural heritage management plans and agreements have a need to be retrospectively validated. However, at the very least, an additional provision should be included requiring that the department investigate any further information that has become known about Aboriginal parties since the plans and agreements were approved, and to allow for an addendum

to those agreements to ensure any native title claimants or Traditional Custodians are party to and can make reasonable adjustments to the agreement.

Further, the "last claim standing" provisions do not allow for new knowledge, without the final determination of the Federal Court, effectively invalidating the native title rights of those that may be in the process of re-establishing their connections with clan and country, or in claiming their native title rights and interests.

Without additional provisions, there is a concerning breach of fundamental legislative principles, not currently addressed by these amendments. The Explanatory notes suggest the proposed amendments are minimal and deal specifically with the Nuga Nuga decision and require amendment in order to provide certainty to stakeholders required to comply with the Acts. However, as it stands, the Bill removes the rights of those Customary Indigenous People with a yet to be determined native title interest in the land, validates past incomplete processes and fails to take the opportunity to address this breach through providing genuine inclusion in any agreements previously approved under flawed legislation.

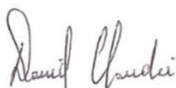
Therefore, the Bill as it relates to amending the Act, is not supported in its current form.

Chuulangun Aboriginal Corporation humbly requests the following be recommended by the Committee:

1. That clan-based mapping be developed in consultation with Indigenous communities, for incorporation into spatial mapping products to inform permit applications, development proposals and appropriate policy consultation.
2. That the Indigenous Reference Group process, adopted in the Wild Rivers legislation, be reinvigorated to ensure a world best practice engagement model to ensure the correct Traditional Custodians are speaking for country with respect to policies, proposals and activities on country.
3. That, in retrospectively validating past agreements and plans, the Bill include a provision for the department, in conjunction with Aboriginal communities, identify any new knowledge about native title claimants/traditional owners since agreements were approved, and allow for an addendum to those agreements to ensure traditional owners can be a party to that agreement and make any reasonable adjustments.
4. That the Acts, and all relevant planning legislation, incorporate a requirement for culturally appropriate engagement with Aboriginal communities, based on traditional governance methodologies.

I would be happy to meet with the Committee to discuss the issues raised and recommendations put forward in this submission.

Sincerely,



David Claudie
Kuuku I'yu Northern Kaanju Traditional Custodian
CEO/Chairman, Chuulangun Aboriginal Corporation

[i] Background on Chuulangun Aboriginal Corporation

Chuulangun Aboriginal Corporation (Chuulangun) is based on Aboriginal freehold lands on Kuuku I'yu Northern Kaanju clan estates within the Mangkuma Land Trust (MLT) on Cape York Peninsula. We represent the interests of particular Kuuku I'yu families within the Mangkuma lands as well as the wider Kuuku I'yu Northern Kaanju homelands. Our functions include management of the 197 500 ha Kuuku I'yu Northern Kaanju Ngaachi Wenlock and Pascoe Rivers Indigenous Protected Area (IPA) which is located on the MLT, and development of sustainable income opportunities on homelands. Our interests in terms of management and protection of biocultural and heritage values also extend across the wider Kuuku I'yu Ngaachi (some 840 000 ha) which underlays a number of properties including pastoral lease and national park.

Chuulangun Aboriginal Corporation has developed a number of management plans, including a comprehensive cultural heritage management plan that outlines prescriptions for the protection and management of cultural heritage across over 30 clan estates of the Kuuku I'yu Northern Kaanju biocultural landscape.

Our homelands are spread across four catchments: Wenlock River catchment (220 000 ha), Olive River/Pascoe catchment (217 200 ha), Lockhart River catchment (68 010 ha), and Archer River catchment (231 000 ha), and include areas in the Cape York and the Cook underground water management areas.

The Mangkuma Land Trust is the official land-holding body for 425 000 ha of Aboriginal freehold land transferred in 2001 under the Aboriginal Land Act 1991 (ALA). It was formed for the purpose of providing a legal entity by which the members of the land trust may perform functions under the Act. Its objectives include to "Relieve the disadvantage, distress, dispossession, lack of housing and employment opportunities, poverty, ill health and suffering of the Traditional Owners of Mangkuma by pursuing all appropriate means including contributing to the cultural, social, and economic and environmental wellbeing and development of the Traditional Owners of Mangkuma".