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Dr Kathy Munro
Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Dr Munro

Inquiry into Government land tenure and native title in Queensland South

Queensland South Native Title Services Limited ('QSNTS') welcomes the opportunity to make comments to the 'Inquiry into the future and continued relevance of Government land tenure across Queensland'. QSNTS is the native title service provider for the southern half of Queensland and our aim is to assist southern Queensland's traditional owners in realising their native title aspirations. The relevance of native title in issues relating to the state's land tenure is significant.

Because the Inquiry's current terms of reference are limited, we will broadly address important principles in proposing changes to land tenure in Queensland. These are the principles of traditional ownership in Queensland, compliance issues with regard to the *Native Title Act 1993* (Cth), and the disregarding of historical extinguishment as playing a role in tenure-related negotiations.

Principle of traditional ownership

Regardless of the underlying tenure, respect for the vital importance of traditional ownership of land and waters enriches all Queenslanders. This principle was encapsulated in the *Constitution (Preamble) Amendment Act 2010*, that states:

'The people of Queensland, free and equal, citizens of Australia...honour the Aboriginal peoples and Torres Strait Islander peoples, the First Australians, whose lands, winds and waters we all now share; and pay tribute to their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community...'

Pursuant to the spirit of the Preamble, it is vitally important that any legislative or administrative change to the tenure regime in Queensland comply with that espoused principle in both substance and form. From a process perspective, it is critical that Best Practice consultation principles and processes are adopted to ensure that there is free, prior and informed consent by Indigenous Queenslanders relating to any tenure change. This framework ensures good policy is formulated and implemented.

Native Title Act compliance

The *Native Title Act 1993* (Cth) ('NTA') formalises the recognition afforded to traditional owners as enunciated in the historic High Court judgment in *Mabo (no.2)* that native title rights and interests do, and always have, existed in land. The fact that Queensland has a high number of native title claims, native title determinations and Indigenous Land Use Agreements registered with the National Native Title Tribunal demonstrates the importance that native title has in any consideration involving tenure changes.

QSNTS would urge the Inquiry to be mindful of the prevailing jurisprudence that has developed over the past twenty years in native title. The Wik principle, for instance, is well settled legal authority that non-Indigenous land holders' rights and interests will be favoured over any inconsistent native title rights and interests. Non-Indigenous land holders have nothing to fear from native title rights and interests provided the prevailing Commonwealth legislation and jurisprudence is followed.

Compliance with Federal legislation is critical. It is QSNTS' experience that there has not always been adequate compliance and there is currently a high level of invalid future acts where Indigenous Land Use Agreements have not been negotiated. Changing the land tenure will not address those invalid future acts and in fact the passing of legislation with that intent may well exacerbate the problem. QSNTS would caution that any proposal to change the land tenure be done by engagement with native title claimants and holders and their representatives. In short, compliance with the future act regime must be a priority in any change to the land tenure system in Queensland.

Historical extinguishment

The Federal Government is currently reviewing the Native Title Act. There is a proposal to consider the prospect of increasing the suite of dealings where extinguishment can be disregarded (see ss47, 47A, and 47B NTA). This tenure review presents an opportune time for the Queensland Government to consider its policy approach to historical extinguishment. In appropriate parcels of land, for example within National Parks, the State can ignore historical tenure and recognise the native title rights and interests of traditional owners. QSNTS urges the Government to consider this opportunity in future negotiations towards native title determinations.

Thank you for the opportunity to outline these important principles to the 'Inquiry into the future and continued relevance of Government land tenure across Queensland'.

Given the absence of specific proposals or clear articulation of the policy intent behind the proposed changes, QSNTS looks forward to the opportunity to address more specific and meaningful terms of reference in the future.

Yours faithfully



Kevin Smith
Chief Executive Officer