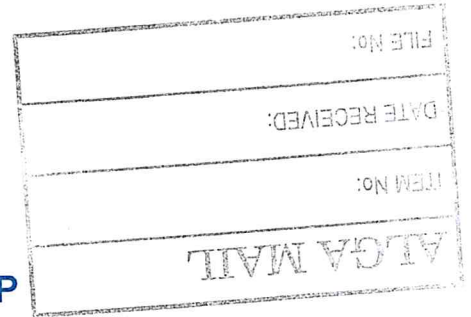




The Hon Christian Porter MP
Attorney-General



MC18-007895

25 OCT 2018

Mayor David O'Loughlin
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Dear ~~Mayor O'Loughlin~~ *David*

Thank you for your letter of 2 August 2018 regarding resolutions made by the National General Assembly of Local Government, and seeking my advice and comment on a number of those resolutions. I appreciate the time you have taken to bring these matters to my attention, and regret the delay in responding.

Consistent with longstanding practice, it would not be appropriate for me to provide legal advice on the resolutions referred to in your letter.

However, I have set out below some general information that might be of assistance to you and the Australian Local Government Association. This general information addresses each of the resolutions you have raised in your letter.

I understand you also wrote to the former Minister for Regional Development, Territories and Local Government, the Hon Dr John McVeigh MP, seeking a response to Resolution 70 carried by the National General Assembly, regarding anti-discrimination legislation. My comments below also address that resolution, as the issues it raises fall within my portfolio responsibilities.

Resolution 1.5

The Australian Government is not currently considering writing a new federal constitution. Section 128 of the existing Constitution requires that any constitutional amendment be approved by voters at a national referendum. In order to be effective, a proposed amendment of the Constitution must be approved by a majority of voters overall and by majorities in a majority of States (that is, in four of the six States). In practice, this means that only proposals with very widespread support succeed at a referendum.

Resolution 1.6

The Australian Government remains committed to recognising Aboriginal and Torres Strait Islander peoples in the Constitution. Recognition would acknowledge our shared history and the value we place on our Aboriginal and Torres Strait Islander heritage.

The Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples was established in March 2018. The Committee has been tasked with recommending options for constitutional change which meet the expectations of Aboriginal and Torres Strait Islander people, and which will secure cross-parliamentary support and the support of the Australian people. You might be interested in the Committee's interim report, which can be found at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_2018/ConstRecognition/Interim_Report.

Resolution 47

Native title compensation is an emerging issue that will have implications for all levels of Government, including local Governments. However, this is a new and complex area of the law. Issues such as the quantum of compensation and liability for compensation have not been judicially determined at this stage.

Further guidance will be provided by the High Court when it hands down judgment in the Timber Creek native title compensation claim, which was heard on 4-6 September 2018. The Timber Creek claim is the first judicial consideration of the principles governing compensation for the extinguishment or impairment of native title under the *Native Title Act 1993*, including quantum. Guidance from the High Court will be important to facilitate future compensation negotiations, and will permit the Commonwealth, States and Territories, local Governments and future act proponents to better estimate and manage their native title compensation liability. Once it is handed down, the Australian Government will consider the High Court's judgment and its implications.

Resolution 47.1

The Australian Government is also developing a package of native title reforms to improve the efficiency and effectiveness of the native title system for all parties. The reforms are focused on improving claims resolution, agreement-making concerning the use of native title land, and measures to promote the autonomy of native title groups to make decisions about their land and resolve internal disputes. Following a process of consultation on an options paper released in November 2017, there will be further consultation on exposure draft legislation in coming weeks.

Resolution 70

Under Australia's Federal system of Government, the Commonwealth, States and Territories each administer their own anti-discrimination laws and related policies and programs. There are many examples of differences between State, Territory and Commonwealth anti-discrimination laws. Achieving consistency between these laws, in and of itself, is not a sufficient basis to amend Commonwealth anti-discrimination legislation to protect against discrimination by large resource projects against residents of nearby regional communities.

The Australian Government considers Commonwealth anti-discrimination law is not the most appropriate mechanism to address concerns about the employment of locals in regional communities. This is best dealt with by individual State or Territory Governments, as appropriate.

Further comments regarding relevant Queensland laws

Anti-discrimination provisions in the *Anti-Discrimination Act 1991* (Qld) and the *Strong and Sustainable Resource Communities Act 2017* (Qld) (SSRC Act) make it an offence for large resource projects to discriminate against locals in the future recruitment of workers. This applies to all projects and communities on the published list of large resource projects from the commencement of the SSRC Act.

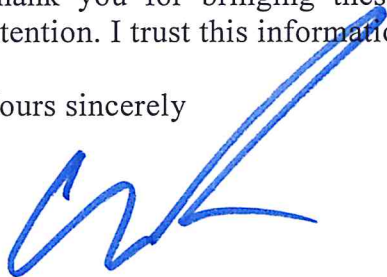
The amendments to the Anti-Discrimination Act and the introduction of the SSRC Act were brought in to prevent the use of a 100% fly-in-fly-out workforce where there is a nearby regional community from which local residents can be employed. Where a person feels that have been discriminated against during a recruitment or termination process because they are a resident of a nearby regional community, the person may lodge a complaint with the Queensland Anti-Discrimination Commission.

Resolution 88

The Australian Government is considering reform options to the *Copyright Act 1968* to enable expanded uses of copyright material by Commonwealth, State and Local Governments. A consultation process was undertaken from March to July 2018 on these possible changes, including allowing uses by governments to comply with statutory requirements. The Australian Government is currently considering the issues raised in submissions to this consultation. Further details about the consultation are available at: <https://www.communications.gov.au/have-your-say/copyright-modernisation-consultation>.

Thank you for bringing these resolutions of the National General Assembly to my attention. I trust this information is of assistance.

Yours sincerely



The Hon Christian Porter MP
Attorney-General