



The Hon Lou Lieberman MP
Chairman
House of Representatives Standing Committee
On Aboriginal and Torres Strait Islander Affairs
Parliament House
Canberra ACT 2600

Dear Mr Lieberman

Review of the Aboriginal Land Rights (Northern Territory) Act 1976

I am writing to you about the Reeves Review of the Land Rights Act. I am aware that your Committee is currently considering its report, and this is expected to be released by the end of August.

Whilst not wishing to pre-empt the deliberations of the Committee, it seemed appropriate that ATSIC indicate to the Committee the general position we have reached at this juncture in our consideration of the future of the Land Rights Act, and what changes might be considered to improve its effectiveness on behalf of traditional owners, Aboriginal communities and others in the Northern Territory.

As you know ATSIC has been concerned by the way the Reeves review was conducted. We believe that the choice of the reviewer was not appropriate, and that the review was conducted outside of the terms of reference (these points were made in the ATSIC submission of 10 March). The result is a long and complex report. As well, many of its key recommendations are legally flawed. Evidence provided in the advice of Mr Ernst Willheim on behalf of ATSIC revealed serious problems of constitutional, domestic and international law nature. As far as we know, this evidence has not been challenged. Consequently, as uncontradicted evidence, it would appear to follow that the Committee should proceed on the basis that the conclusions in Mr Willheim's advice are sound. This itself throws serious doubts on the credibility of the review report.

There are many quite difficult and sensitive issues raised by the review, and no parties have found it easy to develop comprehensive and detailed responses to all these matters. Consequently, ATSIC has been considering its broad position in respect of its response to Reeves as a basis for furthering the dialogue about the Act when the HORSCATSIA report is brought down. We have identified a number of areas where we believe there is room for changes to make the Act more workable and responsive to the needs of the Aboriginal community of the Northern Territory. Finally, we also have identified some mechanisms which might be used to advance consideration of changes to the Act.

A summary of the outcomes of these deliberations is provided below for the information of the Committee.

Basic assumptions:

- Overall, the Land Rights Act has been a major success. It has worked well, especially as the various parties have become familiar with its provisions and procedures. There is, however, need for changes to be made to improve its workability. Such changes should rest on the assumption of self-determination and should result from the agreement of the traditional owners of Aboriginal land and from consultation with the Aboriginal community of the Northern Territory generally;
- The Act is designed to provide for the ownership and control of Aboriginal land according to Aboriginal law and tradition. Consequently the position of traditional owners in the current legislation, particularly in respect of control of what happens on their land, must be maintained;
- Existing land councils should continue to operate within their current boundaries, subject always to the wishes of the traditional owners they serve. Regionalisation of those land councils should be facilitated by legislation, and procedures for establishing new land councils clarified;
- The proposal to create a Northern Territory Aboriginal Council (NTAC) is superfluous. There are existing cross-government arrangements for both policy development and service delivery in the Northern Territory. The proposed creation of NTAC is not related to any function of the Land Rights Act. It does not reflect the wishes of traditional owners, the four existing land councils or the Aboriginal community of the Territory generally; and
- Access to Aboriginal land for any purpose (including recreational, commercial and government purposes), other than access by Aboriginal people in accordance with Aboriginal tradition, should be governed by the general principle that such access is subject to the consent of the traditional owners.

Options for improving the operation of the Act.

Options for improving the Act's operation include:

A. Legislative

- Improve the provisions covering the functions, responsibilities and operations of the land councils to ensure greater transparency and accountability, particularly in respect of gaining and acting upon the informed consent of traditional owners;
- Improve the provisions and procedures for establishing new land councils so that such councils can be established in those situations where the traditional owners so desire and such a council would be viable;
- Enhance the role of the Aboriginal land Trusts. At present the Land Trusts have no independent role and can only act upon the direction of the land councils. An independent capacity to bring forward views to the land councils in respect of the land held in trust would be in keeping with their role as trustees and would accord with native title principles;
- Augment the functions of land councils to require that they promote full understanding of the operations of the Land Rights Act among traditional owners, and to conciliate conflicts between Aboriginal people;

- Improve the transparency and accountability arrangements for the distribution of mining royalty equivalents to “areas affected” by the Land Councils, and to Aboriginal communities throughout the Northern Territory by the Aboriginal Benefit Reserve Committee;
- Improve the accountability and management processes of Royalty Associations for the benefit of their members; and
- Provide an enhanced agreements capability in the Land Rights Act, along the lines of Indigenous Land Use Agreements (ILUAs) in the Native Title Act 1993. In particular, this could provide a mechanism for accommodating the need of residential community members who are not traditional owners.

B Working Parties

An appropriate way to progress areas where there appears to be need for change and reform, especially as such areas may be identified in the HORSCATSIA report, would be to establish a number of working parties tasked to develop concrete and detailed proposals for change. ATSIC would support the establishment of such working parties. Parts of the Act which might benefit from such an approach include:

- The permit system, with a view to streamlining and dealing with any problem areas of operation;
- Royalties, including possible conflict of interest in basing land council funding on royalties, the definition of “areas affected”, the basis for apportioning royalties between and within such areas, substitution of royalty monies for government expenditures, accountability, the future of the Aboriginal Benefits Reserve, accountability of royalty associations etc; and
- deciding unresolved applications for new land councils eg Jawoyn, Anmatjerre etc

A small number of working parties, comprising ATSIC, relevant Northern Territory and Commonwealth Departments and agencies, the land councils and other indigenous organisations, could address such issues, taking account of the findings and recommendations of the HORSCATSIA report, within a given time frame such as 6 months.

Conclusion

This letter has been forwarded to you as Chairman of the Committee to indicate the sorts of directions and activities which might follow on from the release of your report. It seems to ATSIC that a process of dialogue, deliberation and reporting will be required if the review of the Land Rights Act is to lead to positive and constructive outcomes in a manageable way. As I think you will agree, the task is too complex, and important, to be able to go directly from your report to developing legislation.

I hope that the Committee will find this information helpful. ATSIC, on behalf of the Aboriginal community of the Northern Territory, is prepared to contribute to a further process of dialogue and development when the HORSCATSIA report has been released.

Yours faithfully

Gatjil Djerrkura