

CHAPTER 1

Introduction

Background

The Committee's Duty

1.1 The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund is established pursuant to the *Native Title Act 1993* (the Act). The Committee's duties are specified at s.206; and one of those duties is:

- (d) from time to time, to inquire into and, as soon as practicable after the inquiry has been completed, to report to both Houses on:
 - (i) the effectiveness of the National Native Title Tribunal; and
 - (ii) the extent to which there are recognised State/Territory bodies; and
 - (iii) the appropriateness of powers of delegation exercisable by the Registrar under this Act; and
 - (iv) the extent of extinguishment or impairment of native title rights and interests as a result of the operation of this Act; and
 - (v) the operation of the National Aboriginal and Torres Strait Islander Land Fund established by Part 10; and
 - (vi) the effect of the operation of this Act on land management; and
 - (vii) the operation of the Indigenous Land Corporation and the Aboriginal and Torres Strait Islander Land Fund established by Part 4A of the *Aboriginal and Torres Strait Islander Commission Act 1989*.

1.2 On 8 July 1998 the Senate passed the *Native Title Amendment Bill 1997*. Among the amendments to the 1993 Act was the introduction of Indigenous Land Use Agreements (ILUAs), designed to provide a flexible, certain and efficient method of facilitating agreements with native title holders.

1.3 In order to commence its inquiry pursuant to s.206(d) of the Act, the Committee held a conference on 12 March 1999. The proceedings of that conference were published as the Committee's fifteenth report. Under the section entitled 'The Future Act Regime', that (interim) report considered the Act's new provision for the negotiation of ILUAs; paragraphs 7.38 to 7.45 refer. At that stage, and as was noted in the Committee's report, no ILUAs had yet been registered.

1.4 Importantly, however, in its fifteenth report the Committee noted (7.43) the greater scope (pursuant to the Act) for agreements concerning native title and non-native title issues as a result of the availability of ILUAs. It was also confirmed (7.45) that, in carrying out its duty to report on the effect of the operation of the Act on land management, the Committee would consider the potential for agreements using the ILUA provisions of the amended Act.

The Committee Inquiry

Purpose of Report

1.5 The Committee has always been aware that the inquiry to be completed pursuant to s.206(d) of the Act would be extensive. Accordingly, it was considered useful to prepare a number of interim reports covering the most significant matters relevant to s.206(d). The Committee's inquiry into ILUAs has enabled this interim report (the Committee's second such report) to be prepared.

1.6 This report has two purposes:

- a) First, the Committee has sought to identify ILUAs that have been negotiated. This will allow some determination of the extent to which ILUAs are currently being utilised.
- b) Second, the Committee has been concerned to examine how ILUAs operate in practice. This will assist those involved in or affected by native title issues in government, industry and

the community to develop their understanding of how ILUAs work and the results that can be achieved.

Structure of Report

1.7 This chapter provides a general background to the ILUA inquiry. Chapter 2 is concerned with the history of land use agreements and the associated development of the law. In Chapter 3 the statutory framework for ILUAs is considered; and aspects of their operation are considered. Chapter 4 sets out the negotiation processes for ILUAs, while Chapter 5 reviews the perceptions of stakeholders. Chapter 6 examines challenges and issues that emerge during the negotiation process. Chapter 7 considers the registration of ILUAs and the effect of registration. Chapter 8 draws the inquiry's conclusions.

Source Material

1.8 When preparing this report, the Committee was able to draw on significant material collected for the s.206(d) inquiry into the operation of the Act. In addition, the Committee issued invitations to a number of individuals and organisations, seeking responses to questions relating specifically to ILUAs. The submissions appropriate to the ILUA inquiry are listed at Appendix 2. The Committee also made extensive use of various publications and academic resources available on the subject; these are listed at Appendix 4.

Public Hearings

1.9 Following the conference held on 12 March 1999, the Committee continued the ILUA inquiry with public hearings in South Australia, Queensland and the Torres Strait:

- Coober Pedy 17 April 2000
- Adelaide 19 April 2000
- Cairns 3 July 2000
- Weipa 4 July 2000
- Thursday Island 5 July 2000

- Horn Island 6 July 2000

And a further public hearing was held on 9 November 2000 at Parliament House, Canberra.

1.10 Given the significant amount of ILUA activity in that state, subsequently the Committee visited regional Queensland:

- Roma 19 March 2001
- Blackall 19 March 2001
- Winton 20 March 2001
- Townsville 21 March 2001

The second visit to Queensland was followed by a public hearing in the form of a roundtable held at Parliament House, Canberra on 2 April 2001.

1.11 Further hearings were held to finalise the inquiry:

- Canberra 1 June 2001
- Canberra 8 June 2001
- Broome 2 July 2001
- Kununurra 3 July 2001
- Katherine 4 July 2001
- Alice Springs 5 July 2001
- Canberra 6 August 2001

A full list of the witnesses who gave evidence at these hearings is provided at Appendix 3.

1.12 The Committee is grateful to all persons who provided oral or written submissions for this inquiry. While the submissions were carefully considered, it is not possible to refer to them all in the text of this report.

Committee Report

1.13 This report was adopted unanimously by the Committee at a private meeting on Tuesday 25 September 2001.

