

Australian Democrats Dissenting Report

Aboriginal Land Rights (Northern Territory) Amendment Bill 2006

I dissent from the recommendation contained in the majority report. Even the grossly inadequate, truncated examination the Committee was able to undertake showed quite clearly that there needs to be much greater consultation with Traditional Owners and other Aboriginal people who are directly affected by the changes proposed in the legislation before it proceeds.

There are areas of the legislation which cause me serious concern.¹ However, the key issue is not what my views are about the workability of various aspects of the legislation, it is what the informed views are of the Indigenous peoples of the Northern Territory.

If it was clear that this legislation was understood and supported by Traditional Owners and the wider Aboriginal population of the Northern Territory, I would support it, regardless of my own misgivings. However, to the contrary, it is quite clear that there is widespread concern, apprehension and indeed outright opposition to some aspects of the legislation from amongst the Indigenous population.

There are few pieces of legislation more fundamental to Indigenous Australians than land rights laws. No one is disputing that improvements can be made to the existing federal legislation, but it is nothing short of a disgrace that such major changes are being proposed without any serious attempt being undertaken by the federal government to ensure they have the informed consent of those Aboriginal people who will be directly and potentially affected by these changes.

The evidence given to this inquiry by the federal government's own representatives from the Office of Indigenous Policy Coordination made it quite clear that no direct consultation had been undertaken with Traditional Owners. Of even greater concern is that there did not even seem to be any indication that this was seen as being necessary.²

It is well past time that governments and their departments started treating Indigenous Australians with some respect and basic courtesy. It is now becoming common place for the federal government to treat the Senate and its Committees with contempt by refusing to allow meaningful opportunities to scrutinise legislation and seek informed community input.

¹ For example, the provisions that appear to give greater power to the federal Minister to override Land Councils, delegate Land Council functions to other incorporated bodies and to vary and revoke such delegations, to control funding of Land Councils and to exercise greater control over the use of Aboriginal Benefits Account funds and the composition of the ABA Advisory Committee.

² See Hansard evidence, page 75

However, the open contempt for Aboriginal people and communities displayed by the federal government in the process of producing and seeking the passage of this legislation is even more unacceptable.

Even if one were to take the view that the changes in this legislation were completely positive, the chances of them producing the sorts of improvements that government says it desires are drastically reduced by this insistence on introducing them in a way which shows contempt and generates understandable suspicion from Aboriginal people in the Territory.

It is my view that meaningful change cannot be effected without Aboriginal people themselves being part of the whole process because they know what works and what does not in their communities.

Many of the communities and people affected by this legislation live in quite remote areas. They come from a wide range of different language groups, including many people for whom English is not their first language or their second language. As evidenced by submissions from the Traditional Owners of the Miyarrkapuy\u, Laynhapuy\u, and Djalkiripuy\u areas of North East Arnhem Land, it is clear that many Indigenous communities have had major issues with informing the wider community:

"...Most of our homelands have no electricity, we have no newspapers, we do not get ABC Radio or TV - it is very hard to know what Government is doing. We had heard that the Land Rights Act was going to be amended, but it was only by chance that we heard about your Senate Committee hearing. We have had little time to try and understand what these changes might mean, and we have no access to lawyers and other independent experts. It takes time and resources to inform and consult with our members and clansfolk, and we have to rely on our staff who are not experienced in these matters to help us."³

In fact it has been established that review after review for the last decade with respect to land rights in the NT has been devoid of any real attempts to involve the Traditional Owners and communities despite the fact that this risks compromising fundamental rights of Indigenous communities. It is part of the paternalistic attitude of governments who make decisions for Indigenous communities believing them to be incapable of doing so themselves.

Pages 5 through 10 of the submission from the Aboriginal & Torres Strait Islander Social Justice Commissioner⁴ outlines in detail the responsibility the federal government has to properly consult with Indigenous people. It is beyond dispute that the federal government has fallen well short of what is required to even make the pretence that this legislation has the full and informed consent of the Indigenous peoples of the Northern Territory. Until it does, the legislation should not proceed.

³ submission 6, pg 3

⁴ submission 5, esp pages 5-10

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