

# **Dissenting Report - Opposition Senators and Members of Parliament**

## **1. Summary of Dissenting Report**

The Opposition acknowledges that the Committee Chair went to some effort to achieve consensus, and strongly endorses a majority of the recommendations. However the Opposition seeks to address some fundamental weaknesses in the Report, which significantly compromise its impact and constructive value.

First, it is concluded in the Chair's Report that the agreement-making functions of Native Title Representative Bodies (NTRBs) strictly relate to land and water management, and do not encompass the pursuit of broader social and economic outcomes. This interpretation is clearly incongruent with the established scope of Indigenous Land Use Agreements, which have been used to achieve social and economic objectives.

The Opposition submits that a broader interpretation of the agreement-making function should form the basis of any review of NTRB funding levels.

In addition, despite the prolific evidence of the impact of underfunding on the efficacy of NTRBs and more broadly on the native title system, the Chair's Report stops short of recognising the full action that is needed.

The Opposition submits that the recommendations in relation to the adequacy of operational funding and corporate governance training should be strengthened to reflect the full force of the evidence.

## **2. Discussion and Recommendations**

### **2.1 Agreement Making Functions**

Agreement making through the mechanism of Indigenous Land Use Agreements (ILUAs) is a core statutory function of NTRBs under the *Native Title Act 1993 (Cth)*.

The National Native Title Tribunal explains that ILUAs "allow people to negotiate flexible, pragmatic agreements to suit their particular circumstances."

For example, the "Argyle Diamond Mine" ILUA signed in September 2004 provided support for current and future mining corporations, and directed significant company resources towards economic and community development.

In October 2005, the 200<sup>th</sup> ILUA was signed in the Northern Territory, between mining and exploration company Newmont Ltd and the Central Land Council on

behalf of the Gurindji people. This agreement secured employment and training opportunities for Gurindji people, protection of sacred sites and rehabilitation programs for mining sites and exploration.

In the *Native Title Report 2005*, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma noted a number of ILUAs that had achieved social and economic outcomes for Indigenous communities. However, it was also noted that the use of ILUAs as an economic development tool was significantly constrained by under-resourcing to NTRBs.

The decision of this Government to deny NTRBs the resources needed for the effective and full discharge of their agreement-making duties defies common-sense. It obstructs both Indigenous community development and industrial development. It also contradicts the more recent rhetorical shift embodied in the objectives of the Native Title Review announced by the Attorney-General in September 2005. The Opposition welcomes the Attorney-General's apparent emphasis shift from the litigious culture cultivated by the Government over the past ten years to agreement making. However the gap between rhetoric and action is startling, and merits a distinct, specific and strong recommendation from this Committee.

The Opposition recommends that the Commonwealth immediately review the level of funding for NTRBs to effectively and fully execute its statutory agreement-making functions. In particular, resources should be increased to enable:

- a. The development of skills to negotiate regional economic and social outcomes through Indigenous Land Use Agreements;
- b. More effective consultation with communities and negotiations with corporate parties;
- c. Research of social and economic opportunities in the region; and
- d. The monitoring of progress and where necessary, enforcing Indigenous land use agreements entered into with corporate third parties.

## **2.2 Adequacy of funding levels for day-to-day operations**

The Opposition acknowledges the recommendation by the Chair that the Commonwealth immediately review the level of operational funding to NTRBs, but submits it is not enough.

The evidence submitted to the Committee on the impact of chronic NTRB underfunding was prolific, forceful and emanated from a variety of stakeholders – including the minerals sector. The Minerals Council of Australia noted that while reporting requirements had increased significantly in the past few years, there had been no real increase in operational funds since 1995. This meant that NTRBs had less

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money to carry out its functions on the ground. The Council also commented that the workload of NTRBs had risen steadily as the number of native title claims and mining applications proliferated.

The Chair's Report canvasses a wide range of these concerns, noting the impact of under-resourcing on the minerals sector, the native title system and community development in Indigenous communities. But this acknowledgement did not translate into a recommendation for an immediate increase in funding.

The weight of the evidence presented to the inquiry warrants a recommendation that the level of funding be increased immediately, and then reviewed.

### **2.3 Adequacy of funding levels for corporate governance training**

Current funding available to the Office of the Registrar of Aboriginal Corporations (ORAC) for corporate governance training will not be enough to meet the demand generated by the commencement of the *Corporations (Aboriginal and Torres Strait Islander)* legislation. Submissions received by the Inquiry into the CATSI Bill reflected widespread concern amongst NTRBs about the size and complexity of the new legislation, including the compliance requirements.

Training and support on a much wider, systematic scale is required to assist with meeting the new requirements, and to minimise the impact of this new regulatory regime on the native title system. It was submitted in the CATSI Bill Inquiry that the introduction of the registration renewal scheme for NTRBs brought the system almost to a stand still for two years while NTRBs struggled to adjust. The Opposition cautions the Government from repeating the same mistake with the CATSI Bill.

It is not enough to recommend that the Commonwealth ensure funding levels are adequate. The Opposition recommends an immediate increase in ORAC training funds to prepare NTRBs for the upcoming changes in corporate governance regulation.

## **3. Conclusion**

There is considerable evidence to support the claim that the inability of NTRBs to fulfil their responsibilities represents the primary bottleneck in the native title system. The Office of Indigenous Policy Co-ordination (OIPC) has attributed this inability to the inefficient use of resources, at times compounded by mismanagement and corruption. These claims are disputed by NTRBs, which claim the OIPC is more interested in eliminating their advocacy role and micro-managing their work than promoting efficiency.

The Opposition accepts that there is an enormous need for capacity building, skills development, and management/corporate governance training. But fulfilling this need should not be done at the expense of the day-to-day functions of NTRBs, of Indigenous economic and community development, of an efficient native title system, and industrial progress. Until the chronic under-resourcing of NTRBs is addressed, particularly for statutory functions like agreement making, improvements to the native title system will be only peripheral and minimal. The Opposition urges the Government to give this issue its urgent attention for the sake of all stakeholders.

Mr Bob McMullan MP, Deputy Chair

Senator Patricia Crossin

Senator Chris Evans

Mr Daryl Melham MP