



Australian Government
Indigenous Land Corporation

CH2004/158



22 July 2004

Mr Jonathan Curtis
Committee Secretary
Parliamentary Joint Committee on Native Title and the
Aboriginal & Torres Strait Islander Land Fund
Parliament House
CANBERRA ACT 2600

Dear Mr Curtis

Thank you for your letter of 1 April 2004 inviting submissions to your Committee's Inquiry into Native Title Representative Bodies.

I enclose a submission by the Indigenous Land Corporation for your consideration.

Yours sincerely

SHIRLEY McPHERSON
Chairperson

**SUBMISSION BY THE INDIGENOUS LAND CORPORATION TO THE
PARLIAMENTARY JOINT COMMITTEE ON NATIVE TITLE AND THE
ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND
INQUIRY INTO NATIVE TITLE REPRESENTATIVE BODIES**

The Indigenous Land Corporation (ILC), as a national organisation with a national brief to work with Indigenous people in relation to land acquisition and land management, has a broad range of experiences with Native Title Representative Bodies (NTRBs) across the spectrum. This is unsurprising given that it shares a common focus in terms of the particular sector of the Australian community with whom it works.

The Parliament Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (PJC) Inquiry concerns the ability of NTRBs to discharge their responsibilities under the Native Title Act (NTA) and the Inquiry has particular reference to three issues, as follows:

1. The structure and role of the NTRBs
2. Resources available to NTRBs, including funding and staffing
3. The inter-relationships with other organisations, including the strategic planning and setting priorities, claimant applications pursued outside the NTRB structure and non-claimant applications

The ILC notes that it is generally accepted that NTRBs work in a difficult environment and some of the difficulties arise from both structural and resourcing issues. The ILC does not intend this submission to deal extensively with those areas as it is confident that this Committee will receive a number of detailed submissions from stakeholders (including presumably NTRBs themselves) that will deal with these issues comprehensively. It is unlikely that the ILC would have anything useful to add.

However, as a national statutory body, the ILC has had a broad range of dealings with all NTRBs which has enabled the ILC to formulate some generic observations that are pertinent to point 3 above. As the observations are generic

in nature, there will be exceptions and the observations should be read with this in mind.

The ILC has generally had a good relationship with most NTRBs. However, it is apparent that the quality of interaction between the ILC and NTRBs has varied considerably. Those variations can be attributed to a range of dynamics, including corporate governance issues, individual relationships, coinciding and conflicting agendas and political perspectives.

Where there has been friction from time to time, it has been due to misunderstandings (both corporate and individual) about the ILC's statutory brief and the misplaced assumption that its brief is precisely the same as that of NTRBs. The ILC brief is complimentary to, but not the same as, the NTRB brief.

The ILC considers it of some use when analysing the performance of NTRBs to note that they can be broadly put into three categories, as follows:

1. NTRBs that are statutorily incorporated bodies with formal roles that are more extensive than the NTRB role¹
2. Non-statutory NTRBs being those that are locally incorporated bodies whose principal role is as an NTRB but who may perform other functions (but are not necessarily appropriately funded to do so)²
3. Bodies that are not formally recognised as NTRBs but are funded by ATSSIS to perform the functions of an NTRB for a designated area³

GENERIC OBSERVATIONS

Statutory Bodies

The statutory bodies are generally better resourced by virtue of performing non-NTRB functions and being appropriately resourced to do so. This necessarily has some carry over effect into their ability to competently perform in the native title arena. Their statutory backing and formal statutory roles and responsibilities have also given the statutory bodies a great degree of stability.

As a general principle, it appears statutory bodies have performed at the better end of the spectrum when it comes to performing NTRB functions.

¹ Northern Land Council, Torres Strait Regional Authority, Central Land Council

² Cape York Land Council, Gurang Land Council, North Queensland Land Council, Carpentaria Land Council, Queensland South Representative Body, Aboriginal Legal Rights Movement, Kimberley Land Council, South West Aboriginal Land and Sea Council, Ngaanyatjarra, Yamatji Land and Sea Council, Goldfields Land and Sea Council

³ New South Wales Native Title Services, Native Title Services Victoria

Non-statutory NTRBs

The majority of NTRBs fall into this category and have a much more varied track record over the last ten years in performing NTRB functions. The ILC considers that a number of these NTRBs have fallen into the trap of spreading themselves too thinly in the services they provide in trying to be more generic land councils. While that is certainly a legitimate aspiration for such community bodies, regrettably they have not been appropriately resourced to undertake such a wider brief. This means that the more specific NTRB functions for which they are specifically funded (or under-funded as the NTRBs would argue, with some justification) have suffered.

These NTRBs, in attempting to fulfil a wider agenda, have often not shown an ability to perform their NTRB functions in an appropriately strategic and targeted manner. These NTRBs have often had a range of staff but some with limited or inappropriate skills or capacity, and the same observation could be made of governing committees. These deficiencies could be overcome (and in some cases are being overcome) by capacity building programs and by recruiting quality and appropriate staff.

Some of these NTRBs have also taken on a very political angle to their service delivery. Again, this is certainly not without legitimacy, but the ILC's experience is that the political perspective of some of these NTRBs has occasionally and quite unnecessarily interfered in their relationship with the ILC (and possibly other stakeholders) in reaching realistic outcomes for their constituents.

On the positive side, while the ILC considers these observations in the generic form to be accurate, the ILC is pleased to acknowledge that there are exceptions. Some of the non-statutory NTRBs have a much better track record than others and some that had a poor track record have now turned the corner in terms of targeted service delivery.

De facto NTRBs

Two such bodies have recently been established and are not formally NTRBs but are funded to perform the functions of an NTRB for a given area. Note that being an NTRB means they have a couple of limitations on their functions—they cannot certify ILUA's or native title claims and are not entitled to receive future Act notifications—but experience of these bodies to date suggests that they can still perform a very considerable range of NTRB functions to useful effect.

These NTRBs have quickly developed a culture of targeted service delivery and have avoided the trap of trying to take on a wider brief. It is probably too early to comment on the success of these bodies as yet. But they provide an interesting contrast to non-statutory NTRBs that have spread themselves too thinly.

CONCLUSION

The most appropriate NTRB model may be either the purely strategic service delivery model represented by the de facto NTRBs or the more all encompassing properly resourced statutory land council type model. These two models seem to have the greater prospect of delivering services and outcomes when compared with the more haphazard record of the non-statutory NTRBs, which have often taken on a huge range of matters often with little strategy.

Indigenous Land Corporation

July 2004