

HYND, Mr Stephen, Executive Director, Business Improvement, New South Wales Aboriginal Land Council

LYNCH, Mr Charles, Councillor, Northern Region, New South Wales Aboriginal Land Council

[16:19]

Evidence was taken via teleconference—

CHAIR: Welcome. I apologise on behalf of my co-chair, Mr Julian Leaser, who is not present today but would dearly love to be here. I thank you for meeting with the committee today. The committee has been asked by the Commonwealth parliament to look into constitutional recognition relating to Aboriginal and Torres Strait Islander peoples. The committee's resolution of appointment outlines in more detail aspects for the committee's consideration. The co-chairs of the committee have made statements expressing a wish to hear more from First Nations peoples as we start our work. We have also explained that we will continue to receive submissions and hear more views around Australia in coming months.

We need to ensure that everyone present is aware of procedural considerations. Today the committee is taking a Hansard record of the proceedings but it is not being broadcasted. The microphones aren't broadcasting or amplifying your words in the room, but they are likely to be on, and recording, at any given time. The committee may wish to make the Hansard record public at a later date, but we will seek your views on this before doing so. If you feel very strongly that you don't want your views recorded in any way, we will give consideration to that.

When you provide information to a committee, you are covered by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage you on account of the evidence given. Such action may be treated by the parliament as a contempt. It is also a contempt for you to give false or misleading information. If you make an adverse comment about another individual or organisation, that individual or organisation will be made aware of the comment and given a reasonable opportunity to respond to the committee. Would either of you like to make an opening statement?

Mr Lynch: We thank you for giving us the opportunity to have these discussions today. I admit that, as a first-time councillor, I find some things a little daunting. But I look forward to the discussions and being able to make a contribution—and I am sure Stephen is the same.

CHAIR: Stephen, would you like to say something?

Mr Hynd: I'm fine, thanks.

CHAIR: Various members and senators may wish to ask you some questions. I presume you have seen our terms of reference. If you haven't, basically there are five key issues. One is the question of the matters that arose from the Uluru Statement from the Heart, which deals with the makarrata, truth telling and treaty making, or agreement making, and the question of the voice. In relation to the voice, there is the question of constitutional entrenchment or legislative response. The other matter, which is very key, is term of reference (d). This is about current consultations of First Nations organisations as to how they enhance or enable self-determination and economic independence in the policymaking and legislative enactment. That is a broad brush.

This committee is trying to work through those matters as a practical issue to see whether we can gain consensus to put to the parliament. We are doing this in the context of the nations going forward and trying to find some common path down the road. I hope that is helpful. We will be asking you some questions about those matters and other things. Who wishes to start the questions? Ms McGowan.

Ms McGOWAN: Hello, gentlemen. My name's Cathy McGowan. I'm the Victorian rep. I'm interested in understanding the difference between the approaches of Victoria and New South Wales to this treaty business. I'm familiar with what Victoria is doing and I'm really interested in how New South Wales is working in this area.

Mr Hynd: The New South Wales Aboriginal Land Council has recently called for the commencement of a treaty process in New South Wales. It is not a new call in New South Wales nor, obviously, in Australia. At the moment, the New South Wales Aboriginal Land Council is engaging with all parties in the parliament and is seeking to commence a process that is bipartisan—in fact, a multiparty process that has Aboriginal people and the parliament meeting as equals. I think we have to be honest and say that at this stage the response from the government has been a bit lacklustre. We are still encouraging the government to show leadership on this issue. It's an important issue for Aboriginal people and the entire state of New South Wales. The council is showing leadership within the constituency of the Aboriginal land rights network in New South Wales and, more broadly, the entire Aboriginal population of New South Wales. We're trying to encourage similar courage from the government.

Ms McGOWAN: What I'm hearing you say is that Victoria is significantly more advanced.

Mr Hynd: As a New South Welshperson I'm loath to say that but, yes. The bill that entered parliament in Victoria is a very clear statement of commitment to a process. Obviously, it hasn't passed—unless I've missed more recent developments—but it's a very clear statement of commitment from the government at least, at this stage, and hopefully the entire parliament down there. We're optimistic in New South Wales, but these are early days of what will undoubtedly be a long road.

Ms McGOWAN: Thank you.

Ms BURNEY: I think it's worthwhile adding to those comments that the New South Wales opposition has committed to a treaty process.

Mr Hynd: It has, yes. I should have corrected that. The New South Wales opposition has committed to the process; in fact, it has committed to working with the New South Wales Aboriginal Land Council in developing that process. As I said, we're committed to a bipartisan, if not multipartisan, approach. We'd like to think that such an important issue is above politics, but if there's only one side of politics backing such an important issue then we'll proceed—well, we'll see how elections play out, I guess.

Ms BURNEY: That is true. Are you in a position to talk about the New South Wales land council? I'm incredibly familiar with the structure, as you are aware. In fact, I was responsible for it for a few years.

Mr Lynch: Yes, indeed.

Ms BURNEY: You may not have this, but is there any formal position that the land council has on the Uluru Statement from the Heart? If you can't answer that you can take it on notice.

Mr Lynch: We'll take it on notice, but there is a view from council. They're very supportive of the Uluru statement. We've released media releases around that. Council are still very supportive of the Uluru statement and some of the comments that have been made from that. I suppose we're not getting too far into comments just yet, but probably setting out what our views are and how we see it are probably very important because of what seems to be out there. I can only talk about my local area and a comment that was made to me by a parliamentarian, but there was a view that we wanted a separate chamber, and that's definitely not the case. There are some teething issues, and getting that clarity is definitely required around what the expectations of that wording are.

Ms BURNEY: Thank you; that has been put to us already today. I also note that you are from the New England electorate. I also want to ask you to talk to the committee about the very important aspirations of the New South Wales Aboriginal Land Council and how they work, in relation to another part of our terms of reference relating to economic development and sustainability of the local land councils?

Mr Lynch: Yes. We have a sound commitment in economic development, and I'll just talk about it from the local land council perspective. We have adopted a very clear policy, and an investment of around \$16 million over a five-year period that supports that. It comes with—

Ms BURNEY: That's in your local—

Mr Lynch: Hopefully it's geared with capacity building from an economic development unit, with economic development officers employed by New South Wales Land Council and placed throughout the state to assist in looking at economic proposals, such as commercial business operations and so on, and, from that, tapping into the procurement that's out there from the state and federal governments. As I said, it could be just raw commercial investments.

To date, we've had around 38 business cases assessed in the 2½ years; 18 of those are still moving. We have funded multiple business cases to date. Some of those have been very successful, and some of that funding has also brought on other significant contributions financially and so on to the community. Obviously there are two things that can come from this, and one of those is the aspirations of community benefit schemes. When we look at the distribution of the wealth of those activities, some are using that to fund community benefit schemes—that is, things that will make a difference on the ground in their communities, and whether that's assisting with waste or whether it's giving assistance in other areas. Some are using it as a vehicle to train and employ people, down to just the rigours of being in business.

While it has been around for about two years, it is growing in momentum. Obviously it will be underpinned largely, I think, going forward with the more recent announcements and the establishment of the economic business hub in conjunction with the federal government taking up some of the more lucrative arrangements around the development of Western Sydney in civil construction and so on. So there have been some huge steps and gains more recently, but there is a really good underpinning there of building capacity and creating opportunities for the network at large as well.

Mr Hynd: If I may add to that, the council has embarked on a pretty ambitious strategy of economic development activity for the state land council at that state scale itself, in terms of housing, employment and property development. This is largely off the back of the reality that the only way to really get ahead is to make a go of it yourself.

The historic context of Aboriginal rights in New South Wales and across the country, particularly Aboriginal land rights in New South Wales, is not something that we can ignore. There remains a need—and this is a tie-in directly to the Uluru Statement from the Heart, the makarrata commission and what we see as a treaty framework right across Australia, including at a state level—for restitution for the dispossession of land. In New South Wales we're quite fortunate to have the Aboriginal Land Rights Act, which was revolutionary for 1983 and in many respects remains so. The mechanism that allows Aboriginal land councils to claim for Aboriginal communities unused and unneeded Crown land is, in reality, still not fully realised in New South Wales.

We are taking steps forward with the New South Wales government to negotiate what are known as Aboriginal land agreements. But there is still the fundamental need for full restitution. The rights that are recognised in the United Nations Declaration on the Rights of Indigenous People—from memory, articles 26 to 28—really shoot home to this need for land both for cultural and spiritual needs but also for economic needs. If you look at the personal level, for most people their home, their house, is their most significant asset. Historically, land has been the most significant asset for any people.

There is still a fundamental need for the issue of outstanding restitution to be addressed. We don't want to overstress that and scare others, but we do see that as a critical plank of any treaty framework. Again, any treaty throughout history has involved components of land and restitution. While the Uluru Statement from the Heart is a very generous statement in its spirit, underlying that is still the need for restitution, including for the spiritual side, for the whole of this nation but also restitution for the dispossession of land. That will be a key element of any discussion certainly in New South Wales and I imagine anywhere across the country.

Mr SNOWDON: I am interested to get your view on how you think these discussions around the whole issue of constitutional recognition should progress, given the responses that have been made to the Statement from the Heart.

Mr Hynd: It was a bit of a disappointing response, if we're completely honest. We've made public statements to that effect. Despite some problems that still exist in our society, we take a more generous view of the Australian people. We believe that the Australian people could support all the recommendations of the Uluru Statement from the Heart. As I said, it reads as a very generous statement. It is about bringing people together and sharing the ancient sovereignty. It's a very powerful statement, and I think it could be enriching for the whole country as well as address historic issues. These need to be addressed at some point, and we believe that we should get on and address them.

If we look back at the 1967 referendum—I'm not very good at generations—1967 was a different time and I think it would be fair to describe the views then as a bit harsher than we find now. But we still saw the highest vote in favour of constitutional change in 1967. It comes down to political will and providing leadership. We think that the Australian people are far more generous than is made out in the response. I think it's more an issue of political will. We'd encourage everyone to get behind what is, again, a really generous position for the whole country. It always comes down to education and will—political will in this instance. Combine those two things and I think we'll find, as we've seen in recent quasi-referenda, that the Australian people will show their true spirit.

Mr SNOWDON: Could I follow that up with another question? Given the rejection from some of the idea of constitutional entrenchment of a voice—whatever a voice might look like—could you give us a view on whether you think it's reasonable to legislate for a voice in advance of having a referendum with a question posed as to whether the voice should be entrenched? What do you think the attributes of the voice should be?

Mr Hynd: That's a good, tough question. I need to say up-front that our council's position on the Uluru statement has not gone down to that level of granularity at this stage, but, again, there are examples from history that, rightly or wrongly, give us some guidance on such things. Just as a general statement, the repeal—I don't know what you'd call it—of ATSIC provides a very dark reminder to Aboriginal people—

Mr SNOWDON: 'Abolition' is the word.

Mr Hynd: Thank you very much for that. The abolition of ATSIC provides a very stark reminder to Aboriginal people of the insecurity that legislation alone can provide. I'll be honest: we love the Aboriginal Land Rights Act here in New South Wales, but there is perpetual fear about its repeal, amendment or abolition.

Ms BURNEY: They wouldn't dare!

Mr Hynd: I take that as wholehearted support. We believe that too, but you never know. That's why we have constitutions. Some things should be above politics, and this is the very definition of such a matter. It should be above politics. That's why we have the Constitution. The rights of Aboriginal people should be sacrosanct. Whether it's in a Constitution or in a sovereign-to-sovereign treaty, there needs to be protection that puts it above the whim and will of governments. I make no comment on any of the committee members at all! I'm just saying that it should be above politics.

Mr SNOWDON: There is an issue, is there not? I also asked you about what a voice might look like and you rightly said that you really haven't contemplated that. That left open the possibility that people could interpret the voice as being a third chamber, and that's what some people did. In the minds of many, the idea of what a voice actually is would be very nebulous. So we need to have some consideration of how it's constructed, what it looks like, what its engineering is like, how it's made up, who it's made up with, what its role would be. Would you like to take that on notice and perhaps get your council to contemplate that and get back to us?

Mr Hynd: Certainly. I would say that the Uluru statement is far clearer than an awful lot of the Australian Constitution, as it's currently drafted. Obviously, there is a High Court interpreting that. We will take that on notice. Thank you.

CHAIR: We will have to finish there. Thank you for your patience and your contribution and for undertaking to take up the proposition from Mr Snowdon to look at the legislative potential of what a voice might look like and to run it past your council. We appreciate that highly.

Mr SNOWDON: Could I ask you to also take on notice what your view is of current arrangements for consultation with Aboriginal people around policy from a federal point of view.

CHAIR: He's asking if you wouldn't mind looking at item (b) in our terms of reference and giving us a response to that. It would be very useful.

Mr Hynd: Certainly. We will also be making a full submission at the appropriate time.

CHAIR: Thanks very much, gentlemen.