

Australian Greens Additional Comments

1 During the inquiry, submissions and comments were made to the committee regarding the rights of traditional owners. Many of these comments are reflected in the section of the main report dealing with *The role of Traditional Owners*, paragraphs 2.22 to 2.30.

2 Recommendation 1 of the main committee report deals with the right of the Mirrar to participate in the Minesite Technical Committees for the Ranger and Jabiluka operations. The Greens support this recommendation. However, the issues raised in the public hearings were far wider than membership of this committee.

3 Many of the comments related to the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*. This legislation is being reviewed by the relevant Commonwealth Minister.

4 Suggested changes to Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA) relate to:

- (a) Strengthening the powers for Traditional Owners over mining on their land; and
- (b) Agreements covered under the Act.

5 The Gundjehmi Aboriginal Corporation argued that agreements made under the ALRA do not operate effectively and are not supported by legislation¹.

6 In particular, agreements do not provide for direct Traditional Aboriginal Owner participation, and if participation occurs at all, it happens on an arbitrary basis. Gundjehmi argued for the Northern Land Council and Traditional Owners to be able to initiate investigations into environmental incidents associated with mining operations on Indigenous lands, and to take a role in the deliberations regarding whether to invoke sanctions against responsible companies².

7 Gundjehmi also stated that ALRA agreements are easily excluded from considerations regarding environment measures at the operations. The corporation cited the example of the 'Jabiluka Requirements' developed by former ministers Warwick Parer and Robert Hill in 1997-98, which were non-legislative, not prepared under the ALRA and which did not provide for the input of Traditional Owners³.

8 There was additional concern expressed that the Northern Land Council is treated as only a stakeholder in various fora, such as the Minesite Technical Committees, even though the Land Council represents parties with a primary interest, that is the Traditional Owners.

1 Mr Andy Ralph, Tuesday, 1 October 2002 SENATE-References ECITA 129

2 Justin O'Brien, Tuesday, 1 October 2002 SENATE-References ECITA 139

3 Justin O'Brien, Tuesday, 1 October 2002 SENATE-References ECITA 139

9 Added to this, Gundjehmi stated that the Minesite Technical Committees have no legislative basis. Rather, they operate as ‘working arrangements’, which are outdated and unenforceable⁴.

Nor are they supported by Northern Territory legislation, such as the *Mining Management Act*. Consequently, the only means by which the Northern Land Council may participate in deliberations about environmental matters has no legislative basis in either Commonwealth or NT law.

10 Gundjehmi suggested that agreements under the *Aboriginal Land Rights (Northern Territory Act 1976 (Cth)*, in conjunction with relevant Commonwealth and Northern Territory legislation, should provide the Mirrar with the legally enforceable right to:

- i) access independent and appropriate information about the way that mining operations on Mirrar land, and arrangements for regulating those operations, directly and indirectly impact upon the physical environment and living culture of the Mirrar;
- ii) seek compliance and/or remedies where operators of mining projects on Mirrar land do not comply with the regulatory arrangements;
- iii) instigate processes for reforming the regulatory arrangements as they apply to Mirrar land;
- iv) disallow changes to the regulatory arrangements which detrimentally affect the exercise of Traditional Owner rights or protection of the environment on Mirrar land⁵.

11 Gundjehmi also identified the need to:

“ensure Commonwealth authorizations comply with a prescribed agreement under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*”⁶

12 Land rights legislation has been much reviewed. The fact that the ALRA has been raised in this inquiry points to continuing problems with the operation of the legislation.

13 While matters pertaining to land rights legislation fall outside the terms of reference of this inquiry they nonetheless are relevant to environmental regulation of mining activity, particularly given that Indigenous Australians have ownership of 15 per cent of Australia’s landmass, including land which is the focus of mineral exploration and extraction in this country.

14 There has been over time a gradual erosion of the authority granted to Traditional Owners to determine the activities that take place on their lands. The collapsing of the right of veto over exploration and mining into a single decision is but one example of this deterioration of rights. The compromises under Labor’s original Native Title Act and the

4 GAC Submission, p.31; 33

5 Gundjehmi Aboriginal Corporation, *Submission 58*, p 30.

6 GAC submission pg. 122

retrograde amendments made by the Howard government also demonstrate the absence of commitment to achieve just outcomes for Indigenous Australians.

15 The recent whittling away of Indigenous Australians' control over land fails to give proper regard to the centrality of land to Indigenous people, to their cultural obligations to 'care for country' and to the spiritual significance of land.

16 The actions of various governments have fallen well short of what is required. They have undermined the process of national reconciliation and they have failed to deliver justice to Indigenous Australians.

17 The review of the ALRA provides an opportunity to address the issues raised in the course of this inquiry. The process currently involves the Northern Territory and Commonwealth governments, the NT Land Councils and the mining industry. This process may result in positive amendments to the Land Rights Act.

Recommendation

That the Commonwealth Minister for Immigration and Multiculturalism and Indigenous Affairs facilitate discussions with federal and territory counterparts, Traditional Owners and the Land Councils about measures to ensure that agreements made under the Aboriginal Land Rights Act achieve the best possible outcomes for Indigenous Australians.

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