Brief for Senators

Aboriginal Land Rights (Northern Territory) Amendment Bill 2015 and further amendments from the House of Representatives

25 November 2015

Background

The Central and Northern Land Councils are corporate entities pursuant to the Aboriginal Land Rights (Northern Territory) Act 1976. The CLC and NLC have now been operating for forty years, and have worked tirelessly to protect the integrity of the Land Rights Act (ALRA) and, where necessary, to pursue positive amendments to ensure it remains effective and workable. The ALRA has been the subject of many reviews, including the major review of the Act carried out by John Reeves QC in 1998 and an inquiry into Reeves’ review by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA) in 1999. In August 2003 the four Northern Territory Land Councils and the Northern Territory government made a historical joint submission to the Australian government outlining a package of agreed amendments designed to improve the workability of the Act. This culminated in the package of amendments to the ALRA which were passed in 2006.

While the vast majority of the 2006 amendments were those agreed and promoted by the four land councils and the Northern Territory government, there were also several hostile amendments to the ALRA which were drafted at the last minute and were opposed by the land councils.

Most problematic was the amendment relating to the delegation of land council functions (discussed in detail below).

The delegation provision required regulations to be made pursuant to ss. 28A & 28B and these regulations were not progressed until late 2013 when the Minister for Indigenous Affairs released an
exposure draft of the draft regulations to the land councils for comment. Efforts from the CLC and NLC ensured that the senate disallowed these regulations in March 2014. The Minister then sought to advance a second draft of these regulations in December 2014. The second draft of the regulations was almost identical to the previous draft, and land council concerns were not sufficiently addressed.

In March 2015 the Minister indicated his intention to set aside the re-drafted regulations and instead pursue a negotiated outcome with the land councils on the main provision in the ALRA relating to the delegation of functions. After 8 months these negotiations have culminated in an agreed set of amendments to fundamentally alter the mechanism providing for the delegation of functions.

The *Aboriginal Land Rights (Northern Territory) Amendment Bill 2015* and additional amendments were provided to the CLC and NLC as an exposure draft. The proposed amendments to the ALRA are supported by the CLC and the NLC. Specific comments on important aspects of the Bill are provided below.

**Specific Comments on the amendment Bill**

**Variation of Land Council boundaries**

The CLC and NLC support the proposed amendments in the Bill providing for the Minister to vary Land Council boundaries on request of the two relevant land Councils, and subject to traditional owners consent and consultation with affected groups and communities. There is currently no mechanism providing for a variation to a land council boundary. This amendment provides such a mechanism whilst also ensuring that such a change cannot be imposed by the Minister and must be subject to traditional owner consent.

The proposed amendments relating to the variation of land council boundaries are supported in full.

**S.28A – delegation of functions**

The 2006 amendment inserted a power for core Land Council functions to be delegated to an Aboriginal corporation on application. Such an application can be made by an Aboriginal corporation whose members are either the traditional owners of part of an area for which a delegation is sought, or residents of that part. Where a Land Council refuses, or is deemed to have refused, the Minister for Indigenous Affairs can approve the delegation.

The 2006 amendment allows the Minister to strip and reallocate core Land Council functions under the Act outside of the formal process that enables the establishment of new Land Councils. The specific functions that may be ‘delegated’ under s.28A are the power to grant leases (including township leases), consent to exploration and mining tenements and agreements and interests concerning land
under claim. Once a ‘delegation’ has been made the future of that delegation is controlled by the Minister.

During the negotiation process the Land Councils have been concerned to ensure that:

- Traditional owners in consultation with their Land Council retain control of any process of delegation of functions;
- Traditional owners informed consent is provided to any application for a delegation;
- There should be no Ministerial override or interference in this process;
- Any assignment of authority is a proper delegation in the sense that it can be revoked by the Land Council without permission of the delegate or the Minister and the Land Council can still exercise its functions at the same time if required;
- There is an ability to review periodically the performance of the delegated functions by an Aboriginal corporation.

These major concerns of the CLC and NLC are addressed in the amendments proposed in this Bill. The CLC and NLC strongly support the proposed amendments that repeal both section 28C (to remove the Minister’s ability to override a Land Council’s decision not to delegate functions of powers) and Section 28D, which restricts a Land Council from exercising functions or powers once they have been delegated. This means that the decision about whether or not to delegate a land council function upon application rests with the Land Councils who must consult with relevant traditional owners. The amended delegation of functions provision also ensures that if an Aboriginal corporation with delegated land councils functions fails to adequately perform those functions or becomes dysfunctional it is possible for the delegation to be revoked and exercised by the relevant land council.

The amendments also provide that a delegate corporation can be required to provide reasons for its decision if requested by any person or body affected by the decision.

The CLC and NLC welcome and support the agreed amendments to the delegation of functions provisions.

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1 s.28(3) Aboriginal Land Rights (Northern Territory) Act 1976 specifies the functions that are delegable to a Corporation, which are those pursuant to:
(a) section 11A (about agreements concerning land under claim);
(b) section 19 (about leasing by Land Trusts);
(ba) section 19A (about grant of township leases);
(c) Part IV (about mining);
(d) section 67B (granting interests while land subject to claim).
Executive Director of Township Leasing

Currently the Executive Director of Township Leasing (EDTL) may hold a lease of Aboriginal land on behalf of the Commonwealth on consent of traditional owners. Negotiations have been taking place for a number of years regarding a possible community sublease over the community of Mutitjulu which is in the Uluru-Kata Tjuta National Park and already the subject of a lease from the Land Trust to the Director of National Parks. If traditional owners consent there is a possibility that the EDTL will be required to hold a sublease of Aboriginal land at Mutitjulu for a limited period of time. These amendments also allow for the sub-lease to be transferred to a community corporation at a later date. This is an important change to existing leasing arrangements involving the Commonwealth. This amendment allows for these things to occur, and is supported by the CLC and the NLC.

Scheduling of land

The Bill also provides for three additional parcels of land to be scheduled as Aboriginal freehold land: Wickham River, a portion of the Simpson Desert and the Vernon Islands. The Wickham River and associated Yarralin land claim was first made in 1975 to the interim Aboriginal land Commissioner. Resolution of these long-standing land claims is welcome.

Conclusion

The CLC and NLC support the negotiated amendments to ALRA expressed in the Aboriginal Land Rights (Northern Territory) Amendment Bill 2015 that was provided to the land councils in early November 2015. These are beneficial amendments to the ALRA; providing a mechanism for agreed variations to Land Council boundaries with sufficient protections, reflecting a more innovative approach to community-wide leasing, and redesigning the s.28A delegation of functions provisions to remove the Ministerial over-ride, and ensure that the delegation can be revoked. These amendments to s.28A correct a significant flaw in the 2006 ALRA amendment process, and will ensure that any potential delegation to an Aboriginal corporation is undertaken with traditional owner consent, Land Council cooperation and due caution.

The grant of additional land under the Land Rights Act is of great benefit to traditional owners and is another step forward in rectifying the dispossession of Aboriginal peoples in the Northern Territory.