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Member for Nhulunbuy, NT Legislative Assembly



Committee Secretariat

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Inquiry into the Opportunities and Challenges of the Engagement of Traditional Owners in the Economic Development of Northern Australia

Submission

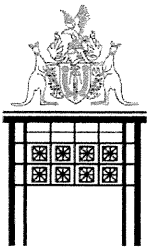
28 February 2019

I make this submission as a Yolŋu leader and elder and as a “traditional Aboriginal owner” - a Waŋa-Waŋu¹. I also make this Submission as the elected Member for Nhulunbuy in the Northern Territory on behalf of the Electorate. I am also aware, having travelled through the Northern Territory that many of my views outlined in this submission are also shared by other Aboriginal Nations in the Northern Territory—who still have strong connections to their Law, Language and Country.

As a Waŋa-Waŋu this Inquiry is about me and the people of my electorate and beyond, and the process of engagement in order to create economic development opportunities on our land. With respect, I wonder whether the Committee has sought to engage the proper leaders of many Waŋa-Waŋu mala² and Aboriginal clans in Northern Australia in this Inquiry as our thoughts and knowledge will be vital for success.

¹ “Waŋa-Waŋu” means the patrilineal clan having principal responsibilities, along with others, for a land estate. This term is from our “Aboriginal tradition”, that is the Madayin (Aboriginal Law) for north-east Arnhem Land.

² Mala means group



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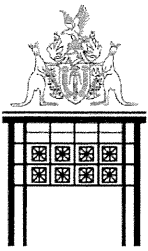


Travelling within my electorate and beyond, and prior to becoming the elected Member, I have heard much frustration from Yolŋu people in relation to business enterprise. For many, there is a great desire to be included in 'Economic Development', rather than leasing the management and development of our country to governments and other businesses, so that they can profit - while our grandchildren and children are left with no jobs, or purpose on their own country. There is a desire to create pathways for our children that combine traditional knowledge, and modern techniques with business enterprise. Many elders have told me their vision for taking family back onto country away from dysfunction, reviving homelands or returning to existing homelands, or for many people living on homelands, building enterprise that will sustain the future of our people. There is a great desire to take responsibility for the management of traditional lands and to create sustainable business and lifestyles from our country and traditional knowledge, and yet there are very few pathways to make this achievable.

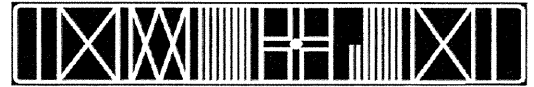
I have spoken with Yolŋu who want to create businesses through: commercial fishing and crabbing, buffalo meat, cattle, crocodile skins and crocodile eggs, eco-tourism, commercial property investment, fishing shops, and much more. The barriers that we face to creating these businesses are most often impossible to overcome.

Some of these people have been told that they must go through a Section 19³ lease process with the land council that may take many years, only to provide themselves with their own lease. Others have been told there are no commercial fishing licenses available, and they must find a current license holder to buy their

³ Aboriginal Land Rights Act (Cth) 1976, Section 19



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license from. Many people have been told to apply for loans from banks in order to get start up capital – but this process is not easy and requires finance on Aboriginal land, of which the title cannot be held or sold if the loan repayments are defaulted on, creating difficulties for the banks. Sometimes the land council refuses to grant a lease because it says the people don't have enough money to do what they propose ⁴. The land council won't even grant a lease which says the people must complete certain development within a set period of time; like the NT Government does (with 'crown lease terms'). These practical barriers need to be addressed in order to give Yolŋu communities greater opportunities.

I am advised that alternatives to Section 19 leases are available and this needs to be a process that is better supported so that Land owners can exert control of their own country without the arduous oversight and intervention of land councils. Section 71⁵ of the Aboriginal Land Rights(Northern Territory) Act 1976 (Cth)(ALRA) clearly identifies Traditional Rights to use or occupy Aboriginal Land. This, and Section 5 of the Aboriginal Land Act 1978 (NT) (ALA) clearly outline authority and process for the Wāṇa-Waṭaṇu mala along with their Djungaya ⁶ and Gutharra ⁷, in accordance with traditional decision-making processes to create permits for land use, as identified by the Supreme Court in 2014⁸.

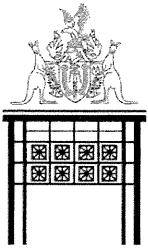
⁴ The land council should put s.23(1)(ea) ALRA into effect. That section says that land councils functions include assisting Aboriginals to carry out commercial activities.

⁵ 71 (1) Subject to this section, an Aboriginal or a group of Aboriginals is entitled to enter upon Aboriginal land and use or occupy that land to the extent that that entry, occupation or use is in accordance with Aboriginal tradition governing the rights of that Aboriginal or group of Aboriginals with respect to that land, whether or not those rights are qualified as to place, time, circumstances, purpose, permission or any other factor.

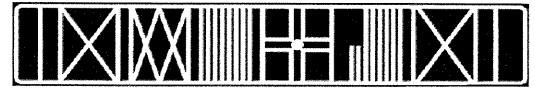
⁶ The children of a female Wāṇa-Waṭaṇu.

⁷ People whose mother's mother is Wāṇa-Waṭaṇu.

⁸ Tiwi Aboriginal Land Trust & Anor V Munupi Wilderness Lodge Pty Ltd (2104) NTSC5



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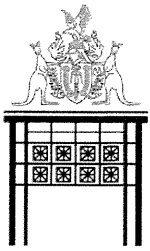
What is important to note in this Supreme Court case, is the emphasis that is placed on upholding traditional decision-making – both through sections 19 and 71 of the ALRA and the ALA. This is a process that upholds our law and tradition and involves many clans as part of a decision-making process. These clans are ringitj alliances⁹, they include the Yothu-Yindi, Märi-Guthurra, Waku-Yapa clans. They all have a say in a project and this ensures that all authorities are informed and have been consulted before a final decision is reached.

I will use the following excerpt from my *Reforms to the Native Title Act 1993 (Cth) Options Paper Submission* in 2018 to give an example of a decision-making process for a land use agreement:

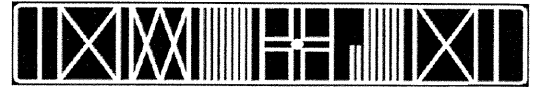
In Yolŋu law, land matters are complex (organised through kinship connections). For example, for those who have travelled to the very small remote community of Gapuwiyak where there is a large waterhole beside the town centre, you might be surprised to know that there are several what we call 'ringitj-watŋu mala' or 'owners' for different parts of that waterhole and also for around the waterhole. So whilst westerners might see it as a single site, there can at Yolŋu law be several clans and even sometimes more than one ringitj – or allied clan group - involved in terms of ownership of a site.

There are also other clan's interests that need to be allowed for, apart from the 'ringitj-watŋu mala'. There will be what we call the 'ŋandi watŋu mala' and in the yothu-yindi system these are

⁹ "Ringitj" is the group of clans and other Aboriginals which, as a group, have authority and responsibilities according to Aboriginal tradition for governing communities and supporting the management and development of land.



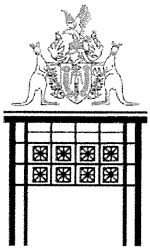
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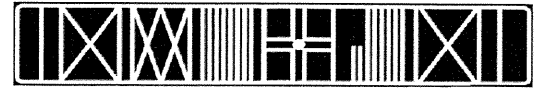
the ones who will be responsible for much of the action that occurs on that site such as if there was a ceremony to be held there. These are also the Djungaya, the managers of any ceremony at that site. Then there's also the 'märi-watänu mala' the grandmother line that have another role in regard to the site. It's not simple and all the clans mentioned in particular song lines about that site are involved in some way. At times we also have trust relationships where for some reason another clan is entrusted to care for that site for a period.

Engagement must come through our Law, and our decision-making processes. To cause rifts at this level because one or more clan leaders were not given sufficient voice in a matter, can create tensions that can last for many years. We know this because where the ALRA is not adhered to and traditional decision-making is not observed we can see the consequences. The Gove area is still caught up in clan disputes and litigation (with many clans cut out of any appeal process, due to their limited rights under the ALRA in favour of land councils and their inability to fund legal proceedings) due to the decades-long and ongoing dysfunction created by the Gove bauxite mining operations, including related agreements. The continued creation of Section 19 leases by the Northern Land Council (NLC) on land that is contested and with processes that breach both the ALRA and our law – due to a lack of traditional decision-making processes, continues to create problems for the Waṇa-Watänu and the communities of our country.

Engagement must also come with language. It is very important that time is taken to relay economic concepts, and business development through our languages. This means having highly skilled interpreters



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and where some concepts do not translate – there needs to be time given for discussion and understanding to be formed.

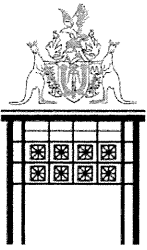
Yolŋu are not opposed to economic initiatives on our lands; quite the opposite. But we need to create pathways for sustainable business development that upholds our traditional decision-making processes and our law, and respects our authority for determining ‘economic development’ on our country.

Governments, including land councils and other government authorities, should stay out of developing and operating businesses apart from providing funding and other support so that Yolngu can set up proper business development organisations (based on traditional decision-making processes) and engage their own business advisers. There is a great desire to create and build business, rather than receiving royalties that becomes ‘sit-down’ money.

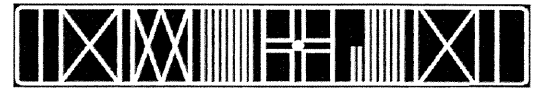
Some of the Yolŋu Waja-Watŋu businesses that are operational in the region are often successfully achieved in partnership with balanda¹⁰. Mäpuru homeland, for which I am a Caretaker, runs the Arnhem Weavers business. This homeland town has been greatly supported through partnership with Balanda in order to create a successful tourism business that operates during the dry season. Partnerships with non-Yolŋu businesses, within a sustainable and cross-cultural frame is one option that could be fostered to help give support to Yolŋu enterprise.

Furthermore, Land Councils must assist Yolŋu business development by providing funding (as noted above) and by simply moving aside so that we have space to self-determine. As I travel through Arnhem Land I

¹⁰ Balanda means non-Yolŋu people



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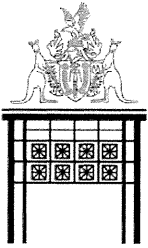


hear people say that the NLC does not represent their best interests. Somehow they have become a foreign body. The Waja-Wataju -mala in one community in Arnhem Land had long held hopes of building commercial properties in their town and leasing these properties directly to businesses.

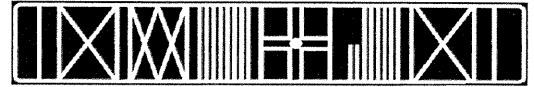
Their vision was hampered by the NLC's refusal to say who it considered to be the "traditional Aboriginal owners" and what it considered their decision-making processes to be. The NLC still refuses to provide that information. Transparent land ownership is foundational to any land use. But, on Aboriginal land, the land councils keep this information hidden – and no-one has the right to obtain the information which the land council holds about them and their land interests ¹¹.

In addition, the communities vision was frustrated by the NLC's insistence that they provide detailed business plans (without any funding support for their preparation from the NLC) and that they have funding immediately available to construct the buildings and to operate the businesses they had in mind. The NLC refused to consider granting a lease conditional on certain development being completed within a certain period of time after the lease was granted. This would have allowed the community to seek funding. Over a period of years the Waja-Wataju mala were not provided with these details and during that time one of the old men passed away. Since his passing, the NLC have had a Section 19 lease signed for the allotted land by a landowner in another community, allowing business to build directly on the land and robbing the community of a commercial property income.

¹¹ Land councils are exempt from the operation of the *Privacy Act* (Cth).



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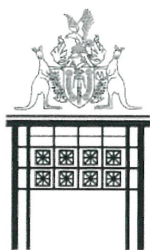


This is where we need a greater level of support from Land Councils to ensure that our own vision is at the heart of economic development. But it needs to be the support that we ask for and control. Too often business is about securing land for a third party, and not about creating a process for Aboriginal people to benefit directly from our own natural resources through Aboriginal business development. We require support through funding so that we can engage qualified advisers with expertise in our resources and business development, as well as training and legal advice. These are ways that we can begin to develop our own capacity to realise economic development and community development.

Really, the idea of community development and economic development must work together here. We want to build our communities through business and responsibility for our land. Elders in Arnhem Land have visions of homeland towns that are sustained by a fishing business, for example. They can see future generations living with good schools and training on their land and being able to take part in ceremony and care for country, while participating in the economic development of the region.

What is also important in understanding this story, is an understanding of our responsibility to our ancestral land. Any economic development is strongly tied to our responsibility to protect sacred sites and care for our country, furthermore it must build community and improve our capacity to self-determine our future.

By making this submission, it is my hope that I have given the committee better understanding about the need to engage through our law, language, culture and traditional decision-making processes. These




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elements are a way of life that promote peace, harmony and functional community life and this, in turn,
creates an opportunity for successful engagement and economic development on Aboriginal Land.

Yours sincerely

 28/02/19

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