



Kimberley Land Council
P.O. BOX 2145 BROOME WA 6725
Phone: (08) 9194 0100 Facsimile: (08) 9193 6279 Website: www.klc.org.au
ABN 96 724 252 047 ICN 21

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Email: community.affairs.sen@aph.gov.au

Dear Honorable Senators

Inquiry into the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014

The Kimberley Land Council (**KLC**) welcomes the inquiry into the *Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014 (Bill)* and the opportunity to make a submission on the Bill.

The KLC represents Traditional Owners in the Kimberley region of Western Australia and is the Native Title Representative Body for the Kimberley. The KLC was established in 1978 and since that time has been engaged in many projects that seek to further the economic, social and cultural aspirations of Kimberley Aboriginal people. Fundamental to this work is recognition of the complex and multilayered interests of Aboriginal people in their traditional lands and the enormous impact that loss of these lands has had, and continues to have, on Traditional Owners.

General Submission

The KLC is strongly in favour of mechanisms that strengthen and support the Land Account.

The Land Account is a central mechanism by which the Australian Government recognises the significance of Aboriginal and Torres Strait Islander interests in land and the impact that 226 years of colonisation has had on Traditional Owners. The Land Account manifests the commitment that the Australian Government made to Aboriginal and Torres Strait Islander people in response to significant compromises that were made during the negotiation of native title legislation following the decision of the High Court in the Mabo Case¹. However, the Land Account also provides an invaluable and unique bridge between the limitations of native title and future prosperity for many Traditional Owners. The Australian Government rightly recognises the importance of, and has invested in programs that support, pathways to economic self-sufficiency for Aboriginal people. The Land Account is one of the most important of these pathways as it allows Traditional Owners to pursue opportunities outside the limited confines that currently exist on native title tenure. For

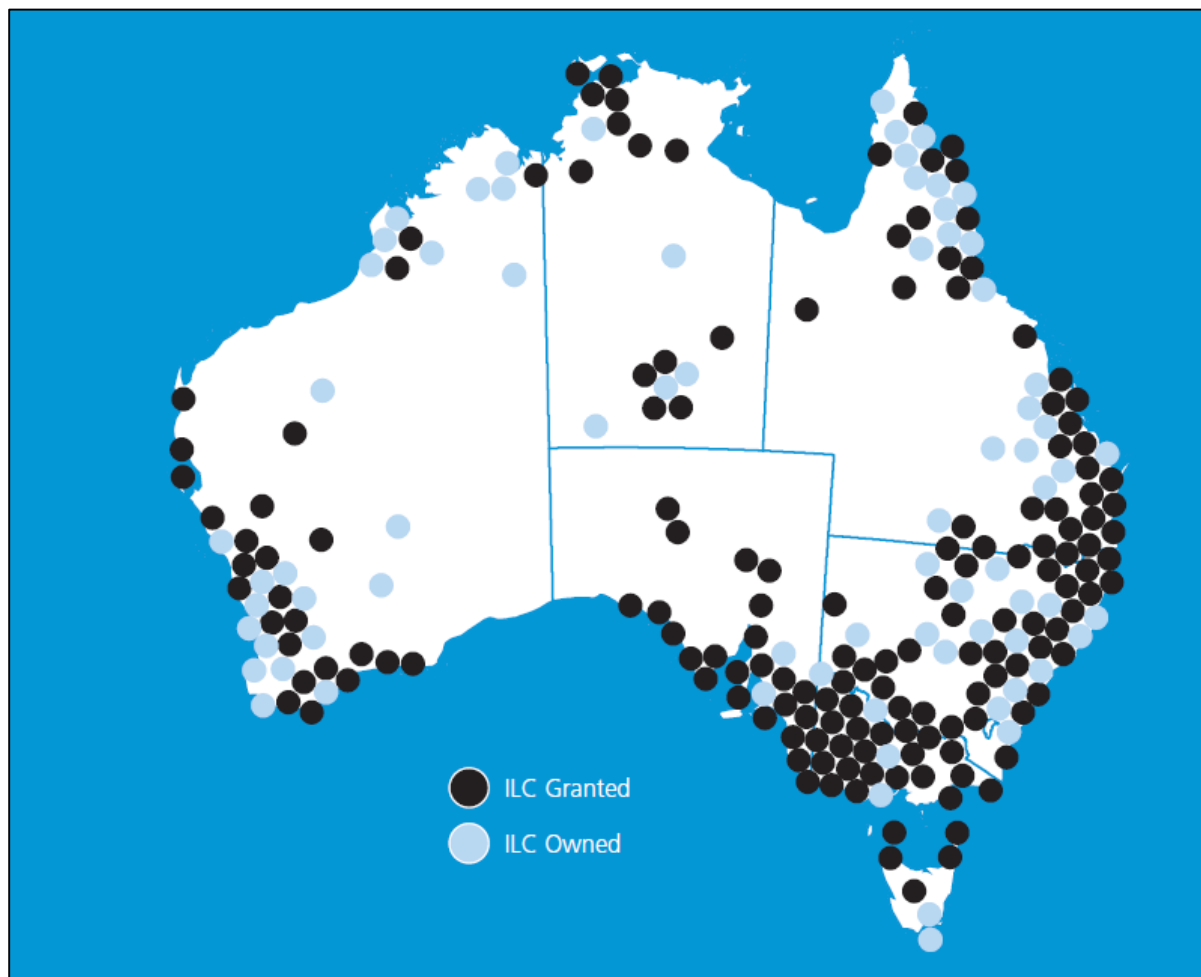
¹ *Mabo v Queensland (No. 2)* (1992) 175 CLR 1

example, while recognition of native title rights and interests is fundamental to cultural integrity and respect, and community resilience, native title permits only limited economic and community development opportunities. In contrast, the Land Account allows the purchase of land (non-native title tenures) to support the development of economic and community projects in a way that is commercially appealing and familiar to lenders. At present, native title does not provide these same opportunities because of factors such as constrained lending and grant requirements.

It should also be recognised that the purchase of land from the Land Account is a first step in the benefits that flow from its operation. Owning non-native title interests in land allows Traditional Owners to work on country, develop personal and communal infrastructure that is consistent with a self-sufficient community rather than a welfare-dependent community, and address often intransient issues such as youth unemployment and remote area employment. The purchase of and investment in land with funds from the Land Account also often provides or leads to a critical mass of support for a project, allowing it to develop with confidence and support from other project partners.

The role of the Land Account in securing tenure in addition to or in conjunction with native title, facilitating project partner participation, and encouraging land use and land occupation should also be recognised as critically important to remote area community development, particularly in northern Australia. The Australian Government is currently developing a white paper on northern Australia. The white paper is intended to identify necessary policy settings for the effective and sustainable development of economies and communities in northern Australia. The Land Account is fundamental to the future of northern Australia because it provides an invaluable and unique resource for development of economic, social and community activities on land in regional and remote areas that might not otherwise be occupied or developed. Figure 1² below shows the properties that are owned or have been granted by the Indigenous Land Corporation (**ILC**) using funds from the Land Account. The distribution of properties across the top of the continent demonstrates the strategic importance of the Land Account to northern Australia's future.

² Indigenous Land Corporation, *Annual Report 2012-2013*, p47.



Finally, it is important to recognise that without land that has secure, defeasible, and commercially attractive title, Traditional Owners have very few options if they want to utilise their traditional land for community development purposes. The Land Account provides a way for land constrained by the limitations of native title to be utilised and opens up real options from Traditional Owners to secure their economic independence. Without the Land Account, these options diminish significantly as there is no other fund or program that supports Traditional Owners in this way.

The KLC therefore strongly supports the purpose and intent of the Bill to secure the future operation and integrity of the Land Account and provide greater control over the Land Account for Aboriginal and Torres Strait Islander people.

The KLC has had the benefit of reviewing submissions on the Bill made by the Indigenous Land Corporation (ILC), Wunan Foundation Inc., and Professor Mick Dodson of the National Centre for Indigenous Studies at the Australian National University. The KLC generally supports each of these submissions.

Specific Submissions

The KLC makes the following specific submissions in relation to the Bill.

- 1 Proposed section 191AB should be amended as follows.
 - (a) Delete the word “prior” in s191AB(1)(d), to better reflect the fact that Aboriginal and Torres Strait Islander interests in land continue through to the present day both in

areas where those interests are recognised by legal and other means and in areas where there is no such formal recognition.

- (b) Consideration should be given to inserting additional subclauses between s191AB(1)(c) and s191AB(1)(d) to recognise the “grand bargain”³ and compromises that were made by Aboriginal people and Torres Strait Islanders in negotiations with the Australian Government following the decision of the High Court the Mabo Case. These subclauses could be in terms such as:

“to acknowledge and recognise that past dispossession of land includes statutory mechanisms in the *Native Title Act 1993* that validate non-native title interests and extinguish native title interests;”

“to recognise the enormous economic and other advantages bestowed on persons who owned, used or were otherwise able to exploit lands dispossessed from Aboriginal persons and Torres Strait Islanders, and the consequential loss of those opportunities to Aboriginal persons and Torres Strait Islanders;”

“to recognise the importance of economic self-sufficiency to the future of Aboriginal people and Torres Strait Islanders;”

- 2 The KLC specifically supports the submission of the ILC that proposed section 193IA(1)(b)(i) should also apply to section 192X.
- 3 The KLC specifically supports the submission of Professor Dodson that the powers of the ILC should be broadened or clarified so that it may purchase, for the benefit of native title holders, interests in land where native title has been recognised. This additional or clarified power would permit the ILC to assist native title holders in utilising their traditional lands as they see fit.
- 4 The KLC specifically supports the submission of Professor Dodson that consultation under proposed section 193IA(4) should be real, substantive and consistent with the principles contained in the United Nations Declaration on the Rights of Indigenous People.

Thank you for the opportunity to comment on the Bill. Please direct any inquiries in relation to this submission to myself.

Yours sincerely

Nolan Hunter
Chief Executive Officer

³ Explanatory Memorandum, *Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014*, p.3.