



CAPE YORK LAND COUNCIL
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Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By electronic lodgement (or email:
legcon.sen@aph.gov.au)

22 December 2010

Dear Sir / Madam

Re: Senate Legal and Constitutional Affairs Legislation Committee – Inquiry into schedule 4 of the Families, Housing, Community Service and Indigenous Affairs and Other Legislation (Budget and Other Measures) Bill 2010

Cape York Land Council (CYLC) is the Native Title Representative Body for Cape York, pursuant to the *Native Title Act 1993* (Cth). CYLC has a proud history of representing Traditional Owners and native title holders in the region since 1990. The Aboriginal peoples of Cape York actively seek involvement in the management, sustainable development and use of their traditional lands. The Cape York communities possess a wealth of knowledge which stems from their stewardship of country and culture for many years.

We welcome the opportunity to provide comment to the Inquiry.

We note that Schedule 4 proposes to amend the *Aboriginal and Torres Strait Islander Act 2005* (the ATSI Act) to include a power for the Minister to make guidelines that would apply to the Indigenous Land Corporation (ILC) when it performs its functions to support native title settlement.

While we support the proposal for guidelines to provide greater clarity to the way in which ILC performs its functions in supporting native title settlements, it is difficult to determine the effectiveness of the proposal without further information about the proposed content of the guidelines or the attitude of the ILC.

We note that ILC is able to exercise its functions in land acquisition and management as part of native title settlements. However, CYLC's experience dealing with ILC in recent years has not been positive. As part of CYLC's focus on seeking to facilitate the return of traditional

Aboriginal land and waters to the traditional owners of Cape York, we pursue comprehensive tenure resolution wherever possible. A critical element in terms of obtaining secure tenure has been assisting Cape York groups to seek freehold tenures, in conjunction with native title outcomes. Our last application to ILC for funding for further acquisitions on Cape York in 2007/2008 was unsuccessful, with ILC indicating its reluctance to fund further acquisitions on Cape York until existing ILC purchased properties on Cape York are making a financial return. While we agree that capacity to appropriately manage any acquired land is critical, there are varied and complex reasons for the difficulties being experienced by some Traditional Owner groups (including a lack of support and resources).

We submit that:-

- There needs to be further consultation with Indigenous interests about the form of the proposed guidelines;
- Consideration must be given to effective regional planning, carried out between ILC, government parties and Indigenous representatives, to enable native title groups to identify potential benefits at an early stage. However, consideration of each application to ILC should be on its merits;
- The guidelines should include a trigger for ILC to become involved in negotiations toward a settlement, so that any potential contribution from ILC can be identified by the government parties and native title claimants at an early stage;
- The guidelines need to provide realistic timeframes for finalisation of any contribution, so that there can be certainty of benefits in any proposed comprehensive settlement;
- Any contribution by ILC to a native title settlement should not replace ILC's existing acquisition program, but should be complementary to it;
- Any contribution by ILC to a native title settlement should not replace the obligation of government parties to compensate the native title holders for loss or impairment of their native title rights and interests;
- Consideration must be given to ongoing resources and support for the native title group as part of any native title settlement, to ensure that appropriate capacity and therefore maximum benefits from the settlement can be achieved over time.

We would be happy to provide further detail if requested. If you have any queries, please do not hesitate to contact us.

Yours sincerely,
CAPE YORK LAND COUNCIL

PETER CALLAGHAN
CHIEF EXECUTIVE OFFICER