

**Senate Economics Committee inquiry into the role of liquidators
and administrators, their fees and their practices, and the
involvement and activities of the Australian Securities and
Investments Commission, prior to and following the collapse of a
business**

A submission

by Jeffrey Bradford

April 2010

(...)

This Submission

This submission is made not only on behalf of myself but a number of other concerned Aboriginal people, who are, or were, members of the Darkinjung Local Aboriginal Land Council (DLALC).

Our concerns

We note that the Senate Economics Committee is conducting an inquiry that will investigate the role of liquidators, administrators, their fees and their practices, and the involvement of activities of the Australian Securities and Investments Commission, prior to and following the collapse of a business.

This submission will raise issues of concern regarding the role of liquidators and administrators only.

Background

Darkinjung Local Aboriginal Land Council (DLALC) is an organisation incorporated under the NSW Aboriginal Land Rights Act.

During 2004, the DLALC members decided to establish a trust to protect a sizeable amount of income the Council would receive through the sale of a large parcel of land at North Entrance.

It is important to note the Trust was only established after comprehensive advice from a major law firm and a leading Sydney barrister.

After the Trust had been established, the peak body for Aboriginal Land Councils in NSW, the NSW Aboriginal Land Council (NSWALC) raised concerns regarding the transfer of funds from the DLALC to the Trust, as it considered such action may be not in accordance with the NSW Aboriginal Land Rights Act.

As a result of the concerns put forward by the NSWALC, the Directors of the Darkinjung Trust decided to seek directions from the NSW Supreme Court as to the validity of the transfer of funds from the Land Council to the Trust.

This action was taken on competent legal advice.

Around this time, the NSWALC - for technical reasons based on the wording of an audit report¹ - appointed an administrator to the DLALC. The Administrator was (...), a partner of the accounting firm (...), which are located in (...).

However, on 17 May 2006 (...) commenced action in the NSW Supreme Court against the Darkinjung Trust and its then Directors including to have a receiver or

¹ These were, in the view of many Darkinjung people, no more than trumped up charges, designed to trigger the NSWALC's desired outcome – the destruction of a successful Aboriginal-run enterprise.

alternatively a liquidator appointed to the Darkinjung Trust. That action and the Trust's application for declarations regarding the validity of the Trust were effectively joined.

The hearing of the joint matters commenced on 25 July 2006 and ran for 13 days.

Concerns

My colleagues and I are extremely concerned at the actions of (...). We have been advised by prominent lawyers that had the matter been allowed to be tested in the Supreme Court as the Trust had originally intended it would have taken possibly 1 to 2 days and involved a cost of some \$10,000-\$20,000.

However, as a result of (...) actions, the matter ran for 13 days and ended up costing the DLALC literally millions of dollars.

One can only wonder what possessed (...) and his hand-picked legal advisor to run his case in the Supreme Court in the way they did, other than it is a blatant case of fee generation.

On (...) (...), (...) (...) ruled:

- that the Trust was valid
- but that, although they were sanctioned by resolutions of the members passed at the meetings of DLALC, DLALC acted beyond authority and capacity in transferring the several sums to DPL to be held upon the trust of the Trustee.

In addition to the above, (...) and his legal adviser, (...), then proceeded to pursue the Aboriginal Directors of the Darkinjung Trust. This was an extraordinary action on behalf of (...) and his legal adviser in that the majority of the Trust members (save one) were Aboriginal people and had no assets of any substance that could be realised in the event that (...) actions were successful.

Our legal advisers sought mediation from (...) advisers which was flatly refused. In the end, the Supreme Court ordered mediation which was conducted by Sir Laurence Street. The matter was then settled very quickly.

Again, one wonders what the motivation (...) had in pursuing a hopeless case even if he was able to win – which on our advice was unlikely – other than to establish a situation where he could further generate fees.

Evidence of all of the above can be found in court transcripts if required.²

Furthermore under the circumstances, it is plain to see that, had (...) allowed this matter to proceed in the initial application for declaration with the Supreme Court it would have saved many, many hundreds of thousands of dollars for the Land Council, whose assets he was presumably appointed to protect.

² NSW Supreme Court Matter No. (...) of 2006.

Notwithstanding the above, (...) then sought orders to have another company that was funded by the Trust wound up, when there was no real reason to do so in our minds. That is, the Company had the capacity to meet its debts as and when they fell due. The liquidator appointed for the winding up of the above Company, was (...) (...) from (...) ³. Again, after many tens of thousands of dollars, a viable business that would eventually (had it been left alone) have offered employment for Aboriginal people was dissolved. ⁴

Conclusion

In my view

- (a) the pursuit of DLALC under my leadership was nothing more than a vendetta originated by the late Administrator of the NSWALC
- (b) the late Administrator of the NSWALC saw to it that his close friend, (...), was appointed with marching orders to destroy Darkinjung, which he did
- (c) in the process, (...) and his legal advisor, acted with harsh impropriety, pursued legal case after legal case for no reason other than fee generation.

Recommendation

I respectfully request this Committee to enquire fully into the circumstances of this matter and to take this scandalous mistreatment of Aboriginal people into account in forming its views on the proper role and function of liquidators and administrators.

³ (...) were employed to do the trumped-up audit report referred to above. (...) has been Administrator of (...) for more than 7 years. As well, before that, he was noticed adversely in (...) inquiry into (...) administration].

⁴ NSW Premier's Indigenous Business Award.