



North Queensland Land Council

Native Title Representative Body Aboriginal Corporation

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Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Re: NQLC comments on Inquiry into the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014 (the Bill), which would amend the *Aboriginal and Torres Strait Islander Act 2005*.

The North Queensland Land Council (NQLC) is a Native Title Representative Body operating under the *Native Title Act 1993*. The NQLC represents and assists a large number of diverse Aboriginal communities on native title and related matters. The NQLC's representative area covers 940,666 km² from Cape Kimberley in the north to Sarina in the south. To date, the NQLC has achieved 28 Native Title Determinations by consent and negotiated a large number of Indigenous Land Use Agreements (ILUAs).

The Bill was introduced to Parliament in the Senate by the Australian Greens. The changes in the Bill were developed in the context of the Ernst and Young review commissioned by the current Government, which recommended that Indigenous Business Australia and the Indigenous Land Council (ILC) should remain separate, and the Government's Commission of Audit Report that concluded the two agencies should merge.

The NQLC notes that, to date, the Government has not indicated which recommendation it will adopt.

The NQLC supports the continued separation of the two agencies on the basis that the Indigenous Land Account (ILA) should be preserved for its original purpose, that is to purchase land for Indigenous Australians and to assist their management of land. The NQLC notes that this principle is reflected in the intention of the Bill and, generally, endorses the Bill on that basis. Specific comments follow:

**1) Clarify the purpose of the Aboriginal and Torres Strait Islander Land Account
Schedule 1, items 1-2 of the Bill**

The Bill proposes a new section 191AB that sets out the objects of Part 4A—Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Account.

The NQLC notes that the objects are in the spirit of the Preamble to the *Native Title Act 1993* and clarifies that the ILC and ILA are established as a “compensatory mechanism” for Indigenous Australians “that addresses their ongoing land needs”.

The NQLC endorses the insertion of the proposed set of objects. However, NQLC suggest the Bill should be amended to include an additional object that reflects the ILC’s commitment to assist native title outcomes for native title claimants, as articulated at page 34 of the ILC’s National Indigenous Land Strategy 2013-2017 (NILS).

The NQLC submits that an additional native title object could be expressed in the following terms:

“to maximise the social, cultural, environmental and economic opportunities for Aboriginal and Torres Strait Islander applicant parties that arise with the settlement of native title applications made in accordance with the *Native Title Act 1993*”.

The NQLC welcomes the commitment of the ILC, in its NILS, to work closely with NTRBs and claimant groups to maximise benefits in settlement of native title claims. However, NQLC notes that it is unaware of any moves to introduce a formal process that would facilitate such cooperation.

The NQLC submits that the inclusion of the ILC’s aspirational involvement in native title settlements into the objects would increase the incidence of land-based benefits for Indigenous Australians through the native title process.

The Bill also expands section 192X that deals with the purpose of the ILA. The Bill would introduce subsection 192X(2), which replicates the terms of s193J (Application of money held by Indigenous Land Corporation) and applies them to money held by the ILC paid to it by the ILA.

The NQLC endorses this aspect of the Bill. However, NQLC suggest the intention of this proposed change would be furthered by also amending s193J by clarifying that its terms also apply to money paid to the ILC from the ILA. Section 193J could also be further amended by insertion of clauses that refer to the objects proposed in the Bill (new s191A) and the purposes of the ILC as set out in s191B.

**2) Provide for excess returns from Land Account investments to be equally shared between the Account and the Indigenous Land Corporation (ILC)
Schedule 1, items 3-7 of the Bill**

The Bill proposes that where the ILA's return on investment is greater than \$50 million then the amount over that figure be halved and shared between ILC and ILA.

The NQLC endorses the proposed change if the effect is to make more funds available to Indigenous people, which would be used to assist with their land acquisition and management aspirations and activities.

**3) Provide that the Finance Minister may have regard to advice provided by the ILC about its financial requirements
Schedule 1, item 9 of the Bill**

The NQLC endorses the proposed change if the effect is to make more funds available to Indigenous people to assist with their land acquisition and management aspirations and activities, and if it strengthens the independence of the ILC from the control of the Commonwealth.

**4) Provide for parliamentary review of any proposed changes to the ILC and the Land Account
Schedule 1, item 10 of the Bill**

The proposal includes a requirement to consult with Indigenous people, including prominent Indigenous organisations and to report on the consultation process.

The NQLC endorses the intention of the proposed change and submits that the Bill should be modified to include the requirement that NTRBs and Native Title Service Providers must be consulted as part of the process.

The NQLC submits that such a requirement would recognise the unique position that these organisations have in regard to the depth of knowledge and understanding of the issues that Indigenous Australians confront on a daily basis, particularly in relation to land-based issues.

**5) Provide that the ILC and its Board operate in accordance with good governance principles
Schedule 1, items 11 and 13 of the Bill**

The NQLC endorses the proposed changes on the basis they promote standards which all statutory corporate bodies and directors should be adhering to.

**6) Provide for the establishment of a Nomination Committee to make recommendations about appointments to the ILC Board
Schedule 1, items 14-16 of the Bill**

The proposed changes would establish a Nomination Committee comprised of at least three Indigenous People who have the necessary skills and expertise relevant to the functions of the ILC and who the Minister must consult with before an ILC director is appointed.

The intention that representatives of Australia's Indigenous communities have a say in who is appointed as an ILC director is to be commended. However, the NQLC submits that, due to the diversity of Indigenous communities in Australia, a truly representative Indigenous Committee would require, at the very least, a member from each State and Territory.

The NQLC submits further the Bill should be amended to ensure that, before the Minister appoints a member of the Committee and its Chair, and in addition to consulting with parliamentary committees, he or she also be required to consult with the Australian Human Rights Commission as established under the *Australian Human Rights Commission Act 1986*. It is submitted that this measure would provide for an element of apolitical scrutiny in regard to appointments.

**7) Require the ILC Board to establish a Risk and Audit Management Committee, with an independent Chair
Schedule 1, item 17 of the Bill**

The Bill and its Explanatory Memorandum (EM) state that the Committees' functions would be to:

- advise the ILC Board on the ILC's governance framework and assurance mechanisms, and
- the key risk to the ILC, including risks relating to carrying out its functions.

Before the NQLC could comment on the proposed changes it would require an explanation regarding the proposed effect of the measures relating to the introduction and role of the Risk and Audit Management Committee.

**8) Limit the tenure and reappointments of directors
Schedule 1, items 18 and 19 of the Bill**

The Bill would reduce ILC directors' tenure to a maximum of three years and limit, to once, the number of times a director can be reappointed. The NQLC notes the EM states that the intention of these changes is to ensure continuity of corporate knowledge and maximise appointments of non-partisan directors.

The NQLC submits that a reduction of the period of tenure and the limitation, to one time, the number of times individuals can be reappointed, could in fact erode continuity of corporate knowledge.

It is difficult to understand how the proposed changes would affect partisan appointment, except for circumstances where a party remains in power for a number of terms and continually reappoints the same set of directors. However, the NQLC notes that the formation of the Nomination Committee proposed in the Bill should operate to reduce the possibility of partisan appointments.

**9) Require the chair and directors to disclose all pecuniary interests; and require the ILC Board to determine a code of conduct
Schedule 1, items 20 and 21 of the Bill**

The NQLC notes that transparency and good governance are commendable goals for any government agency.

However, the NQLC submits that unless reasons exist that are not contained in the EM and it is unaware of, the Board of the ILC should not be expected to be more accountable than the Board of any similar Commonwealth agency.

The NQLC supports the development of a code of conduct for ILC directors and staff.

Yours faithfully

Martin Dore

Principal Legal Officer

North Queensland Land Council Native Title Representative Body Aboriginal Corporation