

**Submission to the Senate Community Affairs Legislation Committee's inquiry into the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014**

**Dr Lowitja O'Donoghue AC, CBE, DSG**

I would like to make a submission in support of the Stronger Land Account Bill, introduced by Senator Rachel Siewert on 24 June 2014.

I was one of the Indigenous leaders approached by the chairperson of the Indigenous Land Corporation (ILC), Dr Dawn Casey, to endorse a Draft Bill developed by the ILC and released on 24 March 2014. The Stronger Land Account Bill introduced into Parliament by the Australian Greens substantially reflects the ILC's Draft Bill.

I have been a campaigner for Indigenous rights all my adult life, and when the Land Account was first legislated, was chairperson of the Aboriginal and Torres Strait Islander Commission (ATSIC). In this role I helped to bring together the team of Indigenous leaders who negotiated with the Government of Prime Minister Paul Keating to come to an agreement on how native title should be accommodated in Australia's statute law.

In June 1992 common law native title had been recognised by the High Court's decision in the Mabo judgment, though the judges set conditions on where native title could be found to exist. (The judgment, momentous though it was, also entrenched the history of Indigenous alienation on which modern Australia is built.) The Mabo judgment raised many expectations among my people. At the same time vocal sections of the non-Indigenous community attacked the judgment. There was a great deal of misunderstanding and misinformation, a lot of political noise.

I saw my job as forging a coalition of Indigenous leaders who could work with the Government on a practical means of moving ahead with native title, allowing Indigenous people to benefit from it while quieting the fears of other Australians.

We achieved the Native Title Act in 1993, which set a record for the length of debate in Parliament. The Act would help those Indigenous groups who still had potential native title rights.

However, many Indigenous Australians had traditional lands that had been well and truly overlaid by the land titles granted to other Australians. The High Court found that freehold land titles extinguished native title. At that time it was thought that all leasehold titles also extinguished native title (an issue that had to wait for the Wik judgment in 1996).

As negotiators we knew that there would be no justice if only part—a small part—of the Indigenous population could benefit from the Mabo judgment and the Native Title Act. We argued uncompromisingly that there must be a compensatory mechanism, a Land Fund, to provide for the purchase of land for Indigenous people in the open market, and to meet the costs of managing land.

The Land Fund (now the Land Account) was agreed to by the Keating Government, though it was legislated only on the second attempt and after another long parliamentary debate. A separate agency, the Indigenous Land Corporation, was set up by the same legislation to receive revenues from the Fund and use them to buy and manage land for Indigenous people.

I strongly support the Stronger Land Account Bill currently before Parliament, in particular the provisions that strengthen and protect the Land Account and recognise its place in our history. The existing legislation—the Aboriginal and Torres Strait Islander Act 2005—is silent on these matters. The current generation of parliamentarians, and of Indigenous and other Australians, need to understand the significance of the Land Account—or be reminded of it if they have forgotten.

When Prime Minister Keating introduced the Bill establishing the Land Account and the ILC for the second time, he said: ‘The context of these measures is a pivotal part of this government’s long-term agenda—that is, the promotion of reconciliation between indigenous Australians and other Australians; the national accounting for the wrongs done to indigenous Australian since European occupation of this country; and a coordinated campaign ... to address ... problems faced by Aboriginals and Torres Strait Islanders.’

The Bill before Parliament expands the objects of the Land Account, setting out clearly the historical background and the symbolic intentions of the original legislators. These new objects also reflect the thinking of the Indigenous leaders who negotiated with Prime Minister Keating.

The Bill has provisions to ensure the Land Account can be used only for the purposes originally legislated. The Land Account may be a tempting source of funds for a future government, even if the current Australian Government—and I understand this has been said repeatedly—has promised to keep the Land Account sacrosanct.

I support any measure that will see the Land Account grow, so that more resources can be given over to land acquisition and management for Indigenous Australians.

I support the several measures in the Bill that will give Indigenous people more of a say in how the Land Account is managed, and on whether or not any changes can be made to it.

I support the measures that tighten accountability in the ILC. I have been briefed by Dr Casey on the problems faced by the current ILC Board over the purchase of Ayers Rock Resort by a former ILC Board. I congratulate her and current board members on their efforts to investigate this purchase and correct deficiencies in governance processes that have come to light in their investigations.

As I see it, if the Bill before Parliament became law, the new legislation would improve and not encumber the workings of the compensatory mechanism set up in 1994.

I remain committed to the advancement of my people. I am an active supporter of Recognise, the campaign to have Indigenous people recognised in Australia’s constitution. I believe legislating the Stronger Land Account Bill would be a step in this direction.

I have heard an argument that this legislation is not needed. I don’t see what harm could be done by it, but I can see a lot of good, not least in making a further statement about the position of Indigenous people in Australia, the losses we have suffered, and our continuing struggle to reclaim some of our rights. The Land Account was about Reconciliation and a national accounting, as well as the socio-economic development of Indigenous Australians.

This Bill is therefore of great practical and symbolic importance to Indigenous Australians.