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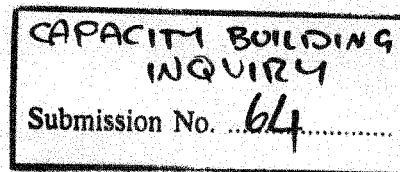
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Kji[7Reply To: Native Title Unit

Your Reference:

Our Reference:

25 March 2003



The Chairman
Mr Barry Wakelin,
House of Representatives
Standing Committee on Aboriginal and Torres
Strait Islander Affairs

Dear Mr Wakelin MP

I write for Aboriginal Legal Rights Movement Inc, which is the Native Title Representative Body for Greater South Australia and on behalf of the Congress of Native Title Management Committees of South Australia.

(The Congress of Native Title Management Committees is a body representing the state's native title management committees and was formed in 2000 following an approach by the Government of South Australia to resolve native title through Indigenous Land Use Agreements (ILUAs).)

In South Australia, ALRM, the Congress of Native Title Management Committees, the SA Government and various peak bodies are attempting to settle native title at a statewide level through negotiation rather than litigation.

Our approach is unique, because we are using a "bottom up" approach, that is we are directly involving the people who are affected by native title in the negotiation process. And that is why we believe our submission is relative to your inquiry.

Capacity building in Indigenous communities is what we are doing in South Australia, via the ILUA process. The negotiations, while still in their infancy, are tackling some very difficult issues, some of which go beyond native title.

We are discussing heritage protection, mining and exploration, pastoralism, national parks, fishing and local government issues but we are also discussing broader issues including constitutional change, Aboriginal seats in Parliament, burial rights, self-determination, participation, land rights, social justice, health and welfare.

When we embarked on these talks, the government said that "everything was on the table" for discussion and already we have explored many issues. In doing so, ALRM has employed, from time to time, various experts who have provided discussion papers and information to Aboriginal people so that they may be able to come to informed decisions about matters that affect them.

We believe that what is happening in South Australia may, in time, serve as a model for other states and territories.

Please find attached further details of what we have achieved and are continuing to achieve in South Australia. We would welcome an opportunity to further discuss our submission.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Parry Agius".

for Parry Agius,
Executive Officer,
ALRM - NATIVE TITLE UNIT.

Statewide ILUA Negotiations

Native Title Management Committees represent the 26 native title claim groups who have lodged or who are about to lodge their native title application with the National Native Title Tribunal. The Congress of Native Title Management Committees united so that they could address the big picture of native title in South Australia. There does not exist in South Australia a similar body representing native title claimant groups

The Congress sets the direction for native title negotiations, but doesn't make decisions about specific country. Individual NTMCs speak for their own country, following the principles of traditional law.

The goal of Congress is to bring about change – change that will incorporate native title into the State's administrative structures, so that Aboriginal people will be part of the processes which operate the State. Congress wants recognition of Aboriginal people and their native title to be part of the way people do business in South Australia. Congress believes the Statewide ILUA Negotiations will bring about certainty for all land users including native title claimants, farmers and pastoralists, miners, government and many others.

The Congress of Native Title Management Committees and Aboriginal Legal Rights Movement Inc, which is the native title Representative Body for Greater South Australia have consistently told government and the other peak bodies involved in the negotiations that recognition of native title is a prerequisite to any talks.

The Statewide ILUA Negotiations have the potential to deliver all types of change which will benefit Aboriginal people including legislative reform (changes to state laws so that they recognise and include native title), structural reform (changes in the way services are delivered and how local decisions are made in statutory bodies like the National Parks Council, the Pastoral Board and in how Aboriginal issues are funded and how decisions are made, and in how things such as environment, heritage and resources are managed), constitutional reform (recognising Aboriginal people as the original inhabitants in the State's Constitution) and delivering a social justice package to better the lives of all Aboriginal people – including those whose land is not able to be returned to them through native title.

History

The South Australian Government (then Liberal) first started talking to Aboriginal Legal Rights Movement Inc about native title negotiations in 1998. In the early days, the discussions simply centred on whether there was a possibility for negotiations. The ALRM Native Title Unit encouraged the government to have a "statewide agreement with a series of local template agreements" signed by all the native title groups rather than a number of individual groups.

For this to happen ALRM's Native Title Unit recognised that there was no Aboriginal representative infrastructure in place for negotiations to occur between the native title claim groups, the State and other relevant peak bodies. This compares with peak bodies who have had infrastructures in place for a number of decades.

ALRM's Native Title Unit embarked on a wide consultative campaign with the State's Native Title Management Committees to inform them of the offer, let them know what the possibilities were and invite comment.

The NTMCs agreed in 2000 to unite and form the Congress so that they could pursue a settlement of native title issues.

Other peak bodies involved at that time included the South Australian Farmers Federation and the South Australian Chamber of Mines and Energy.

Peak bodies and mechanics of the talks

The Statewide ILUA Negotiations have expanded over time as more and more issues are brought to the table.

Priorities and milestones are set and monitored by the Main Table which is made up of representatives from the peak bodies which, at the time of writing were:

- South Australian Government
- Aboriginal Legal Rights Movement Inc
- South Australian Farmers Federation
- South Australian Chamber of Mines and Energy
- South Australian Fishing Industry Council
- Seafood Council (SA) Ltd.
- Local Government Association of South Australia (which had agreed, in principle, to participate).

Issues are discussed in detail at a series of side tables which are established as the need arises. Some of the side tables include Minerals & Exploration, Heritage, Pastoral, Fishing and Aquaculture and Relationship to Land and Waters.

Funding

ALRM's involvement in the Statewide ILUA Negotiations has been mostly funded by the South Australian Government with limited funding from ATSIC because its native title funding is mostly directed to support litigation.

NTMCs can only participate in these discussions if they are funded. It should be noted that the individual time and effort from NTMC members is completely voluntary at the early stages and that funding extends mostly to travel, accommodation and food, meeting venues, consultants etc.

The involvement of the other peak bodies is funded by the Federal Attorney-General, on a six monthly basis which, according to the peak bodies, makes long term planning difficult.

Pilot Projects

As a result of the managing of native title negotiations the peak bodies agreed to establish pilot projects to test the issues on the ground. Three pilot projects are underway to explore the key areas of pastoralism, National Parks, local government and fishing and sea rights.

In recent times a second round of pilot projects has been planned in readiness, as it is expected that two of the three pilot projects from the first round may be finalised by June 2003.

The first round projects are:

ALMAC NTMC is investigating issues to do with minerals exploration, National Parks and local government issues.

The minerals exploration Indigenous Land Use Agreement is being negotiated between the State Government, the South Australian Chamber of Mines and Energy (SACOME) and ALMAC in an attempt to streamline the process of claim groups giving permission to carry out exploration and at the same time maintaining heritage protection.

Instead of going through the Pt 9B process under the Mining Act (SA), which requires claimants to negotiate separate agreements each time a mining company wishes to carry out mineral exploration, one agreement will be negotiated with the State and SACOME, which mining companies can then sign up to if they wish to carry out exploration without having to go through Pt 9B processes. In doing so, the mining companies will avoid having to publish notices in newspapers and give notices to claimants and a range of other bodies, including ALRM. They will also avoid having to wait up to four months from notification before being able to commence exploration.

Not only will claimants avoid having to negotiate a separate agreement each time a mining company wants to carry out minerals exploration, financial incentives may also be provided to claimants by the State and mining companies if they agree to use the alternative scheme.

Claimants will still carry out heritage clearances prior to exploration.

Narungga Nations Aboriginal Corporation Governing Committee (NNAC) will, in April, start negotiating marine and fishing issues, National Parks, and local government matters.

Yankunytjatjara/Antakarinja NTMC is involved in negotiating pastoral issues and continues to work with the pastoralists from a station in the far north of South Australia. Good progress has been made, and it is hoped that the ILUA will be finalised soon.

Achievements

To date significant ILUA agreements have been achieved and tested successfully.

The Narungga Nations group were the first in the state to sign an Indigenous Land Use Agreement (ILUA) covering the Port Vincent Marina development. The ILUA, which was registered in the National Native Title Tribunal allowed the multi-million dollar development to proceed.

An important agreement was the "regional" Cooper Basin Petroleum Agreement with four native title groups and several international and national petroleum companies.

The Un-named or L-Shaped Conservation Park is soon to be handed back by the South Australian Government to the traditional owners.

The South Australian Government recently developed a Consent Determinations policy to finalise native title negotiations in relevant and appropriate circumstances. The State and the ALRM Native Title Unit is currently developing the criteria and parameters for this policy initiative. No other State in Australia has worked and encouraged the Native Title Representative Body like ALRM in developing the criteria and parameters for Consent Determinations. The other states have imposed their criteria and parameters on the Representative Bodies and their clients.

Issues with the Aboriginal Heritage Act 1988 and the Native Title Act 1998 (amended) have come to the fore in native title negotiations due to the local government and resource industry development applications. The above Peak bodies have looked at this issue very closely and have developed a discussion paper which was released in June 2002 for public consultation. ALRM Board and the Native Title Unit met with the Peak bodies advising the Minister for Aboriginal Affairs who has carriage of the Aboriginal Heritage Act and have agreed for a similar discussion paper to be developed and released to the Aboriginal community for consultation. The changes proposed will certainly enhance the statewide negotiations.

Relationship building has been an integral part of the negotiations between peak bodies and the ALRM Board, the Congress of Native Title Management Committees, experts and consultants. Relationship building has led to a positive approach to the issues and the formation of options and solutions for consideration by the peak bodies' constituencies.

Future

The future of Statewide ILUA Negotiations looks very promising, with the three pilot projects aiming to have signed agreements by the end of the year and the second round of pilots in process. The lessons learned from these ILUAs will be transferred to the other NTMCs, who will be able to adapt the ILUAs to their own circumstances if they choose.

A Minerals Exploration Template ILUA is also in the final stages of development and, put simply, will be available to explorers as an off-the-shelf agreement, providing much needed certainty.

ALRM and the Congress of Native Title Management Committees are promoting to the South Australian Constitutional Convention a proposal for indigenous seats in the Parliament.

Local government traineeships where candidates would be identified, mentored and finally elected to local councils are also on our agenda.

We believe that we are we are capacity building by directly involving those who have to live with native title and participate in the negotiations about native title.

The Statewide Indigenous Land Use Agreement Negotiations are about capacity building for indigenous communities.