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Elton Humphrey
Committee Secretary
Community Affairs
Legislation Committee
Australian Senate
By email: community.affairs.sen@aph.gov.au

Re: Inquiry into Aboriginal Land Rights (Northern Territory) Amendment Bill 2006

Thank you for your letter of 23 June 2006 seeking input to the above Inquiry. Given the tightness of the time frame for making written submission, I attach a short critique of the proposed amendments that I have written, a version of which was published in the *National Indigenous Times* on 15 June 2006.

I make the following additional brief comments for the Committee's consideration:

- 1 My attached submission argues that the proposed amendments to the *Aboriginal Land Rights (Northern Territory) Act* (henceforth ALRA) will result in a statutory framework that lacks internal consistency and that will making the meeting of amendment objectives (especially with respect to mainstream economic development) less likely than the current framework.
- 2 This is partly because parts of the amendment package (especially mining provisions) have been negotiated between various interest groups, principally, the Australian government, the NT government, the mining industry and Aboriginal interests represented by Aboriginal land councils. Unfortunately, such negotiated outcomes are rarely optimal and involve tradeoffs that generate sub-optimality.
- 3 Other parts of the amendment (especially the provisions for head-leasing and then sub-leasing Aboriginal township sites located on Aboriginal land) emanate from quite recent ideas that have not been explained at all to Aboriginal traditional owners, have not been openly negotiated, and that have enormous potential implications for both the workability of ALRA and especially its financial provisions. Because these ideas are so new and untested, it would be better to assess their workability at one or two trial sites under existing s.19 provisions of ALRA rather than amending the law. If there are one or two traditional owner groups that wish to voluntarily test these proposals for head-leasing to an NT or Commonwealth entity, these would be ideal locations for such pilots.
- 4 The proposed changes to both the funding of land councils and the operations of the ABA reactively and quite significantly reduce the power of Indigenous interests to operate independently of the state. These proposals are counter to international best practice and while they might assist the current Australian government fulfill its mainstreaming goals in the short-term, in the longer-term they will result in counter-productive contestation about a monolithic view of development that ignores Indigenous diversity of aspirations and cultural plurality.
- 5 There is already some evidence that the Australian government will seek to use mining royalty equivalents raised on Aboriginal land to offset Commonwealth and Territory needs-based funding obligations. Such substitution funding is arguably a major cause of Indigenous disadvantage today, is bad public policy, and should be reconsidered.
- 6 Reducing the financial capacity of land councils to act on behalf of their clients independent of directives from the government of the day will probably generate more, rather than less, legal contestation and associated transactions costs.

- 7 There is one view about that the ALRA should be amended and fundamentally changed because the statutory framework is 30 years old. However, there are many old laws that are good laws and statutory change should only be passed by the Australian government if it is likely to result in better outcomes for all stakeholders, but primarily Indigenous Australians.
- 8 Even a priori, on arguments based on economic theory, it appears highly unlikely that were the ALRA amended as proposed it would generate better outcomes or be more workable than the current internally consistent statutory framework: in particular it appears to me that the incentives to allow commercial development on Aboriginal land have been reduced.
- 9 There is an existing corpus of research and thorough review of many aspects of ALRA that should be revisited to generate a better amendments package than that proposed. There are other proposals, like those for head-leasing Aboriginal townships, that require piloting and far more consultation before they are made Australian law.

Unfortunately, I note that your reporting deadline is 1 August 2006 which in my opinion is an unrealistic timeframe for considering a package of major amendments to a very complex statutory framework. Nevertheless, I would be happy to meet with your Committee to discuss my concerns, spelt out above and in the attached submission in greater detail, if we can find a mutually convenient time.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jon Altman', with a long horizontal stroke underneath.

Professor Jon Altman
10 July 2006

Attached: Submission entitled 'Amended Land Rights Law will be Bad Law'.