Submission

to

Senate Community Affairs Legislation Committee

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

Submitters:	Traditional Owners of the Miyarrkapuy\u, Laynhapuy\u, and Djalkiripuy\u areas of North East Arnhem Land (see attached map), represented by Mr W^li Wunungmurra (Dhalwa\u Clan), Mr Melnathu Wununmurra (Dhalwanu Clan), Mr Lirrpiya Mununggurr (Djapu Clan), Mr Barayuwa Mununggurr (Djapu Clan), Dr Djininyi Gondarra (Golumala Clan).
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Aboriginal Land Rights (Northern Territory Amendment Bill 2006

Reference to the Community Affairs Legislation Committee:

- **seek community and expert opinion on provisions that will significantly impact on the rights of traditional owners and the functions of Land Councils;**
- **to examine the operation of the provisions of the Bill and their potential consequences.**

We are writing to the Senate Community Affairs Legislation Committee as individual 'traditional owners' of our clan estates in the Miyarrkapuy\u, Laynhapuy\u, and Djalkiripuy\u areas of North East Arnhem Land. We are also Executive Council members of the Laynhapuy Homelands Association Incorporated, which we formed some 30 years ago to work for the interest of all our clans people in providing services to our homelands.

As traditional owners ourselves and as representatives for our 700 clansfolk dispersed across some 6,000 km2 and 18 homelands in North East Arnhem Land, we have a direct interest in the proposed changes to the *Aboriginal Land Rights Act (Northern Territory)*. It is our 'inalienable freehold' land, our Land Council structures, our Associations and Councils, and our 'royalty' and ABA income which are being affected.

The attached map showing the boundaries or our proposed Laynhapuy Indigenous Protected Area show the extent of our land and sea estates.

Amongst our number is one of the signatories of the Bark Petition which hangs in Parliament House, who is also one of interpreters from the original Gove land rights case in the high Court. Our people have seen how Australian Governments and the legal system have previously acted against our interests and ignored our views. We are gravely concerned that this is happening again.

We would welcome the opportunity to talk directly with the Senate Community Affairs Committee about our concerns at your Darwin hearing on 21 July 2006.

Inadequacy of the Consultation Process

Our foremost concern, which we want to convey to the Committee, is that despite our direct interest in this matter, we have not been part of any process of discussion, consultation, or information provision regarding the proposed changes to the Act. Neither the Australian Government, the Northern Territory Government, or the Northern Land Council have ever spoken with us directly about these matters. Nor has their been

any public information campaign to inform us. Our governments and the NLC have clearly failed us in this regard.

The same can be said for the Reeves Review, the HORCATSIA Inquiry and the Manning Report. There may have been 9 years of consultation leading to these proposed amendments, but it was not with us.

Many of our people have limited English language and literacy. Most of our homelands have no electricity, we have no newspapers, we do not get ABC Radio or TV - it is very hard to know what Government is doing. We had heard that the *Land Rights Act* was going to be amended, but it was only by chance that we heard about your Senate Committee hearing. We have had little time to try and understand what these changes might mean, and we have no access to lawyers and other independent experts. It takes time and resources to inform and consult with our members and clansfolk, and we have to rely on our staff who are not experienced in these matters to help us.

We are NOT incapable or uninterested in understanding these issues and contributing to finding solutions - your 'dominant culture' processes simply exclude us for the most part.

Our people have our own internal traditional systems of governance - of consultation and decision making. Our traditional systems of social oganisation are profoundly different from your own in terms of both process and timeframes, and what you 'take for granted' can be confusing and alien to many of us.

The changes the Government are making to Indigenous affairs generally, and in this case Land Rights, are happening much too quickly for our people to understand let alone respond to. This is placing enormous stress on our leaders, and the sense of 'loss of control' and powerlessness to respond is resulting in demoralisation, depression and fatigue.

For the passed 14 months or so, our culture, traditional law, and communities have been continually criticised and 'demonised' by the media and academic and political elites – usually based on extreme incidents, generalisations and considerable misinformation about what is 'traditional' culture. People we do not even know are continually referred to as our 'leaders' (eg. Warren Mundine, Noel Pearson, NIC members). A picture has been created that we a ' helpless victims' locked away in 'cultural museums' and a 'socialist experiment in communal land rights' subject to daily violence, substance abuse and sexual exploitation. This purported 'crisis' in our communities is not new and has not suddenly worsened. Yes, changes are needed and new ways forward need to be carefully developed in partnership with government and business, but the changes must be led by us, and implemented in consultation – not imposed.

We cannot help but wonder whether a 'smoke screen' has been deliberately created so that these changes to our land rights can be portrayed as being 'in our best interest' – when they may in fact prove not to be. Many of us feel that there is profound misunderstanding and disrespect for the inherent value of our culture, our systems of

governance, and our commitment to our 'country', that is underpinning some of these changes. This saddens and concerns us.

Our Comments on the Proposed Amendments

From what we have been able to learn about the proposed amendments, our concerns are as follows:

Land Councils
Many of us have at times had concerns about how of some aspects of our Land Council - the NLC – have operated, and have wanted a structure and leadership more responsive to local concerns and diversity of interests.

We do not however want this responsiveness to be at the expense of the resources, expertise and capacity necessary to strongly advocate the interests of traditional owners to government, mining companies , and others when necessary - including through legal action in the courts.

We are concerned that several of the amendments have the potential to undermine this capacity.

- We do not believe it is appropriate that the performance and hence funding of the Land Council should be assessed and determined by the Minister. The Land Council's are our 'representative' structures which are meant to serve our interests within the terms of the Act.

  Changes to the Act should increase and enforce downward accountability to the traditional owners / electors - not displace it with accountability to the Minister.

  We believe a guaranteed minimum level of funding to Land Council's must be provided so they can perform their functions without fear or favour.

  If the Government wishes to encourage specific aspects of performance, this could be done by way of access to additional funding where the rationale and criteria and process for assessing performance are explicit and accountable.

- We believe there may be some merit in allowing a very few additional Land Councils to be formed, where these would reflect broad regional communities of interest or identity. However, we believe:
  - these new land Councils should not be smaller than the smallest of the currently existing Land Councils.
  - the decision to form a new Land Council must be made only by 'traditional owners', with full recognition that 'traditional ownership' is a

layered complex of interests held by different clans and individuals – not all of whom may be resident on the land concerned.

- the amendments should not 'encourage' the formation of new Land Councils potentially representing only small sectional, but well organised interests. This situation would promote instability and conflict for our people, and is open to manipulation and potentially undue external influence by Government and business interests.

- We are very concerned about the proposal to give the Minister power to over-ride Land Councils and to delegate Land Council functions to other incorporated bodies, and to vary and revoke such delegations. Particularly we are concerned that such incorporated bodies could potentially be dominated by members who are not 'traditional owners'.

  Changes to the Act should increase and enforce downward accountability to the traditional owners / electors where a Land Council is not appropriately responsive to its constituents. It is not appropriate to just 'bypass' the Land Council, as this potentially subverts the governance of the Land Council and gives undue leverage to the Minister.

Mining Provision

- We are concerned about the proposal to repeal subsection 41(7) to rmove the 30 day period of notification. Yolngu living in remote communities already find it very difficult to know what is going on.

  We are concerned that if this provision is repealed, it could be very late in the 22 month negotiating period that we first hear about an application for an exploration license, if there have been other matters that have distracted/delayed the Land Council from commencing formal consultations and negotiations with traditional owners.

Aboriginal Benefits Account

- We are concerned about the proposal that the Minister should be able to appoint additional people with specific expertise to the ABA Advisory Committee. Again this is potentially diluting the control NT Aboriginal people and traditional owners have over processes under the ALRA. Aboriginal people are capable of receiving and acting on expert advice provided to them in an *ex-officio* capacity, and should be trusted to do so.

  We believe such expert advice and support should be provided to the ABA Advisory Committee by advisors nominated by the Advisory Committee, and endorsed by the Minister, but they should be *ex-officio*, not full voting members.

- We are concerned about the proposal to increase the powers of the Minister to determine the purposes and conditions under which grants and loans from the ABA are made.

  Particularly we are concerned that ABA funds may be increasingly directed to purposes not primarily focussed on the management and development of Aboriginal land in accordance with the wishes of traditional owners, including enabling traditional owners to maintain their physical and cultural connections to 'country'. We are concerned that ABA funds might be increasingly used to promote the Government's particular agendas and to subsidise services which in other circumstances would be the responsibility of government to provide from general revenue.

- We are concerned about the proposed repeal of section 35(12), as it would appear that our organisation, Laynhapuy Homelands Association Incorporated, may become ineligible to receive payments from the ABA, unless it reincorporates under the *Aboriginal Council's and Associations Act 1976*. This will impose uncompensated time and resource costs on our organisation, and we are not clear what other implications this may have for us.

Town Leases

This area of ammendment to the ALRA is of considerable general concern to us. It would seem that these provisions are excessive. It needs to be recognised that the current Land Use Agreement (LUA) provisions have 'failed' precisely because of the historical reluctance of the NT and at times Commonwealth government to fully acknowledge the traditional ownership of land and enter into LUAs over land where they have funded or constructed 'public' housing, services, and facilities.

It would seem Government is only now interested because someone else would be bearing the cost of recognising this ownership - that is the 'traditional owners' via the ABA.

Some of our concerns are:

- it is not clear what constitutes a 'township'. Is it only major communities or could it also include our larger homelands?
- some 'traditional owners' may be inappropriately induced by short term financial gain to 'sign away' the traditional rights/interests of their children, grandchildren, great grandchildren, and great great grandchilren, and those of other clans with a traditional interest in this land.
- it is extremely difficult for 'traditional owners' and other community members to conceptualise the implications of this proposal both for themselves and future generations. Instituting 'mainstream' private property rights, losing control of community space and land use decisions, increasing numbers of 'outsiders' living

and working in townships, etc. will very profoundly impact on traditional social organisation and activity.

- it is unclear what financial 'costs' will subsequently be imposed on Indigenous households in the future - rent, rates, utility charges, etc. and what other controls/restrictions might be imposed (eg. burial practices, occupancy levels). Some of these issues need to be addressed so that people can make informed decisions.
- it is unclear how 'existing uses' will be dealt with, particularly where these may not be compatible with the NT entity's planning and development objectives. Will the ABA also fund 'compensation' or relocation/rebuilding costs where existing uses are incompatible? Will existing uses that don't currently pay 'rent' be required to pay rent to the NT entity?
- the ability for traditional owners to maximise the potential benefits from the development of their land is constrained by the proposed 5% cap on rent payments and exclusion of any other form of benefit or 'consent' rights. The primary financial beneficiary of the arrangement will clearly be the NT Government and not traditional owners or other Aboriginal community members, as the head lessee will face no such restrictions and will have many of their 'costs' funded from the ABA.
- it is unclear what the future of 'community councils' would be under 'town lease' arrangements, since many of their functions could potentially become redundant and they are likely to be deprived of funding. Would they be supplanted by an NT Government imposed 'regional authority' or an 'administrator' as recently proposed by Minister Tony Abott? If so, this raises many unaddressed questions about appropriate systems/processes for political representation (eg. democratic local government) which still protects the special interest of traditional owners.
- we are concerned that we will no longer have any say in who or how many people come into our communities, or what activities/business are permitted either through consent provisions as land owners, or through effective representative/democratic structures of local governenace.
- there appears to be no impediment to the NT 'entity' effectively implementing a process of 'trans-migration', potentially to the point where local Indigenous community members either literally become a 'minority' or are effectively marginalised and 'pushed out'.
- It seems grossly unfair that the ABA should be used to fund both the operation and activities of the NT entity, but also the rental payments to 'traditional owners'. This is definitely 'giving with one hand and taking with the other', and people other than traditional owners may end up being the primary financial beneficiaries.

  In the 'mainstream', <u>developers</u> generally meet the costs of land development and subdivision, including requirements to contribute to the provision of physical and social infrastructure more generally (eg. Section 94 contributions in NSW). And it is

the 'market' ultimately determines the timing and form of development that will be economically viable.

There is a very real risk that if the NT entity has access to ABA funds, it might attempt to provide incentives to development which are inappropriate and ultimately unsustainable, or push planning and infrastructure development too far ahead of market demand.

These proposed changes are so profound in their implications, and there is so little information on the detail and mechanisms, that it is impossible to make an informed decision.

While the 'town lease' provisions are characterised as 'voluntary', this would appear highly questionable since the Minister is already explicitly linking access to funding for basic services to entering into such a lease arrangement at Galiwin'ku.

We fear there will be pressure across the board for communities to rush into these arrangements. There will inevitably be an inappropriate imbalance of power/resources between the negotiating parties unless traditional owners are given access to independent legal, planning/development and financial advice, but it would seem unreasonable if this too were to be funded out of ABA.

Our organisation, Laynhapuy Homeland Association Inc., would prefer if possible to negotiate a mortgagable interest over the land we have occupied for almost three decades, directly with the traditional owners at Yirrkala under the current ALRA provisions or slightly modified version thereof, rather than potentially being a sub-lessee of the NT Government. The only obstacle to this is that the NLC does not have the resources to commit to facilitating this process.

The purported benefits of these proposed 'town lease' arrangements are purely 'speculative'. Highly questionable assumptions are being made about:

- the economic, material, and lifestyle aspirations of many traditional people,
- about their capacity to access and subsequently service any significant level of debt finance for either housing or businesses,
- about the willingness and ability of 'mainstream' markets for a range of goods and services to expand into remote communities, and
- about the ability of remote enterprises to develop competitive or comparative economic advantages that enable them to compete generate employment and be financially viable.

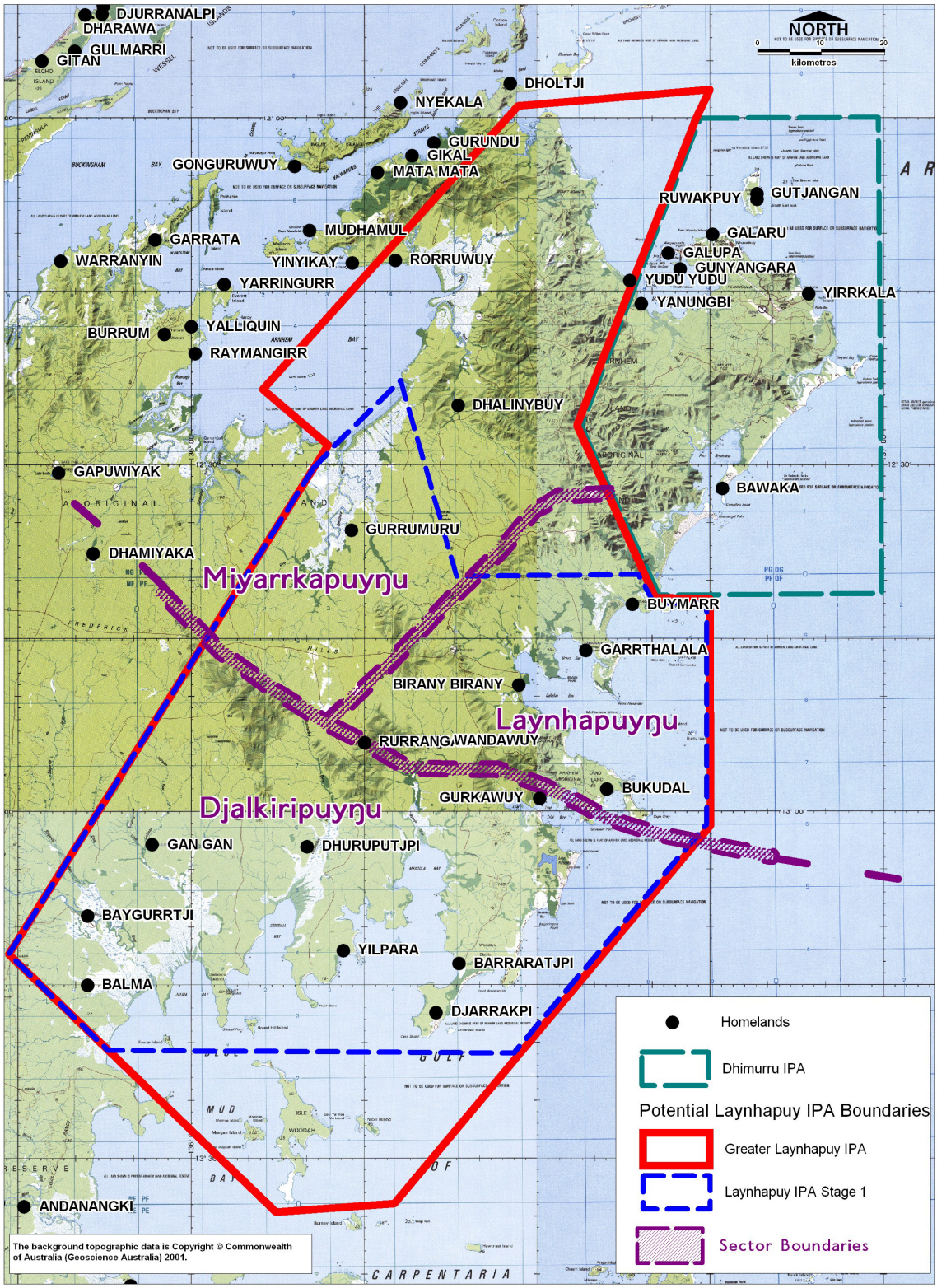
We simply do not know if any of this will work, and whether our people and culture will be able to survive and adapt to these changes. Business investment alone does not solve

our problems - you only need to look at the position of Yolngu in and around Nhulunbuy to see this.

Despite massive private investment over 35 years, significant public investment, and a system of mortgagable sub-leases, virtually no Yolngu people live in Nhulunbuy (much less own homes), social integration is minimal, there is virtually no Yolngu employment in the private sector or public sector (Commonwealth or NT), and virtually no Yolngu enterprise (other than 'rent taking' as land owners). There are on the other hand many of the same social problems – particularly related to alcohol.

We would strongly urge that the Senate Committee recommend limitations of these provisions. Perhaps there should not be more than 2 town leases negotiated within the next 3-5 years to enable these provisions to be carefully 'trialed' and monitored so the financial costs and other impacts can be properly determined.

We would strongly urge that the Senate Committee ensures that prohibits either public or ABA funding (basic or additional) being made contingent upon 'town lease' arrangements being entered into. Apart from the inappropriateness of such leverage being applied, significant extra spending will inevitably make it very hard to understand the impacts. The whole 'rationale' for the experiment is to see if the 'market' can start meeting needs for housing, enterprise development, etc. if this purported constraint to investment (ie. mortgagable security over land) is removed.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