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Senator the Hon Gary Humphries
Committee Chair
Senate Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator

I refer to your letter dated 23 June 2006 about the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 which has been referred to the Senate Community Affairs Legislation Committee for inquiry and report by 1 August 2006.

I note that the Committee will be seeking 'community and expert opinion on provisions that will significantly impact on the rights of traditional owners and the functions of Land Councils' and examining 'the operation of the provisions of the Bill and their potential consequences'. The Committee has invited submissions addressing issues which are of relevance to my Government. All aspects of the Bill are, of course, relevant if not critical to the Northern Territory, and particularly the operation and potential consequences of provisions, which might impinge on the workability of the legislation.

The Northern Territory supports all elements of the Bill which were recommended in the *Detailed Joint Submission to the Commonwealth Workability Reforms of the Aboriginal Land Rights (Northern Territory) Act 1976* developed and agreed by the Northern Territory Government and the Northern, Central, Tiwi and Anindilyakwa Aboriginal Land Councils.

Other elements in the bill introduced by the Commonwealth should have been properly considered by, and discussed with, the Northern Territory Government - and the Land Councils prior to introduction.

Although the amendments to section 67A, concerning resolution of outstanding land claims, were not part of the *Joint Submission*, the Northern Territory supports them, subject to some clarifications.

Broadly speaking, the Northern Territory also supports the proposal for leasing on Aboriginal land. The proposal for a head-lease rental cap, however, is not endorsed, but we understand that changes to this provision were mooted during the debate of the Bill.

Comments on this, and other priority issues in regard to the Bill, together with technical and drafting concerns, were submitted to Senator Brough on 5 June 2006.

Australian Government changes to the proposed amendments were put to the House of Representatives at the Third Reading on 19 June 2006, and it appears that a number of our comments have been adopted.

In particular, changes made at the Third Reading may also significantly alleviate Northern Territory concerns about proposed amendments to the Part IV mining provisions, and related definitions. It would seem that every effort is being made to accommodate the Northern Territory's views in relation to these proposed amendments, and in particular amendment to section 45 to ensure that existing granted tenements on Aboriginal Freehold land can be renewed without the requirement to further negotiate agreement that is already in place.

By way of submission for the Senate Committee's consideration, I attach a document outlining the remaining outstanding issues with the proposed amendments.

I am pleased a public hearing in Darwin has been scheduled for 21 July 2006, and hope that this will provide sufficient opportunity for Territorians to put their views directly to the Senate Committee.

Yours sincerely

CLARE MARTIN

21 JUL 2006

NORTHERN TERRITORY COMMENTS ON THE DRAFT ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL 2006

1 Proposed s19A(1):
The current provision allows that the Land Trust **may** grant a lease where there is Ministerial consent and Land Council direction: this **discretion** conflicts with s5(2)(b) which provides that a Land Trust **shall** take action in accordance with a Land Council direction. Clarification is needed on this aspect.

2 Proposed s19A(5):
It would be useful to provide that any subleases existing at the time a head lease is replaced by another, continue in force for the period that they would have, but for the *replacement* of the head lease.

3 Proposed s19A(6):
NT Government supports the removal of this provision.

4 Proposed 20A(1) - included in changes to proposed Bill at Third Reading
Provides further exceptions to the application of NT law, along the lines of s20A(2), s20A(3) and s20A(4) *(see comments below)*

5 Proposed 20A(2)
This clause is unnecessary as the NT has agreed to waive fees in these circumstances and this can be satisfactorily addressed in accordance with the relevant Territory legislation.

6 Proposed s20A(3) and s20A(4)

The registration of new land grants and leases and other dealings in respect of Aboriginal land are currently registered and dealt with in accordance with the *Land Titles Act* in the Territory, without the need for any specific provision in the *Aboriginal Land Rights (Northern Territory) Act* (ALRA) for this to occur.

In the case of the sorts of dealings contemplated under section 20A, there is no reason not to allow the current practise to continue - ie: that persons applying for the registration of an instrument should comply with the relevant provisions of the *Land Titles Act*. It should be noted that instruments will be able to be searched under the Public Register, and that it is important for the Register to be accurate in terms of survey plans, subdivision approvals, and the like.

The section should therefore be modified so that reference is made to the Northern Territory *Land Titles Act*.

7 Renewal of mining tenements

The definition in section 3(1) of "intending miner" and the provisions at section 46(1) need to be amended to take account of the new definition of "exploration retention lease".

8 Proposed section 67A

Whilst these amendments were not part of the joint Northern Territory Government – Land Council submission, nevertheless we support them. However, we are concerned that in the event that these proposed amendments proceed, they are workable and/or don't result in any unnecessary continued uncertainty or protracted litigation.

S67A(7) claims which cannot be assessed because of insufficient information
These would essentially be those claims that have been lodged with the Commissioner but no further action has been taken by the Land Councils to progress the claims. It should be made clear that these include claims to land held by the two land corporations (the Conservation Land Corporation and NT Land Corporation). These latter claims (about 39) although identified in the Aboriginal Land Commissioner's report as incompetent due to a valid title existing, can however currently be brought on by the Land Councils if they can show that, for example, the land is unalienated Crown land (ie what the NLC sought to establish in relation to Billengarah).

We also query the proposed time frame of 6 months which may delay matters so that they will take at least 12 months to dispose of. We would prefer a period of 90 days, on the basis that there will undoubtedly be requests for extensions. A 90 day time frame plus extension of another 90 days could potentially dispose of a matter within 6 months.

S67A(12)-(16) claims to the intertidal zone, to beds and banks of rivers and creeks and to islands in rivers and creeks
The intention is that claims not contiguous to other claimed land or to existing ALRA land are to be taken to be finally disposed of. Our legal advice is that the term "contiguous" requires clearer legal definition. That is, to what extent does the land need to be "touching", "in contact" or adjoining"? For example, 50(2E)) in relation to stock routes requires the stock route to be contiguous to land to which the application relates along each of its two longer boundaries. We are concerned that if there is any ambiguity, the proposed amendment will not achieve the desired effect in a timely and workable manner. We therefore query why the claims to be struck out are not simply listed.

9 Proposed s70(2C) - New Defence for entering Aboriginal Land

This proposed defence may have implications for successful prosecutions under the *Northern Territory Aboriginal Sacred Sites Act 1989 (NTASSA)* in that it could widen the defence against prosecution under section 36(2) of that Act.

(Section 36(2) of the *NTASSA* provides that it is a potential defence against prosecution for the illegal entry, work and desecration of a sacred site if the person's presence on the land comprised in the sacred site would not have been unlawful if the site had not been a sacred site.)