



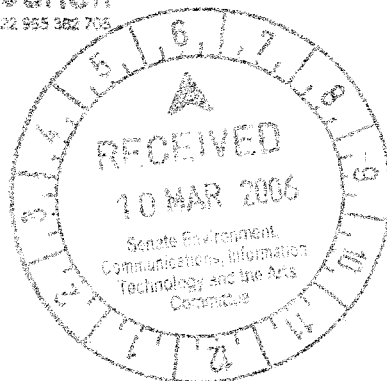
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The Secretary
Senate Environment, Communications Information Technology and the Arts Committee
Parliament House
Canberra
ACT 2600

Cape York Land Council- Submission to Inquiry into Australia's national parks, conservation reserves and marine protected areas

Introduction

We welcome the opportunity to provide a submission to the Senate Committee on Environment, Communications, Information Technology and the Arts.

The Cape York Land Council (*CYLC*) is an Aboriginal Corporation serving the Aboriginal communities and traditional owners of Cape York Peninsula. Membership of the Land Council is open to Aboriginal people whose traditional lands are on Cape York Peninsula.

As a Native Title Representative Body under the *Native Title Act 1993 (Cth) (NTA)*, the CYLC helps traditional owners gain recognition of their native title rights through negotiations and court action.

This submission responds to part (d) of the inquiry's terms of reference concerning the responsibilities of governments with regard to the creation and management of national parks, other conservation reserves and marine protected areas. CYLC contends that the current national park management arrangements in Queensland are grossly inadequate and should be amended to become consistent with the Commonwealth approach to joint management of national parks.

National parks are a key way to promote reconciliation. Joint management of National parks is one of the biggest land issues for indigenous people in Queensland.

Background:

In February 1999, due to 200 or so native title claims over national parks throughout Queensland, the Queensland Government undertook to update their policies and legislation on indigenous interests in national parks. Subsequently the Queensland Indigenous Working Group convened a national parks summit and developed a clear policy with 19 principles for indigenous interests in National Parks. The Cape York Land Council also submitted a policy position to the Queensland Government at that time. Despite this work, the policy on joint management of National Parks in Queensland has not progressed significantly.

Cape York Land Council submitted seven key threshold requirements on national parks and joint management:

- A scheme which ensures a fair and equitable negotiation process;
- Security of tenure and arrangements for traditional owners
- Compensation for loss of use and enjoyment in the form of impact and benefit agreement/economic rent;
- Establishment of Aboriginal decision-making structures and processes that ensure decisions are implemented;
- Absolute right for traditional owners to reside on national park land where required
- Ability to make a living from traditional land;
- Ability to look after cultural property and undertaking cultural activities.

National Parks and Cape York

The Cape York Peninsula is one of Australia's priority conservation areas.¹ Accordingly, there has been an emphasis on protecting Cape York's natural environment through the establishment of national park areas. Unfortunately, this process has historically occurred in such a way as to exclude Indigenous people from their traditional lands because national Parks arose from intellectual understandings of wilderness which marginalized and excluded Indigenous people. Rights of Indigenous people to resource use on their traditional land in national parks has been curtailed and there has been a lack of consultation with Indigenous people as to how national parks should be managed.

Joint management arrangements provide an opportunity to remedy these problems and provide significant benefits to Indigenous communities. Such benefits include; strengthening of cultural identity, community development, employment and skills acquisition and economic self-sufficiency. Under current national park management arrangements in Queensland, Indigenous communities are largely being denied these benefits.

¹ Australian Conservation Foundation, 'Cape York' http://www.acfonline.org.au/news.asp?news_id=499

Commonwealth approach to joint management of national parks

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**the Act**) provides for a joint management regime that sets a useful benchmark for joint management arrangements. Under the Act, the Governor-General may declare an area of land that is owned by the Commonwealth or held under lease by the Commonwealth, to be a Commonwealth reserve.² The Commonwealth must obtain the consent of the State to acquire land for the purpose of declaring it a Commonwealth reserve if the land is dedicated or reserved under State law for purposes related to nature conservation or protecting areas of historical, archaeological or geological importance or significance to indigenous persons.³

The Act defines a Commonwealth reserve as a 'jointly managed reserve' if it includes indigenous people's land and is held under a lease by the Director and if a Board is established for the reserve under Subdivision F.⁴ Land is considered 'indigenous people's land' if a body corporate holds an estate that allows the body to lease the land to the Commonwealth or the Director and the body corporate was established under an Act for the benefit of indigenous persons title to land.⁵ The Minister must establish a Board of Management for a Commonwealth reserve that is wholly or partly on indigenous people's land if the land council or traditional owners for that land and the Minister agree that there should be a Board for the reserve.⁶ The Act contains important provisions relating to Indigenous representation on the Board and involvement in decision making and administration. If the reserve is wholly or mostly on indigenous people's land, a majority of Board members must be Indigenous people nominated by traditional owners.⁷ Also, a meeting of a Board for a Commonwealth reserve consisting wholly of Indigenous people's land must not start or continue unless the majority of the members present are persons nominated by the traditional owners.⁸ These sections serve to provide employment opportunities for local Indigenous people and render them central to the decision-making and administration of the national park.

The functions of the Board include; making decisions relating to the management of the reserve that are consistent with the management plan, preparing management plans for the reserve, monitoring the management of the reserve and advising the Minister on all aspects of the future development of the reserve.⁹ These activities are to be done in conjunction with the Director.¹⁰

² *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s344(1).

³ *Ibid*, s344 (2).

⁴ *Ibid*, s363 (5).

⁵ *Ibid*, s363 (3).

⁶ *Ibid*, s377(1).

⁷ *Ibid*, s377(4).

⁸ *Ibid*, s383.

⁹ *Ibid*, s376.

¹⁰ *Ibid*, s376.

The Act provides for the creation of management plans for Commonwealth reserves. Certain acts may not be done in a Commonwealth reserve, except in accordance with a management plan.¹¹ Indigenous involvement in the drafting of management plans is promoted by the section which provides that the Director must invite comments on proposed management plans from the Chair of any land council for the reserve.¹² It is also promoted by the requirement that the Director and the Board must take account of the interests of the traditional owners of the land and any other indigenous persons interested in the reserve when preparing a management plan.¹³ The Director may only give a management plan to the Minister for approval if the Board agrees.¹⁴ This section, in conjunction with the section requiring majority Indigenous membership of the Board, provides Indigenous people with significant control over the implementation of management plans.

Other important recognition of Indigenous knowledge and inclusion of Indigenous people in decision making under the Act is provided by sections 505A, 505B and the National Heritage Management Principles articulated in the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth). Sections 505A and 505B establish an Indigenous Advisory Committee which has the function of advising the Minister on the operation of the Act, 'taking into account the significance of indigenous peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity.'¹⁵ The National Heritage Management Principles state that 'Indigenous people are the primary source of information on the value of their heritage and the active participation of indigenous people in identification, assessment and management is integral to the effective protection of indigenous heritage values.'¹⁶

In practical terms both Kakadu and Uluru have been leased back by Traditional Owners to the Commonwealth in accordance with these principles. Kakadu is subject to a 30 year lease that is subject to review after that time. The management arrangements for these parks have also contained significant employment opportunities for indigenous rangers and provided the mechanism for indigenous tourism in the parks.

Joint management of the Mutawintji National Park, NSW

The approach to joint management taken by the New South Wales government in relation to Mutawintji National Park contains also some positive characteristics. Freehold title to the Mutawintji National Park was handed over to the Mutawintji Local Aboriginal Land Council (MLALC), on behalf of Mutawintji's traditional owners, in 1998. MLALC then granted a 30 year renewable lease to the Minister for the Environment for the lands to continue to be managed as part of New South Wales' conservation estate. In 1996, the NSW State government amended the *National Parks and Wildlife Act 1974* (NSW)

¹¹ Ibid, s354.

¹² Ibid, s368(2).

¹³ Ibid, s368(3).

¹⁴ Ibid, s370.

¹⁵ Ibid, s505B.

¹⁶ *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth), Schedule 5B, principle 6.

(the NSW Act) to include a provision which empowers the Minister to negotiate with the Aboriginal owners of the named reserves to attempt to agree to joint management arrangements. The structure of these arrangements is similar to the Commonwealth Act. The NSW Act provides for a Board of Management to be established which is comprised of a majority of Aboriginal owners. The Board is responsible for the care, control and management of the reserve. The Board is subject to direction by the Minister except in relation to decisions relating to the management of Aboriginal culture and heritage.

The joint management structure established under the Mutawintji National Park lease is comparable to the Commonwealth approach. The Board is responsible for the care, control and management of the Mutawintji lands.¹⁷ To make a proper decision the Board must have at least seven members of which at least four must be Aboriginal owner members. A decision is invalid if a majority of Wiimpatja members with a cultural association do not support the decision.¹⁸ The lease provides for a Joint Management Co-ordinator who is to report to the Board.¹⁹

The Mutawintji National Park lease provides significant additional benefits to the local Indigenous community through clauses concerning rent, community development, and Aboriginal training and employment. The lease provides for the possibility of amending the lease every five years but specifies that the any amendments to the lease cannot reduce the overall level of benefits to and rights of the Land Council and the Aboriginal owners.²⁰ The lease provides for \$275000 rent to be paid by the Government each year.²¹ This amount is to be adjusted each year and reviewed every five years.²² The Board is to spend rent money paid under the lease for purposes such as community development or buying land to add to the Park.²³ The lease contains an agreement by the Minister to promote Aboriginal training and employment within the National Parks Service and to ensure Mutawintji get fair treatment under the Parks Service general Aboriginal employment plan in addition to the new Aboriginal jobs created as a result of the lease.²⁴

QLD approach to management of national parks

Involvement of Indigenous people in the management of National Parks in Queensland is governed by the *Aboriginal Land Act 1991* (Qld) (the ALA) and the *Nature Conservation Act 1992* (Qld). Under the ALA, claims for national park land can be made on the grounds of traditional affiliation or historical association with the land.²⁵ Parks granted under these provisions are to be held by Aboriginal people as freehold title but with the requirement that they be leased back to the Queensland Department of

¹⁷ Mutawintji National Park Lease, clause 10.1.

¹⁸ Mutawintji National Park Lease, clause 10.7.

¹⁹ Mutawintji National Park Lease, clause 11.1.

²⁰ Mutawintji National Park Lease, clause 5.8.

²¹ Mutawintji National Park Lease, clause 6.

²² Mutawintji National Park Lease, clause 6.

²³ Mutawintji National Park Lease, clause 6.8.

²⁴ Mutawintji National Park Lease, clause 8.1.

²⁵ *Aboriginal Land Act 1991* (Qld) s46 (2).

Environment and Heritage for joint management under terms and conditions negotiated independently for each Park. The *Nature Conservation Act 1992* (Qld) provides the legislative basis for establishing a board of management, management plans and lease agreements for Aboriginal-owned parks.

The Queensland approach to joint management is problematic for a number of reasons. If a claim by a group of Aboriginal people for an area of land is established on the ground of traditional affiliation or historical association, the Land Tribunal must recommend to the Minister that the land be granted in fee simple to the group.²⁶ However, the Land Tribunal's finding is merely a recommendation. Before a deed of grant in fee simple over the land is prepared the Minister must be satisfied that the land should be so granted to the group.²⁷ Accordingly, the Minister retains ultimate discretion as to whether land should be granted back to an Indigenous group, even once traditional affiliation or historical association has been established. As a result of these sections, ten successful ALA claims over national park land have still not resulted in land being granted to Indigenous communities on the Cape York Peninsula.²⁸

Another problematic section of the Act requires that the Minister prepare a management plan before the grant of the land occurs.²⁹ This does not allow Indigenous people to be involved in the management plan and framework for the National park.

Even if successful ALA claims had resulted in national parks being granted to Indigenous claimants, the provisions in the Act relating to subsequent management of such land are inadequate. The ALA provides that if granted land is, or includes part of a national park, there is to be a board of management for the national park land.³⁰ Unlike the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ALA provisions relating to the board of management do not ensure Indigenous involvement in decision-making and administration of national parks. The board of management is to be composed in the way approved by the Minister. The ALA does specify that the Aboriginal people particularly concerned with the national park land are to be represented on the board of management. However, these provisions do not ensure Indigenous representation on the Board to the same degree as the Commonwealth requirements that a majority of Board members be Indigenous people nominated by traditional owners and that meetings of the Board only occur if a majority of the members present are persons nominated by the traditional owners.

ALA provisions relating to preparation of the management plan also fail to provide Indigenous involvement comparable to that under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). The ALA provides that in preparation of the management plan the Minister must consult with and consider the views of the

²⁶ *Aboriginal Land Act 1991* (Qld) s60 (1).

²⁷ *Ibid*, s63.

²⁸ Cape Melville, Flinders Group, Clack Island, Simpson Desert, Ironrange, Lakefield, Cliff Islands, Archibald, Rokeby, Mitchell Alice Rivers.

²⁹ *Ibid*, s83 (5).

³⁰ *Ibid*, s83 (2).

Aboriginal people particularly concerned with the national park.³¹ This section is not as strong as the consultation requirements under the Commonwealth Act. Under the Commonwealth Act management plans are prepared by the Director and the Board rather than by the Minister. The Director must invite comments on proposed management plans from the appropriate land council. The Director and the Board must take account of the interests of the traditional owners of the land and any other interested indigenous persons when preparing a management plan. The requirement of majority Indigenous membership of the Board also serves to ensure adequate Indigenous involvement in the preparation of management plans under the Commonwealth Act.

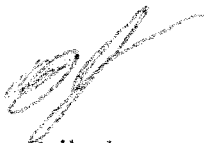
Conclusion and recommendations

As a result of faults in the ALA and *Nature Conservation Act* described above, Indigenous people in Cape York have not been able to enjoy the benefits of joint management such as employment and training opportunities and the payment of rent to traditional owners through leaseback schemes. In contrast, the Commonwealth and New South Wales approaches to national park management involve Indigenous people in decision-making and administration of national parks in a meaningful way.

CYLC contends that the Senate should consider recommendations to ensure that the Commonwealth model for joint management should be used as a benchmark with all states moving to a consistent approach. This would ensure that Indigenous people throughout Australia would be able to benefit from involvement in the management of National Parks. This would significantly increase their opportunities to become involved in land management and employment opportunities such as nature based tourism.

There are several other improvements that could be made in the legislative frameworks and practical applications of joint management. Boards should have the capacity to employ staff and to issue full permit powers, but must consult with Traditional Owners before doing so. Adequate funding needs to be provided to ensure that indigenous people are provided with adequate training to participate in such a system and are adequately consulted. Funding for capital works for the parks also need to be provided, and the revenue raised from the National park needs to be put back into the National park. Permits should be set aside solely for indigenous operations within national parks to ensure that they are able to participate in tourism, and are given adequate and support and training to conduct such business enterprises.

Thank you for considering our submission.



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³¹ *Aboriginal Land Act 1991 (Qld) s83(7).*