

Government and Australian Greens Senators' Dissenting Report

Government and Australian Greens Senators have serious concerns about the reasons for this inquiry, the manner in which it was run, and its findings. The entire inquiry has suffered from a number of profound flaws.

A flawed reference

The report states that the reason for the reference of this issue to the committee was that 'a number of concerns have been raised in the media about Centrecorp's business operations...'.¹

The Government and Australian Greens Senators emphasise that the allegations about Centrecorp's operation have been raised by three journalists, writing for two papers: Erwin Chlanda from the *Alice Springs News*; and Russel Skelton and Ben Schneiders from *The Age*. Those journalists made submissions to the inquiry, and it is clear from those submissions that significant personal hostility exists between the journalists against the Central Land Council and Centrecorp.² Accordingly, Government and Australian Green Senators question the impartiality and integrity of the allegations made against the Central Land Council and Centrecorp.

Government and Australian Green Senators further note that the criticisms and allegations made by the journalists have not been repeated by any stakeholders or beneficiaries of either the CLC or Centrecorp. Nor has any other evidence been presented to the committee to corroborate them. Despite the inquiry being advertised in the Australian, the Centralian Advocate and the Alice Springs News, as well as the Internet, the committee received only six public submissions and one supplementary submission. In light of these facts, Government and Australian Green Senators cannot see how the criticisms of Centrecorp and the CLC can be sustained.

In addition, there have been at least three audits of various aspects of the CLC and Centrecorp by the Australian National Audit Office (ANAO) and the Department of Finance and Deregulation, Office of Evaluation and Audit (Indigenous Programs) (OEA) in the past five years.³ None of those audits have found any evidence that either the CLC or Centrecorp is operating other than in strict accordance with their

1 Paragraph 2.54.

2 Ben Schneiders and Russel Skelton, *Submission 4*; Erwin Chlanda, *Submission 6*; see also attachments 2 and 3 to CLC, *Submission 2*, pp 10–29.

3 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008; OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008; ANAO, *Northern Territory Land Councils and the Aboriginals Benefit Account*, Audit Report No. 28, 2002–03.

legal obligations. Attempts by Opposition Senators to qualify, for political reasons, the findings of the three audits are disingenuous and with no foundation.

These audits included a very thorough audit of Centrecorp by the OEA, which reported as recently as November 2008. With all the financial and audit expertise available to the OEA, it did not uncover any legal obligation which had been breached by Centrecorp or the CLC, either individually or in their relationship with one another.

Accordingly, Government and Australian Greens Senators saw no reason for, or benefit of, the reference of this issue to the committee. Neither the Government nor the Australian Greens supported the reference when it was originally moved in the Senate by the Opposition back in May 2009. The Government and Australian Greens Senators saw it as an unproductive use of the committee's time and resources to inquire into the financial and management operations of an organisation so recently audited by experts, particularly when the committee lacks the necessary audit expertise. The inquiry simply placed unnecessary burdens on the CLC and Centrecorp, for no public benefit.

A flawed inquiry process

Government and Australian Greens Senators on the committee have serious concerns with the way in which this inquiry was run.

The Coalition majority of the committee deferred, on two occasions, public hearings and then decided not to hold public hearings for this inquiry, on the basis that 'it was unnecessary to further investigate [the CLC and Centrecorp]⁴ because 'the committee did not find any evidence of impropriety in the operation or management of either organisation'.⁵ Government and Australian Greens Senators objected to this course of action but the Coalition majority were unyielding.

Yet, the Coalition majority made a number of serious but unfounded criticisms of the CLC and Centrecorp in its report, and the lack of a public hearing denied either organisation the opportunity to respond. This constituted a deliberate attempt to avoid providing the CLC or Centrecorp with the opportunity to defend themselves against what could only be described as politically motivated attacks and criticism.

Government and Australian Greens Senators are of the view that if the committee wishes to make public criticisms of any organisation in a report, in the interests of fairness and justice it should give those organisations the opportunity to respond to those criticisms.

Furthermore, the majority report criticised both the CLC and Centrecorp for being unhelpful because of their alleged 'reluctance to provide the committee with basic financial information about [Centrecorp's] operations', and the editing of documents

4 Paragraph 3.2.

5 Paragraph 3.2.

by both organisations.⁶ Government and Australian Greens Senators firmly reject these statements.

Government and Australian Greens Senators note the comments contained in the majority report regarding the CLC's extensive public reporting obligations:

The CLC is a Commonwealth Statutory Authority within the terms of the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The CLC is also a Native Title Representative Body under the *Native Title Act 1993*. Both acts prescribe various annual reporting requirements which the CLC must fulfil. The Australian National Audit Office (ANAO) performs annual audits of the CLC's financial statements. There is no suggestion in any of the OEA or ANAO audits of the CLC that these statutory requirements are not being fulfilled.⁷

The committee wrote to both organisations on 18 June 2009 requesting an array of financial and management documents, many of which were not, and usually would not be placed, in the public domain. The committee requested the documents by 26 June 2009, giving the CLC and Centrecorp only six working days in which to collate the documents and edit any commercially sensitive, personal, or unnecessary information from them.

Centrecorp responded to the request the following day, suggesting that the committee obtain the documents from the ANAO. On 27 June, Centrecorp sent the committee a further letter requesting clarification of the terms of the committee's request. In total, the committee sent Centrecorp four letters regarding its request for documents during June and July 2009.

The CLC provided the committee with 1602 pages of documents in response to the committee's request on 17 August 2009. Centrecorp provided the committee with 264 pages of documents in response to its request on 24 August 2009.⁸

Government and Australian Greens Senators do not consider it unreasonable for the CLC and Centrecorp to have taken two months to provide the committee with that quantity of documents, particularly given that the scope of the committee's request to Centrecorp was not clarified until a month prior to Centrecorp providing the requested documents.

Government and Australian Greens Senators also do not believe the CLC and Centrecorp's editing of those documents was unreasonable. The CLC have a right to

6 Paragraph 3.3.

7 Paragraph 2.22.

8 The committee also requested documents from Yeperenye Pty Ltd, on 27 July 2009, which provided the committee with 100 pages of documents on 16 October 2009, however, the committee majority does not criticise Yeperenye, so no comments in relation to Yeperenye are necessary here.

remove information which was: 'not within the committee's terms of reference',⁹ predominantly portions of minutes from board meetings which do not relate to Centrecorp; or 'subject to privilege, confidentiality, commercial-in-confidence or privacy considerations'.¹⁰ Centrecorp removed commercial-in-confidence information.¹¹

Given that Centrecorp is not required to provide any financial or other information to government, Government and Australian Greens Senators consider their cooperation in providing 264 pages of documents which were not commercial-in-confidence commendable. It is unreasonable for the Coalition members of the committee to expect a private company, who are subjected to a politically motivated attack, to provide commercially sensitive information to a Senate committee.

Additionally, the committee's behaviour towards Centrecorp and the CLC can hardly be described as cooperative. The committee organised and then cancelled public hearings in Alice Springs on two occasions, placing a substantial imposition on both organisations which had ensured the availability of senior executives and directors on those dates.

In light of these facts, the Government and Australian Greens Senators on the committee consider the criticisms of Centrecorp and the CLC made in the majority report to be entirely unfounded.

Flawed conclusions

The report is entirely contradictory in its findings and conclusions. On one hand it says there is no evidence of 'wrong doing' in quite a number of places, but then attempts to leave the impression that CLC and Centrecorp have not been cooperative and there are still concerns. Given the lack of evidence before the committee on these issues, Government and Australian Greens Senators reject these suggestions outright.

Government and Australian Greens Senators endorse the majority report finding that '...the committee did not find any evidence of impropriety in the operation or management of either organisation, nor in the relationship between the organisations.'¹² This statement is supported by several other sections in the report which demonstrate that there is no case for Centrecorp and the CLC to answer. The following quotes provide examples:

...The committee concludes that the documents provided by the CLC, Centrecorp and related entities do not, on their face, disclose any

9 CLC, additional information, 17 August 2009, p. 2.

10 CLC, additional information, 17 August 2009, p. 2.

11 Centrecorp, additional information, 24 August 2009, pp 1–11.

12 Paragraph 3.2.

inappropriate behaviour on the part of either organisation, or indicate an improper relationship between the two organisations.¹³

The committee has not received the information provided by Centrecorp to its shareholders and beneficiaries and therefore makes no independent finding as to its adequacy. The committee did not consider it necessary to inquire further into the issue, given the OEA's previous consideration, coupled with the fact that none of Centrecorp's shareholders, or current or potential beneficiaries submitted concerns to the committee.¹⁴

...the committee found no indication of: the existence of an improper relationship between the entities; any impropriety in Centrecorp's use of, or accounting for, government funds; any improper conduct in Centrecorp's donations; nor anything to suggest that Centrecorp is acting other than in accordance with its charitable charter.¹⁵

Government and Australian Greens Senators also acknowledge the OEA's findings that there is room for improvement in the transparency of Centrecorp's operations.¹⁶ In this vein, Government and Australian Greens Senators welcome the recent establishment of the Centrecorp Foundation which addresses one of the OEA's key concerns regarding the administration and payment of donations.¹⁷ The Foundation is a new donations body established by Centrecorp that is 'primarily focussed on the needs of young Aboriginal people in disadvantaged circumstances'.¹⁸ The Foundation is a significant step towards implementing the OEA's findings about the governance and transparency of Centrecorp's donation policy, and the Government and Australian Greens Senators commend Centrecorp for this initiative.

Government and Australian Greens Senators emphasise the fact that Centrecorp is a private organisation that operates solely for the furtherance of charitable objectives. Centrecorp has provided donations totalling \$448 021 to the Central Australian Indigenous community over the past five years, and also provides other significant benefits to that community. Centrecorp has been very successful in building up assets to increase its income, which ultimately increases the benefits available to Indigenous people. The accumulation of assets for charitable purposes was exactly what Centrecorp was established to do, and is exactly what it has done.

There has been no attempt by Opposition Senators to effectively address the terms of reference and the Central Land Council and Centrecorp have been denied natural

13 Paragraph 1.9.

14 Paragraph 3.77.

15 Paragraph 3.80.

16 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, p. 8.

17 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, p. 11, recommendation 7.

18 www.centrecorp.com.au/index-2.html

justice as a result of the cancellation of public hearings and what seems to be the prejudice against these bodies by Coalition Senators involved in the inquiry.

This has been a flawed reference, a flawed process, and a politically motivated attempt to discredit the Central Land Council and Centrecorp and, as a result the conclusions of the majority report are fundamentally flawed.

Senator Doug Cameron

Senator Trish Crossin

Senator Rachel Siewert

Deputy Chair