Chapter 2

THE MAJORITY VIEW

Information, Consultation and Negotiation

1.25 In addition to the inquiry process before the Committee a major information campaign and consultative effort preceded the introduction of the legislation into the Parliament. The Committee was told of the considerable efforts already made to inform people of the impact of the *Mabo (No 2)* decision and the Native Title Bill:[8]

- In January 1993 the Council for Aboriginal Reconciliation distributed 25,000 copies of a document entitled *Making Things Right - Reconciliation After the High Court's Decision on Native Title.* A further 200,000 copies of the document were sold through AGPS;

- In June 1993 the Commonwealth distributed a total of 6,000 copies of a document entitled *Mabo: The High Court Decision on Native Title. Discussion Paper*;

- ATSIC undertook a major publicity campaign, distributing 27,000 copies of an information package and operating a 008 contact 'phone number;

- In September 1993 the Commonwealth distributed 2,700 copies of a paper outlining its proposed legislation;

- Some 3,000 copies of the bill and explanatory material have been distributed; and

- ATSIC has distributed some 5,000 copies of a plain English guide to the Bill.

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8 *Evidence (Senator The Hon Gareth Evans) pp SLY 578-579.*

1.26 The Committee is aware that wide ranging consultations have occurred with indigenous people, industry groups and with State and Territory governments.

1.27 In the later stages of the process the Prime Minister has negotiated personally with ATSIC and with representatives of Land Councils in an endeavour to reach agreement with those Aboriginal communities most likely to be affected by the Native Title Bill.

Summary of Major Debates Before the Committee

1.28 The major features of the information provided to the Committee by those appearing at public hearings and in written submissions were as follows:

The Need for Urgent Passage of the Commonwealth Bill

- The major Land Councils and some Legal Services organisations expressed strong support for passage of the Commonwealth Bill immediately. These groups expressed concern about the effect of the Western Australian legislation on native title in that State. These groups, acknowledging that the Bill is not intended to deal with the rights of the dispossessed Aboriginal people, also urged extensive consultation with Aboriginal people on the social justice package foreshadowed by the Commonwealth government for those Aborigines whose native title had been extinguished;[9]

The Need for Certainty

- Industry group representatives stressed the need to remove doubt surrounding title to property in order that investment is not deterred. These witnesses agreed on the need for a national approach to the issues raised by the Mabo decision and to the validation of titles. For example, The National Farmers' Federation informed the Committee that:

> [W]here there is disagreement between the Commonwealth and the state, the matters are likely to be resolved in the

9 *Evidence (Mr Pearce, Northern Land Council) p SLC 327.*

> High Court. The position taken by our council was that, for the period that those issues are before the court, there is as a result uncertainty about land tenure and resulting anxiety perhaps on the part of financial institutions in relation to that particular land tenure.[10]

Representativeness of the Aboriginal Negotiating Team

- A number of Aboriginal groups and some individuals argued that the Aboriginal negotiating team was unrepresentative of them and criticised the team for 'doing a deal' with the Prime Minister without authority and without satisfactory consultation.[11] The negotiating team made it clear that they negotiated only on behalf of the people whom they represented directly;[12]

Linkage with the Racial Discrimination Act 1975

- a number of witnesses, including Mr Ron Castan QC[13], urged that the Bill include express provision that it be subject to the provisions of the *Racial Discrimination Act 1975*. Other witnesses argued that this would prejudice the certainty of the validation provisions of the Bill and the validity of future grants;[14]

Constitutional Validity and Complexity of the Bill

- State and Territory government critics, and industry groups, focussed upon possible Constitutional invalidity and the complexity

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10*Evidence (Mr Farley) p SLC 541.*

11*Evidence (Mr Wayne Wharton, Keooma & Birri Gubba, pp SLC 230 & 246-247); (Mr C Patten, Aboriginal Legal Service, p SLC 251-252); (Mr R Robinson, National Aboriginal & Islander Legal Services Secretariat, p SLC 278).*

12*Evidence (Mr D Pearce) p SLC 310; (Mr Yu) p SLC 509; (Mr Pearson) pp SLC 534-535.*

13*Evidence (Mr Castan QC) p SLC 221.*

14*Evidence (Mr Hugh Fraser QC) p SLC 297.*

of the Bill.[15] On the other side, the Federal Government and other witnesses were confident that the Bill was constitutional and saw the Bill as a practical approach to an extremely difficult and complex issue;[16]

Need to Override the WA Legislation

- Several witnesses stressed the urgency attaching to the passage of the Native Title Bill in light of the enactment of the WA *Land (Titles and Traditional Usage) Bill 1993.* It was put to the Committee that the WA Act extinguishes existing native title with effect from 2 December 1993. This effect will be overridden by the enactment of the Commonwealth Bill. However, the longer the hiatus between the commencement of the WA Act and the Commonwealth Act, the greater will be the degree of confusion about the important question of interests in land[17];

WA Legislation may Breach International Obligations

- Sir Ronald Wilson, President of the Human Rights and Equal Opportunity Commission Commission, spoke of the urgent need for the Commonwealth Bill to be enacted in order to override the West Australian enactment because it (the WA Act) breaches Australia's international obligations[18];

Calls for a Further Inquiry

- A number of witnesses called for a further process, such as a Senate Select Committee, to further explore the matter before enactment of the Commonwealth Bill. However, this would not meet the point made by Sir Ronald Wilson, nor the urging by major Aboriginal groups and by Mr Castan QC, Mr Chaney and Father Brennan, that the Commonwealth Bill be enacted immediately. A

15 *Evidence (Mr M Perron, p SLC 360).*

16 *Submission No. 95 (ATIA) p 1.*

17 *Evidence, Mr Castan QC p. SLC 236*

18 *Evidence, 3 December 1993 p.*

number of witnesses expressed concern that delay in passage would inflame the debate in the community and cause increased racial tension. The Australian Tourism Industry Association stated that any protracted inquiry would also undermine investor confidence;[19]

Compulsory Acquisition of Property

- Some concern was expressed at the possibility that the WA legislation providing for the compulsory acquisition of property might be used to extinguish native title land after passage of the Commonwealth Bill and that the Bill was ineffective to prevent this. Government witnesses contended that all property in WA, whether native title or otherwise, could be acquired compulsorily in this way only on the basis of being acquired on just terms, for a proper public purpose and on a non-discriminatory basis.[20] Were Government to compulsorily acquire land held under native title in bad faith native title holders may be able to obtain redress in the courts.

Tourism Issues

- The Australian Tourism Industry Association asserted that tourism leases have appropriately been given equal treatment by the Bill with other commercial leases[21]. Mr Byrne of the Cape York Land Council put the view that tourist leases should be on the same footing as mining leases[22]. Mr Pearce of the Northern Land Council informed the Committee that:

  > [t]here is also a concern about tourist leases over large areas. For instance, something like Starcke in Queensland is a prime example of where you have a massive lease but the actual buildings consist of a few demountables on the shore. What we argue is that native title survives in those areas and

19*Submission no. 95 (ATIA) p 2.*

20*Evidence (Mr Orr) pp 616 and following.*

21 Submission 19, Australian Tourism Industry Association, p.5

22 Mr Byrne, Evidence, p. SLC 225

> revives, except where there are inconsistencies. Those inconsistencies are where it has been extinguished by the building of a permanent physical structure in that area.[23]

Government witnesses pointed out that such leases do not usually extend beyond the location of a resort or other tourist building to the surrounding areas where tourist activity takes place such as forest areas.[24] As a result, Government witnesses advised that these concerns could be rejected.

Fishing Issues

- Fishing industry representatives claimed that:
  - The Bill fails to specify whether coastal land subject to native title will be to the high or low water mark; and
  - If native title diminishes existing fishing rights of commercial fishermen adequate compensation should be provided.[25]

It was also said that there is some lack of clarity in the Bill caused by the way internal waters are defined across bays and estuaries. Under the *Aboriginal Land Rights (Northern Territory) Act 1976*, land is granted to the low water mark[26]. Fishing methods in this inter-tidal area were discussed at length in Darwin and it was suggested that, if fishing was being conducted by putting nets against the land, permits should be sought.[27] The question of whether native title can apply between the high and low water mark was also raised by the Western Australian Fishing Industry Council.

The Northern Territory Fishing Industry Council also said that the existence of grey areas in the bill diminished the value of fishing

23 *Evidence (Mr Pearce, Northern Land Council, p SLC 327).*

24 *Evidence (Senator the Hon G Evans, 6 December 1993).*

25 *Evidence (Mr I Smith, NT Fishing Industry Council) p SLC 335.*

26 *Evidence (Mr I Smith, NT Fishing Industry Council) p SLC 315.*

27 *Evidence (Mr D Pearce) p SLC 317.*

licences and that these would impose significant costs on fishing businesses.[28]

Senator the Hon Gareth Evans indicated in evidence that the Government would be examining the issue of the high and low water mark because of the different regimes applying.

Mining Issues

- A number of witnesses who were representatives of the mining industry urged delay in passage of the Bill. These witnesses included Mr Ellis (BHP), Mr Armstrong (CRA), Mr Pinnock (Queensland Mining Council), Mr Munro (Mt Isa Mines) and Mr Champion de Crespigny (Normandy Poseidon). They urged delay in order to rectify what they saw as flaws in the Bill, particularly relating to mining approval procedures. Reference was made to the allegedly impractical processes for the making of future grants which may consume significant resources and deter investment.

- The Government submission pointed to the provisions in the Bill for excluding certain low impact grants from the right to negotiate, and the provisions for recognition of State land management bodies and processes, as evidence that the Bill was not unworkable and did not usurp State and Territory responsibilities.

Introduction to the Arguments

1.29 The Committee has given much consideration to the arguments put before it. The majority have reached their conclusions based on the matters raised in the following paragraphs.

Aboriginal Concerns

1.30 The Committee recognises the range of views among Aboriginal people on the *Mabo* decision and their varied responses to the *Native Title Bill*. As Mr Mansell said in evidence it is entirely natural that there should be strongly held and divergent views among Aboriginal people on issues as important as those raised by Mabo.

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28 Evidence (Mr Smith, NT Fishing Industry Council) p SLC 316.

1.31 Criticism was directed at the Aboriginal Negotiating Team on the basis that they had no mandate to negotiate on behalf of all Aboriginal people. The members of the team informed the Committee that they negotiated on behalf of the people whom they directly represented.

1.32 A number of Aborigines, already dispossessed of their land, expressed their alienation from the process of developing the *Native Title Bill 1993*, because the High Court decision effectively excluded them from access to native title rights.

1.33 Several witnesses emphasised the injustice they and their ancestors had suffered, and continued to suffer, as a result of their removal from traditional lands. The myth that Aborigines lose their cultural identity when that connection to their land is removed is totally rejected by international law defining the rights of indigenous peoples.

1.34 The Committee understands this sense of loss and urges the Government to fully recognise this frustration through direct negotiations with Aborigines and Torres Strait Islanders to ensure that the Land Acquisition Fund and Social Justice Package provide real opportunities and choices for their children's futures.

1.35 A number of Aboriginal and Torres Strait Islander spokespersons said that the Government should not legislate until Aboriginal and Islander people had a full understanding of the rights revived by the High Court decision. It was argued that people should be given time to fully understand the import of the decision before they could properly respond to any proposed legislation impacting on their rights.

1.36 The Committee accepts, as did all witnesses generally, that a lack of understanding of the Mabo decision is common throughout the community. The question is, however, whether any delay of the legislation would improve that understanding or in any way advantage Aboriginal and Torres Strait Islander people. In light of the legislation enacted in Western Australia and other factors, referred to in this report, the Committee believes that delay would act to the disadvantage of Aboriginal people and, ultimately, to the disadvantage of the community generally.

1.37 The Committee emphasises the imperative of ongoing communication with indigenous peoples to ensure that the implementation of the *Native Title Bill 1993* is fully detailed to communities throughout Australia and its effects closely monitored.

Industry Concerns

1.38 The Committee received a wide range of submissions from industry interests.

1.39 The Committee was told by a number of representatives of the mining industry that certainty of title was critical to ensure the continuation of exploration activity and of investment in the industry. Some representatives urged that the Committee recommend delaying of the Bill so that further debate about its provisions may occur.

1.40 The Government submission emphasised that the Bill represents a balanced and workable consensus which meets the dual objectives of justice for indigenous interests and certainty in land administration for economic and other interests. The Bill achieves the certainty essential to the well being of the nation's land based industries, particularly the mining industry.

1.41 Pastoral interests, represented by the NFF, have been closely consulted in the formulation of the Bill, and the Government has addressed most of their concerns.

1.42 The Committee endorses the view expressed by the Australian Tourism Industry Association that delay would add to uncertainty, and not be in industry's interests.

1.43 The Committee believes that some of the concerns expressed by industry can be addressed in the Committee stages of the Bill in order to improve the mechanics of the legislation. Other concerns raised are either not supported or seek to wind back principles that the Committee believes are inherent in a balanced and truly national response to the Mabo decision, and thus ought to be retained.

The Racial Discrimination Act Issue

1.44 The Committee was asked to recommend that the Bill should be amended so that it is expressly subject to the provisions of the *Racial Discrimination Act 1975* (the RDA). The RDA provides a standard for other laws and is based on the International Convention on the Elimination of all Forms of Racial Discrimination.

1.45 The preamble to the Bill states that it is intended to be a 'special measure' for the advancement and protection of Aboriginal peoples and Torres Strait Islanders. This was explained by the Commonwealth Race Discrimination Commissioner in the following terms:

> While the Native Title Bill confers benefits on non-Aboriginal Australians such as by the validation of past acts, the much greater benefit of the legislation is conferred on Aboriginals and Torres Strait Islanders. However, this apparent discrimination is permissible within article 1 of the Convention as the legislation constitutes a special measure of the recognition and protection of native title, and also for the advancement of Aboriginal and Torres Strait Islander people through the establishment of a National Land Fund.
>
> The validation of past Commonwealth Acts, possibly rendered invalid by the operation of the Racial Discrimination Act, is proper and acceptable given the advances made by the Aboriginal and Torres Strait Islander people in the legislation.[29]

1.46 The preamble to the Bill makes specific reference to the RDA. Nevertheless pertinent queries have been made about the precise nature of the relationship between that Act and the Bill.

1.47 In light of these ongoing concerns the Committee would like to see the Bill amended to make it absolutely clear that it is the intention of the Parliament that the Bill is consistent with the RDA and constitutes a special measure for the advancement of Aboriginal peoples and Torres Strait Islanders.

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29 *Submission No 102 (Race Discrimination Commissioner) pp 2-3.*

The West Australian Act

1.48 The native title rights of Western Australian Aborigines have been extinguished as a result of the passage of the *Land (Titles and Traditional Usage) Act 1993* (WA).

1.49 The Committee is convinced contrary to the assertion of the Western Australian Government that the Western Australian *Land (Titles and Traditional Usage) Act 1993* provides rights of lesser value than that provided under the Commonwealth Government's Native Title Bill.

1.50 The Commonwealth Parliament is, in our view, duty bound to immediately reinstate those rights arbitrarily extinguished, without any consultation with Western Australian Aboriginal people, by the Western Australian legislation.

1.51 Until Commonwealth Legislation is passed Western Australian Aborigines will remain severely disadvantaged.

1.52 The Committee was told that the longer the Commonwealth Bill is delayed the harder it is to have the Commonwealth law operate retrospectively in such a way that it negates the extinguishment of native title that is built into the Western Australian Act. Mr Castan QC talked about the legal complications of the Western Australian legislation and any delay in the passage of the Federal Bill:

> If I can translate the political battle into legal terms, the reality is that you are going to have a legal nightmare if the Western Australia bill is going to operate, so to speak, in defiance of the federal bill. The federal bill will override but the legal tangle will grow, as the time gap grows. It is the delay and the Western Australian law that will render things unworkable, not the operation of the federal bill.[30]

1.53 The passage of the Western Australian Act will, in effect, create a category of title issued under its provisions which will be subject to doubt because of the probability that they will be invalidated following passage of the Commonwealth Bill. As well, all titles issued to non-

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30*Evidence (Mr R Castan QC) p SLC 237.*

Aboriginal people in disregard of native title will be invalidated upon passage of the Commonwealth Bill. The longer the hiatus period between the two enactments the greater the confusion and uncertainty which will ensue.

1.54 A further powerful argument in favour of urgent passage for the Commonwealth Bill stems from the commencement of the Western Australian legislation on 2 December 1993. The Committee was told by Sir Ronald Wilson, President of the Human Rights and Equal Opportunity Commission, that the West Australian legislation put Australia in breach of its international obligations. In particular, Sir Ronald referred to the obligations binding Australia contained in article 30 of the *Convention on the Rights of the Child*, article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, articles 2, 7 and 8 of the *Universal Declaration on Human Rights*, articles 2, 26 and 27 of the *International Covenant on Civil and Political Rights*, articles 2.2 and 15 of the *International Covenant on Economic, Social and Cultural Rights* and articles 4 and 6 of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.*

1.55 The Commonwealth Bill will override the Western Australia legislation and will correct any breach of Australia's international obligations. The Committee concludes that this is, in its own right, a compelling argument for the urgent passage of the Native Title Bill.

Constitutionality of the Bill

1.56 The Committee heard evidence from the West Australian Government and some industry representatives arguing that the Bill was unconstitutional. It was suggested to the Committee that a range of Constitutional issues, including land management issues and the appointment of assessors to assist the Federal Court, were matters that gave rise to Constitutional doubts. The Committee notes the views expressed by a number of witnesses, including the Commonwealth Government, that the Bill is Constitutional. For example, Mr Castan QC said:

> I do not think there is a constitutional problem. The reality is that there is constitutional power in the Commonwealth to deal with matters arising with respect to people of any race. .... It is totally open-ended and it enables the Commonwealth to do these things.[31]

1.57 The Committee is not persuaded to the view that there is any Constitutional flaw in the Bill and believes that it is valid.

Proposal for a Select Committee

1.58 The Committee rejects the suggestion that the reference of the Bill to a Senate Select Committee will better settle the competing claims for title or in any way improve the effect of the Bill.

1.59 The evidence of Mr Fred Chaney, former Liberal Senator and Minister for Aboriginal Affairs is compelling:

> I suppose my chief concern as an ex-member of the Senate is that I do not want the Senate Committee system used as a Trojan Horse for prejudice, and I think there is every risk that that would be what would happen if we had a lengthy Senate inquiry. I also do not want to see what I think was an important symbolic gain for the whole Aboriginal community in the Mabo decision thrown away.

1.60 A Senate Select Committee if formed prior to Christmas would not, in reality, begin its inquiry prior to the second half of January.

1.61 The Senate is scheduled to sit for six of the eight weeks during February and March.

1.62 Any comprehensive consultation process with industry, governments, Aboriginal communities and interested persons would obviously take some time.

1.63 Travel to outlying communities would be enormously difficult and extremely time consuming. The Northern Territory, Queensland and

31 *Evidence (Mr Castan QC) p SLC 244.*

Western Australia would be particularly difficult. The earliest possible time for a Select Committee to report would be May.

1.64 A referral to a Senate Select Committee would result in a minimum delay of five or more months.

1.65 The Committee is extremely concerned at the divisiveness of the debate worsening. Already quite scurrilous newspaper advertising campaigns have been initiated from competing sides of the debate. The Committee in particular was impressed by the concerns in Western Australia of Mr Riley and Mr Chaney of the potential for this matter to incite racial hatred if not resolved.

1.66 Mr Riley said that children were now being subjected to negative criticism and derisive comment and that his organisation had knowledge of instances of physical violence occurring.[32]

1.67 Mr Chaney said:

> Most importantly, the early passage of the Commonwealth legislation will bring to an end the political and industry campaigns designed to inflame public opinion and to force the federal government to abandon any defence of Aboriginal property interests because of the electoral consequences. I think that any one with a knowledge of the history of the last 10 years could not deny that that is the reality within which you are working.[33]

1.68 The Committee has received evidence from an impressive range of sources that such a delay would only work to the disadvantage of Aboriginal and Torres Strai Islander people.

1.69 The Committee was not persuaded that delay in the passage of the Bill would ultimately assist any group affected by the Mabo decision.

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32 *Evidence (Mr Riley) p SLC 499.*

33 *Evidence (Mr Chaney) p SLC 446.*

1.70 Neither this Committee nor a Select Committee is the appropriate vehicle to educate people about the High Court decision. The Committee's task is to address the Bill and the issues arising from it. We are conscious of the need to fully involve the Aboriginal and Islander people in all processes flowing from the Bill and related initiatives.

1.71 The Committee is also of the view that, because of the unique characteristics of native title and the necessary complexity of the Bill, the Parliament should establish an appropriate monitoring mechanism to review the legislation after enactment. The Committee envisages a role for a Parliamentary committee in monitoring and reviewing the impact of the legislation.

Conclusions

1.72 The majority recommends that the *Native Title Bill 1993* be passed with all due speed, certainly before the end of this Parliamentary Session. Amendments to it can and should be made in the committee stage following the second reading debate: this is in accordance with the process usually pursued by the Senate in respect of any legislation coming before it.

1.73 There is general agreement in the community that a Commonwealth Act should at a suitable time be enacted addressing the issues raised by the High Court in Mabo & Ors v. The State of Queensland & Anor (1988) 166 C.L.R. 186.

1.74 There is keen debate about the content of that legislation and the timing of its passage.

1.75 Those in the mining, pastoral and fishing industries seek legislation overcoming any defect in the titles they have which, up to Mabo, were taken to be inviolable. Those who may have native title to land seek to have that preserved. There is legitimate concern that titles different interests groups truly believe they hold or may come to hold in respect of the same land may conflict to their mutual detriment. It is right and proper therefore that Parliament resolve the problem as efficiently and as expeditiously as possible.

1.76 The Executive has now proposed to the Legislature the *Native Title Bill 1993* as the best means practicable to resolve the issues arising from the Mabo decision. Having listened to debate about those issues over a considerable period and having heard a wide range of submissions over four days this month, the majority is convinced that delay in dealing with the matter will not produce a better outcome than that offered by the present bill.

1.77 The majority believes that if consideration of the Bill is put off to next year it is highly probable that any legislation then passed would be much inferior to that now proposed. Groups dissatisfied with the present Bill will campaign against it in a way that will taint the atmosphere within which debate about it is now taking place. There are already signs of this happening: for example the advertisement on p 7 of *The Weekend Australian* of December 4-5 1993 and on page 12 of *The West Australian* of Tuesday 7 December 1993.

1.78 Those who want further parliamentary debate about the Native Title Bill put off till next year presently show no commitment to its then enactment even were it substantially amended in the meantime. What they seek is not a pause in its agreed passage towards its becoming law, but a postponement of its general consideration by the Senate. The majority find this too slight a basis for further delay in it being dealt with by the Legislature.

1.79 On the issue of the constitutionality of the Bill the majority accepts the advice of Mr. Castan QC who was Counsel for the successful parties in Mabo. He is satisfied that the present Bill fits within the terms of the Constitution.

1.80 It has been argued that there has been insufficient consultation regarding the Bill. The majority notes this argument but does not see it as being the key issue. The decisive issue is whether further consultation would result in an improved outcome. The Committee is convinced that in fact the opposite would occur.

1.81 Australia may now be in breach of international covenants to which it is a party. This is because of the terms of the *Land (Titles and Traditional Usage) Act 1993* of Western Australia which came into

operation there on 2 December 1993. That will continue to apply there in its present form until appropriate Commonwealth legislation is passed.

1.82 Parliament is now charged with the duty of dealing with the matters created by the historic High Court decision in Mabo. It should not evade that duty by delaying its consideration of the matter.

1.83 The responsibility for passing right and proper legislation to address this matter lies with members of the Commonwealth Legislature and with no other person or group. We ought not abdicate our obligation to legislate where legislation is needed.

1.84 The need for the Native Title Bill to be passed is fundamental and urgent. It should be met without delay.

Amendments

1.85 The Committee endorses the fundamental principles underlying the Bill. We believe there are some issues that are capable of being addressed by amendment without damaging the integrity of the Bill. These go to clarifying the Bill, removing unintended consequences and addressing issues not as yet adequately catered for in the Bill. The Committee feels that these issues can be dealt with in the Committee stage debate on the Bill.

1.86 In particular the Committee recommends that the Government give consideration to amendments in the following areas.

a) The Bill should be amended to make clear that it is the intention of the Parliament that the Bill is consistent with the RDA and constitutes a special measure for the advancement of Aboriginal peoples and Torres Strait Islanders.

   This should not provide that the Bill is subject to the RDA because of the uncertainty that would create - contrary to one of the very basic objectives of the legislation.

b) The Committee was impressed by the evidence concerning the efficacy of regional agreements in determining native title and resolving conflicting Aboriginal Land Title claims. A

greater emphasis on such agreements in the Bill without increasing the complexity or length of the process should be considered.

c) The Bill should address the concern that there may be impediments to renewals or regrants of valid leases (eg pastoral) where the renewals or regrants are in the same terms as the original lease.

d) The Bill should clarify the treatment of the fishing industry as it is affected by the distinction made in the Bill between onshore and offshore regimes.

The Committee was convinced that the concerns of the fishing industry in this respect are not adequately catered for in the Bill.

e) The Committee considers that land held under native title should not be subject to legal process as a means of satisfying debts owed by Aboriginal land owning corporations.

Amendments to clarify the protection of native title are necessary.

Recommendations

Recommendation 1: The Committee recommends that the bill be enacted before the end of the current sitting period.

Recommendation 2: The Committee recommends that the Government fully acknowledge the frustration felt by those Aborigines already dispossessed of their land by continuing direct negotiations, particularly with people in settled areas where native title has been extinguished, to ensure that the Land Acquisition Fund and the Social Justice Package provide real opportunities and choices for their children's futures.

Recommendation 3: The Committee recommends that the Bill be amended to make it clear that it is the intention of Parliament that the Bill is consistent with the *Racial Discrimination Act 1975* and constitutes a special measure for the advancement of Aboriginal peoples and Torres Strait Islanders.

Recommendation 4: The Committee recommends that the legislation should be monitored after enactment. This monitoring should be done by a Joint Parliamentary Committee which should report to Parliament on implementation and operation of the legislation. The Committee should consult extensively with Aboriginal groups, industry groups and all levels of government about the implementation and operation of the legislation.

Senator Barney Cooney
Chair