

[CLALandreform@fahcsia.gov.au](mailto:CLALandreform@fahcsia.gov.au)

Land and Economic Development Branch

Department of Families, Housing, Community Services and Indigenous Affairs.

### **Community Living Area Land Reform in the Northern Territory**

I wish to provide the following comments on the Government's Discussion Paper on proposals in respect of Community Living Areas in the Northern Territory.

The current proposals are based on the relevant provisions of the Stronger Futures legislation package. In that context the Discussion Paper encourages discussion of issues raised within submissions to the Senate Community Affairs Inquiry into Stronger Futures legislation package, in particular the submissions from the Northern Land Council and Central Land Council.

In fact I made a detailed submission to the Inquiry, and consequently my comments on this Discussion Paper are to be found in that submission, which I attach. I request that you give close consideration to the submission. That submission was also elaborated on in an article published in the Indigenous Law Bulletin. The article is entitled 'Toeholds on Country: Aboriginal Community Living Areas in the Northern Territory' and is published in the March/April 2012, Volume 7/Issue 29 edition of the ILB. Again I urge that my article be given close consideration.

The proposals in the Discussion Paper basically attempt to 'roll out' the land reforms of the NTER. The objective is to encourage economic development and private home ownership options. However, the NTER is a failed vessel. The attempt to promote economic enterprise and home ownership are part of the wider assimilation-based policies currently in vogue. So far they have failed to deliver any significant outcomes, and they tend to be deeply resented by Aboriginal people. The land reform measures of the NTER represent a disconcerting undermining of the achievements of land rights. They are opposed to communal ownership and responsibility, and they reflect a naive belief in the efficacy of the application of individual title and ownership in Aboriginal communities. Time and again, both here and overseas, these programs have proved to be counter-productive and at times bitterly resented by Indigenous people.

It seems CLA communities are now to be subjected to the same type of externally imposed pressures. This in my view is unfortunate.

### ***Consultation and consent***

In respect of the CLA proposals, my most pressing concerns lie in the area of consultation and consent. The arrangements proposed for consultation and consent in land use decisions and actions for CLAs are quite inadequate. Oddly, they are weaker than the relevant provisions in respect of town camps. It is not good enough that the owners of CLAs will be consulted *if they request it*. The relevant paragraph from the Discussion paper is:

If legislative reforms are undertaken through the Stronger Futures legislation, it is a requirement that before making regulations for CLAs, the Federal Minister for Indigenous Affairs must consult with the NT Government, CLA land owners (on request from the relevant land owners), the relevant land councils, and anyone else the Federal Minister for Indigenous Affairs considers appropriate to consult. As CLA land is within pastoral leases and the reforms need to be compatible with the surrounding pastoral operations, the Australian Government will also consult with the NT Cattlemen's Association.

A minimum standard must be that the CLA owners *will* be consulted, *and their consent obtained*, before such decisions are made over their land. The only exception may be where it is *clearly* impossible for reasons of practicality to have such consultations. The presumption must be consultation with, and informed consent of, the owners of the CLA. Without such a requirement, the Discussion Paper appears to be in direct conflict with basic protection of Indigenous rights in land. The 'safeguard' of consultation with the relevant land council is not necessarily sufficient to the task.

It is to be remembered that the CLAs basically represent traditional connection to country. They were established to meet the needs of those Aboriginal people who were not able to benefit from the ALRA because of the takeover of their lands for pastoralism. They are *de facto* land rights. In this context Australia's support for the UN Declaration on the Rights of Indigenous Peoples is a relevant and significant consideration.

As I observed in the Conclusion to my ILB article:

CLAs are an important part of the land base for Northern Territory Aboriginal people. The potential in this legislation is for the Aboriginal owners of CLAs to be marginalised.....The wide scope of regulations that can be made under the legislation poses a threat to the integrity of the CLAs.

In particular, long term leasing on what generally are very small areas represents a significant potential threat to the integrity and future viability of these areas and must be approached with extreme caution.

### **Conclusion**

CLAs are an important achievement and hugely significant for the people who are connected to, live on and have developed these communities. In dealing with CLA communities the aspirations and self-government of the CLA communities themselves should be paramount. Informed consent must be the cornerstone of any arrangements made in respect of CLA land. These issues are addressed in my attached submission.

Greg Marks  
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