

15 June 2015

IMPORTANT

Mr Gerhardt Pearson
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Dear Mr Pearson



Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014

I am writing to ask for your continuing support for the Stronger Land Account Bill currently before the Australian Parliament. The Bill would amend the *Aboriginal and Torres Strait Islander Act 2005*. As you may be aware, this Bill was introduced into the Senate on 24 June 2014 by Australian Greens Senator Rachel Siewert. The Greens' Bill is largely based on draft legislation developed by the Indigenous Land Corporation (ILC) and released on 24 March 2014 in the context of the Government's review of the ILC and Indigenous Business Australia.

Both Bills—the ILC's original draft and the version subsequently adopted by the Australian Greens—have five main aims:

1. To protect and strengthen the Land Account
2. To ensure the Land Account can be used only for land-related purposes
3. To mandate the highest standards of corporate governance in the ILC
4. To broaden Indigenous involvement in the ILC and the Land Account
5. To allow the Land Account's capital base (currently fixed) to increase over time.

Further information on the measures in the Stronger Land Account Bill and their rationale is provided in the attachment to this letter.

The ILC Board's concern to protect and strengthen the Land Account arises from the Land Account's unique history. The Land Account was a central part of the national settlement after the *Mabo* judgment, negotiated between Indigenous leaders and the then Australian Government. It was established to assist those unlikely to benefit from the Native Title Act and provide some partial compensation for the dispossession of Indigenous peoples since 1788. Its funds are held in trust for

current and future generations of Indigenous Australians. The ILC uses revenues from the Land Account to provide land-related benefits to Indigenous peoples. The land needs of the Indigenous population will continue to grow as more land is added to the Indigenous estate, now covering more than 20 per cent of Australia, and as our population increases.

The Senate Community Affairs Legislation Committee has now completed an inquiry into the Stronger Land Account Bill, reporting in March this year. The majority report of the committee recommended AGAINST the Senate's passing the Bill, with Labor members of the committee providing additional comments and Senator Siewert dissenting.

The ILC Board was extremely disappointed at the majority report. The report's findings are based almost exclusively on concerns expressed by two government departments, Finance and Prime Minister and Cabinet, despite the fact that the vast majority of submissions (18 out of 20) to the committee came from Indigenous and other stakeholders who supported the Bill's purposes and mechanisms.

Organisations that made positive submissions to the committee represent extensive Indigenous constituencies, particularly across remote and northern Australia (see attachment). The ILC's original Draft Bill was itself based on wide engagement with Indigenous Australians and, on the day of its release, was endorsed in principle by a group of senior leaders (including a number who had been involved in negotiating the original native title settlement): Lowitja O'Donoghue, David Ross, Noel Pearson, Patrick Dodson, Tom Calma, Aden Ridgeway and Kirstie Parker.

The ILC Board remains committed to pursuing the important, sensible and practical reforms in the Stronger Land Account Bill, and has informed the committee of its position. The ILC has also indicated its willingness to go on working with the committee, relevant government departments, Senators and Indigenous stakeholders to consult on and refine aspects of the Bill.

The ILC agrees with many of the suggestions for amending the Bill advanced by those making submissions to the committee, in particular the Torres Strait Regional Authority's recommendation that the ILC's remit be expanded to include sea in addition to land, as it is now established that Indigenous land and native title rights can extend out to sea.

The committee's majority response to the Bill once again highlights how easily Indigenous peoples' opinions and interests are sidelined by wider political processes. We believe there are important issues of Indigenous rights at stake, including a continuing threat to the purposes of the Land Account if the current Government once again moves to merge the ILC with Indigenous Business Australia to establish an economic-development agency under stronger ministerial direction.

Land and sea are the basis of Indigenous people's identity and culture; they have been at the centre of our political and legal struggles in the past and, for many Indigenous groups, will be the basis of a more prosperous future. The threats to the Land Account are real but are not receiving the attention they deserve.

Your continuing support will be vital to having the Stronger Land Account Bill legislated. Time is of the essence. I strongly encourage you to take every opportunity to advocate for the reforms in the Bill and support the ILC's position.

I and other members of the ILC Board would be pleased to offer you a more detailed briefing on these matters, if that would assist you.

Yours sincerely



Dawn Casey PSM, FAHA
Chairperson

ATTACHMENT

Aboriginal and Torres Strait Islander (A Stronger Land Account) Amendment Bill

The Stronger Land Account Bill, if legislated, would amend the *Aboriginal and Torres Strait Islander Act 1995* (ATSI Act). It has five main aims that are to:

1. **Include a stronger purpose for the Aboriginal and Torres Strait Islander Land Account**, specifying that the Land Account is a compensatory mechanism recognising past injustices and dispossession and acknowledging the special relationship Aboriginal and Torres Strait Islander peoples have with their lands

WHY: The current ATSI Act does not articulate the significance of the Land Account and the historic settlement from which it arose.

2. **Prevent the Land Account from being utilised for any purpose other than the land-related benefit of Aboriginal and Torres Strait Islander peoples**

WHY: The Land Account remains vulnerable. If, for instance, the ILC had been merged with Indigenous Business Australia (the apparent purpose of the ILC/IBA Review) Land Account funds would have flowed into a larger, and potentially conflicted, organisation and been used sooner or later for non-land-related purposes.

3. **Strengthen Indigenous control over the Land Account and the ILC by:**

- requiring the Minister to consult with a new Indigenous Nomination Committee before making appointments to the ILC Board
- strengthening the provisions that allow the ILC Board to give advice to Ministers on how the Land Account should be managed
- introducing a protective mechanism that requires Parliament to consult with Aboriginal and Torres Strait Islander peoples before making any changes to the legislation that relates the Land Account
- strengthening the ILC's status as an independent, Indigenous-controlled entity

WHY: The Land Account is an important institution and landmark of Indigenous rights. It is appropriate that Indigenous peoples have more say in matters relating to the Land Account, and its use, especially given Indigenous peoples' status as the First Australians and as a tiny minority within a political system where majority interests dominate.

4. **Introduce strong new measures requiring the ILC to comply with the highest standards of corporate governance, transparency and accountability including:**

- limiting tenure and reappointments for Board members
- introducing stronger disclosure requirements for the ILC Chair and Board members
- strengthening the ILC's Audit and Risk Management Committee including ensuring it is managed by an independent chair
- introducing provisions for a new Code of Conduct for ILC Board members and staff

WHY: The ILC Board is effectively the trustee of revenues received from the Land Account. The ILC Board should be held to the highest standards of accountability in the allocation and use of these funds.

- 5. Put in place a measure to ensure the Land Account grows over time**, so it can continue to meet the expanding land acquisition and land management needs of future generations of Aboriginal and Torres Strait Islander peoples.

WHY: The Indigenous population is likely to reach one million by 2026 and the growing Indigenous estate now covers at least 20 per cent of Australia. A larger Land Account is needed to meet future Indigenous land needs, especially if the ILC's remit is extended to sea.

Information on the Stronger Land Account Bill can be found at
<http://www.ilc.gov.au/Home/Media/Stronger-Land-Account-Draft-Bill>

Further information

Information relating to scrutiny of the Stronger Land Account Bill by the Senate Community Affairs Legislation Committee can be found at
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Stronger_Land_Account

Submissions supporting the Stronger Land Account Bill were received from Indigenous and related organisations/individuals including:

- Anti-Discrimination Commission Queensland
- Cape York Land Council, Qld
- Central Desert Native Title Services, WA
- Central Land Council, NT
- Centre for Appropriate Technology, Alice Springs, NT
- Professor Mick Dodson and Dr Asmi Wood, ANU
- Goldfields Land and Sea Council, WA
- Mr Bill Gray (former CEO, ATSIC and former Australian Electoral Commissioner)
- Kimberley Land Council, WA
- New South Wales Aboriginal Land Council
- Northern Land Council, NT
- North Queensland Land Council
- Dr Lowitja O'Donoghue (former chairperson, ATSIC)
- Reconciliation Australia
- Torres Strait Regional Authority, Qld
- Wunan Foundation, WA