



Submission to the Inquiry into Opportunities and challenges associated with land rights, native title and other land-related agreements (together with payments, benefits and access arrangements under these agreements) for the purpose of engaging Traditional Owners in the economic development of Northern Australia

Office of Northern Australia – submission

Through the 2015 *Our North, Our Future: White Paper on Developing Northern Australia* (the White Paper), the Australian Government recognised the importance of Indigenous people to northern development and that the benefits of economic development must flow for all, across the north.

Land rights, native title and Indigenous land holdings are particularly important to development in northern Australia. Seventy-eight per cent of northern Australia is either Indigenous land, subject to native title, or subject to an unresolved native title claim.

While Indigenous rights and interests in land represent a significant asset base for Indigenous people in the north, this has not realised widespread economic independence and, in turn, increased social, cultural and physical wellbeing. Enabling Traditional Owners and other Indigenous people to leverage their assets for economic development is a critical pathway to improving quality of life and autonomy for current and future generations.

This submission will outline the northern context and current status of existing initiatives, and identify opportunities associated with land rights, native title and other land-related agreements. We propose four areas that should be considered to achieve better outcomes:

Reducing the complexity involved in establishing economic development activities on Indigenous land to enhance the ability of Traditional Owners to engage in agreements and partnerships for economic development. Additional initiatives are required to embed and extend opportunities, and increase the efficiency of the system in response to economic development on Indigenous land or land subject to native title.

Improving the capacity of Indigenous land owners and native title holders to engage in economic development on Indigenous land to enable Traditional Owners to maximise land-related economic opportunities. In addition, third party proponents aspiring to undertake economic activity on Indigenous land often require capacity development.

Strengthening the role of Traditional Owners' economic development aspirations in **place-based or regional agreements** to create an environment where these aspirations are understood by potential partners to economic activities, and are considered as part of larger regional strategies. Further work should also be undertaken to facilitate Traditional Owners to lead their own place-based economic approaches where the aspiration and opportunity exists.

Ongoing constructive dialogue between Indigenous land owners and native title holders, governments, and relevant industry sectors is required to refine existing models, and identify further models to advance bankability of Indigenous land ownership and title.

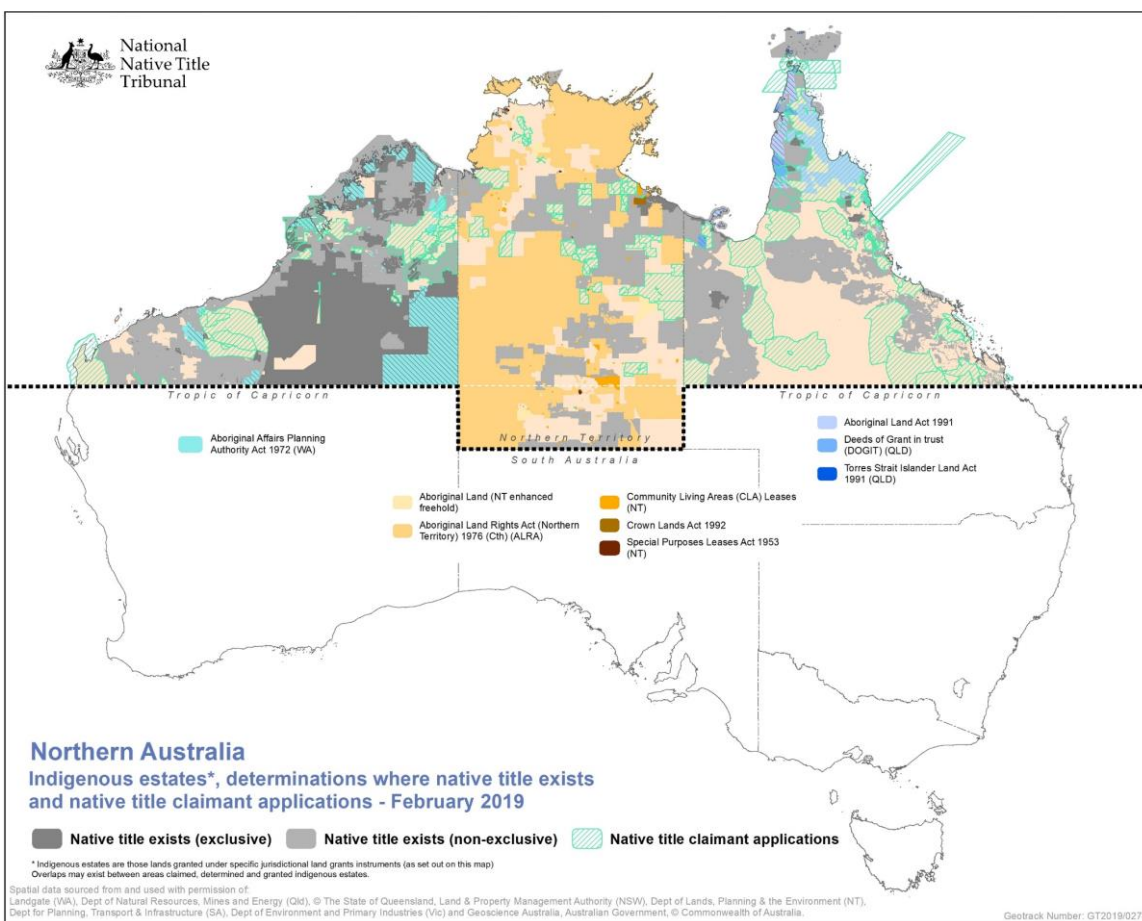
The northern context



Northern Australia
 10.7% of Australia's GDP in 2016–17
 \$187 billion of Australia's GDP in 2016–17

Indigenous population
 13.6% Northern Australia
 2.8% Australia

Median income
 \$18,000 Indigenous northern Australians
 \$40,676 Non-Indigenous northern Australians



Indigenous people in northern Australia make up nearly 14 per cent of the population and have an interest in 78 per cent of the land across the north. Whilst this large land holding provides a platform for economic development, this has not translated into jobs, business development and economic independence with high levels of disadvantage still being experienced across the north.

Employment and business development is fundamental to economic development and continue to be areas with significant opportunity for Indigenous people in the north. While there are proportionally more Indigenous businesses in the north as compared to the south, there is much to be done to achieve parity with non-Indigenous businesses.

In the 2016 Census, in northern Australia, the median income for Indigenous people was \$18 456, and for non-Indigenous Australians it was \$40 676. In northern Australia, approximately 559 000 people were employed, of which, approximately 38 000 were Indigenous. While Indigenous people in the north comprise 13.6 per cent of the population, the Indigenous share of employment is only 6.9 per cent.

In the 2016 Census, in northern Australia 1.7 per cent of business owner managers were Indigenous and 97.9 per cent were non-Indigenous. Indigenous businesses in northern Australia are 9.1 per cent of all Indigenous businesses in Australia. There is some variance across jurisdictions in the north, and northern Western Australia has the highest proportion of Indigenous businesses with approximately 137 Indigenous-owner managers, representing 3.7 per cent of all businesses in this region.

In many regions of the north, Aboriginal and Torres Strait Islanders who are not Traditional Owners comprise the majority of Indigenous people; economic development opportunities for this cohort are also critical for the broader benefits to flow across communities and families. Higher levels of business ownership, entrepreneurship, and access to training which leads to meaningful employment is important for all Indigenous people.

The Government's commitment to unlock the economic potential of northern Australia continues. The White Paper is a \$6.2 billion, 20-year plan which includes measures specifically designed to drive economic development in the interests of Indigenous people and recognises Indigenous interests in land as fundamental to the northern agenda.

The Government's northern economic agenda includes:

- making it easier to use natural assets in close consultation with Indigenous communities
- improving governance through establishing the Ministerial Forum on Northern Development and the Indigenous Reference Group
- engaging with native title holders to ensure development enhances the quality of life for Indigenous Australians through improved capability of native title bodies to more efficiently negotiate with businesses and potential investors
- conducting land surveys for northern communities to improve secure land tenure, including township leases which provide certainty for Indigenous and non-Indigenous investors, and economic opportunities for Indigenous communities; and

- exploring mechanisms to support long term leasehold arrangements for exclusive native title.

Specific White Paper measures and departmental portfolio agency measures to achieve greater Indigenous economic development are outlined in more detail at [Attachment A](#).

Relevant initiatives that influence Indigenous economic development include:

Northern Australia Indigenous Reference Group

The Northern Australia Indigenous Reference Group (IRG) provides advice on Indigenous economic development to the Ministerial Forum on Northern Development. The IRG supports the view that Indigenous participation in the economy is essential to fully realise the Government's ambitions for northern development. An Accord, being an agreement between relevant governments, is currently under development to specify the focus of ongoing work arising through the IRG.

Northern Australia Infrastructure Facility

The Northern Australia Infrastructure Facility (NAIF) finances infrastructure development in northern Australia. It includes projects with sustainable Indigenous participation, procurement and employment outcomes; broad public benefit; supports economic and population growth in northern Australia, and encourages private sector participation in financing northern Australia's infrastructure.

A mandatory criteria for project proponents is an Indigenous Engagement Strategy (IES), which sets out objectives for Indigenous participation, procurement and employment that reflect the Indigenous population in the region of the proposed project. NAIF assesses each IES individually; monitoring and reporting requirements are agreed with each proponent and include mechanisms to address any issues during implementation and appropriate accountability. Having an IES does not preclude the proponent from having any other necessary approvals, such as ILUA's or Land Access Agreements.

Indigenous Engagement Strategy examples include:

- commitments to explore new partnerships and formalise existing partnerships with Traditional Owners and Indigenous businesses through memoranda of understanding, including to deliver apprenticeships and traineeships
- develop and implement Indigenous procurement plans
- identify and promote opportunities for sub-contracting, employment and training, including appropriate identification of proposed targets and supply chain opportunities
- cultural awareness training for staff and contractors
- mentoring and support for Indigenous staff to improve retention
- sponsorship of community events

Cooperative Research Centre for Developing Northern Australia

A White Paper initiative, the Cooperative Research Centre for Developing Northern Australia (CRCNA) is investing \$75 million over ten years to support industry-led research collaborations.

The CRCNA brings together industry, universities and other research bodies, regional development organisations, all northern jurisdictions and international partners in a

collaborative industry-led research and development venture to assist businesses, governments and researchers identify opportunities for business and growth in the north. The funding will develop new technologies, products and services which address industry issues in northern Australia. Traditional Owner-led business development is a key component, identifying new models and approaches, and building industry-ready skilled workforce in the agriculture, food and/or health industries.

A series of Traditional Owner-led business development and Indigenous business projects are underway. These projects are generating new ideas and innovation, and include:

- business on country: land use diversification on the Indigenous estate
- building the Traditional Owner-led bush products sector
- enabling a traditional medicinal plants agribusiness
- Cherabin aquaculture projection for Indigenous business development.

Office of Northern Australia recommended approaches

While the White Paper provided a platform for Indigenous economic development through specific initiatives, there is still much to be done. The Office of Northern Australia believes the following four approaches have the potential to drive further Indigenous economic development in northern Australia:

Reduce complexity

Leveraging capital from land and other assets is extremely complex and challenging on land held under native title. However, capitalising on land and other assets is critical to Indigenous economic development in northern Australia. The Office of Northern Australia supports continued focus on initiatives that make it simpler for Indigenous people to achieve economic benefit from their land interests through reducing the complexity in administrative processes relating to economic activity on Indigenous land or land subject to native title.

Streamlined township leasing and simplified land administration practices encourage local decision making and supports access to mainstream economic development. For example, transferable tenure supports home ownership and commercial enterprise without changing ownership or removing control from Traditional Owners without consent. Such leases also support community and economic development. Under the White Paper, four township leases have been finalised in the Northern Territory at Binjari, Mutitjulu, Pirlangimpi, and Gunyangara; with work underway to progress leases at Jabiru and Yarralin.

Case Study – Gunyangara

The 99-year Gunyangara township lease provides long-term, tradeable tenure for this East Arnhem Land community. Significantly, it is the first township lease to be held by an Aboriginal corporation from the outset.

Executed in 2017, the Traditional Owners are already realising the benefits by negotiating directly with people wishing to use their land and progressing economic projects and developments in their own timeframes and on their own terms. The lease supports businesses run by Gumatj Corporation Limited, new businesses, and manages land-related income returns which are being reinvested into the community.

Under the White Paper, pilot land reform projects have supported innovative approaches to land use arrangements and provided frameworks for jurisdictions to work with Indigenous communities, the Australian Government, and other stakeholders to identify potential tenure improvements. In our view the Committee should consider these land reform initiatives, and how the principles behind township leases and other innovative approaches could be applied to encourage broader economic activity on Indigenous land, or land where Native Title exists.

Case study - Moa Island

Moa Island pilot tenure resolution project –

- The Torres Strait Regional Authority (TSRA) has worked with the two Moa Island Communities and the Mualgal Registered Native Title Body Corporate (RNTBC) to progress the Moa Tenure Resolution Accord, which is a land tenure agreement between the Mualgal people in the Kubin community and people living in the St Pauls community. The project has delivered ten executable ILUAs which were developed following inter-community consultation.
- The ten ILUAs address a range of proponent activities, both government and commercial, and have the potential to resolve current tenure issues, assist in future economic development initiatives, simplify public infrastructure approvals and facilitate private home ownership.
- The project has delivered all the necessary executable documentation to the Mualgal RNTBC and the TSRA is continuing to assist the RNTBC to engage with affected Traditional Owners in order to finalise the project.
- The benefits from the project will not be fully realised until the Accord and the ILUA are executed.

Improving capacity

Implementing an economic development project on Indigenous land or land subject to native title can be complex, time consuming and costly, for Traditional Owners, third party proponents and investors. It is currently a significant achievement to reach agreement on a project.

Increasing the capacity of Indigenous land owners is essential for Indigenous land owners and project proponents to engage in meaningful economic development on Indigenous land. Through the White Paper, the Department of the Prime Minister and Cabinet facilitates funding for capacity building for Prescribed Body Corporates (PBCs) which assists native title land holders to develop stronger economic outcomes from their native title. The funding includes training in financial and corporate governance to manage and protect their native title rights and interests. The Department of the Prime Minister and Cabinet's submission covers this initiative in more detail.

Third party proponents' capacity to engage with Traditional Owners, and the tenure and title system surrounding Indigenous land, varies across and within industry sectors. Currently, project proponents with experience and capacity to deploy expertise in this process are achieving successful outcomes. Those with limited experience and knowledge of the system, and how to engage within it, experience a costly, time consuming process with uncertain success. Broadly, the resources sector has been

successful at navigating the system and bringing projects on Indigenous land to fruition. In our view, consideration should be given to how other industry sectors can develop their understanding and capacity.

Case study - Yawoorroong Miriuwung Gajerrong Yirrgeb Noong Dawang Aboriginal Corporation

Yawoorroong Miriuwung Gajerrong Yirrgeb Noong Dawang Aboriginal Corporation (MG Corporation) receives and manages benefits transferred under the Ord Final Agreement to the native title holders over their traditional country in the East Kimberley. Under the agreement, MG native title holders surrendered their native title rights in exchange for a range of social and economic benefits including a community charitable trust, freehold land title for cultural and community purposes, the right to acquire freehold agricultural development land, and the right to negotiate Aboriginal Development Packages.

MG Corporation has sought a joint-venture partner to develop agricultural enterprises on land in agricultural areas initially developed by the Government, and considered proposals which also offered employment and training opportunities for MG people. MG Corporation's focus on economic development has grown the existing property portfolio, explored commercial prospects and entered into third party joint ventures which promote sustainable economic growth, and acquired and developed agricultural land with local stakeholders and joint venture partners.

In the same way as other land owners, Indigenous land owners should be enabled to undertake pre-feasibility assessments for economic development projects on their land, to encourage investment and partnerships. As well as attracting potential investors, this process allows for early decision making on the requirements of Traditional Owners for use of their land. In our view, organisations with a role to enable Indigenous economic development should ensure their scope incorporates this function.

Regional or place-based agreements

Regional planning and place-based approaches are increasingly important to social and economic development, globally and within Australia. Place-based models are underpinned by co-design principles and locational advantage, aligning public and private investment to a common purpose. They take a long term approach to investing and put community-identified priorities at the centre. Collaboration based on locally identified opportunities and capability can maximise economic and social benefits, and create greater efficiencies through coordinated public sector investment.

Strengthening the focus on Indigenous land ownership, native title interests, and economic development as key elements of a regional agreement would provide opportunities for Traditional Owners to identify economic development potential through their land assets, in partnership with other parties to the regional agreement.

This is similar to more formal land use and development planning and coordination activities undertaken by state and territory governments and would allow better integration of Indigenous perspectives in planning frameworks. The Government has committed to two Cities Deals in northern Australia, at Townsville and Darwin, and is working towards a Regional Deal in the Barkly region of the Northern Territory.

Further effort should also be considered to enable Indigenous land owners and native title holders to lead their own place-based economic development approaches. Where strong aspiration and realistic economic opportunities coincide, government initiatives should focus on establishing the conditions through policy and program funding in which Traditional Owners can facilitate a broad economic agenda. A key enabler of this approach is the ability for Traditional Owners to efficiently access the benefit of their land interests and assets for economic gain.

We believe this model has potential in many regions in northern Australia. This approach could be a catalyst to bring governments, Traditional Owners and industry together to focus on regionally-based economic development activities, which in turn will address issues of disadvantage.

Case study - Barkly regional deal

The Australian and Northern Territory governments will each contribute \$30 million for a 'Barkly Regional Deal' with the Barkly Regional Council.

Projects under the Deal must fall under three themes: economic development, social development, and cultural and place making. A Cultural Authority Group and Traditional Owners must agree on projects to receive funding under the Deal. Project proposals are across a range of portfolio areas such as health, education and critical base infrastructure. The Deal enables a review of economic development potential on Indigenous land in the region, and represents a model with applicability to other locations in northern Australia where significant Indigenous land interests exist.

The Deal aims for all levels of government and the private and not-for-profit sectors to work together for the Barkly region.

Constructive dialogue between Indigenous land owners and native title holders, governments, and relevant industry sectors

In 2018, the National Native Title Council, with support from the Minerals Council of Australia, hosted a seminar to understand factors that may impede native title holders from using native title to support long-term economic development. The seminar involved representatives from PBCs, Indigenous representative bodies and service providers, law firms, academics and mining companies.

Seminar participants developed solutions which use native title monies to encourage economic development. Solutions included pro forma documentation development to support native title organisations establish functional structures and acquire Public Benevolent Institution status, and new organisations for managing native title monies. New organisations would be voluntary, support transparency and accountability, and provide taxation incentives to encourage community and individual economic activity. The seminar is an example of how ongoing and constructive dialogue with relevant parties can identify new approaches that support Indigenous land owners and native title holders to achieve economic benefit through their interests.

Case Study - Project Sea Dragon

Seafarms Group Limited (Seafarms) have negotiated an Indigenous Land Use Agreement (ILUA) for Stage 1 of Project Sea Dragon, a prawn farm which will eventually produce 100 000 tonnes of black tiger prawns a year on Legune Station in far north-west Northern Territory. The ILUA allows the project to proceed and includes a compensation package, delivering long-term benefits to Traditional Owners and other Aboriginal people, such as a proposed biosecurity Ranger group. Under the ILUA native title is surrendered for 95 years.

Negotiating the ILUA included complex and exhaustive consultations with the native title holders and other parties. Native title holders were actively engaged during consultations and Seafarms committed to rigorous provisions to protect sacred sites.

The Australian Minerals Council is working with Indigenous representative bodies to increase the capacity of its members to engage with Traditional Owners and their representatives on proposed projects. Our view is that the Joint Standing Committee should consider how this approach could be broadened to capitalise on opportunities to increase the capacity and understanding of the Indigenous land and native title system by potential investors and project proponents.

Conclusion

We thank the Committee for the opportunity to provide a Submission to this Inquiry. While White Paper initiatives provide a platform for Indigenous economic development in northern Australia, ongoing work towards this very important objective is required.

Reducing the complexity surrounding economic activity on Indigenous land and improving the capacity of Indigenous land owners, native title holders and third party proponents will create an environment with greater potential for economic development.

Strengthening the role of Traditional Owner's economic development aspirations in place-based or regional agreements, and driving ongoing constructive dialogue between Indigenous land owners and native title holders, governments, and relevant industry sectors, will further refine existing models and identify innovative models to advance bankability of Indigenous land ownership and title.

Economic independence is pivotal for Indigenous Australians. As noted by Gumatj leader, Galarrwuy Yunupingu, "economic independence should be obtained through the proper use of the riches of our land and waters in all their abundance and wealth. We, like every working Australian, look for security in our townships, education and jobs for our children, homes for our families, roads, bridges, schools, hospitals, sporting grounds and libraries."

By working together we can maximise northern Australia's economic success. To achieve our full potential in this bold agenda the rich history, culture, and significant economic ability of all Indigenous people of the north – Traditional Owners, native title holders, and those without land assets is essential to northern Australia becoming an economic powerhouse in its own right, delivering real economic and social benefits to all Australians.