



Submission to the Joint Standing Committee on Northern Australia inquiry into the opportunities and challenges of the engagement of Traditional Owners in the economic development of northern Australia

This submission is provided by the Gur A Baradharaw Kod (GBK) Sea and Land Council – the regional coordinating body for the Traditional Owners of the Torres Strait region. We seek to ensure the protection and enjoyment of our native title rights and interests by supporting the Registered Native Title Bodies Corporate (PBCs) in the region to fulfil their responsibilities to manage their sea and lands in accordance with their law.

We have considered the Terms of Reference for this inquiry and offer comments on each of the elements listed by the committee. This submission has been examined and endorsed at our recent Board meeting of 21 PBC Chairs and we welcome further engagement with the committee in order to advance these important issues.

For more information, please contact GBK Chair Lui Ned David, chairperson@gbkcorp.com.au or GBK Chief Executive Officer, Robert Jansen, ceo@gbkcorp.com.au, [REDACTED]

Terms of reference

- 1. The current engagement, structure and funding of representative bodies, including land councils and native title bodies such as prescribed body corporates*

For the Torres Strait, the responsibilities of the current native title representative body – the Torres Strait Regional Authority (TSRA) – will not be required because the native title claim processes will soon be complete. It will be appropriate then for any post-determination tasks, such as future act consultations and Indigenous Land Use Agreement negotiations to be undertaken by the relevant PBC representatives with regional support from GBK.

This situation leads to the question of funding for, and thereby the capacity of PBCs, which is an issue across the whole country – and whether the Commonwealth and/or the state government have an obligation to support the roles and responsibilities of private corporations.

In practical terms, the Commonwealth funding that currently resides with the TSRA for native title and land management should be transferred to the PBCs/GBK; this includes PBC support functions, the Rangers program including the land and sea management unit, and the promotion of economic development strategies and business opportunities. All of these functions sit more appropriately with the native title holders, PBCs and GBK in the Torres Strait; indeed, the Rangers program is led and managed by Traditional Owner groups in all other parts of the country.

2. *The role, structure, performance and resourcing of Government entities (such as Supply Nation and Indigenous Business Australia)*

It is broadly recognised that the Torres Strait region has too much government and therefore too much bureaucracy – which is a contributing factor when reflecting on the prospects for economic development. The expansive and sometimes overlapping roles of the TSRA, Torres Strait Island Regional Council, Torres Shire Council, Commonwealth government and Queensland departments crowd out opportunities for new businesses in the Torres Strait region. Moreover, it is the overwhelming presence of state entities in the lives of Torres Strait Islanders that restricts economic growth and thereby suppresses the prosperity and wellbeing of local families and communities.

Many, if not all government functions in the Torres Strait should be transferred to the Traditional Owner bodies; that is, to the native title PBCs, Land Trusts and GBK because the governance and leadership capacity already exists in these bodies. The Traditional Owners are embedded in their communities, they understand the local opportunities and challenges, and they have the cultural authority to make sustainable decisions that can deliver the strategic priorities of their communities.

Indeed, the systems and processes of effective government already exist – and have existed for many generations – in the Traditional Owners bodies; it is the state in its various guises that needs to vacate the field, to provide space for cultural knowledge and traditional decision-making processes to lead the social, political and economic development of the Torres Strait.

3. *Legislative, administrative and funding constraints, and capacity for improving economic development engagement*

GBK is continuing to build the capacity of Traditional Owners groups and individuals to engage with economic development ideas and opportunities to the extent that we have recently recruited a business development officer, as well as an employment and training officer, both highly skilled Torres Strait Islanders, both located at Waiben, with a mandate to engage actively across the region. We need to invest time and effort to shift community perspectives away from ‘Council will do it’, that all issues can and should be resolved by the Council, as promoted under previous governance arrangements.

Governments, broadly conceived, have been seen as a backstop for everything – health, housing, education, employment, climate change remediation – with disappointment expressed by individuals and families when Council or government departments don’t have the role or funding or capacity to meet community needs. This perspective is understandable when the Torres Strait has been governed and continues to be over-governed in a paternal manner.

As such, the Traditional Owner PBC Boards with GBK will seek to overcome barriers to action on economic development, as well as social and political action, to jump into gaps – to seize opportunities for small scale business ventures and revival of past business enterprises, whether GBK or the Traditional Owners are supported by governments or not. It would be helpful if the various layers of government could offer local assistance to fledgling small business entrepreneurs as well as more established business operators in the form of expert advice, concessional loans and training options. Some government entities might think that they already do this – but the small business ‘programs’ have no impact on the ground, or more specifically, in remote island communities.

4. *Strategies for the enhancement of economic development opportunities and capacity building for Traditional Owners of land and sea owner entities*

There is always room for more capacity building of corporations to demonstrate positive values and achieve their strategic objectives in line with their membership base and community expectations. And we should not assume that Traditional Owner groups ‘don’t have the capacity, training or skill set to capture opportunities’. For the PBC Boards in the Torres Strait, we are starting from a high base; that is, the cultural and corporate governance of the native title holding groups could teach some lessons to the largest companies in Australia – to consistently demonstrate integrity and professionalism, to be honest and transparent, to lead on complex challenges and be led by the interests of the community.

Nevertheless, governments could consider investing in the capabilities of PBCs as the focal point of local and regional governance in the future. To this point, it was disappointing that the Minister, despite his rhetoric at the 25th anniversary celebration of the *Mabo decision* on Mer, decided not to support GBK's IAS application for \$1m funding in 2018-19 to support all of the 21 PBCs in the Torres Strait. We thought that we had consulted with the right people in the department and provided an outstanding application with clear objectives, activity costings and program logic. We have not received any correspondence from the Minister that explains the government's decision.

In the end, we now understand that the Commonwealth does not want to invest in the capacity of the Torres Strait PBCs or engage constructively with the Traditional Owners, and this approach has informed our recent strategies and plans. Indeed, the outcome of the funding application process has reminded us that we must continue to assert our cultural authority in an independent way, and that we will benefit from not receiving funding from government.

In terms of capacity building, GBK is conducting high level governance and leadership training for our Board of Directors through 2019. We will pursue an ambitious and innovative path to enhance the capability of the PBC Chairs to meet their native title obligations and lead their native title holding groups, but also to negotiate with governments and private interests on land and sea matters, and to continue to assert our cultural authority on economic and social activities in our communities.

In terms of strategies to enhance economic development opportunities, it is vital that Traditional Owners are able to leverage the tenure of their land and sea, but this is often not possible where governments and others don't understand or refuse to accept the content of native title rights and interests. The Torres Strait PBCs are often distracted by the need to educate officials about the requirements for consultation and decision-making in the post-determination environment; or worse, the PBC Chairs need to intervene or seek legal action when government authorities or private agents attempt to circumvent the law.

To this end, GBK has initiated a substantial project on the tenure and traditional boundaries of Torres Strait lands and sea that links several currently disparate challenges in the region, with the aim of securing greater infrastructure development and improving economic development in our communities. The issues to consider and integrate are:

- mapping of traditional family and community boundaries on specific islands;
- mapping of sea country native title rights and protocols for fishing and related activities;
- use of traditional decision-making processes and dispute resolution practices, including the role of Elders Councils or other senior cultural authorities;
- consultation and agreement on the Regional Indigenous Land Use Agreement;
- consultation and implementation of the Housing Indigenous Land Use Agreement;
- transfer of Deed of Grant in Trust arrangements for each community;
- transfer of assets to PBCs and related lease arrangements;
- progressing the resolution of Katter leases;
- settlement of compensation for past acts; and
- the role of native title holding groups and PBCs in the management of land and sea.

By making a consolidated investment in these decision-making processes now, we can pave the way for future infrastructure and investment decisions. Indeed, this project could be resolved with the establishment of a traditional land and sea title system to secure tenure information in the long run.

GBK will lead the conceptual analysis required for this complex and critical task, and we have sought a modest level of funding support from the Queensland government. We will design a project plan that will aim to resolve the tenure issues and associated agreements by the end of 2020. Given the length of time that many of these challenges have not been addressed, some for decades, this timetable is ambitious but achievable if goodwill is displayed by all parties. As the economists would argue, the clarity and security of property rights are fundamental to economic development in any community.

5. *The principle of free, prior, and informed consent*

The notion of informed consent rests on respect for the knowledge and authority of Traditional Owners, which in the Torres Strait includes the native title holding groups and their governing corporations. Unfortunately, or maybe not surprisingly, respect has not always been afforded to the Traditional Owners by government [REDACTED]

Nevertheless, the Traditional Owners in the Torres Strait are unflinching in our commitment to open and constructive dialogue with governments at all levels. It is only fair that governments should be equally open to respectful discussions that recognise the cultural responsibilities of Traditional Owners for inter-generational decisions as well as the statutory obligations of PBCs to protect and promote their native title rights and interests.

In practice, governments need to wake up to their obligations to consult with Traditional Owners in a proper way, to convene constructive meetings with the right people, which may require funding the travel arrangements of these Traditional Owners to consider important matters with their native title holding group in an appropriate location. Notably, it is not sufficient for government officials to 'make some calls' to a selective list of native title holders in order to gain agreement on a complex property issue that has significant long-term implications. Traditional Owners understand the need for sustainable outcomes of decisions and expect that governments and private entities will seek informed consent through respectful and honest negotiations.

6. *Opportunities that are being accessed and that can be derived from Native Title and statutory titles such as the Aboriginal Land Rights (Northern Territory) Act 1976*

In the Torres Strait, many more economic opportunities could be accessed if governments recognised the capabilities of Traditional Owners and their governing bodies, as well as leveraging the cultural knowledge and authority of the native title holding groups. There is much wisdom held by Traditional Owners that could be used to improve fishing practices, for example, and many ideas for economic development held by native title holders to start small businesses, such as food production for export.

We need to conduct more analysis on how Traditional Owners can build and expand business ventures in the post-determination context – to borrow against assets, raise venture capital for infrastructure, utilise tax concessions and otherwise leverage our property rights to increase employment and prosperity in our communities. As a first step, we must continue the discussions in the Torres Strait for the Councils to divest small businesses (albeit loss making or abandoned) to the PBCs because these highly-capable Traditional Owner governing bodies are the most appropriate entities in each community to own and operate these enterprises or to support individual native title holders to own and/or operate these businesses. For example, the Malu Kiai PBC on Boigu is ready to manage the local motel but it seems that the Council is delaying any further discussions on divestment.

To conclude, GBK is an active member of the National Native Title Council and we endorse the content and recommendations in their submission to this inquiry. Specifically, GBK would highlight the need to support native title representative bodies and – in the Torres Strait – the PBCs through GBK to deal with the impending workload on compensation matters. On funding for PBCs, we agree that native title holding bodies should be adequately funded by governments to undertake their statutory obligations – although these duties could be reduced following a review of the CATSI Act – and that efficiencies could be obtained with regional models for the delivery of corporate support services in the Torres Strait and elsewhere if appropriate.

4 March 2019