

SENATE INQUIRY INTO NATIVE VEGETATION LAWS, GREENHOUSE GAS ABATEMENT AND CLIMATE CHANGE MEASURES

A submission to the Senate Finance and Public Administration Committee Inquiry by NAILSMA

Background

NAILSMA

The North Australian Indigenous Land and Sea Management Alliance (***NAILSMA***) is an alliance between northern Indigenous land and sea management interests of the Kimberley, Northern and Carpentaria Land Councils and Balkanu Cape York Development Corporation. NAILSMA is hosted by the Charles Darwin University and operates across the tropical savannas of north Australia – 2 million square kilometres.

NAILSMA is managed by a board of Indigenous people comprising executives from the Alliance organisations that cover all the northern regions: the Kimberley, Top End of the Northern Territory, Gulf of Carpentaria and Cape York Peninsula.

The Alliance is based on shared circumstances across the north, such as:

- links between Indigenous people, their culture and country;
- similar natural systems and ecology;
- similar natural and cultural resource management issues;
- persistent pressures for development; and
- the need for a stronger economic base to sustain rapidly growing Indigenous populations.

NAILSMA supports Aboriginal and Torres Strait Islander land and sea management using strategic approaches to care for country with an emphasis on practical management by Traditional Owners across north Australia. This support is delivered in part through our programs and projects:

- Indigenous Water Policy Group
- Indigenous Community Water Facilitator Network
- Carbon Program
- Saltwater People Network
- Enterprise Development
- Indigenous Knowledge (IK) Strategy

A strategic goal of NAILSMA is to advance sustainable business opportunities for Indigenous people living on their ancestral lands. This goal is being realised through a culture based economy – an economy that builds on Indigenous culture, knowledge and connection to country. This approach aims to create genuine opportunities for employment, income and business development for Indigenous people.

The north Australian biophysical and social context

The Indigenous estate is estimated to be around 20% of Australia's total land mass, the great majority of which is in very remote regions and much of it in the north. The Indigenous estate covers around 35% of north Australia and is increasing, with a range of legislated rights mechanisms in relation to customary lands. The Indigenous estate includes a broad spread of small remote homelands/outstations.

Much of the Indigenous estate is relatively intact ecologically, containing substantial high conservation priority areas, including the most intact tropical savannas remaining in the world and immense bio-cultural diversity.

Around 40% of the population of north Australia is Indigenous and this population is rapidly expanding. Its Indigenous peoples maintain a relatively high degree of customary, land based management and ritual activity; and the people of this tropical savanna region engage, often innovatively, in customary, market and state economies to sustain chosen livelihoods.

Conservation laws and Indigenous people

It is only in the last few decades that Indigenous people have recovered access to large areas of their ancestral lands across northern Australia. However, success in regaining control over their lands has not seen corresponding improvement in their socio-economic status. On almost all social indicators, Indigenous people remain among the most marginalised Australians.¹

Indigenous people remain interested in developing enterprises based on sustainable use of lands. Unfortunately, this goal can be compromised by poorly considered regulatory regimes that deny commercial access absolutely or impose such onerous restrictions that they effectively block access by Indigenous individuals and communities seeking to generate income from their lands and create economic independence. Slavish application of conservation practice, designed for highly modified and densely populated parts of the world, generate perverse outcomes when applied uncritically to sparsely populated, remote northern Australia.²

Impoverished Indigenous land owners are urged to escape welfare dependence by the same – often Government – interests that simultaneously promote policy and law to block access to the few economic opportunities available in the remote regions in which most live. They are expected to maintain the natural values of their country against influences unleashed by others, without the benefit of either explicit state support or access to markets for the products their country could produce¹.

Formulaic application of conservation laws may deny Indigenous Australians the economic and social benefits enjoyed by other Australians, in part to compensate for damage done by those other land users. It is difficult to imagine a more perverse approach to conservation policy than to require economically-disadvantaged Indigenous landowners to bear the costs of environmental detriment caused by those who reaped the benefits¹.

These comments should not be interpreted as a rejection of sound, well-designed conservation law. NAILSMA accepts the need for skilled regulation as an element of frameworks for contemporary land and renewable resource management policy.

Native vegetation law

Inept application of land clearing law may particularly disadvantage Indigenous people who have only recently re-acquired land. Both the Howard and Rudd

¹ Steering Committee for the Review of Government Service Provision (2009). *Overcoming Indigenous disadvantage: Key indicators 2009*. Productivity Commission, Canberra.

² P.J. Whitehead and M. Storrs, Submission to the Productivity Commission Inquiry into impacts of native vegetation and biodiversity regulations from the Northern Land Council, *'Biodiversity conservation, landscape integrity and Indigenous enterprise'*, 2003.

Governments promoted the view nationally and internationally that land clearing has been all but halted in Australia³. Treasury modelling of the effects of a carbon cost on the Australian economy assumed continuing decline in the rate of land clearing⁴. Nowhere in these documents is there overt recognition of the interests of Indigenous people in northern Australia, let alone evidence of shaping policy and law to avoid inequities.

Mainstream society has had the benefit of developing its economy at significant costs to the environment but now proposes to prevent the development of remaining natural areas which happen to be held largely by marginalised groups. As a matter of principle, regulation of landholders' rights to control their lands should not unduly disadvantage Indigenous landholders as opposed to other landholding groups.

NAILSMA submits that, if inappropriately applied, native vegetation laws may preclude Indigenous people from realising future economic opportunities. Such an outcome would clearly run counter to the Australian Government's stated policy objective of 'closing the gap' on Indigenous disadvantage.

On the question of land asset values and compensation, NAILSMA does not propose to make detailed submissions. However, we draw attention to two important, connected issues for Indigenous people. First, concerns go well beyond the financial interest of a few individual landowners. Ill-constructed laws damage the economic futures of whole regions and whole communities. Second, many of the environmental goals that land clearing controls are designed to deliver can be addressed by appropriate incentives, including markets in ecosystem services. Rather than deploy crude instruments like blanket bans on clearing, governments need to make the effort to develop more subtle and sophisticated instruments, especially in northern Australia where the option to design sustainable multiple use landscapes has yet to be squandered⁵.

Greenhouse gas abatement and climate change measures

NAILSMA exists to support both present and future generations of Indigenous people to gain social benefits from land ownership and sustainable management and use of natural resources. Rather than indicating preference for particular land development options, NAILSMA is committed to providing information and analysis on the socio-economic, cultural and environmental implications of all the choices available to Indigenous landholders. However, NAILSMA believes that direct engagement with markets is a critically important pathway for sustainable social development and, where there is a choice, a more robust approach than deeper dependence on the cyclical waxing and waning of public sector programs.

NAILSMA is therefore dismayed by the failure of the Senate to support development of markets in carbon through the Carbon Pollution Reduction Scheme. We have worked hard to ensure that the scheme will provide options for the participation of

³ See OECD (2008). Environmental performance reviews: Australia. OECD Environment Directorate, Paris

⁴ The Treasury (2008) Australia's Low Pollution Future: The Economics of Climate Change Mitigation. The Treasury, Canberra.

⁵ Whitehead, P.J., J. C. Z. Woinarski, D. Franklin, and O. Price. (2002). Landscape ecology, wildlife management and conservation in northern Australia: matching policy, practice and capability in regional planning. Pp. 227-259 in J. Bissonette and I. Storch, editors. *Landscape Ecology and Resource Management: Linking Theory and Practice*. Island Press, New York.

Indigenous entrepreneurs and provide a catalyst for businesses that engage with many sectors of the Australian economy. Products offered to markets may include abatement of emissions from land use, as well as, in the future, carbon sequestration in trees or soil carbon.

Savanna fire management

NAILSMA is currently developing four landscape-scale savanna fire management projects focused on pursuing carbon trading opportunities for Indigenous land managers. These projects build on the successful precedent set with the West Arnhem Fire Management Agreement.

NAILSMA's Carbon Project strives to address several key issues:

- climate change mitigation - enabling Indigenous peoples to reside on their country and reduce carbon emissions;
- opportunities for more Indigenous people to work on country. The Carbon Project supports on country livelihoods through engaging in an emerging carbon market;
- carbon offsets from savanna fire management and other beneficial ancillary projects such as biodiversity monitoring and management, open real and substantial opportunities for Indigenous peoples to develop independent projects and business entities for long term livelihoods on country.

The four new savanna fire management projects are located in the north Kimberley region of Western Australia, central Arnhem Land in the NT, the Gulf of Carpentaria and western Cape York in Queensland. The aim of this initiative is to examine prospective opportunities in the emerging carbon and related markets, including carbon offset arrangements under the proposed Carbon Pollution Reduction Scheme and opportunities on the unregulated or voluntary market.

NAILSMA's Carbon Project represents the first comprehensive engagement by Indigenous Australian's in the carbon market at a landscape scale. It represents the commitment by Indigenous people to the management of their lands, their desires to improve their livelihood opportunities, and their desires to create culturally appropriate and highly innovative enterprises.

Avoided deforestation

NAILSMA submits that the contribution that Indigenous landholders have and continue to make to emissions reductions through avoided deforestation should be recognised under the Australian Government's proposed Carbon Pollution Reduction Scheme. The failure to acknowledge the carbon storage and sequestration services provided by Indigenous land represents another instance of the inequitable application of environmental regulation.

Under the proposed Carbon Pollution Reduction Scheme, deforestation (the clearing of forested land for other uses, such as agriculture) is not taken into account. However, the role of land clearing laws in enabling Australia to achieve its 2008-2012 emissions reduction target under the Kyoto Protocol is acknowledged. Prior to the introduction of land clearing laws, many non-Indigenous landholders responded to the threat of legislation by pre-emptive clearing of large sections of their land,

whereas the majority of Indigenous landholdings remained intact. As such, there has been a failure to recognise that a substantial proportion of the emissions that have been sequestered through avoided deforestation have come from Indigenous owned and controlled lands. The Indigenous people of northern Australia have demonstrated a willingness to contribute to conservation goals in the savannas by participation in Indigenous Protected Areas projects under the National Reserve System program. But we do not accept that such contributions can be coerced through laws that deprive our people of choice in seeking pathways to critical economic and social development.

Further, the injustice of the Australian Government providing funding to avoid deforestation overseas whilst taking advantage of the carbon sequestration and storage services provided free by landholders in Australia, particularly Indigenous landholders, is patently evident.

We recognise that administrative issues need to be addressed to ensure that benefits from avoided land clearing go to those who have genuinely made the choice to retain native vegetation where they have clear entitlement to do otherwise. However, we believe that workable arrangements are possible, provided there is the political will to act equitably and to match actions on land management issues to Closing the Gap and related rhetoric about desired social outcomes. We emphasise that what NAILSMA and its partners seek is opportunities to do real work to generate real benefits, preferably through engagement with markets, especially in regions that offer few realistic alternatives.

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