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Friday 24th January 2014

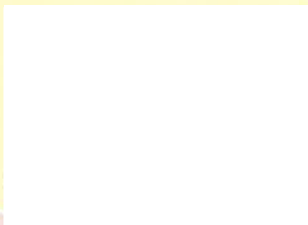
Senator the Hon Nigel Scullion
The Minister for Indigenous Affairs
Department of the Prime Minister and Cabinet

Dear Minister

Please find attached a submission from the Cape York Land Council regarding the review into Indigenous Business Australia and the Indigenous Land Corporation.

If you have any questions or wish to discuss any aspect of this submission please do not hesitate to contact me.

Yours sincerely



Peter Callaghan
CEO
Cape York Land Council



We've been
**kicking
the dust**
for 20 years
1990-2010

Cape York Land Council submission to the review into Indigenous Business Australia and the Indigenous Land Corporation

Cape York Land Council (CYLC) is the Native Title Representative Body (NTRB) for the Cape York region and in this role CYLC fulfils statutory functions under the *Native Title Act 1993* such as supporting applications for the determination of native title and developing land use agreements. In addition to performing NTRB statutory functions, CYLC also performs broader Land Council functions including post-determination support for native title holders, and support for Aboriginal land holders with their home ownership and economic development aspirations.

CYLC shares and supports the IBA and ILC's vision for economic independence for Aboriginal and Torres Strait Islander peoples and providing Indigenous Australians with the same opportunities as other Australians. CYLC has cooperated with ILC and IBA over recent years to remove the obstacles that may prevent Cape York Aboriginal people from creating wealth, accumulating assets and fulfilling their aspirations. This has included working on policies and programs to assist Aboriginal people to buy their own home, and to own business and commercial ventures that can provide independent incomes and employment opportunities. On Cape York, with its remoteness, risks, land administration and capacity issues this is a particularly challenging objective that requires a unique and dedicated approach.

CYLC supports the ongoing delivery of the functions that ILC and IBA currently performs because of the important contribution these functions make to achieving economic independence for the Aboriginal people of Cape York. However, improvements can be made to the form and delivery of these functions, and CYLC offers the following preliminary comments in response to the review's terms of reference.

In addition to these preliminary comments in response to the terms of reference, CYLC considers that the ILC IBA review should be conducted through a two-stage process whereby a draft report is prepared based on preliminary comments, and the draft report is then distributed for further comment. This two-stage process will assist respondents to provide more pointed comments and focus on the key issues, which will ultimately result in a more effective review. CYLC therefore requests that a copy of the draft report is provided to CYLC so that further comments may be provided on that draft prior to the final report being submitted to government.

Response to Terms of Reference

a. The effectiveness of Indigenous Business Australia (IBA) and the Indigenous Land Corporation (ILC), as they are currently constituted, in driving Indigenous economic development through employment, training, business development, land acquisition and management and home ownership.

Employment and training

1. The employment outcomes achieved by ILC at the Mossman Gorge Gateway Centre are highly commendable and have provided significant economic growth for the local economy and Aboriginal people in particular. Good employment outcomes are also demonstrated on ILC pastoral properties although the numbers are reasonably small.
2. However, ILC's employment and training programs should not be limited to ILC held properties and CYLC submits that these programs should also be extended to Aboriginal held land on Cape York. There is potential for pastoral, horticulture, tourism, land management and other developments and employment outcomes on Aboriginal land but these developments are often restricted by lack of skilled and qualified people to provide the workforce for these types of development. ILC should partner with Balkanu to deliver appropriate vocational training and assist the preparation of business plans for economic development projects on Aboriginal land on Cape York that create employment.

3. s191D(3)(b) of the *Aboriginal and Torres Strait Islander Act (2005)* (Cth) requires that where the ILC acquires an interest in land for the purpose of making a grant of the interest to an Aboriginal corporation then that grant must be made within a reasonable time after acquisition of the land.
4. CYLC support the grant of interests in land from the ILC to an Aboriginal corporation as soon as possible after the ILC acquires land, provided that the Aboriginal corporation has adequate capacity to hold the land and manage the activities for which the land is being used. CYLC is concerned that ILC does not invest sufficient time, effort and resources in training Aboriginal corporations to develop sufficient capacity to have the land granted to them, and subsequently the ILC holds onto the land for an unreasonably long period of time.
5. The ILC and IBA should invest in programs to develop in the capacity of Land Trusts, Registered Native Title Bodies Corporate and other Aboriginal land holding corporations so they can competently hold and manage interests in land. The capacity of Aboriginal corporations to manage land for economic, social, cultural and environmental outcomes is a common concern for all levels of government and an increasingly important issue on Cape York as Aboriginal corporations acquire substantial and commercially valuable interests in land through various means.
6. CYLC has established a PBC Support Unit which provides training and capacity building services to Aboriginal corporations, and is a potential platform for the delivery of training to corporations that ILC intends to divest land to. CYLC is willing to enter into a partnership arrangement with other Cape York Regional Organisations ILC to assist with the delivery of this training.

Business development

7. There is a critical need for greater Aboriginal business development and participation in mainstream economic activity in Cape York. This has been identified by the Cape York Institute and Balkanu as a key strategy to address Aboriginal peoples' dependence on welfare and associated social dysfunction. However, although some good outcomes have been achieved, the ILC and IBA need to develop more targeted strategies to support business development in remote locations where land is communally held by Aboriginal organisations. Indeed, the majority of ILC and IBA effort should be directed towards remote areas since this is where the need is greatest (Aboriginal disadvantage increases with remoteness), and other programs and investors are available to Aboriginal people in less remote areas and for privately held land.
8. As has been previously observed, many Aboriginal land holding organisations are "land rich but dirt poor", and this is often because the land arrangements are not conducive to investment for economic activity. Whilst some Aboriginal land on Cape York does not have the inherent attributes necessary for economic activity (such as fertile soil, reliable rainfall, or infrastructure and amenity) there are substantial Aboriginal land holdings with potential for economic success through agriculture, tourism, service delivery and other ventures. However, Aboriginal land tenures and the inalienability of communal land constrain financial investments for economic development, including from IBA and ILC, since inalienable land cannot be used as collateral for investment in the way that other land tenures can.

9. To address this issue, CYLC advocates improvements in the overall land administration system affecting aboriginal land; land reforms that create the option for limited or full alienability of land in town areas; and the use of trust accounts to underwrite investments where the land is to continue to be held communally and to support secondary markets for alienable tenures. The trust account model would provide cash collateral in lieu of land collateral and thereby provide the security required to enable low risk external investment in development.
10. ILC and IBA could either deposit funds in the trust account to provide security for mainstream investors, or invest in development on communally owned Aboriginal land with the security of the trust account to underwrite their investment. In this case the funds in the trust account could be provided from philanthropic, government and other sources. CYLC advocates using the trust account to underwrite business investment only where a solid case for the viability of the development has been identified through a well prepared business plan. ILC and IBA could also support the preparation of the business plan.
11. In addition to the trust account and business planning, CYLC understand that the management of development projects is also a major determinant of a project's success. Whilst many Aboriginal individuals and organisations have capacity for day to day operations, their capacity for overall project management is often insufficient for the project to succeed on Cape York. Where management capabilities are low or undeveloped, CYLC advocates that ILC and IBA enter into a partnership arrangement where Balkanu is the initial project manager and employer of staff. Balkanu would simultaneously manage the project and staff whilst developing the capacity of local people to take over management in the future. This model has similarities with the model already implemented by ILC but with Balkanu's ongoing presence on the Cape, close contacts with Aboriginal people and experience in doing business in remote Aboriginal communities it has potential to successfully perform the business management role and be a major contributor to the success of ILC and IBA funded projects.
12. Aboriginal land holdings on Cape York are significant and growing, particularly as a result of the land transfer provisions of the *Aboriginal Land Act 1991* (Qld) and dealings under the *Cape York Peninsula Heritage Act 2007* (Qld). The ILC and IBA should take more of a role in supporting organisations which acquire land through these processes, such as Prescribed Bodies Corporate (PBCs) and Land Trusts, to identify the economic potential of their land, prepare business plans and support development application processes to develop the land's potential. In this way more ILC resources would be invested in supporting existing land holders and developing this land, which would result in greater economic development outcomes for Aboriginal people.
13. The ILC and IBA should also provide much needed support to PBCs and Land Trusts prior to their acquisition of land through transfers under the Queensland legislative processes described above so that the economic potential of the land can be identified and plans made for its economic development. In this way the land can be developed and become a viable concern as soon as possible after acquisition, rather than becoming a liability because it does not generate a cash flow due to the lack of planning and development. In addition to business planning the ILC and IBA should provide more support for PBCs and Land Trusts to do land administration work, such as survey and subdivision, so they can lease land to other parties to conduct economic activities if desired.

14. PBCs also have potential to generate economic activity through agreements made with mining companies and other users of land where the PBC holds, or will hold, native title rights and interests. These PBCs may or may not also hold tenure to some of the land where native title exists. However, many PBCs require significant assistance with corporate governance, anthropological responsibilities (such as maintaining genealogies) legal advice, financial management and other aspects of management in order to realise the economic potential of the land and provide benefit to their members. The CYLC PBC Support Unit provides some assistance to PBCs however the CYLC does not receive sufficient resources to provide the level of support required. CYLC would like to enter into a partnership with ILC and IBA to help provide this support to PBCs.
15. More generally, because Aboriginal land holders and potential business operators on Cape York are predominantly corporations rather than individuals CYLC would like to work with ILC, IBA and other Cape York Regional Organisations to develop strategies for economic development in remote locations where land is communally held by Aboriginal corporations. For ILC and IBA this would complement the current emphasis on supporting individuals on privately held and alienable land, but for Cape York Aboriginal people it would be a big step in supporting development by both individuals and Aboriginal corporations.
16. CYLC proposes that an outcome of the ILC IBA review should be a specific program for employment, training, business development, land acquisition, land management and home ownership in remote locations where land is communally held by Aboriginal organisations. Cape York would be an ideal location to trial this program since IBA and ILC would have the opportunity to partner with CYLC and other Cape York Regional Organisations, such as Balkanu and Cape York Institute, and there are already many elements of a system in place that would support this program.

Land acquisition and management

17. CYLC is of the understanding that the ILC's policy is to not invest in any further pastoral properties on Cape York until the ILC has divested its current Cape York land holdings. CYLC does not support this position and considers that if a suitable property becomes available then the ILC should acquire it.
18. However, as previously commented, the ILC should also have a clearer and more urgent divestment schedule for properties it acquires, and this will be dependent upon building the capacity of the relevant Aboriginal Corporation so that it is ready to accept ownership of the property interest sooner. Examples of where ILC divestments should be accelerated include the Gateway project at Mossman Gorge and the Merapah and Crocodile/Welcome pastoral properties on Cape York.
19. As well as business planning and management support for economic development projects, Aboriginal land holding organisations such as PBCs and Land Trusts also require support for their statutory land management responsibilities, such as pest and weed control, fire management, etc. ILC and IBA, in partnership with CYLC and other Cape York Regional Organisations, should make arrangements to provide this support and focus investment priorities more on supporting existing land holders.

20. Traditional owners have contacted CYLC to seek assistance for better access to their traditional lands where these lands are held by the ILC, such as Cape York pastoral properties. In addition to traditional activities traditional owners would also like to conduct mainstream economic activities on these properties, such as cultural tourism and horticulture. CYROs consider that the aspirations of these traditional owners present an opportunity to diversify and increase economic activity on this land in a way that is compatible with the primary activity of pastoralism, and thereby contribute to the economic independence of these traditional owners. CYLC would like to work with ILC to develop plans to enable diversification of land use and greater economic activity on ILC held lands.

Home ownership

21. CYLC considers that Aboriginal home owners must have the same access to equity and other wealth creation opportunities as mainstream mortgage holders and home owners. This position is consistent with IBA and ILC objective to provide Indigenous Australians with the same opportunities as other Australians. However, access to equity and other opportunities are not available through IBA loans. If IBA loans of the current type remain the only option for people seeking to become home owners on Aboriginal land then the objective for economic independence and providing Indigenous Australians with the same opportunities as other Australians, such as wealth creation founded on property ownership, will not be achieved.
22. CYLC strongly advocates the use of trust accounts to underwrite home ownership in remote Aboriginal communities. The home ownership trust accounts would be funded from the proceeds of house sales and enable land trustees to provide home owners with a guaranteed sale in the case of land and housing trusts, or by being a buyer of last resort where secondary markets do not develop or a very slow to establish. The trust account would also provide mainstream banks with the security to offer mortgages in remote Aboriginal communities because the mortgage would be underwritten by the trust account whereby the bank would have access to funds in the trust account in the case of mortgage default. Because the home owner would have a mainstream mortgage they would also have access to the equity in their home and use this as the basis for wealth creation. CYROs are developing a model for the trust account in partnership with the Queensland Government and the banking sector which it can present to the IBA.
23. On this basis CYLC considers that there should no lending for home ownership by IBA to Aboriginal people living on Aboriginal land without the operation and support of trust accounts. This is because there is a very limited and uncertain ability for mortgage holders on these tenures to either access equity or to potentially sell their property given the inalienability of Aboriginal land and the uncertain nature of the secondary market. Even if amendments are implemented so that home ownership is based on fully transferable leases or fee simple freehold titles, there is still a critical role for trusts to hold some minimum tranche of the proceeds of sales to support resales given the real uncertainty surrounding the development of secondary markets in Aboriginal townships.
24. Some IBA functions could also be performed by the private sector. In particular, IBA home loan subsidies, such as the good renter's discount, should be able to be attached to a mortgage applicant who can then take the subsidy to a mainstream lender rather than relying on the naturally limited network of IBA staff (given the relatively small size of the overall loan book value held by IBA). Access to a mainstream mortgage will enable home owners to enjoy the full benefits of the competitive market for mortgages. Of course, this assumes that mainstream lenders are prepared to lend on a leasehold or freehold tenure in a remote area with unknown secondary markets. This again highlights the critical role for the establishment and operation of trust accounts.

25. Eligibility for the Indigenous Home Ownership program (IHOp) should be expanded to include all Aboriginal towns on Cape York. CYLC is aware that there are aspirations for home ownership in all towns on Cape York and currently (because trust accounts have not yet been established) IHOp is the only realistic option for a home loan. However, IHOp criteria restrict its offer to just a few Aboriginal towns, which effectively means that home ownership is not an option for those towns where IHOp is not offered. Once again, IBA support for the establishment of home ownership trust account arrangements would address IBA and mainstream bank concerns about providing loan subsidies and mortgages for closed market communal land situations and for alienable tenures in towns with uncertainty around the formation of secondary markets.

b. The optimal structure and function of government effort to drive Indigenous economic development. This should include consideration of whether outcomes could be enhanced by integrating IBA and the ILC into a single entity.

26. CYLC considers that the Boards of the ILC and IBA should be fully integrated so that one Board oversees the operations of both organisations. This will eliminate overlaps in operations and create efficiencies and savings that could be put towards service delivery. In addition, a single entity with a mandate for facilitating Indigenous economic development in remote areas of Northern Australia should be established. An entity with resources and capacity to achieve economic development in remote areas is more necessary, and would achieve greater outcomes, than ongoing investment in non-remote areas where other options exist and the development process is more straight forward. If ILC and IBA continue to focus the majority of their effort and resources in non-remote areas they will not address the areas of greatest need. In Cape York, this entity should deliver much of its services through partnerships with existing organisations such as Balkanu so that it avoids duplication of functions and is works with organisations that have existing skills, networks and experience with doing business on Cape York.

c. If a statutory body is considered the best approach, how to structure arrangements to ensure:

- ***efficient administration and reduce red tape***
- ***transparency and accountability of public funds***
- ***appropriate powers of Ministerial direction or Government control***

27. The most appropriate arrangements for ILC/IBA to deliver economic development outcomes in an efficient, transparent and accountable manner is to enter into partnerships/contractual arrangements with established regional service delivery organisations such as Balkanu and CYLC. These arrangements should include the delegation of decision making powers to the regional organisation, given its better knowledge of the on-the-ground situation. These arrangements would take advantage of existing regional capacities and ensure resources are applied to projects rather than to establishing and maintaining stand alone staff and administrations.

28. The conditions of the partnership or contract should include minimum performance standards, and require regular reporting of outputs, decisions, outcomes and finance accounts. The arrangements could include provisions for appeals to the Minister on decisions by the regional organisation, and Ministerial override where appeals are upheld.