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Committee Secretary  
Joint Select Committee on Northern Australia  
PO Box 6021  
Parliament House  
Canberra ACT 2600  
Email: [jscna@aph.gov.au](mailto:jscna@aph.gov.au)

Dear Committee Members

The Kimberley Land Council (**KLC**) welcomes the inquiry into the Development of Northern Australia (**Inquiry**) by the Joint Select Committee on Northern Australia, and thanks the Joint Select Committee for the opportunity to make a submission to the Inquiry.

The KLC's submissions to the Inquiry are set out in the attachment to this letter. The KLC also supports the submission to the Inquiry made by the Kimberley to Cape Initiative.

In addition to the attached submissions, the KLC invites members of the Joint Select Committee to come to the Kimberley and meet with the KLC, our cultural advisors and members, and our Indigenous ranger teams to discuss the future of Northern Australia. There are a range of exciting and innovative initiatives currently being developed that should be part of the Australian Government's vision for Northern Australia and we invite the Joint Select Committee members to observe these first hand as part of the Inquiry.

Yours Sincerely

Nolan Hunter  
CEO  
Kimberley Land Council



## Kimberley Land Council

### Submission to the Joint Select Committee on Northern Australia

14 March 2014

#### General Submissions to the Inquiry

##### Participation of Indigenous people in the economic future of the region

- 1 The KLC represents Traditional Owners in the Kimberley region of Western Australia, and is the Native Title Representative Body for the Kimberley. The KLC was established in 1978 and its organisational goals are to assist Kimberley Aboriginal people in getting country back, caring for country, and securing the future.
- 2 The KLC is engaged in many projects that further the economic, social and cultural aspirations of Kimberley Aboriginal people. In addition to native title determinations, the KLC works with Traditional Owners to develop economic self-sufficiency through projects which provide environmental services on country, involve Traditional Owners in emerging enterprises, and facilitate agreements between Traditional Owners and third parties for mutually beneficial development on country.
- 3 Economic development in the Kimberley is fundamental to the future of the Indigenous residents of the region. At present Indigenous people in the Kimberley are significantly underrepresented in mainstream employment. Exclusion from economic opportunities means that Aboriginal people are more reliant on income support and other forms of welfare and Indigenous households face significant pressures associated with low incomes in a high cost region<sup>1</sup>. This has flow-on effects to health, education, and general community well-being.
- 4 Addressing Indigenous disadvantage and closing the gap requires strategic regional solutions<sup>2</sup> that draw on the existing and inherent strengths in Traditional Owner communities. These existing strengths have been identified in the work of the Harvard Project on American Indian Economic Development (**Harvard Project**), which over 25 years of applied research has identified a number of critical factors for successful economic and social development in First Nations.<sup>3</sup> These critical factors include capable, stable and culturally compatible institutions of governance. Recognition of, and support for, principles such as these will lead to the successful long term involvement of Traditional Owners in the economic and social development of the Kimberley, and Northern Australia generally, and should be a cornerstone of the Australian Government's policy for the region.
- 5 The KLC plays a significant role in the Kimberley in the development of local economies that Indigenous people and Indigenous businesses are able to participate

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<sup>1</sup> Taylor J (2006) *Indigenous People in the West Kimberley Labour Market*. Centre for Aboriginal Economic Policy Research. Working Paper No. 35/2006.

<sup>2</sup> Deloitte Access Economics (2014). *Economic benefits of closing the gap in Indigenous employment outcomes*. Reconciliation Australia.

<sup>3</sup> The Harvard Project on American Indian Economic Development (2010). <http://hpaied.org/about-hpaied/overview>

in, and seeks to occupy a centralist position in the debate about development and its effects on the environment and the communities of the region. Our position at the "sensible centre" of the debate enables us to engage with all stakeholders to identify and pursue opportunities which have the potential to benefit our members and Kimberley Indigenous people generally. Our pursuit of the economic and social advancement of Traditional Owners is guided by:

- (a) traditional law and culture, which remains strong in the Kimberley and is an enduring part of the everyday lives of Traditional Owners;
- (b) economic development consistent with cultural obligations;
- (c) principles of regionality to effectively address systemic problems and draw on the support that exists in Traditional Owners communities and their regional representative bodies; and
- (d) recognition of Traditional Owners as primary interest holders of the land, water, and resources of the region. This ownership should be respected in accordance with the principles set out in the United Nation's Declaration on the Rights of Indigenous People (**UNDRIP**), which was endorsed by Australia on 3 April 2009, in particular the principle of free, prior and informed consent.

6 The KLC recommends that:

- (a) the Inquiry recognise that Indigenous people are fundamental to the future success of development in Northern Australia;
- (b) economic development must place Indigenous people at its centre rather than on the periphery waiting for "trickle down" benefits;
- (c) economic development must be done in a manner consistent with the UNDRIP, in particular the principle of free, prior and informed consent of Traditional Owners;
- (d) economic development must be regional and strategic and should draw on the existing social, cultural and physical infrastructure in Traditional Owner communities and representative organisations;
- (e) the principles for successful economic development identified by the Harvard Project should be supported by the Australian Government and incorporated into policies for the development of Northern Australia;
- (f) communities affected by chronic disadvantage in areas such as health, housing, education and employment must be assisted to participate in the economic development of the region; and
- (g) the Inquiry should consider the need for a sustained investment in the capacity of Indigenous people and Indigenous communities and a recognition of the fact that property and procedural rights backed by strong institutional capacity are vital for Indigenous people and communities to be able to engage effectively with industry and benefit from economic development. The principle of free, prior and informed consent should underpin any engagement between industry and Traditional Owners.

## Land and economic development

- 7 One of the most important assets available to Traditional Owners in developing economic independence is land. As well as being a fundamental cultural and social asset, land is a primary economic asset. Traditional Owners in the Kimberley (and elsewhere across Northern Australia) are land rich and but often lack sufficient capital to unlock the economic potential in their own land. In most cases, land held by Aboriginal people in the Kimberley is in the form of native title interests, although diverse other interests, such as pastoral leases, freehold, and commercial leases are also held by Aboriginal people individually and communally.
- 8 Native title has now been determined across more than 75% of the Kimberley, and in similarly significant proportions across the rest of Northern Australia. Native title is a significant and dominant asset in Northern Australia and needs to be recognised as such by the Inquiry. The concept of native title as an impediment to development and economic growth, both for the community generally and for Aboriginal people, must be put aside. Native title is a significant property asset of one of the largest constituencies in Northern Australia. That constituency is actively and passionately seeking ways to advance its social and economic standing through the positive use of its own property. The development of Northern Australia, and the unlocking of the full potential of this region, therefore depends on the positive incorporation of native title into the economic future of the region. Native title must be viewed as an asset to development not an impediment.
- 9 The KLC recommends that:
  - (a) the Inquiry recognise native title as a valuable, enduring and positive component to the future development of Northern Australia; and
  - (b) engagement with Traditional Owners and their representative bodies should be recognised as having significant positive potential for development and mutually beneficial outcomes, and should not be viewed as a negative impediment to development.

## Pro-active Strategic Regional Development

- 10 Recognition of native title as an important asset in the development of Northern Australia requires a complementary political and regulatory framework that permits the development of that asset by its owners. The development framework should also be pro-active and strategic rather than piece meal and ad hoc. The tools for this framework should wherever possible be found in existing legislation to avoid the need for significant changes to the law and accompanying delays and uncertainty, and could include:
  - (a) strategic development and land use assessments; and
  - (b) innovative use of Indigenous Land Use Agreements (**ILUAs**) by Traditional Owners, for example the development of area agreements or alternative procedure agreements as part of a development package that can be promoted in a pro-active manner to potential developers.
- 11 Economic development within this strategic regional framework can be maximised if it occurs with regard to the findings of the Harvard Project, as recommended above.
- 12 The KLC recommends that:

- (a) the Inquiry supports proactive strategic regional development, with a central role for Traditional Owners in the promotion of their economic assets; and
- (b) the Inquiry considers the Kimberley as a trial site for a strategic regional assessment of economic and social development, with Traditional Owners supported to participate and produce concrete outputs such as ILUAs and associated marketable land use proposals.

### **Diverse and modern economies**

- 13 The Coalition (prior to its election to Government in October 2013) proposed a five pillar economy for Northern Australia comprised of:
- (a) manufacturing innovation;
  - (b) advanced services;
  - (c) agriculture;
  - (d) education and research; and
  - (e) mining exports.
- 14 The large land areas owned by Traditional Owners in the Kimberley are highly amenable to the development of cultural enterprise economies, which are modern economic activities involving both agricultural activity and the provision of 'advanced services'. The KLC is currently developing a number of these economies in conjunction with Traditional Owners.
- 15 Cultural enterprise economies have a number of advantages and unique characteristics which should make them an important part of the future economy of Northern Australia.
- (a) They are complimentary to, rather than competitive with, a number of other economic activities including mining and resource development, traditional agricultural activities, tourism, and education and research.
  - (b) They create enduring economic benefits and employment opportunities that enable a degree of independence for Traditional Owners from government support.
  - (c) Economic activity is locally based, providing remote area employment and injecting income into local economies. Locally based employment also strengthens local communities and supports maintenance of cultural obligations.
- 16 The KLC recommends that the proactive strategic regional development proposal set out at (12) above incorporate cultural enterprise economies.

## Submissions on the Terms of Reference

***The Committee will consider policies for developing the parts of Australia which lie north of the Tropic of Capricorn, spanning Western Australia, Northern Territory and Queensland, and in doing so:***

- ***examine the potential for development of the region's mineral, energy, agricultural, tourism, defence and other industries;***
- 17 The Australian Government's policies for the economic development of Northern Australia should recognise that Indigenous people, many of whom are Traditional Owners within the region, form a significant constituency. This constituency holds assets crucial to realising the full economic potential of the region. Indigenous people must play a central role in the economic future of the region.
  - 18 Culturally appropriate governance and development will provide the maximum opportunities for Traditional Owners to successfully participate in economic activity in the region. The importance of culturally appropriate governance has been demonstrated by the work of the Harvard Project and is a cornerstone of project development in the Kimberley.
  - 19 As noted above, development should be regional and strategic. At present there is a critical need for a measured strategic consideration of the water resources in Northern Australia. While these water resources are significant in volume, there are a number of competing (although not necessarily mutually exclusive) demands on them. Appropriate water planning, management, regulation and use must incorporate:
    - (a) the cultural, social, communal and economic needs of Traditional Owners;
    - (b) the unique access to and knowledge of water resources (freshwater and marine) held by Traditional Owners;
    - (c) the importance of appropriate use of water for all residents within the region, including Traditional Owners;
    - (d) the need for measured and diversified development, and balanced access to water to support a diversified economy; and
    - (e) appropriate allocations for environmental and cultural purposes.
  - 20 A strategic Indigenous reserve system and recognition of Indigenous interests in water would allow industries seeking large amounts of water a clearer basis on which to approach native title holders and enter into commercial arrangements about the economic use of water.
  - 21 Economic development must also be responsible and sustainable and not be pursued at any cost. The Kimberley, and Northern Australia generally, is of international significance in terms of its environmental and cultural values, and the environmental, social and cultural impacts of development must be balanced as part of any government policy that promotes development.
  - 22 Responsible and sustainable development carries with it responsibilities to engage with Indigenous people and in particular Traditional Owners, not only in respect of the bare rights they are granted under the *Native Title Act* but also in acknowledgement of

their role as Traditional Owners of the Kimberley's rich environmental and cultural values.

- 23 The environmental and cultural values of Northern Australia are valuable assets for the economic future of the region. These assets may be subject to competing priorities which must be balanced with regard to inter and intra generational equity. The KLC supports a balanced and considered approach to development where industry, conservation and biodiversity initiatives and traditional law and cultural can co-exist. A number of projects run by the KLC with positive economic outcomes demonstrate that this co-existence is realistic and attainable.
- 24 The KLC recommends that:
- (a) Indigenous people, and their physical, social and cultural assets, must be recognised as central to the future development of Northern Australia;
  - (b) strategic planning for water management, regulation and use must balance the rights of competing users and ensure the development of a diversified economy;
  - (c) a Strategic Indigenous Reserve System and recognition of Indigenous rights and interests in water should be developed as part of the framework for water management;
  - (d) support for culturally appropriate governance should be a cornerstone of the Australian Government's policy for the region;
  - (e) development must be sustainable, ensure intra and inter generational equity, and be balanced between competing industries;
  - (f) the economic value of the environmental and cultural values of the Kimberley, and Northern Australia generally, must be recognised; and
  - (g) economic development policies should recognise and build on the unique position that Traditional Owners have based on their knowledge of country which is relevant to:
    - (i) diversified economic activities such as cultural and environmental services;
    - (ii) tourism; and
    - (iii) defence, quarantine and bio-security.

• ***provide recommendations to:***

➤ ***enhance trade and other investment links with the Asia-Pacific;***

- 25 Significant potential exists for expansion of the tourism industry in the Kimberley, in particular cultural and emersion tourism. Global megatrends in tourism in Queensland over the next twenty years have been identified in recent research<sup>4</sup>, and can be extrapolated to Northern Australia generally. Megatrends of particular relevance to the Kimberley, given its proximity to Asian markets and an existing international airport in Broome, are:

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<sup>4</sup> Hajkowicz SA, Cook H, Boughen N (2013) The Future of Tourism in Queensland. Global megatrends creating opportunities and challenges over the coming twenty years. Draft for comment. CSIRO, Australia.

- (a) a shift in global wealth from west to east and from north to south, creating major growth opportunities for Asian markets;
  - (b) the significant advantage and attraction of well preserved and protected environments; and
  - (c) an increasing shift towards “experiences” rather than “products”, which presents particular potential for growth in emersion tourism.
- 26 At present one of the most significant contributors to maintenance of the physical environment, including access, around sites of cultural and tourism interest are Traditional Owner ranger groups. The Kimberley Ranger Network is comprised of 14 ranger groups that employ more than 70 Aboriginal rangers and support staff. The Australian Government’s commitment to these programs has been paramount: *Working on Country* funds ten Kimberley ranger groups and supports the eight native title groups that have declared Indigenous Protected Areas across their country, creating one of Australia’s largest conservation corridors. The work of the Kimberley Ranger Network also supports the development of complimentary economies based around cultural and natural resource management, including environmental services, carbon farming, and quarantine and bio-security services. At present the development and operation of the Kimberley Ranger Network is reliant on support from the Australian Government, although commercial fee for service opportunities are developing rapidly.
- 27 The KLC recommends that:
- (a) Australian Government support for ranger networks across Northern Australia is maintained while commercial opportunities from cultural and natural resource management are developed;
  - (b) the Australian Government recognise the significant positive externalities from the cultural and natural resource management activities undertaken by Indigenous ranger groups, and by Traditional Owners generally, which flow through to industries such as tourism, agriculture, and education and research; and
  - (c) Traditional Owners of tourism hotspots must be respected and recognised as primary interest holders and partners for tourism development activities, and the use of traditional culture in the promotion of tourism should be consistent with cultural protocols and authorised by Traditional Owners.
- ***establish a conducive regulatory, taxation and economic environment;***
- 28 The KLC repeats its recommendation for a proactive strategic regional approach to economic development in Northern Australia which utilises existing regulatory arrangements, including strategic assessments and the innovative and proactive use of ILUAs. Significant changes to the law, particularly interventions in favour of competing interests which may degrade current statutory and property rights of Traditional Owners in favour of non-Indigenous interests, is strongly opposed. It is important that development occurs in cooperation with residents and land owners (a significant proportion of whom are Traditional Owners) rather than in opposition to them.
- 29 Kimberley Traditional Owners have strong views that business should be done in a culturally appropriate manner to create enduring and robust opportunities. Twenty five years of research and economic development activity under the Harvard Project has



demonstrated that culturally appropriate governance is critical to positive economic and social outcomes for Traditional Owners.<sup>5</sup>

- 30 Planning for the economic future of Northern Australia should incorporate the prescribed representative organisations for native title holders – prescribed bodies corporate (**PBCs**) and registered native title bodies corporate (**RNTBCs**). Strengthening and commercialising these corporations (and the regional organisations that support them) is an important step in ensuring the participation of Traditional Owners in the economic future of the region, and will facilitate timely and efficient investment in the region.
- 31 Innovative use of tax concessions should be investigated to promote investment into Indigenous communities and partnerships with Indigenous businesses. This may be an effective and efficient method for attracting capital to Northern Australia and to encourage innovative private sector economic development to replace inefficient government funded service delivery.
- 32 The KLC recommends that:
- (a) the Inquiry supports proactive strategic regional development, with a central role for Traditional Owners;
  - (b) the Inquiry considers the Kimberley as a trial site for a strategic regional assessment of economic and social development, with Traditional Owners supported to participate and produce concrete outputs such as ILUAs and associated marketable land use proposals;
  - (c) regulatory intervention should not favour the interests of non-native title holders over the interests of native title holders;
  - (d) native title should be recognised as an asset to be utilised in the development of Northern Australia;
  - (e) the mandatory role of prescribed representative organisations (PBCs and RNTBCs) should be supported to facilitate timely and efficient investment in the region; and
  - (f) the Inquiry should investigate the use of tax concessions to support investment in Indigenous businesses and communities, particularly in remote areas.

➤ **address impediments to growth; and**

- 33 There is a significant lack of capacity in Indigenous communities which has stymied many government attempts to increase employment outcomes and encourage increased rates of participation in the mainstream economy. It is important that initiatives and programs designed to build capacity and facilitate economic participation are designed and implemented locally. Regional organisations are critical in this regard and the institutions that support native title holders need to be strong and have a level of autonomy to develop capacity in a way that is effective and appropriate to the circumstances of the region.

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<sup>5</sup> The Harvard Project on American Indian Economic Development was founded in 1987 at the [John F. Kennedy School of Government, Harvard University](http://hpaied.org/). See <http://hpaied.org/>

- 34 Constraints on innovative land use presently exist in a number of forms of tenure and land interests, including:
- (a) pastoral leases, which are constrained to pastoral activities and a narrow band of diversified activities; and
  - (b) native title lands, where innovative land use is often constrained by a narrow understanding of native title interests by both private and public sectors.
- 35 The current inquiry into the Indigenous Land Corporation (**ILC**) and Indigenous Business Australia (**IBA**) is considering how these important government bodies should function to support social and economic development. The KLC's submissions to that inquiry included the need for the ILC and IBA to recognise and support the economic potential of native title lands.
- 36 The KLC recommends that:
- (a) the Inquiry investigate and support the development of tenures that support diversified activities in Northern Australia, including environmental services, carbon farming, and cultural tourism activities; and
  - (b) the Inquiry have regard to the current inquiry into the ILC and IBA and the relevance of these two organisations to the development of Northern Australia.

➤ **set conditions for private investment and innovation;**

- 37 Conditions to promote economic development should be appropriately balanced so that private investment and innovation are encouraged not only in relation to developing economic industries in Northern Australia but also in developing mutually beneficial partnerships and joint ventures with Indigenous communities and Traditional Owners. This requires effective engagement with Indigenous stakeholders on issues such as policy settings, revenue sharing, and business development.
- 38 The Inquiry should also consider how to attract capital and investment into Indigenous businesses who may struggle to obtain debt financing on a commercial basis from banks and mainstream capital markets. The KLC recommends that the Inquiry look at alternative mechanisms for financing businesses in Northern Australia including expanding the availability of low interest/long term loans and grants to businesses which produce co-benefits to remote communities (Indigenous employment, ecosystem services, cultural maintenance, community development and reduced welfare dependency) and positive externalities for industries such as tourism, agriculture, and research and education.
- 39 For a number of years the KLC has been promoting the development of a Kimberley Trust Fund from which public and private investors can purchase environmental offsets to preserve the environmental and cultural values of the Kimberley. The concept of a Kimberley Trust Fund could be expanded to include the promotion of enterprises in the region that are consistent with the preservation and promotion of the Kimberley's environmental, cultural and social values; that is, the cultural enterprise economy.
- 40 For a cultural enterprise economy to be viable the appropriate regulatory and market conditions would need to be set to encourage and incentivise the protection of biodiversity (potentially through environmental offsets), the abatement and sequestration of carbon (ie through Traditional Owner and private sector partnerships to fund improved fire management), the recognition of value in the delivery of

ecosystem services, and a focus on job creation in remote areas that otherwise have limited employment opportunities. The establishment of a Kimberley Trust Fund and appropriate policies to support and build the trust is a viable mechanism for supporting the development of a cultural enterprise economy.

41 The KLC recommends:

- (a) private investment in Indigenous communities and businesses should be supported by policies which:
  - (i) facilitate early engagement; and
  - (ii) promote mutually beneficial and co-operative development;
- (b) the Inquiry investigate options for financing of Indigenous businesses in Northern Australia and the promotion of innovative businesses such as environmental services and carbon farming;
- (c) recognition of important co-benefits and positive externalities from cultural and natural resource management activities, and support for these important activities; and
- (d) the Inquiry investigate alternative financing and enterprise support models such as the Kimberley Trust Fund.

**• identify the critical economic and social infrastructure needed to support the long term growth of the region, and ways to support planning and investment in that infrastructure.**

42 Poor economic and social infrastructure is a significant impediment to long term growth in the Kimberley. However, as noted above, appropriate use of and support for existing social and cultural infrastructure is fundamental to positive economic and social outcomes from development for Traditional Owners. The key finding from the work of the Harvard Project is that Traditional Owners will experience positive economic and social outcomes when development occurs in concert with existing social and cultural infrastructure.

43 At present there is considerable scope to improve economic opportunities in the Kimberley by improving infrastructure in the region. Development of this infrastructure should be done in consultation with Traditional Owners to ensure:

- (a) development decisions are informed by local knowledge and concerns;
- (b) economic and social outcomes from infrastructure development are optimised; and
- (c) environmental and cultural impacts are avoided or minimised.

44 At present there is a rigid approach to the development of social infrastructure and service delivery in remote areas which essentially constrains investment outside of identified and preferenced hub communities. This discourages the development of enterprises outside of these preferenced communities, stymieing development and limiting access to resources by restricting the movement of people, businesses and services within the region.

- 45 The KLC also recommends that the Inquiry investigate how services are currently delivered in the Kimberley and Northern Australia and how service delivery and locally based economic development could be more closely aligned. Locally sourced service delivery not only delivers a more cost effective and culturally appropriate service but also ensures that funds invested by the Australian Government are retained in the region and are able to stimulate local economic activity and further business opportunities.
- 46 The KLC recommends:
- (a) existing social and cultural infrastructure should be incorporated into economic development in the region;
  - (b) infrastructure development should involve early engagement with Traditional Owners to optimise the benefits of local knowledge;
  - (c) a more flexible approach to investment in social and economic infrastructure should occur where practicable to encourage broad and diversified economic and social development; and
  - (d) government service delivery and locally based economic activities should be more closely aligned.