

**Northern Land Council Submission to Joint Select Committee on Northern Australia**

**February 2014**



**Northern Land Council**

### ABOUT THE NORTHERN LAND COUNCIL

The Northern Land Council (NLC) was established in 1973. Following the enactment of the *Aboriginal Land Rights (Northern Territory) Act* (the Land Rights Act), it became an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas.

The Land Rights Act combines concepts of traditional Aboriginal law and Australian property law. It creates a three way relationship between traditional Aboriginal owners, Land Trusts and Land Councils in order to combine concepts of Aboriginal customary law with Australian property law. The Act requires the Land Councils to consult with traditional Aboriginal owners (and other Aboriginal people affected by proposals) before giving a direction to a Land Trust to enter into any agreement or take any action concerning Aboriginal land. Under the Land Rights Act, traditional owners must give their informed consent, as a group, to each proposal.

Some of the most important functions of Land Councils include:

- Determining and expressing the wishes of Aboriginal people about the management of, and legislation in relation to, their land; and
- Negotiating on behalf of traditional owners with parties interested in using Aboriginal land or land the subject of a land claim.

The NLC has statutory responsibility for facilitating economic activity over more than 210,000 km<sup>2</sup> of the land mass of the Northern Territory, and over 80% of the coastline.

In 1994, the NLC became a Native Title Representative Body under the *Native Title Act 1993* (the Native Title Act). In this capacity, the NLC also represents the Aboriginal people of the Tiwi Islands and Groote Eylandt. The NLC's role and functions as a Native Title Representative Body are set out under Part 11, Division 3 of the Native Title Act.

The NLC assists the Aboriginal people of its region by providing services in its key output areas of land management, land acquisition, mining, land trust administration, native title services and advocacy, information and policy advice.

The vision of the NLC is a Territory in which the land rights of every traditional owner are legally recognised and in which Aboriginal people benefit economically and culturally from the secure possession of their lands and seas.

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### Introduction

The NLC welcomes the opportunity to provide a submission to the Joint Select Committee on Northern Australia ahead of the production of a Government White Paper on the Development of Northern Australia.

As a large statutory Commonwealth Authority with a strong element of community control<sup>1</sup>, and an interest in equitable economic development, the NLC is in a unique position to provide points of consideration for the Joint Select Committee on the Development of Northern Australia.

In meeting the objectives and obligations of the Land Rights Act and Native Title act, the NLC considers that it maintains valuable corporate knowledge and experience of working in complex social and cultural environments in regional and remote areas of Northern Australia. As such, this submission may be of interest to governments, the private sector, Non-Government Organisations (NGOs) and other Indigenous bodies across Australia's North.

Traditional Owners (TOs) in the Northern Land Council region (boundaries and sub-regions found at figure 1.1) are large landholders through the *Aboriginal Land Rights Act 1976 (Cwlth)*. The NLC recognises and supports the fundamental right of Traditional Owners to control development on their landholdings, and maintains a position that this right applies across the spectrum of planning and development, from minor town planning processes through to large scale land development projects impacting on hundreds of square kilometres.

Figure 1.1 – Northern Land Council regions



<sup>1</sup> Land Council membership is decided on nomination by their community or region under Section 29-30 of the *Aboriginal Land Rights Act 1976 (Cwlth)*.

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When matched with TO aspirations, these landholdings represent enormous economic and social opportunity for TOs and the Northern Territory, and by extension, 'the North' as a whole. However, accessing the opportunities offered by Aboriginal Land in the NLC region will require a concerted effort to address long-standing structural barriers to economic development and a renewed focus on meeting the future challenges to development in the NLC region.

By way of summary, this submission calls for equitable development across the North, and particularly in the NLC region through:

1. Government, NGOs and the Private Sector adoption of a 'Sustainable Livelihoods Approach' and prepare for future challenges;
2. Government and the private sector reconsidering their approach to Indigenous Landholdings under the *Aboriginal Land Rights Act*; and
3. A coordinated approach by all stakeholders to identifying and building on the NLC region's (and by extension the NT and the North) competitive strengths, and developing new economic opportunities.

Through this Submission, the NLC also echoes calls by the North Australian Indigenous Land Sea Management Alliance (NAISMA) for equitable development across the North that is founded on the United Nations Declaration on the Rights of Indigenous People (UNDRIP) notion of free, prior and informed consent<sup>2</sup>.

### **A sustainable livelihoods approach and preparing for future challenges**

In regard to maximising development opportunity in the NLC region, The Northern Land Council supports the 2011 'Sustainable Livelihoods Approach'<sup>3</sup> first proposed by Aboriginal Peak Organisations NT (APONT) in 2011.

APONT described the key qualities of a Sustainable Livelihoods Approach as:

- Empowerment of the disadvantaged individual or community to determine their own livelihood pathways;
- Long term and flexible programming;
- Responsive and participatory planning and implementation;

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<sup>2</sup> "Constructing a northern development framework that fosters strong Indigenous participation and achieves national outcomes for resilient communities through reliable prosperity". A submission to the Parliament of Australia: Joint Select Committee on Northern Australia. North Australian Indigenous Land Sea Management Alliance, 2014 pp 6.

<sup>3</sup> Creating and Supporting Sustainable Livelihoods: A Proposal for a New Remote Participation, Employment & Enterprise Development Scheme. Aboriginal Peak Organisations Northern Territory, 2011.

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- Activity-focused partnerships between disadvantaged people, their organisations, the public sector, the non-government sector and the private sector;
- Disaggregated strategies that address identifiable sub-groups (women, youth, the disabled); and
- Outcome-based monitoring and evaluation.

The NLC calls on governments to adopt these qualities as a policy approach across the North, toward providing an effective and equitable foundation for future development, and that key element of this approach will be recognition of Aboriginal rights and interests in:

- Fresh Water allocation and management (particularly through Strategic Indigenous Reserves and other mechanisms);
- Coastal and Sea-bed management (especially with regard to the extractive industries); and
- Commercial and industrial Development of Native Title estates.

In considering future development needs and the demographics of the Territory, it is of particular importance that Aboriginal people currently represent over 28% of the population of the Northern Territory, and over 36,000 Aboriginal people<sup>4</sup> reside in the Northern Land Council region of the NT across various land tenure types, representing a significant proportion of the NTs current and future workforce and social fabric. The well known comparative socioeconomic disadvantage present in Aboriginal communities poses a significant number of challenges that will be faced by government, NGOs and Aboriginal people alike.

For governments and other interested observers seeking to understand the Indigenous policy landscape in the NLC region, the reports produced by the First (June 2012) and Second (May 2013) Mary River Indigenous Experts Forums<sup>5</sup>, (facilitated by the North Australian Indigenous Land Sea Management Alliance) are an excellent resource that detail the challenges faced by Indigenous people in driving and remaining involved in sustainable economic development. With regard to governments, the forums identified the following challenges<sup>6</sup>:

- Failure to consider change in fiscal policy, specifically the way in which public funds are invested to support northern and Indigenous economic development;
- Weak recognition of Indigenous interests in land and resources - in practice - as determining factors in northern development;

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<sup>4</sup> Private Consultancy – Australian Bureau of Statistics (Based on 2011 Census results from the NLC region)

<sup>5</sup> Indigenous Experts Forums, North Australian Indigenous Land and Sea Management Alliance, 2012-2013: <http://www.nailsma.org.au/north-australian-indigenous-experts-forum-naief/1st-indigenous-experts-forum>

<sup>6</sup> 'Towards resilient communities through reliable prosperity' North Australian Indigenous Experts Forum on Sustainable Economic Development - First Forum Report Mary River Park, Northern Territory, 19 – 21 June 2012. NAILSMA Knowledge Series 013/2012. NAILSMA 2012 (pp6)

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- Little consideration of emerging economic opportunities, including carbon and other offset industries;
- No apparent intention to deal with the idiosyncratic and sometimes conflicting approaches from different portfolios (and between State and Territory governments) that compromise the effectiveness, viability and sustainability of programs;
- Absence or weakness of strategies to engage the corporate sector in supporting Indigenous economic development according to Indigenous priorities;
- No indication of support for the maintenance of Indigenous culture and its role in enterprise for reducing dependence on government;
- Lack of investment in Indigenous leadership; and
- No apparent strategy for formalising deeper and ongoing Indigenous involvement in decision-making for northern development.

The NLC calls on governments to give priority to these critical issues in any consideration of the future of Northern Australia, and seeks to make several observations around government service delivery in the NLC region.

The NLC considers that governments of all levels have historically underfunded remote living Aboriginal people in the areas of infrastructure and essential services, which have resulted in Aboriginal people (and by extension, the people of the NT as a whole) being unable to reach their full capacity in terms of Health, Education and Employment<sup>7</sup>.

Notwithstanding the short and long term costs to Government in delivering expensive and difficult remote services, economic development capacity is being lost in this environment as the NT fails to provide a sustainable environment for development with a population base that is physically able, work ready and productive. In addition, this loss in individual and population group development capacity is multiplied over time, as Aboriginal people represent a more stable and long term component of the NT population when compared to the more transient<sup>8</sup> non-Indigenous NT population.

The NLC believes that, in this environment, development and adoption of 'a minimum standard of essential services' model for remote communities would result in a much stronger base from which Aboriginal people and the NT as whole could approach development and outside investment. This minimum standard must be developed in consultation with Aboriginal communities across the North.

Alongside the dire need for a more strategic approach to the challenges of service delivery in the NLC region, the NLC considers that there is also a clear need for Aboriginal communities to be empowered and engaged as partners in the policy planning processes in place in the Northern

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<sup>7</sup> Overcoming Indigenous Disadvantage: Key indicators 2011, Australian Productivity Commission

<sup>8</sup> Australian Bureau of Statistics: [Australian Demographic Statistics, Mar 2010](#)

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Territory. Consistent with the community empowerment component of the Sustainable Livelihoods approach, the NLC considers that there is an important role for a community controlled funding source to drive development projects on Aboriginal landholdings. Such a role may be filled by the Aboriginal Benefit Account (ABA), if a stronger element of community decision making can be built around the management of the account (as opposed to the current primarily Departmental and Ministerial based decision making).

The NLC has, where possible, sought to work with Aboriginal communities in its region to prepare for future challenges. An existing example can be seen in the policy campaign for the introduction of Strategic Indigenous Reserves (SIRs)<sup>9</sup> in Northern Territory Water Planning processes. Aboriginal people in water planning areas within the NLC region have sophisticated and wide ranging views about how water should be used, not just in terms of managing and caring for country, but as vital platform for future economic development.

Working with Traditional Owners and partner organisation NAILSMA, the NLC identified inequitable water allocation processes in the Northern Territory as a major risk to future economic development options for Aboriginal Landholders – exemplified by Indigenous interests being effectively locked out of southern water planning processes around the Murray Darling Basin.

In response, the NLC and NAILSMA worked closely with Traditional Owners to develop a robust policy plan for guaranteed water allocations for economic purposes, termed as SIRs, which allowed for cultural, environmental and economic objectives to be achieved, and allowed for Aboriginal decision making structures to be built around management of such allocations.

The SIR policy campaign underlines the importance of a community oriented approach to identifying and meeting future challenges. The NLC considers that in this instance, government refusal to adopt SIRs is broadly indicative of an inability to prepare for a significant future challenge – inequitable development through availability of water to Aboriginal interests.

### **Indigenous Landholdings: *The Aboriginal Land Rights Act***

The NLC broadly concurs with the tenets of the 2013 Central Land Council Land Tenure discussion paper<sup>10</sup>, but wishes to expand on some issues of land tenure and development that are of particular relevance to this submission.

The NLC vigorously rejects any notion that the *Aboriginal Land Rights Act 1976 (Cwlth)* acts as an impediment to development, and contends that it is in fact, the optimum system for merging Traditional Aboriginal Ownership of country with western legal and property rights. The Land Rights Act, and the system of land tenure it delivers, is congruent with the NLCs commitment to development on Aboriginal Land with the free, prior and informed consent of Traditional Owners.

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<sup>9</sup> *Indigenous people's right to the commercial use and management of water: An Indigenous Water Policy Position, The Strategic Indigenous Reserve*. North Australian Indigenous Land Sea Management Alliance, 2014.

<sup>10</sup> *Land Reform in the Northern Territory: evidence not ideology*, Central Land Council, 2013

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The NLC has long considered that far larger impediments to development than land tenure are to be found in Governments historical unwillingness to fairly recognise the property rights of TOs under the Land Rights Act; and the unwillingness of banks and others to invest in communities without a functional economy.

A clear example of the difference in the efficacy of the Land Rights Act when government agrees to work with Traditional Owners and Land Councils can be seen in the 2010 Northern Territory Government decision to pay fair rent to Traditional Owners (for leases over Government infrastructure on Aboriginal Land). This decision broke a decade long stalemate scenario where the NT Government would not pay a fair return (and thus were unable to secure tenure) but would not invest in new infrastructure without secure tenure. The 2010 change in NT Government policy resolved the stalemate and directly resulted in the NLC Full Council passing a record 269 Section 19 Land Use Agreements in 2011-2012<sup>11</sup>.

A future bi-partisan commitment by governments and an undertaking from NGOs and the private sector to fully embracing the Land Rights Act (and working with TOs) in pursuing development in would set an effective socio-political platform for development.

Other arguments that the Land Rights Act is an impediment to development (especially in relation to evolution of a private housing market in communities) rely on the concept that banks and other investors will not consider short or long term leases as security for lending.

The NLC considers this argument misleading – there are many places around Australia that banks and others invest into that have a long term lease as security, such as pastoral leases in the NT, and more distantly, but more broadly spanning, the Australian Capital City of Canberra. A far bigger issue for investors and financial institutions are the risks inherent in lending into a dysfunctional or non-existent economy, such as asset devaluation and lender repayment/return capacity.

The only truly effective way for governments to encourage private investment in Aboriginal communities is to develop sustainable economies that present an attractive target – achievable through long term coordinated action by governments, private sector, NGOs and most importantly, communities themselves. The Indigenous Prospectus - Operational Framework for Northern Development<sup>12</sup> introduced in the NAILSMA Submission to this enquiry is an excellent conceptual example of how coordinated planning can occur between relevant organisations and industry sectors.

### **Building on strengths and finding new opportunities**

The APONT Sustainable Livelihoods Approach, introduced elsewhere in this document, also identifies a number of strengths (also known as attributes) that characterise the model.

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<sup>11</sup> Northern Land Council Annual Report 2011-2012, pp97

<sup>12</sup> Constructing a northern development framework that fosters strong Indigenous participation and achieves national outcomes for resilient communities through reliable prosperity. *A submission to the* Parliament of Australia: Joint Select Committee on Northern Australia. North Australian Indigenous Land Sea Management Alliance, 2014 pp 4



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The NLC contends that identifying and building on these attributes over time will provide the NLC region and the North with the base for a competitive advantage for investment and development. These strengths include:

- Human capital (skills, knowledge, health and wellbeing) – starts with what people can already do and seeks to augment that;
- Social capital (formal and informal networks of relationships and exchange) – builds upon existing networks and enhances these;
- Financial capital (access to money) – identifies or invents and adapts financial mechanisms to facilitate and increase access;
- Physical capital (basic infrastructure and goods to support all categories of capital) – identifies or provides and maintains access to these; and
- Natural capital (natural resources available in or close to the locality) – identifies these and invests in their sustainable utilisation.

The NLC also maintain that the ‘top end’ of the NT (and the NLC region therein) already possesses a number of these strengths across different industry sectors. Some of these strengths are comparatively well known, such as the impact that the rich and vibrant NT Indigenous culture has on local tourism - an example of human, social and natural capital.

In examining these strengths, it is also important that governments and private sector proponents realise the important role of small, locally based ‘niche’ industries, such as arts and crafts or ecotourism enterprises – as a driver of local employment and economic development. Collectively, these types of industries can be as important to Aboriginal communities as a large scale developments, which in some cases present risks of delivering royalties and other benefits mostly outside of the community or region they are based in (an argument the NLC believes is currently being played out at a national level around foreign ownership and fly-in fly-out workers).

The NLC seeks to caution governments that over-reliance on any one particular sector to drive development presents a number of risks, and that a vibrant and productive Northern Australia, underpinned by a Sustainable Livelihoods Approach will feature economic activity in a number of diverse industries. The main sectors of economic activity occurring in the NLC region include (but are not limited to) the following:

Tourism	Pastoralism	Agriculture	Fisheries
Mining	Defence	Government Services	

The NLC ‘Indigenous Pastoral Program’ stands as an example of a project where the NLC has worked to develop Aboriginal involvement in an already established industry. A case study of the program is attached to this submission, at Attachment A.

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The need for diverse industry notwithstanding, in promoting the development of the NLC region and the North more generally, it is also necessary to identify and support 'emerging opportunities' that may provide Indigenous people in the NLC region (and by extension the NT and the North) with competitive advantages over southern and overseas jurisdictions. The NLC contends that Governments have traditionally been slow to identify these emerging opportunities – a view supported by the First NAILSMA Indigenous Experts Forum, who described governments of all levels as having 'Little consideration of emerging economic opportunities, including carbon and other offset Industries'<sup>13</sup>.

The environmental and conservation services sector is a strong example of an emerging opportunity – with growing recognition of the environmental and economic value of bio-diversity and activity such as carbon offsetting, remote living Indigenous people are in a unique position to play a central role.

NLC Land and Sea Ranger operations through the 'Working on Country' program<sup>14</sup> is a prime example of how development can occur in the NLC region within such these new industries. In this example, the NLC has played a unique role in transforming a small local initiative into a national, and in some cases, international movement. The program has a strong track record in delivering employment and training as well and environmental and conservation outcomes – in the 2012/13 Financial Year the NLC administered 21 land and sea ranger groups employing 86 full-time equivalent rangers during 2012 - 2013, with 16 ranger group co-ordinators, and a head office support team of co-ordinators and facilitators.

More broadly, traditional knowledge in research and innovation also represents an under-utilised opportunity for development. – The NLC believes the following are all among the many examples where TOs are currently (or are capable of) developing an effective expert-knowledge based industry able to be exported to the rest of the country or potentially the world:

- Fire and carbon management;
- Fresh water management;
- Customs and border protection;
- Pharmaceuticals and nutrition; and
- Fisheries management and research

However, it will be the localised nature of the intellectual property underpinning such work that can provide the NLC region, and the North, with the competitive advantage needed in the future.

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<sup>13</sup> 'Towards resilient communities through reliable prosperity' North Australian Indigenous Experts Forum on Sustainable Economic Development - First Forum Report Mary River Park, Northern Territory, 19 – 21 June 2012. NAILSMA Knowledge Series 013/2012. NAILSMA 2012 (pp6)

<sup>14</sup> <http://www.nlc.org.au/articles/info/ranger-programs1/>

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A case study presenting an overview of the NLC Fire and Carbon Management program is found at Attachment B to this submission.

Notwithstanding the need for recognition and support, the NLC also believes that there is real requirement for streamlined and effective venture administration within these emerging industries. A 'single desk' model for emerging industries may be a useful and pragmatic way to both reduce administrative overheads and generate economies of scale in commercial capacity. A single desk model may also be more effective at working with governments to maximise existing demand and generating new demand for the various products and strengths of the North.

### *Case study A: Indigenous Pastoral Program*

The Indigenous Pastoral Program (IPP) is a multi agency partnership that includes the Northern Land Council, Central Land Council (CLC), Northern Territory Cattlemen's Association, Department of Resources, Department of Education, Employment and Workplace Relations (DEEWR) and the Indigenous Land Corporation (ILC).

NLC worked collaboratively with partner agencies on the third round of the IPP and developed a Strategic Plan to guide IPP up to June 2015. Under that plan, ILC provided two years of grant funding commencing 2012 to engage three Pastoral Engagement Officers to assist the implementation of the IPP3 Operational Plan.

Under the IPP3 Operational Plan twelve properties were prioritised for support. This included the development of four business plans, infrastructure upgrades, natural resource management assistance and compiling thorough property profiles for thirty properties. Pastoral activity on Aboriginal Land Trusts cover an extensive area with approximately 55,000 square kilometres of land currently in production within the NLC region. The development of the property profiles will assist NLC and program partners to target future support effectively.

IPP continues to support the development of pastoral aspirations on behalf of traditional Aboriginal owners and delivers a range of support mechanisms to establish land use agreements on Aboriginal Land Trust areas.

Indigenous pastoralists were supported with training opportunities via two Indigenous Cattlemen's Workshops. The first was held at Charles Darwin University (CDU), Katherine Campus and the second in Alice Springs at the Arid Zone Research Institute. Indigenous Cattlemen's Workshops deliver content in a range of formal settings and practical demonstrations and participants enjoyed training activities covering issues such as best practice herd management, business management, governance responsibilities, marketing and animal welfare.

NLC's Pastoral Unit worked collaboratively with colleagues from the Department of Primary Industries and Fisheries Pastoral Production Group in facilitating the delivery of extension services. Extension Service staff provide assistance with the provision of specialist information during the development of business plans, a minimum infrastructure standards hand book for Indigenous pastoral properties, pastures and land systems information, assisting community groups with funding applications as well as program logistics and general operational support.

NLC facilitated and negotiated several new land use agreements over Warrumungu, Murrarji (western side) and Dillinya Aboriginal Land Trusts. Land use agreements over Robinson River and Bishops Bore were negotiated in the previous reporting period and executed in this reporting period.

The NLC is committed to work with traditional owners on pastoral development on Aboriginal Land Trust areas. Benefits flowing from this work incorporate sustainable pastoral activities, improved land and environmental management and economic benefits from enhanced infrastructure, revenue as well as improving employment and social outcomes for local people on country. In conjunction with traditional Aboriginal owners and has commenced carrying out a compliance monitoring schedule on pastoral land use agreements.

## *Case Study B: Fire Management and Carbon Farming Initiative*

In May 2012, the Australian Government agreed to fund the three regional fire management projects – Central Arnhem Land Fire Abatement (CALFA), the NT Gulf and Western Top End under the *Caring for our Country* program.

The aim of these NLC fire projects was to prevent large late dry season wildfires from damaging country through creating a network of early dry season firebreaks and mosaic burning lit by Aboriginal ranger groups and traditional owners employed under the project. There are now over 122 Aboriginal people directly employed in this project as well as 15 Aboriginal ranger groups involved across the three regions. NLC ranger groups have been involved in Fire Fighting 1 training this year with 72 rangers completing this course with Bushfires NT.

The *Carbon Farming Initiative* (CFI) officially commenced on 1<sup>st</sup> July 2012 and is built on research undertaken by NAILSMA. The CFI recognises early dry season burning activities as an effective way of reducing the large amount of smoke and carbon pollution created by late dry season wildfires. Under this scheme Aboriginal ranger groups will be able to create carbon credits and generate funds to support land management activities on Aboriginal land through s19 *ALRA* land use agreements with traditional owners.

In 2012, Fish River Station managed by the Indigenous Land Corporation generated hundreds of thousands of dollars of income from carbon credits from fire abatement and strategic early dry season burning by their Aboriginal rangers and traditional owners.

Funding has also been secured for the West Arnhem Land Fire Abatement (WALFA) and Western Top End regional fire management projects under the *Indigenous Carbon Farming Fund*. This funding aims to develop the capacity of ranger groups and Aboriginal organisations to develop governance structures and commercial agreements to earn income from fire management through reducing the amount of country that gets burnt each year through strategic early dry season burning.

Fire abatement agreements under the CFI have the potential to fund ongoing employment for Aboriginal people (including senior traditional owners) in fire management and other land management activities, as well as improving access to outstations (grading roads) and remote country for Aboriginal communities.

Large late dry season wildfires, lit by lightning or people have burnt large areas of the Gulf, Arnhem Land and the western Top End every year until recent times. This has caused a lot of damage to cultural sites, bush tucker, plants and animals, cattle stations and community infrastructure. Recent efforts by Aboriginal ranger groups in Arnhem Land and the Gulf have managed to significantly reduce the incidence of wildfires late in the year by creating early dry season fire breaks.

Fire management is part of how Aboriginal people have looked after country for thousands of years in the Top End. Early dry season burning has protected a variety of habitats including places that are very sensitive to fire like rainforest (jungle), cypress pine forest, sandstone heath and riparian areas along river and springs.