



National
Native Title
Council

28 January 2014

Review Team
Review of Indigenous Business Australia and
the Indigenous Land Corporation

*spirit
of
Change*

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Dear Sir / Madam

Thank you for the opportunity to provide comments to the review into Indigenous Business Australia (IBA) and the Indigenous Land Corporation (ILC). The NNTC, as always, is committed to working closely with the Government to assist in the development of improved policy and legislative reforms to secure socio-economic benefits for Aboriginal and Torres Strait Islander peoples across Australia.

The NNTC is an alliance of Native Title Representative Bodies and Native Title Service Providers (NTRBs/NTSPs) from across the country being formally incorporated in November 2006. The objects of the NNTC are, amongst other things, to provide a national voice for NTRBs/NTSPs on matters of national significance affecting the native title rights of Aboriginal and Torres Strait Islander people.

The following submission provides preliminary comments in response to points (a) and (b) of the Terms of Reference to the Review. However due to the timing of the Review and the limited capacity to seek comprehensive comments from its members, the NNTC seeks a commitment to be involved in the development of the Government's response to the review in order to provide further comment, particularly in relation to discussions on the merits or otherwise of integrating the ILC and IBA.

Introduction

The IBA and ILC have both been established by federal legislation with responsibilities for Indigenous economic and social development. Both have received significant Government funding and the ILC in particular has responsibility for a significant land estate.

The IBA was established under the 1990 Aboriginal and Torres Strait Islander Commission (ATSIC) legislation and promotes and encourages self-management, self-sufficiency and economic independence for Indigenous people. The ILC was established by statute as an amendment to the ATSIC Act in 1995 to administer the Indigenous Land Fund and to assist Indigenous people to acquire and manage

land to achieve economic, environmental, social and cultural benefit. Both bodies have not been substantially reformed since they were established.

The NNTC believes that whilst both the ILC and IBA may have achieved some positive Indigenous economic and land development outcomes, these have been achieved outside of any strategic approach to policy development, resulting in a perception that they have had little impact on the overall economic position of Indigenous people.

The NNTC therefore believes that the Review provides a welcome opportunity to significantly review the activities of both the ILC and IBA to promote a renewed national effort to rebuild indigenous communities in line with developments that have occurred since the recognition of Indigenous common law rights as well as the more recent maturing of native title jurisprudence.

Native title and the ILC/IBA

The NNTC appreciates that the ILC was originally established by the Federal Government in 1995 to assist Indigenous individuals and groups that were unlikely to be able to successfully claim native title rights to acquire and manage land. At that early stage of the native title system's evolution, neither the Government nor native title claimants could ever have anticipated the time, energy and expense involved in reaching a native title determination (many claimants have been waiting over 10 years for a resolution). In addition, no-one could have anticipated the nuances that have developed over 20 years since the introduction of the *Native Title Act 1993 (Cth)*, such that economic benefits do not flow evenly across Australia to native title parties, but are rather concentrated in resource-rich areas and many native title holders are left with very few resources to exercise those hard-won rights via their Prescribed Body Corporate (PBC).

The NNTC therefore welcomes an opportunity to provide this submission, with the perspective of a mature native title system, drawing to the Government's attention those key areas where the ILC/IBA could instigate or improve, their interaction with native title parties.

The key areas include:

- Indigenous economic and community development
- Native title settlements
- Support for Prescribed Bodies Corporate
- Regional Planning and Strategies
- Aboriginal Land Account

Native Title and Economic Development

Native title has played an important role in achieving improved socio-economic circumstances and economic independence for native title groups, as well as individuals, families and communities. The native title system provides significant employment and training opportunities and should be considered as a key factor and driver of indigenous policy development and implementation.

By and large economic improvements have been achieved through the negotiation of agreements, predominantly with the extractive industry. Whilst the native title experience differs across the country, depending on local circumstances, the native title system has become a proven avenue for economic growth and financial autonomy for indigenous peoples through a range of economic activities including employment and training, enterprise development, and social entrepreneurship and improved housing.

There have been a large number of native title claims settled throughout Australia with the subsequent creation of many Traditional Owner corporations (Prescribed Bodies Corporate and Registered Native Title Bodies Corporate - PBCs). An increasing number of PBCs are being established and this number will continue to increase into the future as more native title claims are settled. Many NTRBs and NTSPs have identified a growing demand for the need for support to PBCs, however most remain insufficiently resourced and struggle to carry out their statutory functions.

The NNTC believes that the Review should consider how best the ILC and IBA can engage with NTRBs, NTSPs and PBCs to achieve positive and sustained Indigenous economic and social improvement.

The NNTC would argue that native title can be leveraged for economic and social development whilst still protecting and enhancing cultural and environmental values. The ability of native title groups to realise these outcomes is hampered by the lack of clear Commonwealth government policy on:

- post-settlement funding and support for PBCs and other Traditional Owner organisations
- Commonwealth contribution to native title settlements as a way of sharing compensation liability with the States
- a co-ordinated approach to native title and economic development.

The NNTC therefore recommends that the Government enhance the level of coordination and investment in native title settlements across all relevant Commonwealth agencies and statutory authorities.

The NNTC also believes that reforming the Government's Indigenous development policy in alignment with the realities and practicalities of native title agreements, whilst recognising the limitations of PBCs, as a way to significantly advance the potential for improved economic and social outcomes for native title groups and Indigenous communities generally.

Native title settlements and the challenge of establishing a clear role for the ILC and IBA

A current impediment to the ILC and IBA contributing to native title settlements is that there is no legislative or procedural 'trigger' for them to become involved in negotiations toward a settlement. Unless the native title party already has a project in train that could be bolstered by the acquisition of freehold land or

assistance with land management or economic enterprise, it is unlikely that the ILC or IBA will have cause to know whether and in what way it might contribute to a settlement.

While there is nothing to prevent native title claimants applying for ILC assistance through its existing land acquisition and land management programs, the NNTC submits that there needs to be a specific arrangement in place whereby government parties can approach the ILC to work with the native title party to identify local, sustainable opportunities to build intergenerational wealth through land based activities. Furthermore, any assistance the ILC can provide in the form of land acquisition and management needs to be delivered in a timely way that provides certainty for native title parties. Native title claimants cannot be expected to agree to a settlement that may or may not provide certain benefits in the future, due to policy frameworks and processes beyond their control.

The ILC's existing programs and associated application processes require applicants to have conducted a range of business and/or other planning processes and to be able to demonstrate a certain capacity to manage land for enterprise development purposes or social, cultural or environmental activities. Many native title groups will need considerable support and resources in order to reach this organisational capacity.

During the negotiation phase of a native title settlement, it is not always the case that a native title group will have a registered organisation or other legal entity capable of receiving or holding land. This role cannot fall to the relevant PBC until the claim is resolved. Therefore dedicated and readily accessible support is required from the ILC and other relevant government agencies to facilitate the development of this capacity and ensure opportunities for economic development through land acquisition can be taken up in the context of native title settlements. For example, dedicated funding from the ILC for scoping land needs of the group and strategic planning for future acquisition and land management may assist native title groups identify specific benefits that could form part of a settlement package.

Government Policy Development

The NNTC has argued on many occasions that native title policy has been developed independent to closing the gap and broader indigenous affairs policies. Native title has provided a successful platform for economic development, a clear stated goal of Federal as well as State and Territory Governments across Australia, yet some State governments seem more focussed on strategies to control native title payments in a paternalistic fashion rather than developing initiatives that better promote economic development for native title groups through the negotiation of agreements.

The NNTC believes that there has been a failure of Governments to develop a coherent public policy and institutional framework that matches the priorities of

native title groups for improved socio-economic conditions through their traditional lands and culture. This lack of consistency, where bodies such as the ILC and IBA and a range of other government bodies with responsibility to support Indigenous policies operate in a policy context that is fundamentally detached from native title.

The NNTC also believes that the ILC and IBA have the potential to facilitate partnerships between native title groups and other parties to build economic and social partnerships. However, as they are currently structured and through their policy development, the ILC and IBA appear to be constrained by their own commercial imperatives and governmental accountabilities which impedes their capacity to play this important development role.

The Aboriginal and Torres Strait Islander Land Fund

The NNTC welcomes Minister Scullion's assurance in his press release dated 2 December 2013 that "*there is no intention to change, alter or take savings out of the Aboriginal and Torres Strait Islander Land Account*". The NNTC strongly urges that, in the event of the ILC and IBA being integrated, the purpose of the Land Account should be preserved.

The NNTC also submits that in the event of income from the Land Account being used to fund any contribution by the ILC towards native title settlements, it should not be used to fund the Commonwealth's native title compensation liability.

The NNTC therefore strongly recommends that the Government preserve the purpose of the Aboriginal and Torres Strait Islander Land Account

Integrating the ILC and IBA

The NNTC believes that there should be further discussion and consultation on any proposal to integrate the ILC and IBA. An integration of the two authorities represents a significant policy shift which, at present, the NNTC has not had any opportunity to properly canvas with its members. We therefore respectfully request further consultation on such a proposal. In the meantime, and to assist Government with its initial considerations, the NNTC submits the following preliminary comments.

In considering the integration of the ILC and IBA, a close examination should be undertaken of how the combined scale of the organisations can best be leveraged for native title settlement negotiations to further equip native title corporations to maximise assets and investments for sustained economic benefit. A roundtable addressing this issue could be co-ordinated by the Department of Prime Minister and Cabinet and attended by the IBA and ILC, the National Native Title Council, NTRBs, NTSPs and native title organisations (including PBCs, RNTBCs and Traditional Owner Corporations).

As part of this examination, the NNTC recommends that consideration be given to merging the ILC and IBA's assets and financial capacity within a coherent developmental framework based on evidence of what approaches are most effective that could vastly improve the social and economic outcomes that are currently achieved from public investment in Indigenous development.

Previous Governments, with varying success, have created Commonwealth entities that have both commercial and community service obligation (CSO) objectives. The NNTC believes that any integration of the ILC and IBA would create tension between achieving both commercial and CSO imperatives.

A review of the ILC's performance outcomes reveals a focus on predominantly CSO objectives related to social, cultural and environmental outcomes, whereas the IBA is focussed predominantly on commercial and economic aspirations. Therefore, the NNTC believes that any proposal to integrate the authorities would need to carefully consider the challenges presented through resulting tension between commercial and CSO priorities.

Consideration should also be given to developing a clear strategy for assigning priorities and objectives should the ILC and IBA be integrated. The current statutory purpose of the ILC is to assist Aboriginal and Torres Strait Islanders acquire and manage land to provide economic, environmental, social and cultural benefits. The purpose of the IBA is to foster Aboriginal economic self-sufficiency through the accumulation and use of a substantial capital asset. The NNTC would be concerned about the IBAs ability to invest in initiatives with social objectives given its focus on financial and economic outcomes.

The NNTC therefore believes that there should be further consideration and examination of any proposal to integrate the two agencies given the tension between prioritising economic objectives over social or cultural objectives.

Regional planning and strategies

The NNTC believes that there is potential to increase the effectiveness of IBA and ILC support for native title groups across Australia by adopting a co-ordinated approach between the ILC and IBA, relevant State agencies and NTRBs, NTSPs and PBCs. Such an approach should be done in a way that sets out clear roles and responsibilities for working with native title groups to provide support towards preparing for, negotiating and implementing native title resolutions as well as agreements including investment and business plans.

The effectiveness of the IBA and ILC will depend on the support provided to native title groups seeking to achieve long term sustainability through economic development and land management initiatives. This would include providing support other than just financial grants to native title groups for both pre- and post-settlement environments. This could be assistance towards the

development of regional plans across various communities and the building of organisational capacity to better manage business enterprise to ensure benefits from agreements are utilised in the most beneficial way.

The NNTC also believes that the IBA and ILC could be more effective by having a stronger and more systematic 'programme approach' for pre-commercial facilitation that is guided by regional strategies and knowledge and sits along-side and supports the range of capital products available. This should be developed in the context of regional planning, funded by the ILC and IBA and delivered in partnership with NTRBs and NTSPs.

The NNTC notes the importance of effective regional planning to enable the ILC to respond quickly and effectively to the needs of native title groups involved in the course of native title settlement negotiations.

The NNTC therefore believes there is scope for both the ILC and IBA to support native title groups, strengthened through regional engagement. Such a regional approach has the potential to contribute to a more collaborative attitude whereby NTRBs/NTSPs can work with the ILC, IBA and government parties to identify aspirations for land acquisition and management and economic development early in negotiations and work together towards culturally and economically sustainable outcomes for native title groups.

Greater funding flexibility

Governments can enable Indigenous development by responding to Indigenous priorities with pooled and flexible funding arrangements. Currently there is a gap in the range of tools available for the IBA to provide grants. Grants, whether to access expert advice and information at the pre-commercial stage, or to fund the due diligence or initial acquisition of particular assets and activity, are often used in development programmes, and are often a pre-cursor to accessing loans and other forms of capital. The effectiveness of the IBA could be enhanced through increasing the ability to provide grants, and in particular to enable the flexible and tailored use of grant funds within a programme of business and capacity development.

The ILC's fixed grant rounds, particularly in relation to land acquisition, is an impediment to Indigenous people attempting to take advantage of time-critical market opportunities to purchase land. It is vital, both from the point of view of program applicants, and also Australian taxpayers, that the ILC work flexibly and allow the purchase of optimum properties that provide best value for money.

The NNTC submits that the IBA/ILC should be given a clear mandate to increase the dollar for dollar ratio of funding provided to support native title groups compared with spending on process and administration.

Capacity Development

Having access to land and other resources and assets is an essential component required to facilitate indigenous economic development activity. However another critical component to economic development is an investment in human capital. The development of people to be able to effectively interact with economic institutions is essential to any economic development policy and program. It is the experience of some NNTC members that this is an area requiring comprehensive investigation and appropriate program responses in order to realistically achieve economic development policy objectives in remote and regional Australia. The extent of development will continue to be constrained until skill levels can be improved in relation to Indigenous business development.

The support that has been provided to Indigenous people interested in developing businesses, such as through the IBA, has predominantly been around business planning and feasibility studies provided by external consultants or through the provision of low interest loans and grants. While important components in themselves these do not provide for the capacity and skills development required for Indigenous people to run their own businesses or operate effectively as a business partner, such as in a joint venture arrangement.


Given the need for capacity development in a number of areas associated with business development the NNTC considers an area worthy of further exploration is that of appropriate joint venture models conducive to building indigenous business capacity. There is the potential for government, in partnership with Aboriginal organisations, to design an incentive program that encourages established business operators of repute to partner with Indigenous business proponents under arrangements that give prominence to providing benefits through capacity development, employment etc. while offering operator incentives that reduce their risks. Depending on the scale of the enterprise, consideration might be given to assisting the joint venture partner to directly provide the commercial expertise and other capacity-building support themselves as required or to work in collaboration with the relevant agency or an appointed third-party to facilitate such a process. The NNTC would encourage the Government to examine such an initiative in collaboration with NTRBs/NTSPs.

Conclusion

The NNTC acknowledges that some of the issues raised above go beyond the scope of the terms of reference for the Review. Nonetheless, they do illustrate the importance of further public consultation on the future scope and activities of both the ILC and IBA. In this regard, the NNTC would welcome an opportunity to work closely with the government to ensure that any resultant policy shift continues to deliver positive economic benefits, not only for native title groups but the broader Indigenous community.

I trust you find these comments useful and constructive, however if you have any queries or require any further information please do not hesitate to contact me at your convenience.

Yours sincerely

A handwritten signature in black ink, appearing to read "Brian Wyatt".

Brian Wyatt

Chief Executive Officer